Agenda

Minnetonka Economic Development Authority

Monday, September 25, 2017

Following the Regular Meeting

Council Chambers

1. Call to Order
2. Roll Call: Wagner-Ellingson-Allendorf-Acomb-Wiersum-Bergstedt-Schneider
3. Approval of Agenda
4. Approval of Minutes: July 24, 2017 EDA meeting minutes
5. Business Items:

   A. Shady Oak Redevelopment Contract for Private Development

      Recommendation: Adopt the resolution (4 votes)

   B. 2018 Preliminary HRA Levy

      Recommendation: Recommend the EDA adopt a resolution setting a preliminary HRA levy (4 votes)

6. Adjourn

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Minutes
Minnetonka Economic Development Authority
Monday, July 24, 2017

1. Call to Order

President Terry Schneider called the meeting to order at 7:39 p.m.

2. Roll Call

Commissioners Bob Ellingson, Dick Allendorf, Patty Acomb, Brad Wiersum, Tim Bergstedt, Tony Wagner, and Terry Schneider were present.

3. Approval of Agenda

Allendorf moved, Bergstedt seconded a motion to accept the agenda, as presented. All voted "yes." Motion carried.

4. Approval of Minutes: April 10, 2017 EDA minutes

Allendorf moved, Bergstedt seconded a motion to approve the April 10, 2017 minutes. Ellingson, Allendorf, Acomb, Wiersum, Bergstedt, and Schneider voted "yes." Wagner abstained. Motion carried.

5. Business Items:

A. Applewood Pointe TIF Note

Community Development Director Julie Wischnack gave the staff report.

Wagner asked what the length of the TIF district was. Wischnack said it was 26 years.

Wagner moved, Allendorf seconded a motion to adopt resolution 2017-002 granting approval of the issuance of the TIF note not to exceed $1,290,000. voted "yes." Motion carried.

B. Resolution approving modifications to the TIF Plan for Rowland Housing District

Wischnack gave the staff report.

Wiersum moved, Wagner seconded a motion to adopt resolution 2017-003 approving the TIF Plan modification for the Rowland Housing District. voted "yes." Motion carried.

C. Resolution approving an assignment of loan to CHC Minnetonka Affordable Housing LLC; authorizing the execution of loan documents in connection therewith; and approving the subordination of payments

Julie Eddington from Kennedy and Graven, the city's bond council, gave the report.

Acomb moved, Allendorf seconded a motion to adopt resolution 2017-004 approving the assignment of the loan to CHC Affordable Housing, the Subordination of the Elmbrooke Loan, and related documents; and authorize the EDA President and Executive Director of the EDA to approve non-substantive changes to the Elmbrooke Loan document and Subordination documents. voted "yes." Motion carried.

6. Adjournment

Wiersum moved, Wagner seconded a motion to adjourn the meeting at 7:45 p.m. All voted "yes." Motion carried.

Respectfully submitted,

David E. Maeda
City Clerk

EDA Agenda Item #5A
Meeting of September 25, 2017

Brief Description	Shady Oak Redevelopment Contract for Private Development
Recommendation	Adopt the resolution

Request

The Economic Development Authority (EDA) is required to be a party to the documents and approvals contained in the attachments by adopting the resolution approving the Contract for Private Development for the properties located at 4312 Shady Oak Road and 4292 Oak Drive Lane. This action is required in addition to the city council action.

EDAC/City Council Joint Meeting Summary

On August 14, 2017 the Economic Development Advisory Commission (EDAC) and city council convened at a joint meeting to review the developer's city financing request. Below is a summary of questions and responses from the joint meeting.

- Council Member Allendorf inquired about the city's ability to collect repayment of the $515,889 of the city land-write down through the cash flow note.
    - The city's financial consultant, Stacie Kvilvang from Ehlers, clarified that the $515,889 is an upfront cost to the city that can be refunded through Tax Increment Financing (TIF) pooling as an eligible expense. The overall $1.209 TIF request could be reduced by tax credit pricing but would depend on the final financing of the project. The council should not anticipate that this will happen.
- Council Member Wagner asked a clarifying question about the prior allocation of Boulevard Gardens TIF Pooling funding.
    - Julie Wischnack clarified that The Ridge received a deferred loan allocation of $1,050,000 and the Music Barn was approved for $500,000; however, the Music Barn project is no longer moving forward.
- Commissioner Johnson asked why the developer is not contributing any cash equity to the project.
    - Ms. Kvilvang clarified that the equity is provided through the tax credits that are sold to the investors (who receive a tax break). Tax credits are structured like a mortgage and are not a grant to the developer.
- Mayor Schneider inquired about the ability of the developer to set aside some of the units at 80% AMI vs. the 60% AMI that are being proposed.
    - Ms.Kvilvang clarified that the affordability of the units is established through the scoring of the MHFA tax credit program. The lower affordability level is required to score competitively in the tax credit program.

- Council Member Wiersum asked a clarifying question regarding the income levels and rent restrictions. Commissioner Isaacson clarified that it is a two part test that includes both rental income limits and household income limits below:
  - Rent is capped at between $800 and $1200 per month depending on the size of the unit; and
  - The maximum income that a household can earn is capped at 60% of the AMI which is $58,240 for a family of four (based on 2017 limits).
- Council Member Acomb asked a question regarding how many tax credit projects are awarded each year and the trend for the upcoming year.
  - Julie Eddington, the city's EDA attorney, commented that the tax credit program continues to be very competitive and there are more projects than available funding.
  - Mike Waldo of Ron Clark Construction also clarified that 25-35% get awarded each year. Ron Clark Construction received tax credits awards for three of the past five projects funded in the first year and funding for the remaining two projects in the second year of funding.
  - Mr. Waldo clarified that the developer would request an extension of the contract if tax credits are not awarded in the first year.
- Council Member Wagner asked a clarifying question regarding the shift in rents from 50% AMI to 60% AMI in years 20-30.
  - Commissioner Isaacson clarified that the competitive scoring of the tax credit program provides more points if the rents are lower during the initial five to 10 year period. Rents can be raised after the initial five to 10 year period to 60% AMI.
- Mayor Schneider asked if the project would be eligible to receive additional scoring points on the tax credit application due to its proximity to the future Southwest LRT station at the Shady Oak station.
  - Ms. Wischnack clarified that the project is just outside the half-mile area that is required to receive points for transit.
  - The city will apply for Livable Communities Demonstration Account funding in future years. Any funds received through other grant resources would reduce the city's contribution of TIF pooling funding. The city's contribution will be the last money into the project.
- Mayor Schneider inquired about the vacancy rates and how wage inflation impacts the income and rent restrictions on the units.
  - Ms. Kvilvang clarified that income and rents could rise in some years and decrease in other years. The Department of Housing and Urban Development (HUD) adjusts the limits accordingly each year.
  - Mr. Waldo provided clarification that the development proforma includes an increase of 2% increase in income and 3% in rents each year. The proforma also assumes a 5% vacancy rate. The current vacancy rate in Minnetonka is approximately 2%.
- Council Member Bergstedt inquired about the city's ability to obtain a cleanup grant for the contamination and who is responsible to pay for cleanup if grant funds are not received.

- The city will apply for grant funding to assist with the costs for demolition and cleanup. If funding is not received or cleanup costs increase, the developer would likely request additional assistance from the city and/or seek additional grant sources. The environmental consultant prepared a conservative estimate for the cleanup of the site.

EDAC Recommendation

The EDAC unanimously recommended the approval of the Contract for Private Development with the inclusion of the following modifications to the contract:

- Revised the commencement date and completion date to coincide with the developer's tax credit application process. If tax credits are not received in year one the developer will be required to ask the council for an extension to apply for funding in year two.
- Added language to the contact to clarify that the purchase price of $734,400 is reflective of the appraised value of the property.
- Added HOME and AHIF to the list of grants and loans that the developer will seek to assist with financing for the project.
- Modified the surplus cash flow language to allow project accountants identified in the limited partnership agreement to prepare the audit.

Recommendation

Staff recommends the EDA adopt the resolution approving the Contract for Private Development.

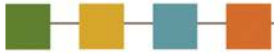
Submitted through:
Geralyn Barone, City Manager
Julie Wischnack, AICP, Community Development Director
Merrill King, Finance Director

Originated by:
Alisha Gray, EDFP, Economic Development and Housing Manager

Supplemental Information:

EDAC Unapproved Meeting Minutes September 7, 2017

Joint City Council/EDAC Meeting August 14, 2017



Memo

To:	Julie Wischnack, Community Development Director Alisha Gray, Economic Development and Housing Manager
From:	Stacie Kvilvang & James Lehnhoff, Ehlers
Date:	August 14, 2017
Subject:	Shady Oak Apartments

Ron Clark has proposed to construct a 49-unit, non-age restricted apartment community on City-owned property at 4312 Shady Oak Road. They have requested $1.379 million in financial assistance from the City from its Boulevard Gardens TIF account. You requested we provide background information on the source of these funds, what they can be used for, explanation on 9% federal low-income-housing tax credits (LIHTC) and an analysis of the financial need of the project.

Boulevard Gardens TIF (District 1-2)

Boulevard Gardens is a redevelopment TIF district that was established in 1996 to facilitate a mixed-use development consisting of retail, affordable family and senior rental units, and condominium/townhomes. This District received its first tax increment revenue in 1997 and will decertify on December 31, 2022.

In 2010, the City modified the TIF District's plan to allow up to 35% of the TIF generated from the District to be utilized for affordable housing. The City completed this modification to provide a source of financing to assist the City in providing affordable housing. In 2012, The EDA committed $1,025,000 to Community Housing Coalition for The Ridge, a 64-unit affordable apartment community located on I-394. Currently there is a balance of approximately $3,138,000 in the account and it is expected that the District will receive approximately $650,000, annually, from 2017 – 2022 (approximately $7M total available).

These funds are limited on what they can be utilized for. Essentially, the funds can only be expended on rental projects and more specifically, LIHTC eligible rental housing. The assistance provided to any project cannot exceed the qualified basis of the tax credits, as defined under section 42(c) of the Internal Revenue Code, less the amount of any tax credits allowed. In this instance, the project has approximately $11.28 million in eligible basis for tax credits, but is only receiving approximately $9.285 million in tax credits. That leaves approximately $2 million in eligible costs where the City could use increment from this district to provide financial assistance to the project.

Low income housing Tax Credits (LIHTC)

The LIHTC program was created in the Tax Reform Act of 1986 and is the Federal government's primary tool to incentivize the construction of new affordable housing in the United States. The purpose of the LIHTC program is to encourage private investment in affordable rental housing. The investor (which are often banks or insurance companies) provide cash (equity) to developers of affordable housing and, in exchange, receive an offset on their federal tax bill—LIHTC is not a grant nor is it a Section 8 program. These investors expect that the project they invest in will perform at a level that generates adequate cash flow to repay the mortgage, their annual asset management fee and any deferred developer fees within a specified time frame (typically 10 years). If the project doesn't perform or fails to comply with Federal regulations, the investor can lose their tax credit.

Each year, the Federal government allocates a limited number of LIHTCs to each state. The Minnesota Housing Finance Agency (MHFA) is charged with creating and overseeing the process for allocating the LIHTC in most of the State. In the spring of each year, MHFA issues their "Super RFP" that details the process to compete for what is known as the "9% LIHTC" and other "soft" funding sources. The applications are typically due in June and this is a one-time opportunity to receive LIHTCs on an annual basis. MHFA announces the awards each year at the end of October.

Because 9% LIHTCs are so scarce and thus highly sought after and competitive, MHFA has created a strict scoring process to rank the submitted funding requests. In 2016, only one in five requests received 9% LIHTCs. MHFA scores applications on a number of priorities, including:

1. **Funding Contributions and Financial Readiness**
2. **Lowest Income Tenants**
3. **Bedroom Count**
4. **Workforce**
5. **Households Experiencing Homelessness**
6. **Location**
7. **Cost Containment**

The more priorities a project meets, the higher the scoring and greater chance it will receive a 9% LIHTC allocation (projects often compete down to the last possible point). By showing committed funds from the City and requesting **NO** additional dollars from MHFA, the chances of the project being funded in 2018 significantly increase.

Analysis of Financial Need

Ehlers conducted a thorough review of the developer's budget and operating pro forma to ensure all development costs, anticipated revenues, and expenditures are represented appropriately and accurately. The table below depicts the proposed sources and uses for the project.

SOURCES	Amount	Pct.	Per Unit
First Mortgage	1,797,000	14%	36,673
Minnetonka Deferred Loan	1,379,100	11%	28,145
Tax Credits	9,285,818	73%	189,506
Deferred Developer Fee	237,417	2%	4,845
TOTAL SOURCES	**12,699,335**	**100%**	**259,170**

USES	Amount	Pct.	Per Unit
Acquisition Costs	734,400	6%	14,988
Construction Costs	9,826,780	77%	200,547
Professional Services	499,700	4%	10,198
Financing Costs	349,309	3%	7,129
Developer Fee	1,045,000	8%	21,327
Cash Accounts/Escrows/Reserves	244,146	2%	4,983
TOTAL USES	**12,699,335**	**100%**	**259,170**

Generally, this project meets the expectations of a 9% LIHTC rental project with regards to the financing structure, projected revenues, on-going operational costs and developer fee. Following are our findings relating to the analysis completed for the development:

- LIHTC projects typically never have any developer equity in the project. The equity comes from the LIHTC investor. The developer only receives a development fee (payment for time and expenses into the project), of which a portion is usually deferred to fill a gap in the financing, and they receive payment over time if there is any cash flow. Typically, 9% LIHTC projects that have rents at the proposed 50% level only provide enough annual cash flow to pay back the deferred developer fee and little to no future cash flow is expected for "profit" purposes.

- Developer is requesting $1,379,000 in a deferred loan from the City, which is 11% of the overall project financing and is only very slightly higher than what we see in most 9% LIHTC projects (typically not more than 10%). We are of the opinion that the first mortgage amount can be increased to reduce the City's level of participation.

- The developer's fee is only 8% of total development costs, which is lower than they could charge for their time, effort and overhead on developing the project and obtaining land use approvals and financing for the project (typical range for LIHTC projects is 10% to 15%). However, the lower fee helps the overall project financially and they are deferring 23% of the developer fee to be paid out of cash flow over the next 10-years, which is typical. However, we are of the opinion that slightly more of the fee can be deferred in order to reduce the City's participation.

- The total development costs for this project are approximately $12.7 million, or $260,000/unit. These costs have increased per unit from their first application due to reducing the size of the project by 5 units and adding a flat roof based upon input, which increased costs by $195,000.

Based upon the above referenced comments, the updated sources and uses are as follows:

SOURCES	Amount	Pct.	Per Unit
First Mortgage	2,035,000	16%	41,531
Minnetonka Deferred Loan	1,209,000	9%	24,673
Tax Credits	9,285,818	73%	189,506
Deferred Developer Fee	246,918	2%	5,039
TOTAL SOURCES	**12,776,736**	**100%**	**260,750**

USES	Amount	Pct.	Per Unit
Acquisition Costs	734,400	6%	14,988
Construction Costs	9,826,780	77%	200,547
Professional Services	499,700	4%	10,198
Financing Costs	349,309	3%	7,129
Developer Fee	1,045,000	8%	21,327
Cash Accounts/Escrows/Reserves	321,547	3%	6,562
TOTAL USES	**12,776,736**	**100%**	**260,750**

Please note the overall project budget increased by approximately $77,000 due to tax credit fees that were not in the original submission. As noted, we reduced the City's loan by $170,000 to $1,209,000 and increased the deferred developer fee by $9,501 (can defer this much more and still have it paid off within 11 years).

Recommendation

Based upon our review of the developer's pro forma and current market conditions, the proposed development will not reasonably be expected to occur solely through private investment within the reasonably near future. Due to the costs associated with redeveloping the property and constructing housing with affordable rents, this project is feasible only through assistance, in part, from the City's contribution.

We recommend providing a Cash Flow Note (Note) to the project for $1.209 million. This will assist them in obtaining more points from MHFA, which increases their scoring and the likelihood they will be awarded 9% LIHTC in the June 2018 round (basically assure the housing gets developed). The Note will be structured to allow the first $30,000 of cash flow, after the deferred developer fee is repaid, to be paid to the developer and anything above that will be split 50/50 between the developer and the City for repayment on the Note. Any balance outstanding on the Note at refinancing and/or sale for the property will be repaid at that time.

Based upon typical underwriting of 5% vacancy and 2% annual increase in revenue and 3% increase in expenses, it is expected that the deferred developer fee is repaid in year eleven (11). However, annual cash flow is only anticipated to be approximately $23,000/year starting in year twelve (12), leaving no available cashflow for repayment on the City's Note. If the project performs at a 2% vacancy (more typical for the City's market), then the deferred developer fee will be repaid in year six (6). Annual cash flow starting in year seven (7) is anticipated to be approximately $43,000/year. Based upon the terms noted above, the first $30,000 will go to the developer. The remaining $13,000 will be split 50/50 between the City and the developer.

Overall, the City should not assume that repayment on the Note will happen over time. However, if the project performs better than anticipated and no unforeseen capital repairs are needed, there is a mechanism in place for the City to receive repayment on the Note sooner than anticipated.

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Policy Number 2.14
Tax Increment Financing Pooling Funds

Purpose of Policy: This policy establishes evaluation criteria that guide the city council in consideration of use of tax increment financing pooling funds

Introduction

Under the Minnesota Statutes Chapter 469, at least 75 percent of tax increment in a redevelopment tax increment financing (TIF) district must be spent on eligible activities within the district, leaving up to 25 percent of the funds to be pooled and therefore eligible to be spent outside of the district, but within the project area.

An exception to the pooling funds is for affordable rental housing. The city may allow the pooling allowance to be increased to 35 percent, which can then go to finance certain affordable housing projects. The project may be located anywhere in the city, and not limited to the project area. Each financed project must be rental housing that is eligible for federal low income housing tax credits. The amount of the assistance is also limited to any amount that satisfies tax credit rules.

The council is aware that use of such TIF pooled funds may be of benefit to the city and will consider requests for pooled funds subject to this council policy. The council considers the use of these funds to be a privilege, not a right.

It is the judgment of the council that TIF pooled funds is to be used on a selective basis. It is the applicant's responsibility to demonstrate the benefit to the city, and that they should understand that although approval may have been granted previously by the city TIF pooled funds for a similar project, the council is not bound by that earlier approval.

Evaluation Criteria

The city will use the following criteria when evaluating a development proposal requesting the use of TIF pooled funds:

- The project supports reinvestment in an identified village center and addresses the goals set out in the comprehensive plan for that center.
- Priority will be provided for projects that are within a "regional" village center or support transit areas.
- Weight will be given when the proportion of affordability is greater than what is customary in other tax increment financed projects in the city, overall affordability of 20% of units (usually at 60% AMI for rental).
- The project may request both tax increment financing and pooling dollars as long as the project has provided data that "but for" the additional pooling dollars, this project would not occur.

- If the project is receiving funds from other sources, the pooled dollars would be the last source utilized unless it impacts other sources.

Other Provisions

- A project will not normally be given financing approval until all city planning and zoning requirements have been met. Planning and zoning matters may be considered simultaneously with preliminary approval of the financing.

- The city is to be reimbursed and held harmless for any out-of-pocket expenses related to the TIF pooling funds, but not limited to, legal fees, financial analyst fees, bond counsel fees, and the city's administrative expenses in connection with the application. The applicant must execute a letter to the city undertaking to pay all such expenses.

- The applicant will be required to enter into a development agreement with the city outlining the terms of the use of TIF pooled funds.

Adopted by Resolution No. 2011-039
Council Meeting of May 16, 2011

Fourth Draft
September 20, 2017

CONTRACT

FOR

PRIVATE DEVELOPMENT

between

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

CITY OF MINNETONKA, MINNESOTA

and

SHADY OAK CROSSING LIMITED PARTNERSHIP

Dated __________, 2017

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 on or as of the ____ day of __________, 2017 (the "Agreement"), is by and 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 (the "City"), a home rule city duly organized and existing under its Charter and the laws of the State of Minnesota, and SHADY OAK CROSSING LIMITED PARTNERSHIP, a Minnesota limited partnership (the "Developer").

WITNESSETH:

WHEREAS, the Authority was created pursuant to Minnesota Statutes, Sections 469.090 through 469.1082, as amended (the "Act"), 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 City have undertaken a program to promote economic development and job opportunities, promote the development and redevelopment of land which is underutilized within the City, and facilitate the development of affordable housing, and in this connection created a development district known as Development District No. 1 (the "Project") in the City, pursuant to Minnesota Statutes, Sections 469.124 to 469.134, as amended; and

WHEREAS, by Resolution No. 93-9649, the City transferred control, authority and operation of the Project from the City to the Authority; and

WHEREAS, the City and the Authority have established Redevelopment Tax Increment Financing District No. 2 (the "TIF District") within the Project and adopted a financing plan (the "TIF Plan") for the TIF District in order to facilitate redevelopment of certain property in the Project, all pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended (the "TIF Act"); and

WHEREAS, pursuant to Section 469.1763, subdivision 2(d) of the TIF Act, the Authority and City modified the TIF Plan for the TIF District in order to increase the amount of Tax Increments (defined hereinafter) that may be spent outside the boundaries of the TIF District from twenty-five percent (25%) to thirty-five percent (35%), provided that such pooled Tax Increment is used solely to assist the development of rental housing that meets the requirements for federal low income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, the City owns certain property located within the Project (the "Development Property") and proposes to convey the Development Property to the Developer;

WHEREAS, the Developer has proposed a development of an affordable rental housing facility described further herein as the "Minimum Improvements" on the Development Property, which facility is expected to receive federal low income tax credits; and

WHEREAS, the Authority has proposed to provide the Developer with a loan of tax increment from the TIF District to assist in financing the acquisition and construction of the Minimum Improvements on the Development Property; and

WHEREAS, the Authority and the City believe that the development of the Development Property pursuant to this Agreement, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State of Minnesota and local laws and requirements;

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:

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

ARTICLE I

Definitions

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

"Act" means the Economic Development Authority Act, Minnesota Statutes, Sections 469.090 through 469.1082, as amended.

"Affiliate" means with respect to the Developer (a) any corporation, partnership, or other business entity or person controlling, controlled by or under common control with the Developer and (b) any successor to such party by merger, acquisition, reorganization or similar transaction involving all or substantially all of the assets of such party (or such Affiliate). For the purpose hereof the words "controlling," "controlled by," and "under common control with" shall mean, with respect to any corporation, partnership, corporation or other business entity, the ownership of fifty percent or more of the voting interests in such entity, possession, directly or indirectly, of the power to direct or cause the direction of management policies of such entity, whether ownership of voting securities or by contract or otherwise.

"Agreement" means this Agreement, as the same may be from time to time modified, amended, or supplemented.

"Authority" means the Economic Development Authority in and for the City of Minnetonka, Minnesota, or any successor or assign.

"Authority Representative" means the Executive Director of the Authority, or any person designated by the Executive Director to act as the Authority Representative for the purposes of this Agreement.

"Business Day" means any day except a Saturday, Sunday, legal holiday, a day on which the City is closed for business, or a day on which banking institutions in the City are authorized by law or executive order to close.

"Business Subsidy Act" means Minnesota Statutes, Sections 116J.993 to 116J.995, as amended.

"Certificate of Completion" means the certification to be provided the Developer, pursuant to Section 4.4 hereof and substantially in the form attached as SCHEDULE B.

"City" means the City of Minnetonka, Minnesota.

"City Representative" means the City Manager or person designated in writing by the City Manager to act as the City Representative of the City of Minnetonka, Minnesota.

"Closing" has the meaning provided in Section 3.2(b) hereof.

"Code" means the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

"Construction Plans" means the plans, specifications, drawings and related documents on the construction work to be performed on the Development Property which (a) shall be as detailed as the plans, specifications, drawings and related documents which are submitted to the appropriate building officials of the City and the Authority, and (b) shall include at least the following for each building: (1) site plan; (2) foundation plan; (3) basement plans; (4) floor plan for each floor; (5) cross-sections of each (length and width); (6) elevations (all sides); (7) landscape plan; and (8) such other plans or supplements to the foregoing plans as the Authority may reasonably request to allow it to ascertain the nature and quality of the proposed construction work.

"County" means the County of Hennepin, Minnesota.

"Declaration" means the Declaration of Restrictive Covenants attached as SCHEDULE C hereto.

"Developer" means Shady Oak Crossing Limited Partnership, a Minnesota limited partnership, or its permitted successors or assigns.

"Development District" means the Authority's Development District No. 1.

"Development Plan" means the Development Program for the Development District.

"Development Property" means the property described in SCHEDULE A hereto.

"Event of Default" means an action by a party described in Section 9.1 hereof.

"Holder" means the owner or mortgagee of a Mortgage.

"Minimum Improvements" means the construction on the Development Property of a rental housing facility containing 49 Rental Housing Units, subject to the affordability requirements described in Section 4.5 hereof.

"Mortgage" means any mortgage made by the Developer in favor of one of the Other Lenders which is secured, in whole or in part, with the Development Property, and which is a permitted encumbrance pursuant to the provisions of Article VIII hereof.

"Other Lenders" means any entities (other than the Authority and the Tax Credit Investor) that provide grants or loans to the Developer in order to finance a portion of the cost of the Minimum Improvements.

"Other Loans" means a construction loan to be obtained by the Developer for the construction of the Minimum Improvements, a permanent first mortgage loan to be obtained by the Developer for permanent financing of the Minimum Improvements, and any other loan financing obtained by the Developer and related to the construction of the Minimum Improvements.

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

"State" means the State of Minnesota.

"Surplus Cash" means the annual cash flow of the Developer, calculated pursuant to the limited partnership agreement of the Developer as total cash receipts of the Developer from ordinary operations of the Minimum Improvements *less* the total cash disbursements of the Developer associated with the Minimum Improvements, such as, but not limited to: (1) operating expenses, (2) costs of repair or restoration, (3) management fees, (4) financing fees or other requirements of any lender to the Developer, (5) interest and principal repayments of the Other Loans, as the same may be refinanced, to the extent such amounts are due and payable under the applicable loan documents associated with the Other Loans, and (6) costs paid by the Developer, if any, to provide tenants with supportive services, and (7) amounts paid in connection with the establishment or maintenance or reserves required for the Minimum Improvements; and, further, *less* payments to the Tax Credit Investor for unpaid Credit Adjuster Payments and Credit Adjuster Advances, payments to the Tax Credit Investor for Asset Management Fees, payments of unpaid Developer Fees, payments of Operating and Construction Deficit Loans, all as defined in the limited partnership agreement of the Developer.

"Tax Credit Investor" means Wells Fargo Affordable Housing Community Development Corporation or any other investor limited partner selected by the Developer.

"Tax Credit Law" means Section 42 of the Code.

"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 Authority's Redevelopment Tax Increment Financing District No. 2.

"Tax Increment Plan" or "TIF Plan" means the Authority's Tax Increment Financing Plan for the TIF District, as most recently modified by the Authority and City on December 20, 2010, 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 court including the tax court of the State.

“Termination Date” means the later of the date the TIF Loan is paid in full in accordance with its terms, or the date of termination of the “Qualified Project Period” as defined in the Declaration.

“TIF Loan” has the meaning provided in Section 3.9(a) hereof.

“Transfer” has the meaning set forth in Section 8.2(a) hereof.

“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 war, terrorism, strikes, other labor troubles, 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 City or the Authority in exercising its rights under this Agreement) which directly result in delays. Unavoidable Delays shall not include delays in the Developer’s obtaining of permits or governmental approvals necessary to enable construction of the Minimum Improvements by the dates such construction is required under Section 4.3 hereof, unless (a) the Developer has timely filed any application and materials required by the City for such permit or approvals, and (b) the delay is beyond the reasonable control of the Developer.

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ARTICLE II

Representations and Warranties

Section 2.1. Representations and Covenants by the Authority.

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

(b) The Authority will use its best efforts to facilitate development of the Minimum Improvements, including but not limited to cooperating with the Developer in obtaining necessary administrative and land use approvals and construction and/or permanent financing pursuant to Section 7.1 hereof. The Authority will also use its best efforts in obtaining various grants for the Minimum Improvements, including but not limited to, a Tax Base Revitalization Account grant from Hennepin County and a Livable Communities Demonstration Grant from the Metropolitan Council, and other grants for environmental remediation and demolition of existing buildings on the Development Property.

(c) The activities of the Authority are undertaken for the purpose of fostering the development of affordable rental housing, which will also revitalize this portion of the Development District and increase tax base in the City.

(d) 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 charter or statutory limitation or any indebtedness, agreement or instrument of whatever nature to which the Authority is now a party or by which it is bound, or constitutes a default under any of the foregoing.

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

(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 proposes to convey the Development Property to the Developer and will use its best efforts to facilitate development of the Minimum Improvements, including but not limited to cooperating with the Developer in obtaining necessary administrative and land use approvals and construction and/or permanent financing pursuant to Section 7.1 hereof. The City will also use its best efforts in obtaining various grants for the Minimum Improvements, including but not limited to, a Tax Base Revitalization Account grant from Hennepin County, and a Livable Communities Demonstration Grant from the Metropolitan Council, and other

grants for environmental remediation and demolition of existing buildings on the Development Property.

(c) The activities of the City are undertaken for the purpose of fostering the development of affordable rental housing, which will also revitalize this portion of the Development District and increase tax base in the City.

(d) 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 charter or statutory limitation or any indebtedness, agreement or instrument of whatever nature to which the City is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(e) The City shall promptly advise the Developer of all litigation or claims affecting any part of the Development Property.

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

(a) The Developer is a limited partnership duly organized and in good standing under the laws of the State of Minnesota, is not in violation of any provisions of its organizational documents, or, to the best of its knowledge, the laws of the State, has power to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action of it partners.

(b) The Developer will construct, operate and maintain the Minimum Improvements in accordance with the terms of this Agreement, the Construction Plans, and all applicable local, State and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations) in all material respects.

(c) 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.

(d) 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 partnership or company restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which either is bound, or constitutes a default under any of the foregoing.

(e) The Developer shall promptly advise 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 the Developer or its business, which may delay or require changes in construction of the Minimum Improvements.

(f) The proposed redevelopment on the Development Property hereunder would not occur but for the financial assistance being provided by the Authority hereunder.

(g) The Developer will construct the Minimum Improvements in accordance with all local, state or federal laws or regulations.

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ARTICLE III

Land Conveyance; Tax Increment Assistance

Section 3.1. Status of the Property. As of the date of this Agreement, the City owns the Development Property. In order to assist the Developer in making construction of the Minimum Improvements economically feasible, the City will convey title to and possession of the Development Property to the Developer at a reduced cost, subject to all the terms and conditions of this Agreement. The Authority has no obligation to acquire any portion of the Development Property.

Section 3.2. Conditions of Conveyance. (a) The City will convey title to and possession of the Development Property to the Developer by quit claim deed substantially in the form of the deed attached as SCHEDULE D to this Agreement for a purchase price of $734,400. $734,400 is the appraised value of the Development Property but the cost to the City to purchase the Development Property, including the payment of relocation benefits and other costs, was $1,250,289. The City will reimburse itself for the land write-down in the amount of $515,889 from Tax Increment. The City's obligation to convey the Development Property to the Developer is subject to satisfaction of the following terms and conditions:

(1) The City and the Authority having approved Construction Plans for the Minimum Improvements in accordance with Section 4.2, and the City having approved the Developer's site plan;

(2) The Authority and the City having approved financing for construction of the Minimum Improvements in accordance with Article VII hereof, and the Developer having closed on the permanent financing at or before Closing on transfer of title to the Development Property to the Developer;

(3) The City having approved the conveyance of the Development Property by ordinance as required by the City's Charter;

(4) The Developer having reviewed and approved (or waived objections to) title to the Development Property, including survey matters, as set forth in Section 3.4;

(5) The Developer having reviewed and approved (or waived objections to) soil and environmental conditions as set forth in Section 3.5; and

(6) There being no uncured Event of Default under this Agreement.

Conditions (1) and (2) are solely for the benefit of the Authority and the City, and may be waived by the Authority and the City. Condition (3) cannot be waived. Conditions (4) and (5) are solely for the benefit of the Developer, and may be waived by the Developer. Condition (6) is for the benefit of the Authority, the City, and the Developer and must be waived by all parties. If a condition is not waived by the relevant party, that party may terminate this Agreement, upon the

receipt of which this Agreement will be null and void and neither party will have any liability hereunder, except the Developer's obligations under Section 3.11 hereof for Administrative Costs incurred through the date of termination. If any conditions described in this Section 3.2 are waived, the waiver must be in writing.

(b) The Closing on conveyance of the Development Property from the City to the Developer must occur upon satisfaction of the conditions specified in this Section, but no later than December 31, 2019 ("Closing"). If the Developer does not obtain Tax Credits pursuant to an application submitted on or before June 30, 2019, the deadline for closing on the conveyance of the Development Property may extended by up to one year at the sole discretion of the Authority.

Section 3.3. Place of Document Execution, Delivery and Recording, Costs. (a) Unless otherwise mutually agreed by the City and the Developer, the execution and delivery of all deeds and documents will be made at the offices of the title company selected by Developer or any other location to which the parties may agree.

(b) The deed will be in recordable form and will be promptly recorded in the proper office for the recordation of deeds and other instruments pertaining to the Development Property. At Closing, the Developer must pay: recording costs for the deed and any additional recordable documents referenced in this Agreement other than documents needed to clear title encumbrances, if applicable; state deed tax, title insurance commitment fees and premiums, if any; and title company closing fees, if any. The parties agree and understand that the Development Property is currently exempt from property taxes but will be subject to property taxes upon conveyance to the Developer.

Section 3.4. Title. (a) As soon as practicable after the date of this Agreement, the Developer must obtain, at Developer's sole expense, a commitment for issuance of an owner's title insurance policy for the Development Property and a survey of the Development Property. Within ten (10) days after the date of the later of (i) the Developer's receipt of the commitment and survey, or (ii) the date of this Agreement, the Developer must review the title to the Development Property and provide the City with a list of written objections to title (including survey matters). Upon receipt of the Developer's list of written objections, the City agrees to attempt in good faith and with all due diligence to cure the objections made by the Developer. If the City fails to cure objections within sixty (60) days after its receipt of the Developer's list of objections, the Developer may, by giving written notice to the City, (i) terminate this Agreement; or (ii) waive the objections and proceed to Closing. If the Developer terminates this Agreement, the Agreement will be null and void upon the City's receipt of Developer's notice, and neither party will have any liability to the other under this Agreement, except that Developer will remain obligated for Administrative Costs incurred through the date of termination, as provided in Section 3.11 of this Agreement. The City has no obligation to take any action to clear defects in the title to the Development Property, other than the good faith efforts described above and the actions described in Section 3.4(b).

(b) The City will take no actions to encumber title to the Development Property between the date of this Agreement and the time the deed is delivered to the Developer. The City expressly agrees that it will not cause or permit the attachment of any mechanics, attorneys, or other liens to the Development Property prior to Closing.

(c) The Developer will take no actions to encumber title to the Development Property between the date of this Agreement and the time the deed is delivered to the Developer. The Developer expressly agrees that it will not cause or permit the attachment of any mechanics, attorneys, or other liens to the Development Property prior to Closing. Notwithstanding termination of this Agreement prior to Closing, Developer is obligated to pay all costs to discharge any encumbrances to the Development Property attributable to actions of Developer, its employees, officers, agents or consultants, including without limitation any architect, contractor, and or engineer.

Section 3.5. Soils, Environmental Conditions. (a) Before Closing on conveyance of the Development Property from the City to the Developer, the Developer may enter the Development Property and conduct any environmental or soils studies deemed necessary by the Developer. If, at least ten (10) days before Closing the Developer determines that hazardous waste or other pollutants as defined under federal and state law exist on the Development Property, or that the soils are otherwise unsuitable for construction of the Minimum Improvements, the Developer may at its option terminate this Agreement by giving written notice to the City, upon receipt of which this Agreement will be null and void and neither party will have any liability hereunder, except the Developer's obligations under Section 3.11 hereof for Administrative Costs through the date of termination.

(b) The Developer acknowledges that the City makes no representations or warranties as to the condition of the soils on the Development Property, or their fitness for construction of the Minimum Improvements or any other purpose for which the Developer may make use of the property. The Developer further agrees that it will indemnify, defend, and hold harmless the Authority, the City, and their 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 which are placed on the property on or after Closing.

(c) In the event any material contamination requiring remediation is discovered on any part of the Development Property, and the Developer does not elect to terminate this Agreement as provided in this Section 3.5, then the Authority, the City, and the Developer shall cooperate in any submission of the impacted property to the Minnesota Pollution Control Agency Voluntary Investigation and Clean-up Program (VIC) or the Voluntary Petroleum Investigation and Clean-up Program (VPIC) and the obtaining of appropriate assurances for the parties related to liability. Any costs of participating in the VIC or VPIC programs shall be paid by the Developer.

Section 3.6. Relocation of Tenants. Upon the award of Tax Credits, the City will commence relocation of existing tenants of the commercial building presently on the Development Property in accordance with Minnesota Statutes, Sections 117.50 to 117.56 (the "Minnesota Uniform Relocation Act") and shall be responsible for all costs and expenses of such relocation including the payment of nay required relocation benefits.

Section 3.7. Cost of Acquiring Land and Land Write-Down.

(a) The costs to the City of acquiring the Development Property (including the payment of relocation benefits and less funds received from Hennepin County for the purchase of right of way and anticipated revenues from the Development Property) is estimated to be $1,249,889. The parties agree and understand that, in conveying the Development Property to the Developer for $734,000, the City will sell the Development Property for amount which is $515,889 less than what it paid to acquire the Development Property. The land write-down represents an advance of City funds in the amount of $515,889. The Authority will reimburse the City for the land write-down from Tax Increment on the Closing Date.

Section 3.8. Demolition and Environmental Remediation.

(a) Upon closing on the acquisition of the Development Property, the Developer agrees to perform demolition of all existing buildings and undertake all required environmental remediation in order to make the Development Property suitable for the construction of the Minimum Improvements. Neither the City nor the Authority shall have any responsibility for the payment of any costs relating to demolition or environmental remediation on the Development Property.

(b) The City and the Authority shall work cooperatively with the Developer to apply for grants for the costs of demolition of existing buildings and environmental remediation on the Development Property, including but not limited to, a Tax Base Revitalization Account grant from Hennepin County, a Metropolitan Livable Communities Demonstration Account grant from Metropolitan Council, an Environmental Response Fund grant from Hennepin County, and a Contamination Cleanup Grant from the Department of Employment and Economic Development. The City and the Authority shall also work cooperatively with the Developer to apply for other available grants or loans for demolition and environmental remediation. If no grants or other funding are available to finance the demolition and environmental remediation, the parties will work cooperatively to review and modify the project budget in order to pay for such costs, which may require amendments to this Agreement.

Section 3.9. Tax Increment Assistance.

(a) *TIF Loan*. In order to make development of the Minimum Improvements financially feasible, the Authority will make a loan to the Developer in an amount of $1,209,000 (the "TIF Loan"). The amount of the TIF Loan is subject to reduction as described in paragraphs (b) and (c) of this Section, and proceeds of the TIF Loan shall be disbursed in accordance with paragraph (b). The TIF Loan shall not bear interest.

(b) *Disbursement of TIF Loan*. Notwithstanding anything to the contrary herein, if the total costs of developing the Minimum Improvements required to be financed as of the Closing are reduced below the amounts estimated as of the date of this Agreement due to additional financing for the Minimum Improvements from other sources (except for a Tax Base Revitalization Account grant from Hennepin County or other grants received for the demolition of existing buildings or environmental remediation on the Development Property) or a reduction in anticipated total development costs, such reduction shall be applied first to reduce the amount of the TIF Loan, prior to reducing any other funding sources; provided that if the Developer

demonstrates to the Authority's reasonable satisfaction that such reduction in the TIF Loan will impair the Developer's eligibility to receive the full amount of tax credits awarded for the Minimum Improvements under the Tax Credit Law, then the TIF Loan reduction amount will be adjusted to a level that prevents such impairment. Subject to the immediately following conditions, the TIF Loan shall be funded in a single disbursal of funds to the Developer on the date of Closing. The Authority's obligation to fund the TIF Loan is subject to satisfaction of the following conditions as of the Closing:

(i) the Developer having provided evidence satisfactory to the Authority that the Developer has established a separate accounting system for the Minimum Improvements for the purpose of recording the receipt and expenditure of the TIF Loan proceeds;

(ii) the Authority having approved Construction Plans for the Minimum Improvements in accordance with Article IV hereof;

(iii) the Developer having obtained, and the Authority having approved, financing as described in Article VII hereof;

(iv) the Developer having delivered to the Authority the executed Declaration in accordance with Section 4.5 hereof;

(v) the Developer having delivered to the Authority a list of all sources of funding to be used to develop the Minimum Improvements and evidence of the total costs of developing the Minimum Improvements, in a form reasonably satisfactory to the Authority, evidencing any reduction in the amount TIF Loan as described in this paragraph;

(vi) there being no uncured Event of Default under this Agreement; and

(vii) the Developer having provided evidence reasonably satisfactory to the Authority and the City that it has taken reasonable steps to secure grants or loan from other public entities (including but not limited to a loan from Hennepin County HRA's Affordable Housing Incentive Fund and a grant from Hennepin County's HOME Investment Partnerships Program) to provide required equity for the Minimum Improvements so long as applying for and receiving such funds will not negatively affect the Minnesota Housing Qualified Allocation Plan scoring to receive Tax Credits for the Minimum Improvements.

(c) *Reduction of TIF Loan*. Subject to the provisions of Section 3.9(b), if after review of the sources of funds and total costs of developing the Minimum Improvements provided by the Developer pursuant to Section 3.9(b)(vi), but prior to disbursal of the TIF Loan to the Developer, the Authority's financial advisor reasonably determines that all or a portion of the amount of the TIF Loan is not necessary to cover a gap in the amount of funds needed to construct the Minimum Improvements, the TIF Loan will be reduced to the amount necessary to cover the gap in the amount of funds needed to construct the Minimum Improvements.

(d) *Developer Fee*. The Developer further agrees that the aggregate amount paid to the Developer as a developer fee from proceeds of all sources of funding and from the proceeds of permanent financing entered into upon completion of construction of the Minimum Improvements (but net of any portion of such fee reinvested to pay Minimum Improvements costs) shall not exceed ten percent (10%) of the total cost of development of the Minimum Improvements. Upon completion of the Minimum Improvements (and as a condition to issuance of a Certificate of Completion), the Developer shall provide to the Authority a report from an independent certified public accountant evidencing compliance with this paragraph. Upon request from the Authority from time to time (but no more often than annually), the Developer shall provide to the Authority a report certifying and evidencing compliance with clause (ii) of this paragraph.

(e) *Repayment of TIF Loan*. The Authority and the Developer agree that principal of the TIF Loan will be subject to repayment in full. Prior to March 15 of each year, commencing with first fiscal year following the repayment in full of the developer fee, the Developer shall submit to the Authority, evidence of the Surplus Cash for the Minimum Improvements for the preceding fiscal year. In addition, if requested, the Developer agrees to provide to the Authority any background documentation reasonably related to the financial data, upon written request from the Authority or the Authority's municipal advisor. Each year, within thirty (30) days of submission by the Developer of its Surplus Cash calculation for the previous fiscal year, the Developer shall repay the principal of the TIF Note in an amount equal to fifty percent (50%) of Surplus Cash after deducting a $30,000 retainage for the Developer. The Developer shall continue to make principal payments on the TIF Loan each year until the TIF Loan is repaid in full. The principal of the TIF Loan must be paid in full on the later of (i) 30 years following the Closing; or (ii) the maturity of any permanent mortgage loan obtained by the Developer to finance the Minimum Improvements.

(f) *Sale of Property*. The Developer shall repay the principal amount of the TIF Loan in full upon a sale of the Development Property or refinancing of any mortgage loan obtained by the Developer to finance the Minimum Improvements. However, in the event that any mortgage loan obtained by the Developer is refinanced, the Authority may, in its sole discretion, review the terms of such refinancing and consent to the refinancing without requiring the payment in full of the outstanding principal amount of the TIF Loan. In addition, the Authority hereby consents to the repayment in full of the Developer's construction financing for the Minimum Improvements, upon the completion of the Minimum Improvements, and the placement of permanent financing on the Development Property and agrees that such actions by the Developer shall not constitute a sale or refinancing requiring approval of the Authority hereunder. Additionally, a conveyance of the limited partner's partnership interests in the Developer pursuant to the limited partnership agreement of the Developer (*e.g.* the tax credit investor exiting the partnership) shall not constitute a sale of the Development Property.

Section 3.10. <u>Additional Grants and Funding Sources</u>. The City and the Authority will work cooperatively with the Developer to apply for grants for the costs of constructing the Minimum Improvements on the Development Property, including but not limited to, and a Livable Communities Demonstration Grant from the Metropolitan Council.

Section 3.11. 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 3.12. Exemption from Business Subsidy Act. The parties agree and understand that all financial assistance provided by the Authority and the City under this Agreement represents assistance for housing, and accordingly is not subject to the Business Subsidy Act.

Section 3.13. Park Dedication Fees. The Developer must pay all water and sewer hook-up fees, SAC, WAC, and REC fees, and park dedication fees associated with the Minimum Improvements in accordance with applicable City policies and ordinances.

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ARTICLE IV

Construction of Minimum Improvements

Section 4.1. Construction of Minimum Improvements. In consideration for the assistance provided pursuant to Article IV, the Developer will construct or cause construction of the Minimum Improvements on the Development Property in accordance with approved Construction Plans and at all times through the Termination Date will operate, maintain, preserve and keep the respective components of the Minimum Improvements or cause such components to be operated, maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition.

Section 4.2. Construction Plans.

(a) *Generally.* Before commencing construction of the Minimum Improvements, the Developer shall submit Construction Plans for the Minimum Improvements to the Authority. The City's chief building official and community development director will review and approve all Construction Plans on behalf of the Authority, and for the purposes of this Section 4.2 the term "Authority" means those named officials. The Construction Plans shall provide for the construction of the Minimum Improvements and shall be in conformity with this Agreement and all applicable State and local laws and regulations. The Authority will approve the Construction Plans in writing or by issuance of a permit if: (i) the Construction Plans conform to all terms and conditions of this Agreement in all material respects; (ii) the Construction Plans conform to the goals and objectives of the TIF 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; and (v) there is no uncured Event of Default. No approval by the Authority shall relieve the Developer of the obligation to comply with the terms of this Agreement, applicable federal, State, and local laws, ordinances, rules and regulations, or to construct the Minimum Improvements in accordance therewith. No approval by the Authority shall constitute a waiver of an Event of Default, or waiver of any State or City building or other code requirements that may apply. Within thirty (30) days after receipt of complete Construction Plans and permit applications for the Minimum Improvements, the Authority will deliver to the Developer an initial review letter describing any comments or changes requested by Authority staff. Thereafter, the parties shall negotiate in good faith regarding final approval of Construction Plans for that building. The Authority's approval shall not be unreasonably withheld or delayed. Said approval shall constitute a conclusive determination that the Construction Plans (and the Minimum Improvements constructed in accordance with said plans) comply to the Authority's satisfaction with the provisions of this Agreement relating thereto. The issuance by the City of permits for the construction of the Minimum Improvements shall be considered evidence of the Authority's approval of the Construction Plans.

The Developer hereby waives any and all claims and causes of action whatsoever resulting from the review of the Construction Plans by the Authority and/or any changes in the Construction Plans requested by the Authority, except for any failure by Authority to perform its

obligations under this Section. Neither the Authority, the City, nor any employee or official of the Authority or City shall be responsible in any manner whatsoever for any defect in the Construction Plans or in any work done pursuant to the Construction Plans, including changes requested by the Authority.

(b) *Construction Plan Changes.* If the Developer desires to make any material change in the Construction Plans or any component thereof after their approval by the Authority, the Developer shall 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 such previously approved Construction Plans, the Authority shall approve the proposed change and notify the Developer in writing of its approval. Such change in the Construction Plans shall, 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. Such rejection shall be made as soon as reasonably practicable but in any event within thirty (30) days after receipt of the notice of such change. The Authority's approval of any such change in the Construction Plans will not be unreasonably withheld.

Section 4.3. Completion of Construction.

(a) Subject to Unavoidable Delays, the Minimum Improvements must commence construction on or about December 31, 2019 and complete construction by August 31, 2021. Construction is considered to be commenced upon the beginning of physical improvements beyond grading. If the Developer does not obtain Tax Credits pursuant to an application submitted on or before June 30, 2018, the commencement and completion of construction deadlines set forth in this Section 4.3(a) may be extended by up to one year at the sole discretion of the Authority.

(b) All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Development Property shall 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 such successors and assigns, shall promptly begin and diligently prosecute to completion the redevelopment of the Development Property through the construction of the Minimum Improvements thereon, and that, subject to Unavoidable Delays, such construction shall be commenced and completed within the period specified in this Section 4.3. Until construction of the Minimum Improvements has been completed, the Developer shall make reports, in such detail and at such times as may reasonably be requested by the Authority, as to the actual progress of the Developer with respect to such construction.

Section 4.4. Certificate of Completion.

(a) Promptly after substantial completion of the Minimum Improvements in accordance with those provisions of the Agreement relating solely to the obligations of the Developer to construct the Minimum Improvements (including the dates for completion thereof), and delivery of the developer fee evidence described in Section 3.9(d) hereof, the Authority will

furnish the Developer with a Certificate of Completion in substantially the form attached as SCHEDULE B. Such certification by the Authority shall 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. Such certification and such determination shall 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 shall be in such 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 shall refuse or fail to provide any certification in accordance with the provisions of this Section 4.4, the Authority shall, 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 such 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 Rental Housing Units.

Section 4.5. Affordable Housing Covenants.

(a) The Developer shall cause at least 49 (100%) of the Rental Housing Units in the Minimum Improvements to be rent-restricted and income-restricted in accordance with the Tax Credit Law, all as further described in the Declaration attached as SCHEDULE C. Notwithstanding anything to the contrary in the Tax Credit Law, such restrictions shall remain in effect for later of (i) the 30-year period described in the Declaration; or (ii) the repayment of the TIF Loan. On or before the Closing, the Developer shall deliver the executed Declaration to the Authority in recordable form.

(b) Pursuant to Section 3(a)(iv) of the Declaration, the Developer shall provide the Authority with annual reports regarding tenant eligibility and rents within the Minimum Improvements for any tenants new to the Rental Housing Units in the year for which a report is to be submitted.

(c) The Authority, the City and their representatives shall 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 Development Property's satisfaction of the covenants described in this Section and in the Declaration.

Section 4.6. Records. The Authority, the City, the legislative auditor, and the State auditor's office, through any authorized representatives, shall have the right after reasonable

notice to inspect, examine and copy all books and records of the Developer relating to the construction of the Minimum Improvements. Developer shall maintain such records and provide such rights of inspection for a period of six years after issuance of the Certificate of Completion for the Minimum Improvements.

Section 4.7. Property Management Covenant. The Developer has or will contract with Steven Scott Management, Inc. to act as the initial property manager for the Minimum Improvements. Nothing herein shall prevent the Developer from utilizing the services of a different property manager during the term of this Agreement so long as the Developer provides the Authority with notice of such change. 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 tenancy 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 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), or at least two additional Violations occur within the next 12-month period after the date of the notice under paragraph (d), 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. The parties agree and understand that appointment of any replacement manager may

also be subject to consent by the City, the Tax Credit Investor, and the Holder of a one or more of the Other Loans on the Development Property.

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ARTICLE V

Insurance

Section 5.1. Insurance.

(a) The Developer or the general contractor engaged by the Developer will provide and maintain at all times during the process of constructing the Minimum Improvements an All Risk Broad Form Basis Insurance Policy and, from time to time during that period, at the request of the Authority, furnish the Authority with proof of payment of premiums on policies covering the following:

(i) Builder's risk insurance, written on the so-called "Builder's Risk – Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called "all risk" form of policy. The interest of the Authority shall 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 an Developer's Contractor's Policy with limits against bodily injury and property damage of not less than $2,000,000 for each occurrence, and shall be endorsed to show the City and Authority as additional insured (to accomplish the above-required limits, an umbrella excess liability policy may be used); and

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

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

(ii) Commercial general public liability insurance, including personal injury liability, 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 shall be endorsed to show the City and Authority as additional insureds.

(iii) Such other insurance, including workers' compensation insurance respecting all employees of the Developer, if any, in such amount as is customarily

carried by like organizations engaged in like activities of comparable size and liability exposure.

(c) All insurance required in this Article V shall be taken out and maintained in responsible insurance companies selected by the Developer that are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Developer will deposit annually with the Authority a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V each policy shall contain a provision that the insurer shall 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 shall 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 such event the Developer will forthwith repair, reconstruct, and restore the Minimum Improvements to substantially the same or an improved condition as it existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction, and restoration, the Developer will apply the net proceeds of any insurance relating to such damage received by the Developer to the payment or reimbursement of the costs thereof.

(e) The Developer shall complete the repair, reconstruction and restoration of the Minimum Improvements, regardless of whether the net proceeds of insurance received by the Developer for such purposes are sufficient to pay for the same. Any net proceeds remaining after completion of such repairs, construction, and restoration shall be the property of the Developer.

Section 5.2. Subordination. Notwithstanding anything to the contrary herein, the rights of the Authority with respect to the receipt and application of any insurance proceeds shall, in all respects, be subordinate and subject to the rights of any Holder under a Mortgage allowed pursuant to Article VII hereof.

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ARTICLE VI

Tax Increment; Taxes

Section 6.1. Right to Collect Delinquent Taxes. The Developer acknowledges that the Authority and the City are providing substantial aid and assistance in furtherance of the redevelopment described in this Agreement. The Developer understands that, while the Development Property itself is not located within the TIF District or any other tax increment financing district, one purpose of the assistance under this Agreement is to increase the property tax base of the City. 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 and the City through the Termination Date 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 any such suit, the Authority and the City shall also be entitled to recover their costs, expenses and reasonable attorneys' fees. Notwithstanding the foregoing, 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.

Section 6.2. Review of Taxes. The Developer agrees that prior to the Termination Date, 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 Termination 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 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. The Authority, the City, and the Developer acknowledge and understand that the Developer intends to seek the "class 4d" property classification rate for affordable rental properties under Minnesota Statutes, Section 273.13 for the Development Property at all times during the term of this Agreement.

Section 6.3. Use of Tax Increment. The parties agree and understand that the Authority expects to finance the TIF Loan under Section 3.7 hereof. However, the Authority may use any funds available to the Authority to fund the TIF Loan. The Developer has no title or interest in Tax Increments, except to the extent the Authority elects to use Tax Increment to fund the TIF Loan.

ARTICLE VII

Financing

Section 7.1. Financing.

(a) Before the Closing, the Developer shall submit to the Authority and the City evidence of receipt of a reservation of or preliminary determination letter evidencing eligibility for low income tax credits under the Tax Credit Law from the Minnesota Housing Finance Agency and one or more commitments for other financing (including without limitation the Other Loans) which, together with committed equity for such construction, is sufficient for acquisition of the Development Property and construction of the Minimum Improvements. Such 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 and the City find that the financing is sufficiently committed and adequate in amount to pay the costs specified in paragraph (a) then the Authority and the City shall notify the Developer in writing of their approval. Such approval shall not be unreasonably withheld and either approval or rejection shall be given within twenty (20) days from the date when the Authority is provided the evidence of financing. A failure by the Authority and the City to respond to such evidence of financing shall be deemed to constitute an approval hereunder. If the Authority or the City rejects the evidence of financing as inadequate, it shall do so in writing specifying the basis for the rejection. In any event the Developer shall submit adequate evidence of financing within ten (10) days after such rejection.

Section 7.2. Option of Authority and City 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 this Article VII, the Developer shall make commercially reasonable efforts to cause the Authority and the City to receive copies of any notice of default received by the Developer from the Holder of such Mortgage. Thereafter, the Authority and the City shall have the right, but not the obligation, to cure any such default on behalf of the Developer within such 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 and the City agree to subordinate their rights under this Agreement to the Holder of any Mortgage securing construction or permanent financing (including but not limited to the reversionary rights described in Section 9.3 hereof), under terms and conditions reasonably acceptable to the Authority and the City. Any agreement to subordinate this Agreement must be approved by the Board of Commissioners of the Authority and the City Council of the City.

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ARTICLE VIII

<u>Prohibitions Against Assignment and Transfer; Indemnification</u>

Section 8.1. <u>Representation as to Redevelopment.</u> The Developer represents and agrees that its purchase of the Development Property and its other undertakings pursuant to the Agreement are, and will be used, for the purpose of redevelopment of the Development Property by the Developer and not for speculation in land holding.

Section 8.2. <u>Prohibition Against Transfer of Property and Assignment of Agreement</u>. The Developer represents and agrees that until the Termination Date:

(a) Except as specifically described in 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 this Agreement or the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same, to any person or entity (collectively, a "Transfer"), without the prior written approval of the Authority's Board of Commissioners and the City Council of the City. The term "Transfer" does not include (i) encumbrances made or granted by way of security for, and only for, the purpose of obtaining construction, interim or permanent financing necessary to enable the Developer or any successor in interest to the Development Property or to construct the Minimum Improvements or component thereof; (ii) any lease, license, easement or similar arrangement entered into in the ordinary course of business related to operation of the Minimum Improvements; or (iii) a transfer of any ownership interests in the Developer in accordance with the terms of the Developer's partnership agreement. The Developer may effect a Transfer of the Development Property to the Developer or its Affiliate without approval by the Authority and the City provided that the Developer submit to the Authority and the City an assignment and assumption executed by the Affiliate in accordance with Section 8.2(b)(2) hereof.

(b) If the Developer seeks to effect a Transfer requiring approval by the Authority and the City, the Authority and the City shall be entitled to require as conditions to such Transfer that:

> (1) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the Authority and the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer as to the portion of the Development Property to be transferred; and
>
> (2) Any proposed transferee, by instrument in writing satisfactory to the Authority and the City and in form recordable in the public land records of the County, shall, for itself and its successors and assigns, and expressly for the benefit of the Authority and the City, have expressly assumed all of the obligations of the Developer under this Agreement as to the portion of the Development Property to be transferred and agreed to be subject to all the conditions and restrictions to which the Developer is

subject as to such portion; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, and shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Authority and the City) deprive the Authority or the City of any rights or remedies or controls with respect to the Development Property, the Minimum Improvements 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, shall operate, legally, or practically, to deprive or limit the Authority or the City of or with respect to any rights or remedies on controls provided in or resulting from this Agreement with respect to the Development Property that the Authority and the City would have had, had there been no such transfer or change. In the absence of specific written agreement by the Authority and the City to the contrary, no such transfer or approval by the Authority and the City thereof shall be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the Development Property, from any of its obligations with respect thereto; and

(3) 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 shall be in a form reasonably satisfactory to the Authority and the City.

(c) If the conditions described in paragraph (b) are satisfied, then the Transfer will be approved and the Developer shall be released from their obligations under this Agreement, as to the portion of the Development Property that is transferred, assigned, or otherwise conveyed, unless the parties mutually agree otherwise. Notwithstanding anything to the contrary herein, any Transfer that releases the Developer from its obligations under this Agreement (or any portion thereof) shall be approved by the Authority's Board of Commissioners and the City Council of the City, which approval shall not be unreasonably withheld, conditioned, or delayed. If the Developer remains fully bound under this Agreement notwithstanding the Transfer, as documented in the transfer instrument, the Transfer may be approved by the Authority Representative and the City Representative. The provisions of this paragraph (c) apply to all subsequent transferors.

(d) Except as otherwise provided herein, upon the sale of the Minimum Improvements, the principal amount of the TIF Loan shall be due and payable in full in accordance with Section 3.9(f) hereof.

Section 8.3. <u>Release and Indemnification Covenants.</u>

(a) The Developer releases from and covenants and agrees that the Authority and the City and the governing body members, officers, agents, servants and employees thereof shall not be liable for and agrees to indemnify and hold harmless the Authority and the City and the

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 willful or negligent misrepresentation, misconduct or negligence of the Indemnified Parties (as hereafter defined), and except for any breach by any of the Indemnified Parties of their obligations under this Agreement, the Developer agrees to protect and defend the Authority and the City and the governing body members, officers, agents, servants and employees thereof (the "Indemnified Parties"), now or forever, and further agrees to hold the Indemnified Parties 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, and operation of the Minimum Improvements.

(c) Except for any negligence of the Indemnified Parties (as defined in clause (b) above), and except for any breach by any of the Indemnified Parties of their obligations under this Agreement, the Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Developer, or its respective officers, agents, servants or employees or any other person who may be about the 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 shall 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.

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ARTICLE IX

Events of Default

Section 9.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement, any one or more of the following events, after the non-defaulting party provides thirty (30) days' written notice to the defaulting party of the event, but only if the event has not been cured within said thirty (30) days or, if the event is by its nature incurable within thirty (30) days, the defaulting party does not, within such 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) Subject to Unavoidable Delays, failure by the Developer on the one hand or the Authority or the City on the other to observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement; or

(b) the Developer having:

(i) filed 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 and failing to discharge the same within ninety (90) days;

(ii) made an assignment for benefit of its creditors;

(iii) admitted in writing its inability to pay its debts generally as they become due; or

(iv) been adjudicated as bankrupt or insolvent.

Section 9.2. Remedies on Default.

(a) 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 (30) days' written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days or, if the Event of Default is by its nature incurable within thirty (30) days, the defaulting party does not provide assurances reasonably satisfactory to the non-defaulting party that the Event of Default will be cured and will be cured as soon as reasonably possible. The Authority and the City agree that they will provide notice and an opportunity to cure any Event of Default to the Tax Credit Investor and they will accept such cure as though it was made by the Developer.

(b) Upon an Event of Default by the Developer, the Authority or the City may (i) demand repayment of the outstanding principal and accrued interest on the TIF Loan, and

(ii) 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.

(c) Upon an Event of Default by the City or the Authority, the Developer may take whatever action, including legal, equitable, or administrative action, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

Section 9.3. Revesting Title in Development Property in City Upon Happening of Event Subsequent to Conveyance to Developer. In the event that subsequent to conveyance of the Development Property to the Developer and prior to receipt by the Developer of the Certificate of Completion for the Minimum Improvements required to be constructed on the Development Property:

(a) the Developer, subject to Unavoidable Delays, fails to begin construction of the Minimum Improvements in conformity with this Agreement and the failure to begin construction is not cured within ninety (90) days after written notice from the City to the Developer to do so; or

(b) subject to Unavoidable Delays, the Developer after commencement of the construction of the Minimum Improvements, fails to carry out its obligations with respect to the construction of the improvements (including the nature and the date for the completion thereof), or abandons or substantially suspends construction work, and any failure, abandonment, or suspension is not cured, ended, or remedied within ninety (90) days after written demand from the City to the Developer to do so; or

(c) the Developer fails to pay real estate taxes or assessments on the Development Property when due, or creates, suffers, assumes, or agrees to any encumbrance or lien on the parcel (except to the extent permitted by this Agreement), or has allowed any levy or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach, and the taxes or assessments have not been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the City made for their payment, removal, or discharge, within thirty (30) days after written demand by the City to do so; provided, that if the Developer first notifies the City of its intention to do so, it may in good faith contest any mechanics' or other lien filed or established and in the event the City will permit the mechanics' or other lien to remain undischarged and unsatisfied during the period of contest and any appeal and during the course of the contest the Developer will keep the City informed respecting the status of its defense; or

(d) there is, in violation of the Agreement, any transfer of the parcel or any part thereof, or any change in control of the Developer or a change in the general partner of the Developer, and the violation is not cured within sixty (60) days after written demand by the City to the Developer, or if the event is by its nature incurable within thirty (30) days, the Developer does not, within the 30-day period, provide assurances reasonably satisfactory to the City that the event will be cured as soon as reasonably possible; or

(e) the Developer fails to comply with any of its other covenants under this Agreement related to the Minimum Improvements and fails to cure any noncompliance or breach within thirty (30) days after written demand from the City to the Developer to do so, or if the event is by its nature incurable within thirty (30) days, the Developer does not, within the 30-day period, provide assurances reasonably satisfactory to the City that the event will be cured as soon as reasonably possible; or

(f) the Holder of any Mortgage secured by the Development Property exercises any remedy provided by the Mortgage documents or exercises any remedy provided by law or equity in the event of a default in any of the terms or conditions of the Mortgage (subject to the terms of any subordination agreement executed by the City and Authority);

then the City will have the right to re-enter and take possession of the Development Property and to terminate (and revest in the City) the estate conveyed by the deed to the Developer, it being the intent of this provision, together with other provisions of the Agreement, that the conveyance of the Development Property to the Developer will be made upon, and that the deed will contain a condition subsequent to the effect that in the event of any default on the part of the Developer and failure on the part of the Developer to remedy, end, or abrogate the default within the period and in the manner stated in the subdivisions, the City at its option may declare a termination in favor of the City of the title, and of all the rights and interests in and to the Development Property conveyed to the Developer, and that the title and all rights and interests of the Developer, and any assigns or successors in interest to and in the parcel, will revert to the City, but only if the events stated in Section 9.3(a)-(f) have not been cured within the time periods provided above.

Section 9.4. Resale of Reacquired Property; Disposition of Proceeds. Upon the revesting in the City of title to and/or possession of the Development Property or any part thereof as provided in Section 9.3, the City will, pursuant to its responsibilities under law, use reasonable efforts to sell the Development Property or part thereof as soon and in the manner as the City will find feasible and consistent with the objectives of the law, the TIF Act and of the Project to a qualified and responsible party or parties (as determined by the City) who will assume the obligation of making or completing the Minimum Improvements or the other improvements in their stead as will be satisfactory to the City in accordance with the uses specified for the parcel or part thereof in the Project and in accordance with the TIF Act. During any time while the City has title to and/or possession of a parcel obtained by reverter, the City will not disturb the rights of any tenants under any leases encumbering the parcel. Upon resale of the Development Property, the proceeds thereof will be applied:

(a) First, to reimburse the City for all costs and expenses incurred by it, including but not limited to salaries of personnel, in connection with the recapture, management, and resale of the parcel (but less any income derived by the City from the property or part thereof in connection with the management); all taxes, assessments, and water and sewer charges with respect to the parcel or part thereof (or, in the event the parcel is exempt from taxation or assessment or the charge during the period of ownership thereof by the City, an amount, if paid, equal to the taxes, assessments, or charges (as determined by the Hennepin County Assessor) as would have been payable if the parcel were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the parcel or part thereof at the time of revesting of title thereto in the City or to

discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the subject improvements or any part thereof on the parcel or part thereof; and any amounts otherwise owing the City by the Developer and its successor or transferee; and

(b) Second, to reimburse the Developer, its successor or transferee, the amount actually invested by it in making any improvements on the Development Property or part thereof, less any gains or income withdrawn or made by it from this Agreement or the Development Property. Any balance remaining after the reimbursements will be retained by the City as its property.

Section 9.5. 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 such remedy shall be cumulative and shall 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 shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or the City to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article IX.

Section 9.6. 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, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 9.7. Attorney's 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 (10) days of written demand by the City or the Authority, pay to the City or the Authority the reasonable fees of the attorneys and the other expenses so incurred by the City and the Authority.

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ARTICLE X

Additional Provisions

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

Section 10.2. Equal Employment Opportunity. The Developer, for their respective 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 until the Termination Date, the Developer, and such successors and assigns, shall devote the Development Property to the operation of the Minimum Improvements for uses described in the definition of such term in this Agreement and shall 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 shall be merged by reason of any deed transferring any interest in the Development Property and any such deed shall 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 shall 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 shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, overnight mail, or delivered personally; and

(a) in the case of the Developer, is addressed to or delivered personally to the Developer at:

Shady Oak Crossing Limited Partnership
7500 West 78th Street
Edina, Minnesota 55439
Attention: Mike Waldo

with copies to:

Winthrop & Weinstine, P.A.
3500 Capella Tower
225 South Sixth Street
Minneapolis, Minnesota 55402
Attention: Erin E. Mathern

(b) in the case of the Authority, is addressed to or delivered personally at:

Economic Development Authority in and for the City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, Minnesota 55345-1502
Attention: Executive Director

(c) in the case of the City, is addressed to or delivered personally at:

City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, Minnesota 55345-1502
Attn: Community Development Director

or at such other address with respect to either such 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 shall constitute one and the same instrument.

Section 10.8. Recording. The Authority and the City may record this Agreement and any amendments thereto with the County recorder or registrar of titles, as the case may be. The Developer shall pay all costs for recording.

Section 10.9. Amendment. This Agreement may be amended only by written agreement approved by the Authority, the City 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. In addition, the Developer may elect to terminate this Agreement for any reason prior to the Closing by providing written notice of such termination to the City and the Authority. In the event of such termination by the Developer, the Developer shall promptly pay any amounts then due and payable under Section 3.11 hereof.

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

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed in its name and behalf on or 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 _____________, 2017, by Terry Schneider, 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 _____________, 2017, 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

(SEAL)

By ____
Its City Manager

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____________, 2017, by Terry Schneider, the Mayor or 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 _____________, 2017, by Geralyn Barone, the City Manager of the City of Minnetonka, Minnesota, on behalf of the City.

SHADY OAK CROSSING LIMITED PARTNERSHIP

By: __________________ LLC
Its: General Partner

By ____
Its ____________________________________

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ________________, 2017, by _________________, the _____________________ of ___________________ LLC, a Minnesota limited liability company, the general partner of _____________________Limited Partnership, a Minnesota limited partnership, on behalf of the Developer.

____
Notary Public

SCHEDULE A

DESCRIPTION OF DEVELOPMENT PROPERTY

Those portions of the following described properties, to be platted as Lot 1, Block 1, SHADY OAK CROSSINGS:

Par 1:
All that portion of the tract or parcel of land described at paragraph "A" below, which lies Northerly of a line drawn parallel to and 200 feet Southerly of the North line thereof and the same extended, to-wit:

Paragraph "A". That portion of the West Half of the Southeast Quarter of Section 23, Township 117, Range 22, described as follows: Starting at the Northeast corner of the Southwest Quarter of the Southeast Quarter of said Section; thence South along the East line of the West Half of the Southeast Quarter of said Section, a distance of 300 feet; thence Westerly at right angles to said East line for a distance of 284 feet; thence Northerly along a line parallel to said East line a distance of 600 feet; thence Easterly along a line at right angles to said East line 209 feet to the center line of McGinty Road; thence Southeasterly along the center line of McGinty Road to the East line of the West Half of the Southeast Quarter of said Section 23; thence Southerly along said East line 33.5 feet to the point of beginning.

Par 2:
Lot 20, Block 2, Ginkels Oakridge Addition

AND

Lot 19, Block 2, Ginkels Oakridge Addition

SCHEDULE B

CERTIFICATE OF COMPLETION

The undersigned hereby certifies that Shady Oak Crossing Limited Partnership, a Minnesota limited partnership (the "Developer"), has fully complied with their obligations under Articles III and IV of that document titled "Contract for Private Development" dated ______________, 201_ (the "Contract"), by and 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 the Construction Plans, and that the Developer is released and forever discharged from its obligations to construct the Minimum Improvements under Articles III and IV of the Contract, but all other covenants under the Contract remain in full force and effect.

Dated: _______________, 20___.

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

By ____
Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____________, 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

SCHEDULE C

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") dated as of _____________, 20__, by SHADY OAK CROSSING LIMITED PARTNERSHIP, a Minnesota limited partnership (the "Developer"), is given to the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA (the "Authority").

RECITALS

WHEREAS, the Authority entered into that certain Contract for Private Development, dated ___________, 201_, filed _____________, 20____ in the Office of the [Recorder] [Registrar of Titles] for Hennepin County as Document No. _________ (the "Contract"), between the Authority, the City of Minnetonka, Minnesota (the "City"), and the Developer; and

WHEREAS, pursuant to the Contract, the Developer is obligated to cause construction of 49 housing units of rental housing on the property described in Exhibit A 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 for all rental units on the Property. The period from commencement to termination is the "Qualified Project Period."

(b) Termination of Declaration. This Declaration shall terminate upon the date that is 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 49 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 sixty percent (60%) of the Minneapolis-St. Paul metropolitan statistical area (the "Metro Area") median income for the applicable calendar year. For purposes of this definition, the occupants of a residential unit shall not be deemed to be Qualifying Tenants if all the occupants of such residential unit at any time are "students," as defined in Section 151(c)(4) of the Internal Revenue Code of 1986, as amended (the "Code"), not entitled to an exemption under the Code. The determination of whether an individual or

family is of low or moderate income shall be made at the time the tenancy commences and on an ongoing basis thereafter, determined at least annually.

(ii) Certification of Tenant Eligibility. As a condition to initial and continuing occupancy, each person who is intended to be a Qualifying Tenant shall be required, during such tenant's first year of occupancy, 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 reasonably necessary by the Authority to substantiate the Eligibility Certification. 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 March 15 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.

4. Rental Restrictions. Commencing at the end of the first taxable year of credit period for the Property under the Tax Credit Law and continuing for ten (10) years thereafter, the Developer represents, warrants and covenants that the maximum gross rent for all units occupied by Qualifying Tenants shall not exceed thirty percent (30%) of the fifty percent (50%) income limitation. Following the ten (10) year anniversary of the commencement of the Rental Restrictions and continuing until the Termination Date, the Developer represents, warrants and covenants that the maximum gross rent for all units occupied by Qualifying Tenants shall not

exceed thirty percent (30%) of the sixty percent (60%) income limitation, all in accordance with the Tax Credit Law

5. Transfer Restrictions. The Developer covenants and agrees that the Developer will cause or require as a condition precedent to any Transfer (as defined in the Contract) 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 the Developer's failure to cure such breach within the cure periods described in Section 9.1 of the Contract, 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 shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing. The 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 Blvd.
Minnetonka, Minnesota 55345
Attention: Community Development Director

To the Developer:

Shady Oak Crossing Limited Partnership
7500 West 78th Street
Edina, Minnesota 55439
Attention: Mike Waldo

with copies to:

Winthrop & Weinstine, P.A.
3500 Capella Tower
225 South Sixth Street
Minneapolis, Minnesota 55402
Attention: Erin E. Mathern

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 49 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 or during any period when the requirements of this Declaration are more prohibitive than the Tax Credit Law, this Declaration controls.

Drafted by:

Kennedy & Graven Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402

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.

SHADY OAK CROSSING LIMITED PARTNERSHIP

By: _________________ LLC
Its: General Partner

By ____
Its ___________________________________

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ________________, 2017, by ________________, the ____________________ of _________________ LLC, a Minnesota limited liability company, the general partner of Shady Oak Crossing Limited Partnership, a Minnesota limited partnership, 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 _____________, 20__, by Terry Schneider, 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 _____________, 20__, by Geralyn Barone, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

____
Notary Public

EXHIBIT A

Legal Description

[Insert Legal Description]

EXHIBIT B

Certification of Tenant Eligibility

(INCOME COMPUTATION AND CERTIFICATION)

Project: [Address]

Developer:

Unit Type: _____ 1 BR _____ 2 BR _____3 BR

1. I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully, frankly and personally each of the following questions for all persons (including minors) who are to occupy the unit in the above apartment development for which application is made, all of whom are listed below:

Name of Members of the Household	Relationship To Head of Household	Age	Place of Employment
______________	______________	___	__________________
______________	______________	___	__________________
______________	______________	___	__________________
______________	______________	___	__________________
______________	______________	___	__________________

Income Computation

2. The anticipated income of all the above persons during the 12-month period beginning this date,

(a) including all wages and salaries, overtime pay, commissions, fees, tips and bonuses before payroll deductions; net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness); interest and dividends; the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts; payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay; the maximum amount of public assistance available to the above persons; periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling; and all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household or spouse; but

(b) excluding casual, sporadic or irregular gifts; amounts which are specifically for or in reimbursement of medical expenses; lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen's compensation), capital gains and settlement for personal or property losses; amounts of educational scholarships paid directly to the student or the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for such purposes; special pay to a serviceman head of a family who is away from home and exposed to hostile fire; relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; foster child care payments; the value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charged for the allotments; and payments received pursuant to participation in ACTION volunteer programs, is as follows: $_____________.

3. If any of the persons described above (or whose income or contributions was included in item 2) has any savings, bonds, equity in real property or other form of capital investment, provide:

(a) the total value of all such assets owned by all such persons: $____________;

(b) the amount of income expected to be derived from such assets in the 12 month period commencing this date: $_______________; and

(c) the amount of such income which is included in income listed in item 2: $__________.

4. (a) Will all of the persons listed in item 1 above be or have they been full-time students during five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students?

Yes _________________ No ________________

(b) Is any such person (other than nonresident aliens) married and eligible to file a joint federal income tax return?

Yes _________________ No ________________

THE UNDERSIGNED HEREBY CERTIFY THAT THE INFORMATION SET FORTH ABOVE IS TRUE AND CORRECT. THE UNDERSIGNED ACKNOWLEDGE THAT THE LEASE FOR THE UNIT TO BE OCCUPIED BY THE UNDERSIGNED WILL BE CANCELLED UPON 10 DAYS WRITTEN NOTICE IF ANY OF THE INFORMATION ABOVE IS NOT TRUE AND CORRECT.

____
Head of Household

____
Spouse

FOR COMPLETION BY OWNER
(OR ITS MANAGER) ONLY

1. Calculation of Eligible Tenant Income:

(a) Enter amount entered for entire household in 2 above: $__________

(b) If the amount entered in 3(a) above is greater than $5,000, enter the greater of (i) the amount entered in 3(b) less the amount entered in 3(c) or (ii) 10% of the amount entered in 3(a): $__________

(c) TOTAL ELIGIBLE INCOME (Line 1(a) plus Line 1(b)): $__________

2. The amount entered in 1(c) is less than or equal to _______ 60% of median income for the area in which the Project is located, as defined in the Declaration. 60% is necessary for status as a "Qualifying Tenant" under Section 3(a) of the Declaration.

3. Rent:

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

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

4. Number of apartment unit assigned: ___________.

5. This apartment unit was ____ was not ____ last occupied for a period of at least 31 consecutive days by persons whose aggregate anticipated annual income as certified in the above manner upon their initial occupancy of the apartment unit was less than or equal to 60% of Median Income in the area.

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

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

NAME OF OWNER,
a Minnesota _________________

By ___________________________________
Its___________________________________

EXHIBIT C

Certificate of
Continuing Program Compliance

Date: _______________________, ______.

The following information with respect to the Project located at __________________, Minnetonka, Minnesota (the "Project"), is being provided by _________________ (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 _______, 201__ (the "Declaration"), with respect to the Project:

(A) The total number of residential units which are available for occupancy is 27. 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):

1 BR Units:

2 BR Units:

3 BR Units:

(C) The following residential units which are included in (B) above, have been re-designated as units for Qualifying Tenants since _______________, 20___, the date on which the last "Certificate of Continuing Program Compliance" was filed with the Authority by the 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							
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33							
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36							

37							
38							
39							
40							
41							
42							
43							
44							
45							
46							
47							
48							
49							

(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 ____________________, 201_.

SHADY OAK CROSSING LIMITED PARTNERSHIP

By: _________________ LLC
Its: General Partner

By ____
Its __________________________________

SCHEDULE D

FORM OF QUIT CLAIM DEED

THIS INDENTURE, between the City of Minnetonka, a municipal corporation and political subdivision of the State of Minnesota (the "Grantor"), and Shady Oak Crossing Limited Partnership, a Minnesota limited partnership (the "Grantee").

WITNESSETH, that Grantor, in consideration of the sum of $734,000 and other good and valuable consideration the receipt whereof is hereby acknowledged, does hereby grant, bargain, quitclaim and convey to the Grantee, its successors and assigns forever, all the tract or parcel of land lying and being in the County of Hennepin and State of Minnesota described as follows, to-wit (such tract or parcel of land is hereinafter referred to as the "Property"):

[insert legal description]

To have and to hold the same, together with all the hereditaments and appurtenances thereunto belonging.

SECTION 1.

It is understood and agreed that this Deed is subject to the covenants, conditions, restrictions and provisions of an agreement recorded herewith entered into between the Grantor, the Grantee and the Economic Development Authority in and for the City of Minnetonka, Minnesota on the __ day of __________, 2017, identified as "Contract for Private Development" (hereafter referred to as the "Agreement") and that the Grantee shall not convey this Property, or any part thereof, except as permitted by the Agreement until a certificate of completion releasing the Grantee from certain obligations of said Agreement as to this Property or such part thereof then to be conveyed, has been placed of record. This provision, however, shall in no way prevent the Grantee from mortgaging this Property in order to obtain funds for the purchase of the Property hereby conveyed or for erecting the Minimum Improvements thereon (as defined in the Agreement) in conformity with the Agreement, any applicable redevelopment program and applicable provisions of the zoning ordinance of the City of Minnetonka, Minnesota, or for the refinancing of the same.

It is specifically agreed that the Grantee shall promptly begin and diligently prosecute to completion the development of the Property through the construction of the Minimum Improvements thereon, as provided in the Agreement.

Promptly after completion of the Minimum Improvements in accordance with the provisions of the Agreement, the Grantor will furnish the Grantee with an appropriate instrument so certifying. Such certification by the Grantor shall be (and it shall be so provided in the certification itself) a conclusive determination of satisfaction and termination of the agreements and covenants of the Agreement and of this Deed with respect to the obligation of the Grantee, and its successors and assigns, to construct the Minimum Improvements and the dates for the beginning and completion thereof. Such certifications and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Grantee to any holder of a mortgage, or any insurer of a

mortgage, securing money loaned to finance the purchase of the Property hereby conveyed or the Minimum Improvements, or any part thereof.

All certifications provided for herein shall be in such form as will enable them to be recorded with the County Recorder, or Registrar of Titles, Hennepin County, Minnesota. If the Grantor shall refuse or fail to provide any such certification in accordance with the provisions of the Agreement and this Deed, the Grantor shall, within thirty (30) days after written request by the Grantee, provide the Grantee with a written statement indicating in adequate detail in what respects the Grantee 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 Grantor, for the Grantee to take or perform in order to obtain such certification.

SECTION 2.

The Grantee's rights and interest in the Property are subject to the terms and conditions of Section 9.3 of the Agreement relating to the Grantor's right to re-enter and revest in Grantor title to the Property under conditions specified therein, including but not limited to termination of such right upon issuance of a Certificate of Completion as defined in the Agreement.

SECTION 3.

The Grantee agrees for itself and its successors and assigns to or of the Property or any part thereof, hereinbefore described, that the Grantee and such successors and assigns shall comply with all provisions of the Agreement that relate to the Property or use thereof for the periods specified in the Agreement, including without limitation the covenant set forth in Section 10.3 thereof.

It is intended and agreed that the above and foregoing agreements and covenants shall be covenants running with the land for the respective terms herein provided, and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Deed, be binding, to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by, the Grantor against the Grantee, its successors and assigns, and every successor in interest to the Property, or any part thereof or any interest therein, and any party in possession or occupancy of the Property or any part thereof.

In amplification, and not in restriction of, the provisions of the preceding section, it is intended and agreed that the Grantor shall be deemed a beneficiary of the agreements and covenants provided herein, both for and in its own right, and also for the purposes of protecting the interest of the community and the other parties, public or private, in whose favor or for whose benefit these agreements and covenants have been provided. Such agreements and covenants shall run in favor of the Grantor without regard to whether the Grantor has at any time been, remains, or is an owner of any land or interest therein to, or in favor of, which such agreements and covenants relate. The Grantor shall have the right, in the event of any breach of any such agreement or covenant to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled; provided that Grantor shall

not have any right to re-enter the Property or revest in the Grantor the estate conveyed by this Deed on grounds of Grantee's failure to comply with its obligations under this Section 3.

SECTION 4.

This Deed is also given subject to:

(a) Provision of the ordinances, building and zoning laws of the City of Minnetonka, Minnesota and state and federal laws and regulations in so far as they affect this real estate.

(b) Declaration of Restrictive Covenants, dated _____________, 2017, executed by the Developer for the benefit of the Economic Development Authority in and for the City of Minnetonka, Minnesota.

(c) [Any other permitted encumbrances after Developer's title review]

Grantor certifies that it does not know of any wells on the Property.

IN WITNESS WHEREOF, the Grantor has caused this Deed to be duly executed in its behalf by its Mayor and City Manager and has caused its corporate seal to be hereunto affixed this ______ day of ____________, 2017.

CITY OF MINNETONKA, MINNESOTA

By ____
Its Mayor

By ____
Its City Manager

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

On this ____ day of _________, 2017, before me, a notary public within and for Hennepin County, personally appeared _______________ and ___________________ to me personally known who by me duly sworn, did say that they are the Mayor and City Manager of the City of Minnetonka named in the foregoing instrument; that the seal affixed to said instrument is the seal of said Authority; that said instrument was signed and sealed on behalf of said City pursuant to a resolution of its governing body; and said _________________ and ______________ acknowledged said instrument to be the free act and deed of said Authority.

____
Notary Public

This instrument was drafted by:

Kennedy & Graven, Chartered (JAE)
470 US Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota 55402

Resolution No. 2017

Resolution approving a contract for private redevelopment between the Economic Development Authority in and for the City of Minnetonka, the City of Minnetonka, and Shady Oak Crossing Limited Partnership

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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 (the "Authority") as follows:

Section 1. Background.

1.01. The City of Minnetonka ("City") and the Authority have established Redevelopment Tax Increment Financing District No. 2 (Boulevard Gardens) (the "TIF District") within a larger development district known as Development District No. 1 (the "Development District") and adopted a financing plan (the "TIF Plan") for the TIF District in order to facilitate redevelopment of certain property in the Development District, all pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended. The TIF Plan provides for pooling tax increment for housing projects outside the TIF District if the housing project meets certain affordability requirements.

1.02. In order to facilitate development of affordable rental housing in the City, the Authority and the City have caused to be prepared a Contract for Private Development (the "Contract") between the City, the Authority, and Shady Oak Crossing Limited Partnership, a Minnesota limited partnership (the "Developer"), under which the City will convey certain real property (the "Development Property") to the Developer, the Developer will construct a 49-unit multifamily housing rental facility on the Development Property, subject to certain income and rent limitations, and the Authority will provide certain financial assistance to the Developer using pooled tax increment revenues derived from the TIF District.

1.03. Pursuant to the Contract, the City will convey the Development Property to the Developer for the appraised price, which is substantially less than the cost to the City to acquire the Development Property. The Contract provides that the City will reimbursement itself with pooled tax increment from the TIF District for the land write-down in the amount of $515,889.

1.04. The purpose of the Contract is to facilitate development of the property within the City and provide affordable housing in the area 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, which will promote economic development, increase the City's tax base, and encourage development or redevelopment of underutilized land within the City.

1.05. The Board has reviewed the Contract, and finds that the execution thereof by the Authority and performance of the Authority's obligations thereunder are in the best interest of the City and its residents.

Section 2. Board Action.

2.01. The Contract is approved in substantially the form on file in City Hall, subject to modifications that do not alter the substance of the transaction and are approved by the President and Executive Director of the Authority; provided that execution of the document will be conclusive evidence of their approval.

2.02. The President and Executive Director are authorized and directed to execute the Contract and any other documents or certificates necessary to carry out the transactions described therein.

2.03. The reimbursement of the City for its land costs in the amount of $515,889 from pooled tax increment from the TIF District is approved.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka this 25th day of September, 2017.

____
Terry Schneider, 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 September 25, 2017.

____
Secretary

EDA Agenda Item #5B
Meeting of September 25, 2017

Brief Description 2018 Preliminary HRA Levy

Recommendation Recommend the EDA adopt a resolution setting a preliminary HRA levy

Background

The city's first levy for housing and redevelopment began in 2009. State law limits levies, and the maximum rate is 0.0185 percent of a city's taxable market value. This equals approximately $1.55 million in Minnetonka. Beginning in 2010, the annual levy increased to $175,000 (0.00212 percent) and has remained at that dollar level to accommodate village center master planning, housing programs, marketing efforts, and more recently light rail.

The table below shows the history of the amounts and the uses of the HRA levy.

Year	Amount/Rate	Use
2009	$100,000 .001171%	Homes Within Reach
2010	$175,000 .002121%	•Village Center Master Planning ($75,000) •Housing programs ($100,000)
2011	$175,000 .002233%	•Village Center Master Planning ($85,000) •Housing programs ($90,000)
2012	$175,000 .002233%	•Village Center Master Planning ($75,000) •Housing programs ($100,000)
2013	$175,000 .002324%	•Village Center Master Planning ($75,000) •Housing programs ($100,000)
2014	$175,000 .002330%	•Marketing ($75,000) •Livable Communities Fund ($100,000)
2015	$175,000 .002196%	•Marketing ($75,000) •Village Center Master Planning ($100,000)
2016	$175,000 .002126%	•SWLRT ($75,000) •Housing Programs ($75,000) •Business Outreach ($25,000)
2017	$175,000 .002187%	•SWLRT ($75,000) •Housing Programs ($100,000)

HRA Levy Funded Programs

Housing Loan Programs

There has been a steady amount of interest in the city's housing loan programs. As of June 30, approximately $151,000 remained available for Minnetonka Home Enhancement and Welcome to Minnetonka loan programs out of the original $565,000 committed to the programs. Approximately ten new loans can be made with the existing balance which includes interest earned (about $12,000 as of May 30) and repayment of loans totaling $26,000 which will be rolled back into the program. Based upon the continued interest in the two programs, it is anticipated that the funds will be exhausted in mid - 2018. The recommended levy amount of $75,000 supports the city's intent to make the program self-sustaining.

Homes within Reach (WHAHLT) is currently rehabilitating two homes in the community. It is anticipated that the remaining Minnetonka 2017 grant of $100,000 will be expended in 2018. The 2018-2020 EIP anticipated that the funding for Homes Within Reach will be reduced to $25,000 beginning in 2020 to assist with ongoing maintenance of properties. The recommended levy amount of $100,000 would support the acquisition and rehabilitation of at least two more homes depending on funds leveraged from other grant programs.

Business

There is a fund balance of $25,000 to assist with business outreach. Staff is dedicating a portion of these funds to develop a business newsletter with the goal of engaging the business community. This effort supports business retention and expansion in the community. The recommended levy amount does not include additional funding for business outreach in 2018.

Southwest Light Rail Transit (SWLRT)

Green Line Extension. In July 2015 the city council committed $2 million towards the SWLRT project. Initially funded through the Special Assessment Construction Fund, partial payback will occur from the HRA levy funds over a 10 year period for a total of $750,000. The city's Economic Improvement Program (EIP) indicated a cost of $75,000 per year to be funded through the HRA levy for 2018-2022.

Recommendation

On June 12, the city council adopted the 2018-2022 Economic Improvement Program (EIP), which would have set the 2018 HRA levy at $300,000 (up from its 2017 level of $175,000). The indicated uses of the funds were: Homes within Reach ($100,000); Light Rail ($75,000); Housing Loan Programs ($100,000) and Business Outreach ($25,000). The light rail funds have been obligated by the council for a ten-year payback to the city's

Special Assessment Construction Fund for a portion of the city's commitment to the project.

The Economic Development Advisory Commission (EDAC) reviewed the HRA budget at its July 27 meeting and recommended adopting *a* preliminary HRA levy of $175,000 (no levy increase). The EDAC's recommended budget included funding for Homes within Reach or WHAHLT ($75,000), Housing Loan Programs ($25,000) and for the Southwest Light Rail Transit ($75,000).

At the city council's August 21 budget study session, the city council discussed a preliminary HRA levy below the EIP-adopted plan, which removed funding for Business Outreach in 2018 ($25,000). Per the discussion, staff recommends a 2018 preliminary HRA levy of $250,000 and a 2018 HRA budget as illustrated below:

($ thousands)	EIP	EDAC	Proposed
SW Light Rail	$75	$75	$75
WHAHLT	100	75	100
Housing Loans	100	25	75
Business Outreach	25	0	0
Total HRA Levy	***$300***	***$175***	***$250***

The next steps for the 2018 budget review process are as follows:

October 19—EDAC review and recommendation on non-profit funding requests (not including CDBG)
November 20—City Council study session on final budget
December 4—Public hearing and adopt final 2018 budget and tax levy

Submitted through:

Geralyn Barone, City Manager
Merrill King, Finance Director

Originated by:

Julie Wischnack, AICP, Community Development Director
Alisha Gray, EDFP, Economic Development and Housing Manager

Supplemental Information:

August 21, 2017 City Council Study Session Packet

July 27, 2017 EDAC Minutes

June 12, 2017 City Council Minutes

EDA Resolution No. 2017-

Resolution setting a preliminary 2018 H.R.A. tax levy and budget

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Be it resolved by the Economic Development Authority of the city of Minnetonka, Minnesota, as follows:

Section 1. Background.

1.01. On May 2, 1988 by Resolution 88-8637 and amended on May 9, 1994 by Resolution 94-9715, the city council established the Economic Development Authority (EDA) of the City of Minnetonka, and effective June 15, 1988, transferred to the EDA the control, authority and operation of all projects and programs of the city's Housing and Redevelopment Authority (HRA). On March 8, 2010, the city council became the appointed EDA.

1.02. Minnesota Statutes 469.033, Subdivision 6 authorizes housing and redevelopment authorities the power to levy a tax upon all taxable property within its district to finance housing and redevelopment programs subject to the consent of the city council.

1.03. The law and council resolutions further require the EDA to file a budget in accordance with the budget procedure of the city in the same manner as required of executive departments of the city and all actions of the authority to be approved by the city council.

1.04. State law requires the city to certify to the county a preliminary HRA tax levy by September 30, 2017, and a final HRA budget and levy to be adopted, approved and certified to the county by December 28, 2017.

Section 2. Findings.

2.01. The EDA finds that an annual budget and tax levy of $250,000 for levy in 2017, collectible in 2018, will fund housing and redevelopment activities of the authority in 2018.

Section 3. Authorization.

3.01. The preliminary 2018 HRA budget and tax levy is hereby approved.

3.02. The City Clerk is hereby directed and ordered to transmit a certified copy of the resolution to the Hennepin County Director of Property Tax and Public Records.

Adopted by the Economic Development Authority of the City of Minnetonka, Minnesota, on this 25th day of September, 2017.

____
Terry Schneider, President

Attest:

____
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 EDA of the City of Minnetonka, Minnesota, at a duly authorized meeting held on September 25, 2017.

____
Secretary