Agenda

Minnetonka Economic Development Authority

Monday, Feb. 24, 2020

Following the Regular Meeting

Council Chambers

1. Call to Order
2. Roll Call: Kirk-Schack-Carter-Calvert-Schaeppi-Coakley-Wiersum
3. Approval of Agenda
4. Approval of Minutes:
   - A. December 2, 2019 EDA minutes
5. Business Items:
   - A. Shady Oak Crossing Redevelopment Contract for Private Development and establishment of a TIF District

     Recommendation: Adopt the resolutions
6. Adjourn

Minutes
Minnetonka Economic Development Authority
Monday, December 2, 2019

1. Call to Order

Wiersum called the meeting to order at 8:44 p.m.

2. Roll Call

Commissioners Bob Ellingson, Deb Calvert, Rebecca Schack, Susan Carter, Mike Happe, Tim Bergstedt and President Brad Wiersum were present.

3. Approval of Agenda

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

4. Approval of Minutes:

A. September 16, 2019 EDA minutes

Schack moved, Calvert seconded a motion to accept the minutes, as presented. All voted "yes." Motion carried.

5. Business Items:

A. 2020 HRA Levy Recommendation: Adopt the Resolution

City Manager Geralyn Barone gave the staff report.

Calvert moved, Schack seconded a motion to adopt Resolution 2019-006 setting the 2020 HRA levy. voted "yes." Motion carried.

6. Adjournment

Happe moved, Bergstedt seconded a motion to adjourn the meeting at 8:47 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Becky Koosman

Becky Koosman
City Clerk

EDA Agenda Item #5A
Meeting of Feb. 24, 2020

Brief Description	Shady Oak Crossing Redevelopment Contract for Private Development and establishment of a TIF District.
Recommendation	Adopt the resolutions
Request	Resolution approving the Contract for Private Development for the properties located at 4312 Shady Oak Road and 4292 Oak Drive Lane and approving a tax increment financing plan for the Shady Oak Crossing Tax Increment Financing District and a modified development program for Development District No. 1

Background

In March 2015, the city purchased the properties at 4312 Shady Oak Road and 4292 Oak Drive Lane as a result of Hennepin County's road reconstruction project on Shady Oak Road. The city currently owns and manages the commercial building at 4312 Shady Oak Road and the residential building at 4292 Oak Drive Lane.

In Nov. 2016, after several neighborhood meetings and a developer interview process, the city council selected Ron Clark Construction to begin negotiations and had the developer propose a development concept.

On Sept. 25, 2017, after community outreach, the city council approved the Shady Oak Crossings redevelopment project. The project, as approved, is a two and three-story, 49-unit apartment building with underground parking, resident community room, exercise room, on-site manager's office, and an outdoor play area. The building would have a mix of 1, 2, and 3 bedroom apartments with rents expected to be between $800 and $1,200 per month. (On Dec. 16, 2019, the city council extended the approval to Dec. 31, 2020. The extension is customary for approvals when construction has not commenced.)

After the 2017 approval, the developer worked towards 2018 tax credit financing for the project (through the state). In Nov. 2018, the developer was notified that they were not awarded tax credits.

In May 2019, Ron Clark Construction announced it was proposing to make revisions to the approved plan, which included the acquisition of adjoining property in Hopkins. A revised concept plan was submitted to the planning commission, and the city council reviewed a revised concept plan. The city council also introduced an ordinance for the revised project on July 8, 2019. In June 2019, another application for tax credits was submitted, and unfortunately, the credits were oversubscribed, and the project again did not receive credits.

The developer continued to meet with staff to discuss the project financing and is now moving forward with a mixed-income project. The city council reviewed the introduction of the revised project at its Jan. 6, 2020 meeting, which included a review of the master development plan, site and building plan review, preliminary plat, and detachment and annexation associated with the

parcel. Additionally, the Economic Development Advisory Commission (EDAC) reviewed a request for financing at its meeting on Jan. 9, 2020.

Complete information on the project's history is posted on the city's website here.

Revised Proposal

Ron Clark Construction has submitted revised plans and is now proposing a three-story, 75-unit apartment building on the property located at 4312 Shady Oak Road and on a portion of the property to the south that is currently in the City of Hopkins. The proposed apartment building would have underground parking with bike amenities, resident community room, exercise room, onsite manager's office, and an outdoor play area.

The apartment units would be a mix of alcove, studio, 1- and 2-bedroom apartments ranging between 450 and 1,200 sq. ft. with an average size of 847 sq. ft. The rent is estimated to be between $1,000 and $1,300 per month for the affordable units and between $1,100 and $2,400 per month for the market-rate units. The revised project is a mix-income project with 30% (23 units) of the 75 units affordable at 60% average median income (AMI). This level of affordability supports workforce housing for local employees, such as retail, administration, and health care positions.

2019 qualifying income for 60% AMI units (23 units)

- At or below $42,000 (family of 1)
- At or below $48,000 (family of 2)
- At or below $54,000 (family of 3)
- At or below $60,000 (family of 4)
- At or below $64,800 (family of 5)
- At or below $69,600 (family of 6)

Projected Affordable Rents (including utilities)

- 1 bedroom = $937
- 2 bedroom = $1,125
- 3 bedroom = $1,300

Financing Request

The developer requested the city to consider providing financial assistance for the inclusion of affordable units. Staff is recommending the establishment of the Shady Oak Crossings Tax Increment Financing District (TIF), up to $1.9 million, as the source of funding for this request. The city's financial consultant, Ehlers, reviewed this request and prepared the attached memo that includes analysis of the request and a recommendation. The following is a summary of Ehlers' recommendation that is included in the memo:

- Establish the Shady Oak Crossing Tax Increment Financing District (Redevelopment District)
    - A blight study was conducted in Sept. 2016 and will be updated to include the annexed parcel.

- Provide up to $1.9M, structured as a pay-as-you-go note for an anticipated term of 20 years.

- The interest rate on the TIF note will be 4.5% and will be issued after the developer provides evidence of incurred costs.

The assistance requested from the developer would result in a per-unit cost of approximately $2,753 per unit per year over a 30 year affordability period based on total assistance of up to $1.9 million. The per-unit assistance on previously approved housing redevelopment projects in Minnetonka ranges from $540 per unit/per year to $4,571 per unit/per year.

The developer also indicated it would take reasonable steps to apply or assist in applying for grant funding through the Metropolitan Council's Tax Base Revitalization Account (TBRA), Hennepin County Transit Oriented Development (TOD) and Environmental Response Funds to assist with project costs. The documents also include TIF pooling dollars from Boulevard Gardens TIF District to reimburse the city themselves for relocation and environmental clean-up, if grant funds are not received.

For more information regarding TIF, see the attached information from the League of Minnesota Cities.

Contract for Private Development

The city's legal counsel, Julie Eddington at Kennedy & Graven, drafted the attached Contract for Private Development that was developed based upon the requests for city assistance by the developer with feedback from the EDAC and city council. The contract outlines the major points associated with the (TIF) request, as well as other expectations for the development. Both Ms. Eddington and the city's financial consultant, Stacie Kvilvang from Ehlers, will be available at the city council meeting to answer any questions regarding the Contract for Private Development and to answer questions related to the financial request.

Purchase of Land

The developer will purchase the city-owned property for $734,400. The purchase price reflects the appraised value of the property. The developer has request the conveyance of the property in conjunction with the redevelopment of the property. The closing date of the property is to be completed no later than September 1, 2020.

The developer has also secured a purchase agreement with the adjacent property in Hopkins that will provide additional land to expand the project. The developer is proposing that the City of Hopkins and the City of Minnetonka concurrently detach/annex the property.

Land Write-Down

In addition to the tax increment financing, staff is proposing to write down the cost of the land in the amount of $515,889. Staff is proposing that the city be reimbursed with TIF pooled funds from Boulevard Gardens. This will assist the city in recouping costs relating to the purchase and carrying costs of the land.

Construction Commencement and Completion

The developer intends to commence clean-up of the site in the Spring/Summer of 2020 and begin construction following site demolition and clean-up.

Demolition Funding and Performance

The developer intends to coordinate with the city on the submission of a grant application to assist with the funding for the costs of demolition and contamination clean up on the site. Any grant applications that would be made to the Department of Employment and Economic Development, Hennepin County, and/or Metropolitan Council must be approved through a resolution of support by the city council.

If grants are not obtained for such costs, the city will utilize existing pooled TIF dollars from Boulevard Gardens to reimburse itself for these expenditures.

Declaration of Restrictive Covenants

The developer is proposing to make all 23 units affordable to those at 60% AMI or less, for 30 years and is seeking the establishment of a Redevelopment TIF District. The developer is able to provide 30% of the units at 60% AMI versus a Housing TIF District, which allows 20% of the units at 50% AMI or 40% of the units at 60% AMI.

The Affordable Housing Policy provides guidance on the required affordability for projects receiving city assistance. For this project, staff is recommending establishing a Redevelopment TIF district to obtain a greater number of affordable units while maintaining project feasibility.

The 23 units will remain affordable for 30 years, in accordance with the city's Affordable Housing Policy. As an example, rents are anticipated to be $937 - $1,300 per month (depending on the size of the unit). At 60% AMI, the maximum estimated annual income allowable for one person is approximately $42,000 ($20.19/hour). For a four-person household, the estimated annual income allowable is approximately $60,000 ($28.84/hour). In similar developments in Minnetonka, residents indicated employment at these wages in retail, administrative, and health professional careers.

Relocation

In 2019, the city completed the relocation process for all tenants in the 4312 Shady Oak Road building.

EDAC Recommendation

On Jan. 9, 2020 the EDAC discussed the revised financing and unanimously recommended approval of up to $1.9 million in tax increment financing to support the production of affordable housing.

Recommendation

Staff recommends the economic development authority adopt the resolutions:

1) Approving an amended and restated contract for private development between the Economic Development Authority in and for the City of Minnetonka, the City of Minnetonka, and Shady Oak Crossing LLC and the issuance of a tax increment revenue note; authorizing city officials to approve non-substantive changes to the contract for private development; and

2) Approving a tax increment financing plan for the Shady Oak Crossing Tax Increment Financing District and a modified development program for Development District No. 1

Submitted through:
Geralyn Barone, City Manager
Julie Wischnack, AICP, Community Development Director
Darin Nelson, Finance Director

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

Attachments

Location Map

Amended and Restated Contract for Private Development

Letter from Ron Clark Construction

Ehlers Memo

Affordable Housing Production in Minnetonka

Concept Plans

Tax Increment Financing Policy

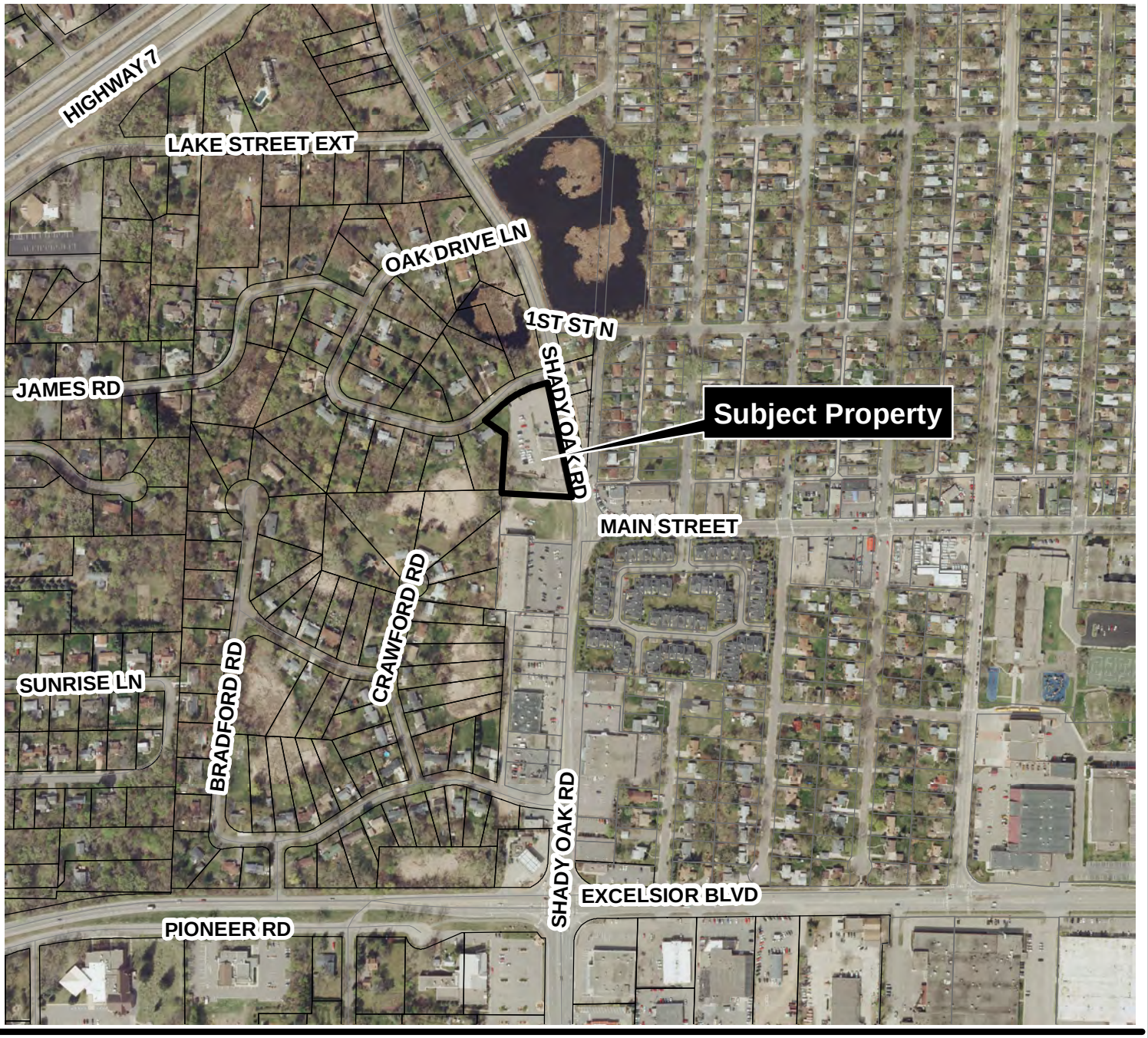
Tax Increment Financing Pooling Policy

Affordable Housing Policy

Supplemental Information:

Jan 6, 2020 - City Council Meeting (link)

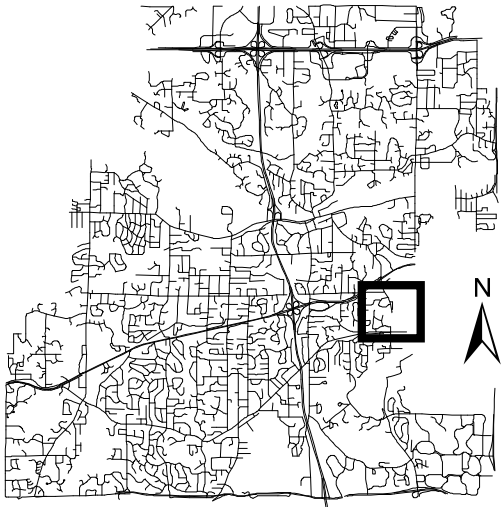
Jan 9, 2020 - EDAC Minutes (link)



LOCATION MAP

Project: Shady Oak Redevelopment
Address: 4312 Shady Oak Rd.

CITY OF MINNETONKA



This map is for illustrative purposes only.

RonClark
Construction & Design

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Monday, December 02, 2019

Loren Gordon
City of Minnetonka
14600 Minnetonka Blvd
Minnetonka, MN 55345

RE: Shady Oak Crossing Project Narrative

Ron Clark Construction is proposing a three-story, 75-unit apartment building on the property located at 4312 Shady Oak Road and on a portion of the property to the south that is currently in the city of Hopkins.

The proposed apartment building would have underground parking, resident community room, exercise room, onsite manager's office and an outdoor play area.

It is proposed to have a mix of Alcoves, Studios, 1- and 2-bedroom apartments and they currently expect the unit rents to be between $1,000 and $1,300 per month for the affordable units and between $1,100 and $2,400 per month for the Market Rate units. (See attachments).

Zoning for the property is currently B-2, limited business district. The city's comprehensive plan guides the property for commercial use.

Change from Tax Credit to a Mixed Income Apartment. We have submitted for tax credits the last 2 years and have been unsuccessful, as such we have worked with staff and decided to propose a mixed income project. We are disappointed that we were not able to obtain the tax credits, but the process has become more and more competitive over the last few years and without being within ½ mile of the Light Rail platform, we just don't get enough points to beat other projects. We have revised the project with more of a Market Rate unit mix and we have also adjusted the sizes of the units to be consistent with comparable projects, which allows for a smaller overall building. We will have 9 Alcove, 14 Studios, 21 One Bedroom, 9 One Bedroom + Dens and 22 Two Bedroom units.

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Rezoning and Comprehensive Plan: The proposed residential use requires a rezoning and guide plan change.

The proposed housing component would qualify the project for public benefit under the planned unit development zoning district.

A complementary high density residential comprehensive plan re-guidance would align with the zoning density of 27.18 units/acre. (75 units/2.76 acre)

Building Design: The proposed 3 story building with a combination of sloped and flat roof and two-story components at each end represents significant first step in the redevelopment of the Shady Oak Road corridor between Highway 7 and Excelsior Boulevard.

This existing commercial building is dilapidated and unlikely to be a candidate for remodeling. The other residential redevelopment in the area includes The Oaks of Mainstreet townhome development (late 1990s) at the corner of Shady Oak Road and Mainstreet.

The proposed apartment building incorporates an attractive roof design and an articulated façade, underground parking and common building entry accesses.

Changes from the previously approved development plan:

During our previous City approval process most of the concern from the neighbors was the impact of traffic on Oak Drive Lane. We had attempted during the previous application to approach our neighbor to the south on acquiring some additional property to allow for a change of access to the site, but we were unsuccessful. After our approval we re-kindled those discussions and now have a purchase agreement for the additional land needed to make the access off Shady Oak Road possible at the current stop light location.

Our current design includes 75 units. The previous design submitted in May earlier this year contained 67 units, but the building footprint was much larger which was a major concern of the Planning Commission and City Council. Our new design has

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smaller units and the building is approximately 60' shorter in length along Shady Oak Road and much farther from Oak Drive Lane.

Site Design: Like our previous proposal, this proposal would site the apartment building toward Shady Oak Road while providing greenspace to separate the building from the sidewalk.

Surface parking and a play area are provided on the west side of the building and the underground parking is now accessed only from Shady Oak Road.

Site and building design consider the relationships of public and private spaces. A strong relationship of the sidewalk, front yard space and the building's first floor is essential for great spaces, including an outdoor patio and rooftop deck, both facing the main street intersection.

Changes to Site Design:

The previously approved site plan in 2017 had the entrance to the parking garage coming from Oak Drive Lane. The parking garage now enters from Shady Oak Road. The only traffic to Oak Drive Lane will come from our small surface parking lot of 29 parking stalls that will mainly be used by visitors.

The building now has shifted south to allow the garage entrance to come from Shady Oak Road.

The building exterior has changed to more blend and complement the existing residential neighborhood and the front of the building is faced toward and connected to the sidewalk along Shady Oak Road while providing greenspace to separate the building from the sidewalk.

Accenting landscaping will be placed at the north and south ends of the building to provide an attractive updated presence along Shady Oak Road. All efforts will be made to protect the existing trees as well as adding additional trees and landscaping to screen the existing neighbors from the surface parking.

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Stormwater Management:

The current property is covered with 1.53 acres of impervious surface and primarily drains to the wetland. The new development stormwater management system for the site will convey all site runoff to a new basin installed on the adjacent property to the West. The impervious area for the new development (1.18 ac) provides a 23% reduction from the existing site condition. The development will meet all management standards required by the City of Minnetonka, the Nine Mile Creek Watershed District and the MPCA NPDES Permit.

Traffic: Prior to our previously approved proposal the city consultant prepared a traffic study of the area and it clearly shows that the new use will have less traffic than other currently allowed uses and the effect on the surrounding intersections was minimal. The impact of our current design will be dramatically reduced from our previously approved proposal due to most of our traffic will now enter directly onto Shady Oak Road vs Oak Drive Lane.

Affordable Housing: The project will include some units that are affordable based on 60% of area medium income (AMI).

Professional Management: Steven Scott Management will be our management company, they are a highly respected local company.

We will have an onsite resident caretaker as well as a building manager who is at the building a minimum of 30 hours per week, along with leasing agent and a Senior Manager who oversees the building management.

As part of the maintenance and management of the building we are in each unit, normally monthly or bi-monthly to maintain equipment and to do a quick inspection to confirm no lease violations or undo wear and tear is happening.

Income requirements and Rents for Shady Oak Crossing

New 2019 Qualifying incomes: At or below $42,000 (family of 1)

At or below $48,000 (family of 2)

At or below $54,000 (family of 3)

At or below $60,000 (family of 4)

At or below $64,800 (family of 5)

At or below $69,600 (family of 6)

Each resident in the household must pass extensive credit, criminal and housing history checks.

Projected rents including utilities:

1 bedroom = $937

2 bedroom = $1,125

3 bedroom = $1,300

Note: There are also 8 permanent supportive housing units within the development.

Memo

To: Alisha Gray, Economic Development and Housing Manager

From: Stacie Kvilvang, Ehlers

Date: January 9, 2020

Subject: Analysis of TIF Request – Shady Oak Apartments

In 2017, the City and EDA entered into a contract with Ron Clark Construction for the development of a 49-unit, non-age restricted apartment community on City-owned property at 4312 Shady Oak Road. The project was going to be financed with 9% low-income housing tax credits (LIHTC) through the State's competitive process. The City agreed to provide the developer with $1,209,000 TIF loan to repaid from surplus cash, if any, over time. Since that time, the developer has gone through two (2) rounds of applications for the LIHTC without success. They have since revised the proposal to purchase the adjacent property located at 2 Shady Oak Road and have increased the number of units to 75. They are proposing to provide 23 units (31%) affordable to persons at or below 60% of the area median income (AMI).

Analysis of Financial Need

Ehlers conducted a thorough review of the developer's updated 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	11,557,331	66%	154,098
TIF Note	1,900,000	11%	25,333
Energy Rebate	37,000	0%	493
Developer Cash	3,919,091	23%	52,255
TOTAL SOURCES	**17,413,422**	**100%**	**232,179**

USES	Amount	Pct.	Per Unit
Acquisition Costs	1,384,400	8%	18,459
Construction Costs	13,833,971	79%	184,453
Professional Services	777,804	4%	10,371
Financing Costs	614,073	4%	8,188
Developer Fee	500,000	3%	6,667
Cash Accounts/Escrows/Reserves	303,174	2%	4,042
TOTAL USES	**17,413,422**	**100%**	**232,179**

Pro Forma Analysis:

Generally, this project meets the expectations of a 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:

1. **Total Development Costs (TDC).** The TDC for this project is approximately $17.4 million, or $232,000/unit, which is within the typical range of $225,000 to $300,000.

2. **Financing** – The developer has proposed to obtain permanent financing for 78% of the project and will bring the difference in as equity of approximately $3.8 million. This financing structure is in line for market rate apartment projects. Typically, permanent financing ranges from 70% - 80%.

3. **TIF Assistance**. Total TIF is 11% of TDC, which is a little higher than the typical high end of 10%. This is due mainly to the small size of the project, lending thresholds and lack of adequate return on the investment to the developer (see comments in #7 below).

4. **Acquisition Costs** – The land acquisition cost of the project is approximately $18,500 per unit. This figure is at the higher end of what we expect to see for a project with a higher amount of affordability in it. Typical range for market rate projects is $10,000 to $18,000 per unit.

5. **Developer Fee** – The proposed developer fee is 3% of the total development costs (TDC), which is in line with industry standards of 3% to 5%.

6. **Rents** – The rents for the 23 affordable units are in line with LIHTC restricted rent amounts and are noted below:

Unit Type	Monthly Rent	Unit Count	Size Sq. Ft.	Rent Sq. Ft.
Studio	$1,011	5	448	$2.26
Studio	$1,011	3	549	$1.84
1BR	$1,081	8	725	$1.49
2BR	$1,293	7	1,080	$1.20

   The market rate rents average $2.17 sq. ft., which is lower than many of the market rate rents we are seeing in newer developments within the City, however this is due to the small size of the project and the more limited common area amenity package.

7. **Operating Expenses** - The operating expenses of $3,928 per unit per year (before management fees, property taxes, and replacement reserves) are within the typical market range of $3,500 to $4,500 per unit per year. The proposed management fees of 4% of effective gross income is also reasonable for the product type (typical range of 3% to 6%).

8. **Return on Investment** – To determine if a project is "financially feasible", a developer typically requires one of two metrics; cash-on-cash (net cash divided by equity) or cash-on-cost (NOI divided by TDC). The developer indicated that they would like to achieve a cash-on-cash return of 8%, which is within industry standard of 8% to 10%. They meet this threshold in year 11 on an annual basis, but not until year 19 on a cumulative basis.

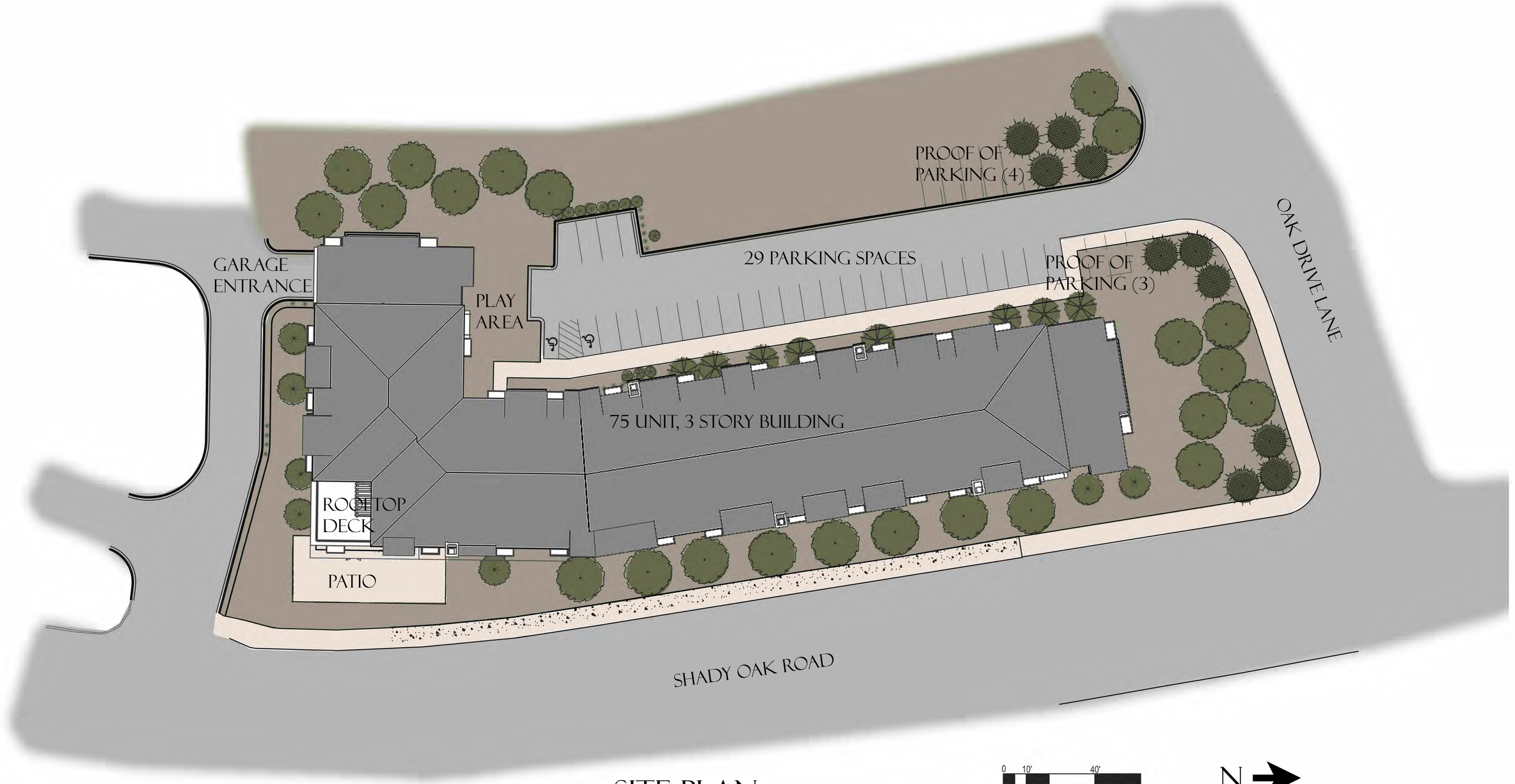
Recommendation:

Based on our review of the developer's pro forma and under current market conditions, the proposed development may not reasonably be expected to occur solely through private investment within the near future due to the low returns noted. The cost associated with development of this project is only feasible through public financial assistance from the City. We conclude that TIF assistance in the amount of $1.9 million on a pay-as-you-go basis over an anticipated term of 20 years is supportable for this project. In addition, the City will use existing TIF dollars from Boulevard Gardens to reimburse themselves for relocation and environmental clean-up, if grant funds are not received.

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

Name of Project	Number of Affordable Units	Number of Market Rate Units	Total Assistance (for affordable units)	Years of Affordability	Assistance per Unit, per Year	Affordability Level
Dominium	482	0	$7,809,000	30	$540	60% AMI
Homes Within Reach (2004-2012 grant years)	35	0	$1,740,000	99	$502	80% AMI
The Ridge	52	0	$1,050,000	30	$673	60% AMI
West Ridge Market (Crown Ridge, Boulevard Gardens, Gables, West Ridge)	185	0	$8,514,000	30	$1,534	*Crown Ridge*—60% AMI Boulevard Gardens—60% AMI Gables—initially 80% AMI, now no income limit West Ridge—50% AMI
Beacon Hill (apartments)	62	48	$2,484,000	25	$1,602	50% AMI
Ridgebury	56	163	$3,243,000	30	$1,930	Initially--80% AMI, Now no income limit
Shady Oak Redevelopment	23	52	$1,900,000(est)	30	$2,753	30% of units at 60% AMI
Glen Lake (St. Therese, Exchange)	43	119	$4,800,000	30	$3,721	60% AMI
Cedar Point Townhomes	9	143	$512,000	15	$3,792	50% AMI
Tonka on the Creek (Overlook)	20	80	$2,283,000	30	$3,805	50% AMI
At Home (Rowland)The Chase at 9 Mile	21	106	$2,500,000	30	$3,968	50% AMI
Applewood Pointe	9	80	$1,290,000	Initial Sale/Ongoing maximum %	$4,777	80% AMI
Doran (Marsh) - TIF Housing	35 (20% of units)	175	$4,800,000 - estimate	30	$4,571	50% AMI

updated 01/03/2020



SITE PLAN

SCALE: 1" = 20'

0 10' 40'
5' 20' 60'

N

SOUTH ELEVATION SCALE: 3/32" = 1'-0"

WEST ELEVATION SCALE: 3/32" = 1'-0"

EAST ELEVATION SCALE: 3/32" = 1'-0"

NORTH ELEVATION SCALE: 3/32" = 1'-0"

Unit Mix by Floor

Name	Count	Net Area	Gross Area	Level
Level 1				
Unit A1	4	704 ft²	796 ft²	Level 1
Unit A2	2	757 ft²	843 ft²	Level 1
Unit A3	1	721 ft²	785 ft²	Level 1
Unit B1	2	915 ft²	988 ft²	Level 1
Unit B2	1	857 ft²	920 ft²	Level 1
Unit C1	4	1,029 ft²		Level 1
Unit C2	2	939 ft²	1,015 ft²	Level 1
Unit C4	1	1,151 ft²	1,231 ft²	Level 1
Unit S1	3	549 ft²	623 ft²	Level 1
Unit S2	4	448 ft²	519 ft²	Level 1
	24			
Level 2				
Unit A1	5	704 ft²	796 ft²	Level 2
Unit A2	2	757 ft²	843 ft²	Level 2
Unit A3	1	721 ft²	785 ft²	Level 2
Unit B1	2	915 ft²	988 ft²	Level 2
Unit B2	1	857 ft²	920 ft²	Level 2
Unit C1	5	1,029 ft²	1,107 ft²	Level 2
Unit C2	2	939 ft²	1,030 ft²	Level 2
Unit C3	1	1,197 ft²	1,282 ft²	Level 2
Unit C4	1	1,151 ft²	1,231 ft²	Level 2
Unit S1	3	549 ft²	623 ft²	Level 2
Unit S2	5	448 ft²	519 ft²	Level 2
	28			
Level 3				
Unit A1	5	704 ft²	796 ft²	Level 3
Unit A3	1	721 ft²	785 ft²	Level 3
Unit B1	2	915 ft²	988 ft²	Level 3
Unit B2	1	857 ft²	920 ft²	Level 3
Unit C1	5	1,029 ft²	1,107 ft²	Level 3
Unit C4	1	1,151 ft²	1,231 ft²	Level 3
Unit S1	3	549 ft²	623 ft²	Level 3
Unit S2	5	448 ft²	519 ft²	Level 3
	23			
Grand total: 75	75			

Unit Mix by Unit Type (Gross SF)

Name	Count	Unit Type
1 BR		
Unit A1	14	1 BR
Unit A2	4	1 BR
Unit A3	3	1 BR
	21	
1BR + Den		
Unit B1	6	1BR + Den
Unit B2	3	1BR + Den
	9	
2 BR		
Unit C1	14	2 BR
Unit C2	4	2 BR
Unit C3	1	2 BR
Unit C4	3	2 BR
	22	
Alcove		
Unit S1	9	Alcove
	9	
Studio		
Unit S2	14	Studio
	14	
Grand total: 75	75	

Total Gross Area

Level	Area
Level 3	23,549 ft²
Level 2	27,360 ft²
Level 1	27,466 ft²
Level -1	27,926 ft²
Grand total	106,300 ft²

Parking Schedule

Type	Count
Level -1	
	77
	77
	77

Plot Date & Time:

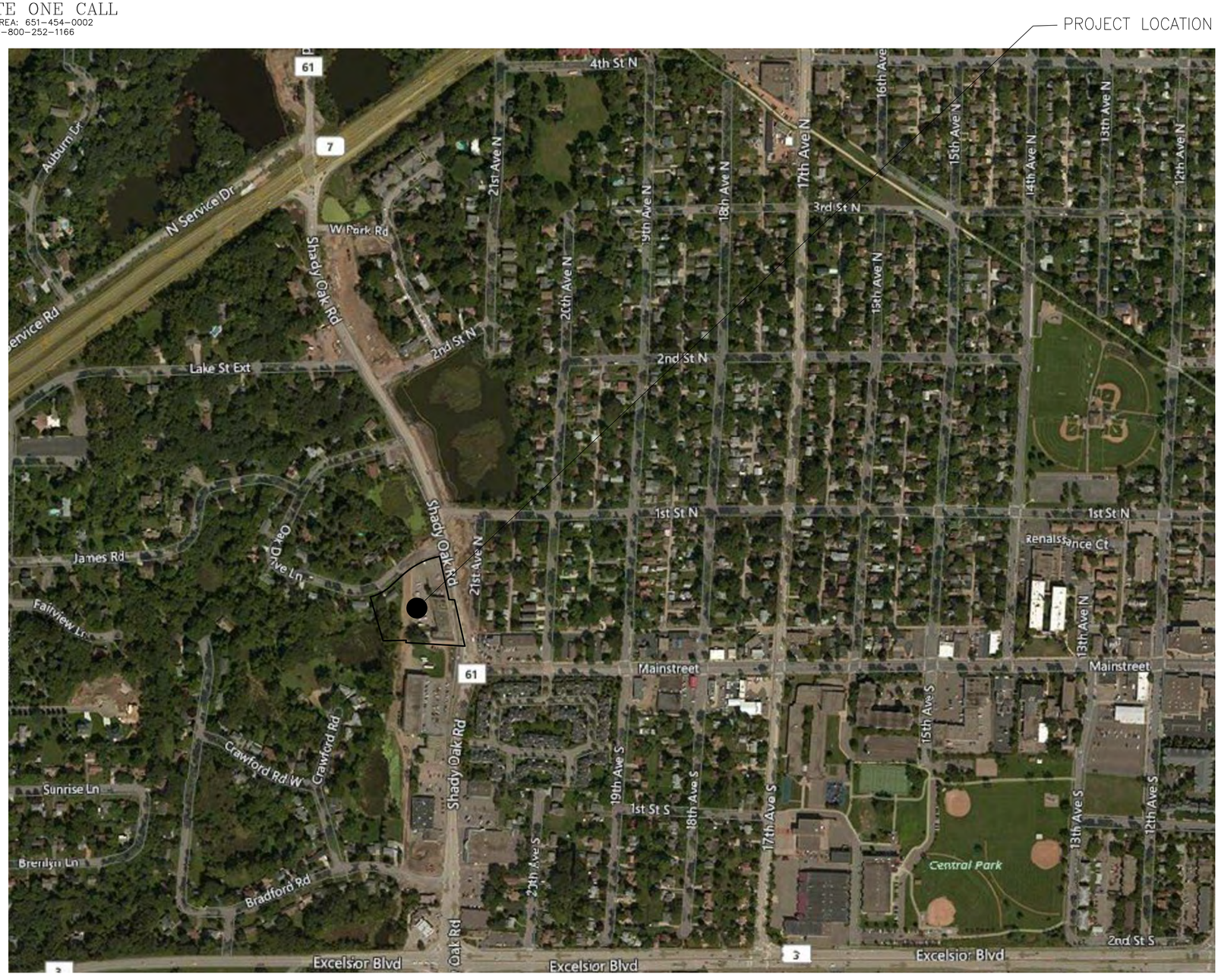
WARNING:

THE CONTRACTOR SHALL BE RESPONSIBLE FOR CALLING FOR LOCATIONS OF ALL EXISTING UTILITIES. THEY SHALL COOPERATE WITH ALL UTILITY COMPANIES IN MAINTAINING THEIR SERVICE AND/OR RELOCATION OF LINES.

THE CONTRACTOR SHALL CONTACT GOPHER STATE ONE CALL AT 651-454-0002 AT LEAST 48 HOURS IN ADVANCE FOR THE LOCATIONS OF ALL UNDERGROUND WIRES, CABLES, CONDUITS, PIPES, MANHOLES, VALVES OR OTHER BURIED STRUCTURES BEFORE DIGGING. THE CONTRACTOR SHALL REPAIR OR REPLACE THE ABOVE WHEN DAMAGED DURING CONSTRUCTION AT NO COST TO THE OWNER.

CALL BEFORE YOU DIG
GOPHER STATE ONE CALL
TWIN CITY AREA: 651-454-0002
TOLL FREE 1-800-252-1166

SHADY OAK CROSSING
MINNETONKA, MN



PROJECT DIRECTORY

OWNER:
RON CLARK CONSTRUCTION & DESIGN
MIKE ROEBUCK
7500 WEST 78TH STREET
EDINA, MN 55439
PH. 952.947.3022
EMAIL: MIKE@RONCLARK.COM

ENGINEER:
CAMPION ENGINEERING SERVICES, INC.
MARTY CAMPION
1800 PIONEER CREEK CENTER
MAPLE PLAIN, MN 55364
PH. 763.479.5172
EMAIL: MCAMPION@CAMPIONENG.COM

SURVEYOR:
WENCK ASSOCIATES
1800 PIONEER CREEK CENTER
MAPLE PLAIN, MN 55359
PH. 763.479.4200

NOTE:
BOUNDARY AND TOPOGRAPHIC INFORMATION PER SURVEY PREPARED BY WENCK ASSOCIATES, DATED FEBRUARY 6, 2017.

GOVERNING SPECIFICATIONS:

1. THE MINNESOTA DEPARTMENT OF TRANSPORTATION "STANDARD SPECIFICATIONS FOR CONSTRUCTION" LATEST EDITION & SUPPLEMENTS.
2. CITY ENGINEERS ASSOCIATION OF MINNESOTA (CEAM) STANDARD UTILITIES SPECIFICATIONS. (LATEST EDITION)
3. ALL APPLICABLE FEDERAL, STATE AND LOCAL LAWS AND ORDINANCE WILL BE COMPLIED WITH IN THE CONSTRUCTION OF THIS PROJECT.
4. CITY OF MINNETONKA STANDARD SPECIFICATIONS & DETAILS.

INDEX

N

0 250 500
GRAPHIC SCALE IN FEET

NO.	DATE	DESCRIPTION
		REVISIONS

CAMPION ENGINEERING SERVICES, INC.
● Civil Engineering ● Land Planning
1800 Pioneer Creek Center,
P.O. Box 249
Maple Plain, MN 55359
Phone: 763-479-5172
Fax: 763-479-4242
E-Mail: mcampion@campioneng.com

I hereby certify that this plan, specification or report has been prepared by me or under my direct supervision and that I am a duly licensed Professional Engineer under the laws of the State of Minnesota.

Martin P. Campion -Lic. # 19901 Date:

SHADY OAK CROSSING
RON CLARK CONSTRUCTION
MINNETONKA, MN

COVER SHEET

PROJECT NO: 17-011

SHEET NO. 1 OF 11 SHEETS

DATE: 12/02/2019

C:\Users\kk-co\OneDrive\2017\17-011 Shady Oak Crossing\CAD\CIV\1 COVER SHEET.dwg

CERTIFICATE OF SURVEY

MINNETONKA, MN

LEGEND

- SET 3/4"ODx14" IRON PIPE WITH PLASTIC CAP 43055 OR MAG NAIL W/WASHER
- PROPERTY MARKER FOUND BY HENNEPIN COUNTY SURVEYOR
- FOUND MONUMENT
- SANITARY SEWER MANHOLE
- STORM SEWER MANHOLE
- STORM SEWER INLET
- STORM SEWER INLET
- TELEPHONE MANHOLE
- GAS METER
- COMMUNICATIONS PEDESTAL
- ELECTRIC MANHOLE
- ELECTRIC TRANSFORMER
- TRAFFIC SIGN
- BOLLARD/POST
- UTILITY POLE
- LIGHT POLE
- CONIFEROUS TREE
- DECIDUOUS TREE
- WATER VALVE
- HYDRANT
- STORM SEWER
- SANITARY SEWER
- WATERMAIN
- UNDERGROUND GAS LINE
- UNDERGROUND COMMUNICATION LINE
- OVERHEAD UTILITY LINE
- TREE LINE
- BUILDING
- CONCRETE SURFACE
- ASPHALT SURFACE

N

0 30 60

SCALE IN FEET

PROPERTY DESCRIPTION:

Certificate of Title 1400998

Lot 19 Block 2, Ginkels Oakridge Addition
AND

Certificate of Title 1400997
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

SURVEYORS NOTES:

1. *Utility lines shown hereon are based on field markings and maps provided to us as a result of Gopher State One Call private utility locate (Ticket Numbers 170260089, 170260090). the surveyor cannot guarantee that all utilities were marked or that the markings/maps are accurate.*
2. *Horizontal Datum: Hennepin County Coordinate System NAD83(11)*
3. *Vertical Datum: NAVD88*
4. *Date of fieldwork: 2/3/2017*
5. *Gross area = 2.38 acres.*
6. *Portions of the subject property were covered by snow and ice at the time of survey, the surveyor does not guarantee that all improvements are shown hereon.*
7. *This survey was prepared based on a cursory title review, the surveyor does not guarantee that all or any adverse interests, easements or other encumbrances are shown or that the owner listed has fee title to the property.*

SURVEYORS CERTIFICATION:

I hereby certify that this survey was completed by me or under my direct supervision and that I am a duly licensed land surveyor under the laws of the State of Minnesota.

_____

Chris Ambourn *Date*
LS 43055

WENCK ASSOCIATES
Responsive partner. Exceptional outcomes.
1802 WOODDALE DRIVE
WOODBURY, MN 55125
Ph: 651–395–5212

CLIENT NAME: RON CLARK CONSTRUCTION & DESIGN

PROJECT TITLE: CERTIFICATE SURVEY

DWN BY	CHK'D	APP'D	DWG DATE
MLH	CNA	CNA	6–FEB–2017

SCALE 1" = 30'

#				
REV	REVISION DESCRIPTION	DWN	APP	REV DATE

PROJECT NO. 1531–0009

SHEET NO. 2 OF 11

Policy Number 2.18
Tax Increment Financing and Tax Abatement

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

Introduction

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

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

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

TAX INCREMENT FINANCING

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

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

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

- Projects must be compatible with the Comprehensive Guide Plan (or acquire an amendment) and the development and redevelopment objectives of the city.

- Priority will be given to those projects which:

    - are within the "village areas" identified in the city's most recently adopted Comprehensive Guide Plan;

    - are mixed use or residential in nature, and include affordable housing units which meet the city's affordable housing standards;

    - contain amenities or improvements which benefit a larger area than the identified development;

    - improve blighted or dilapidated properties, provide cohesive development patterns, or improve land use transitions; or

    - maximize and leverage the use of other financial resources.

Costs Eligible for Tax Increment Financing Assistance

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

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

Title insurance	Landscape design

Forms of Assistance

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

Fiscal Disparities

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

TAX ABATEMENT

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

Projects Eligible for Tax Abatement Assistance

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

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

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

Fiscal Disparities

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

REVIEW PROCESS

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

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

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

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

Policy Number 13.2
Affordable Housing Policy

Purpose of Policy: This policy establishes general procedures and requirements to govern the City's commitment to affordable housing.

Introduction

The City of Minnetonka has a long history of promoting diversity in the type and size of housing units in Minnetonka, including the production of new affordable rental and ownership opportunities.

This Policy recognizes the city's commitment to provide affordable housing to households of a broad range of income levels in order to appeal to a diverse population and provide housing opportunities to those who live or work in the city. The goal of this policy is to ensure the continued commitment to a range of housing choices by requiring the inclusion of affordable housing for low and moderate-income households in new multifamily or for-sale developments.

The requirements in this policy further the Minnetonka Housing Action Plan and city's Housing Goals and Strategies identified in the 2040 Comprehensive Plan.

Applicability and Minimum Project Size

This policy applies to all new multifamily rental developments with 10 or more dwelling units and all new for-sale common interest or attached community developments, (condominiums, townhomes, co-ops) with at least 10 dwelling units. This includes existing properties or mixed-use developments that add 10 or more units.

Calculation of Units

The number of Affordable Dwelling Units (ADUs) required shall be based on the total number of dwelling units approved by the city. If the final calculation includes a fraction, the fraction of a unit shall be rounded up to the nearest whole number.

If an occupied property with existing dwelling units is expanded by 10 or more units, the number of required ADUs shall be based on the total number of units following completion of expansion.

Affordable Dwelling Unit (ADU)

General Requirements.

<u>For projects not requesting a zoning change and/or comprehensive plan amendment and not receiving city assistance.</u>

- In multi-family rental developments, at least 5% of the units shall be affordable to and occupied by households with an income at or below 50% of

the AMI.

- In attached for-sale common interest or attached community developments (condominiums, townhomes, co-ops), at least 10% of the units shall be affordable to and occupied by households with an income at or below 80% AMI.

For projects requesting a zoning change or comprehensive plan amendment without city assistance.

- In multi-family rental developments, at least 10% of the units shall be affordable to and occupied by households with incomes at or below 60% AMI, with a minimum of 5% at 50% AMI.

- In attached for-sale common interest or attached community developments (condominiums townhomes, co-ops), at least 10% of the units shall be affordable to and occupied by households with an income at or below 80% AMI.

For projects receiving city assistance.

- For multi-family rental developments, at least 20% of the units shall be affordable to and occupied by households with an income at or below 50% of the AMI; or at least 40% of the units shall be affordable to and occupied by households with an income at or below 60% AMI.

- In attached for-sale common interest or attached community developments (condominiums, townhomes, co-ops), at least 10% of the units shall be affordable to and occupied by households with an income at or below 80% AMI.

Calculation of AMI

For purposes of this policy, Area Median Income means the Area Median Income for the Twin Cities metropolitan area calculated annually by the Minnesota Housing Finance Agency for establishing rent limits for the Housing Tax Credit Program (multi-family ADU) and the Department of Housing and Urban Development (attached for-sale common interest or attached community developments, including: condominiums, townhomes, co-ops).

Rent Level Calculation (Multi- Family Rental Developments)

The monthly rental price for an ADU receiving city assistance shall include rent and utility costs and shall be based on fifty percent (50%) or sixty percent (60%) for the metropolitan area that includes Minnetonka adjusted for bedroom size and calculated annually by Minnesota Housing Financing Agency for establishing rent limits for the Housing Tax Credit Program. This does not apply to units not receiving city assistance.

For Sale Projects

The qualifying sale price for an owner-occupied dwelling unit shall include property taxes, homeowner's insurance, principal payment and interest, private mortgage insurance, monthly ground lease, association dues, and shall be based upon eighty (80%) AMI for the metropolitan area that includes Minnetonka adjusted for bedroom size and calculated annually by the Department of Housing and Urban Development.

Period of Affordability

In developments subject to this policy, the period of affordability for the ADUs shall be thirty (30) years.

Location, Standards, and Integration of ADUs

Distribution of affordable housing units. Unless otherwise specifically authorized by this policy, the ADUs shall be integrated within the development and distributed throughout the building(s). The ADUs shall be incorporated into the overall project unless expressly allowed to be located in a separate building or a different location approved by the city council.

Number of bedrooms in the affordable units. The ADUs shall have a number of bedrooms proportional to the market rate units. The mix of unit types shall be approved by the city.

Size and Design of ADUs. The size and design of ADUs shall be consistent and comparable with the market rate units in the rest of the project.

Exterior/Interior Appearance of ADUs. The exterior/interior materials and design of the ADUs in any development subject to these regulations shall be indistinguishable in style and quality with the market rate units in the development.

Non-Discrimination Based on Rent Subsidies

Developments covered by this policy must not discriminate against tenants who would pay their rent with federal, state or local public assistance, including tenant based federal, state or local subsidies, but not limited to rental assistance, rent supplements, and Housing Choice Vouchers.

Alternatives to On-Site Development of an ADU

The city recognizes that it may not be economically feasible or practical in all circumstances to provide ADUs in all development projects due to site constraints resulting in extraordinary costs of development. The city reserves the right to waive this policy if the developer requests a waiver and can provide evidence of extraordinary costs prohibiting the inclusion of ADUs. The city will review on a case-by-case basis to determine if the waiver is justifiable and granted.

Recorded Agreements, Conditions and Restrictions

A declaration of restrictive covenants shall be executed between the city, EDA and developer, in a form approved by the city's EDA attorney, which formally sets forth development approval and requirements to achieve affordable housing in accordance with this policy. The declaration shall identify:

- The location, number, type, and size of affordable units to be constructed;
- Sales and/or rental terms; occupancy requirements;
- A timetable for completion of the units; and
- Annual Tenant income and rent reporting requirements; and
- Restrictions to be placed on the units to ensure their affordability and any terms contained in the approval resolution by the city/EDA.

The applicant or owner shall execute all documents deemed necessary by the city manager, including, without limitation, restrictive covenants and other related instruments, to ensure affordability of the affordable housing unit within this policy.

The documents described above shall be recorded in the Hennepin County as appropriate.

Definitions

Affordable Dwelling Unit: A unit within a residential project subject to this policy that shall meet the income eligibility and rent affordability standards outlined in this policy.

Financial Assistance: Funds derived from the city or EDA, including but is not limited to fund from the following sources:

- City of Minnetonka
- Housing Redevelopment Authority (HRA) Funds
- Economic Development Authority (EDA) Funds
- Community Development Block Grant (CDBG)
- Reinvestment Assistant Program
- Revenue Bonds and/or Conduit Bonds
- Tax increment financing (TIF), TIF pooling, or tax abatement
- Land write downs
- Other government housing development sources

Adopted by Resolution 2019-060
Council Meeting of July 8, 2019

LEAGUE of MINNESOTA CITIES

HANDBOOK FOR MINNESOTA CITIES

Chapter 14
Community Development and Redevelopment

TABLE OF CONTENTS

LEAGUE of MINNESOTA CITIES

HANDBOOK FOR MINNESOTA CITIES

Chapter 14
Community Development and Redevelopment

Learn about the requirements for a city to establish criteria for awarding business subsidies and various development agencies cities may create. Find an overview of state and federally sponsored programs for encouraging development and redevelopment. Most economic development tools can be applied to any size city. These tools are interrelated, and a city may use several for one project.

RELEVANT LINKS:

I. Business subsidies or financial assistance

A. Business subsidies

Minn. Stat. §§ 116J.993 to 116J.995.
Minn. Stat. § 116J.993, subd. 3.

State law defines "business subsidy" or "subsidy." It is a state or local government agency grant, contribution of personal property, real property, infrastructure, or the principal amount of a loan at rates below those commercially available to the recipient. In addition, a business subsidy is any reduction or deferral of any tax or any fee, any guarantee of any payment under any loan, lease, or other obligation, or any preferential use of government facilities given to a business in an amount greater than $150,000.

Minn. Stat. § 116J.994, subds. 5, 11.
Minnesota Department of Employment and Economic Development (DEED).

Prior to awarding a business subsidy of more than $150,000 (and as defined by law) to any business, a city and any housing and redevelopment authority (HRA), economic development authority (EDA), port authority, and nonprofit created by a local government must hold a public hearing and adopt criteria for awarding business subsidies. The public hearing notice must include a statement that either a resident or a city property owner may file a written complaint with the city if the city does not follow the business subsidy law. Written complaints must be filed within specified timelines. The criteria must include a policy regarding the wages to be paid for any jobs created. Copies of the criteria adopted by cities are found on the Minnesota Department of Employment and Economic Development (DEED) web site.

Minn. Stat. § 116J.994, subd. 3.

Once the criteria are established, the grantor and the recipient must enter into a subsidy agreement that meets the statutory requirements. The agreement must include an obligation to repay at least part, if not all, of the subsidy if the recipient does not meet its obligations.

RELEVANT LINKS:

Minn. Stat. § 116J.993, subd. 3.
Minn. Stat. § 469.185.

Types of assistance meeting the definition of a business subsidy include: grants; contributions of real or personal property or infrastructure; the principal amount of a loan at rates below those commercially available to the recipient; any reduction or deferral of any tax or any fee; any guarantee of any payment under any loan, lease or other obligation; or any preferential use of government facilities given to a business.

Minn. Stat. § 116J.994, subd. 11.

The law imposes a 180-day statute of limitations on actions to challenge a city after approval of a business subsidy agreement. Citizens or owners of taxable property in a city may bring a civil action against the city for failure to comply with the business subsidy laws. Cities should therefore consult closely with the city attorney before awarding a business subsidy.

Minn. Stat. § 116J.993, subd. 3.

There are several exceptions to this definition, including a subsidy of less than $150,000; subsidies for redevelopment, pollution control and land clean up, housing, industrial revenue bonds, utility property tax abatements and other similar programs.

Minn. Stat. § 116J.994, subds. 4, 7, 8.

Recipients must provide grantors with information on their progress toward the goals outlined in the agreement. The goals for increasing jobs or retaining jobs must result in local job creation and job retention. Grantors must submit the annual Minnesota Business Assistance Form (MBAF) to the Department of Employment and Economic Development (DEED) by April 1 each year for each business subsidy agreement. Local government agencies in cities with a population of 2,500 or more must submit an MBAF, regardless of whether they have awarded business subsidies. Local government agencies in cities with a population of 2,500 or less are exempt from filing the MBAF if they have not awarded a subsidy in the past five years.

B. Financial assistance

Minn. Stat. § 116J.994, subd. 2. Minn. Stat. § 116J.994, subd. 8.

Cities may offer “financial assistance” in the form of a business loan of more than $25,000 or a guarantee of $75,000 or more, but less than $150,000 required to constitute a business subsidy. If a city offers such financial assistance it must develop criteria and set minimum wage floor levels as prescribed in business subsidy law. Cities granting such financial assistance must submit business assistance reports to the Department of Employment and Economic Development (DEED) within one year of granting the assistance.

RELEVANT LINKS:

II. City development tools

A. General city development powers

Minn. Stat. § 469.041.

Cities have authority to aid and cooperate in the planning, construction, or operation of economic development, and housing and redevelopment projects. The following is a partial list of actions cities may take, with or without compensation:

- Dedicate, sell, convey, or lease any of its interests in any property or grant easements, licenses, or any other rights or privileges to an HRA.
- Furnish parks, playgrounds, recreational, community education, water, sewer, and drainage facilities or other works adjacent to or in connection with housing and redevelopment projects.

Minn. Stat. § 469.192.

A statutory city, home rule charter city, economic development authority, housing and redevelopment authority, or port authority may make a loan to a business, a for-profit or nonprofit organization, or an individual for any purpose the entity is otherwise authorized to carry out under any of the laws cited.

Judd Supply Co. v. Merchants & Mfgs. Ins. Co., 448 N.W.2d 895 (Minn. Ct. App. 1989).

Private development projects that receive public financial or other assistance will not necessarily become public projects that trigger competitive bidding or other state laws applicable to public works.

B. Housing and redevelopment authorities

The predominant method of delivering and administering housing and redevelopment programs in Minnesota is through a legal public agency, accountable to city government. A city may establish this public agency, which is often the HRA. There are more than 230 HRAs in Minnesota.

1. Elements of an HRA

Minn. Stat. §§ 469.001 to 469.047.
Minn. Stat. § 469.003.

An HRA is a public corporation with power to undertake certain types of housing and redevelopment or renewal activities. While state legislation conveys authority for housing and redevelopment in each city, it is up to the city council to formally establish an HRA before it can do business and use its powers. Once a council legally establishes an HRA, it may undertake certain types of planning and community development activities on its own without council approval.

Minn. Stat. § 469.003, subd. 1.

To create a housing and redevelopment authority, the city council must, by resolution, make the following findings required by law:

RELEVANT LINKS:

- Substandard, slum or blighted areas that cannot be redeveloped without governmental assistance; or
- A shortage of affordable, decent, safe, and sanitary dwelling accommodations available to low-income individuals and families.

Minn. Stat. § 469.003, subds. 2, 4.

The council must pass this resolution after a public hearing. A copy of this resolution must go to the commissioner of DEED.

2. Area of operation for an HRA

Minn. Stat. § 469.003, subd. 1.
Minn. Stat. § 469.004, subds. 1, 2.

The area of operation of a city HRA is the corporate limits of the city. County and multi-county HRAs operate in areas that include all the political subdivisions within the county or counties, except they may not undertake any project within the boundaries of a city that has not adopted a resolution authorizing the county or multi-county HRA to exercise powers within that city.

Minn. Stat. § 469.004, subd. 5.

Establishment of a county or multi-county HRA precludes the formation of city HRAs, unless the county or multi-county HRA and the commissioner of DEED agree to let the city form one.

3. HRA membership

Minn. Stat. § 469.003, subds. 5, 6.

An HRA consists of up to seven commissioners who are residents of the city. The mayor appoints and the council approves the members who serve five-year, staggered terms. City councilmembers often serve on the HRA. The entire membership of an HRA may consist of councilmembers.

24 C.F.R. 964.400 to 964.430.

Federal regulations require that at least one eligible resident be a member of a public housing agency board, which may be the HRA, an EDA or other public housing authority (PHA). This rule applies to any public housing agency that holds a public housing annual contributions contract with HUD or that administers Section 8 tenant-based rental assistance. The rule does not apply to state-financed public housing projects or Section 8 project-based assistance. A “small PHA exception” also exists.

Minn. Stat. § 469.003, subd. 7.

The city clerk must file a certificate of appointment for each commissioner of a city HRA and send a certified copy to the commissioner of DEED.

Minn. Stat. § 469.011, subd. 2. Minn. Stat. § 469.011, subd. 4.

State law allows the HRA to adopt bylaws. Commissioners may accept compensation of up to $75 for each meeting they attend. Commissioners who are elected officials may receive daily payment for a particular day only if they do not receive any other daily payment for public service on that day. Commissioners who are public employees may not receive daily payment, but may not suffer loss in compensation or benefits as a result of their service.

RELEVANT LINKS:

4. HRA powers

Minn. Stat. § 469.012, subd. 1.

An HRA is primarily responsible for the planning and implementation of redevelopment and/or low-rent housing assistance programs within its area of operation. An HRA has all the powers necessary to carry out the state HRA Act, including, but not limited to, the following powers:

- To sue and be sued.
- To employ staff and an executive director.
- To undertake projects within its area of operation and to provide for the construction, reconstruction, improvement, extension, alteration, or repair of any project or part of a project.
- To sell, buy, own, and lease property by any means necessary, including the power of eminent domain.
- To cooperate with and use state and federal financial assistance programs.
- To develop rehabilitation and code enforcement techniques.
- To issue bonds for any of its corporate purposes backed by the pledge of revenues, grants or other contributions.
- To implement renewal or redevelopment programs using tax increment financing.
- To own, hold, improve, lease, sell or dispose of real or personal property.
- To designate substandard, slum or deteriorating areas needing redevelopment, and unsafe, unsanitary, and overcrowded housing.
- To make necessary expenditures to carry out the purposes of the HRA law.
- To develop and administer an interest reduction program to assist the financing of the construction, rehabilitation, or purchase of low- or moderate-income housing.

5. HRA special assessment and levy authority

Minn. Stat. § 469.001 – 469.047.
Minn. Stat. § 469.033, subd. 6.

Minn. Stat. § 275.70 to 275.74.

Minn. Stat. § 275.066.

HRA power to levy and collect taxes or special assessments is limited to the power provided in state law. Subject to a resolution of consent from the city council an HRA may levy a tax upon all taxable property within the city. (The council may give a consent that covers a series of years if they so choose or council may pass a resolution authorizing an HRA levy for a set amount of time, for example, the entire term of the bonds secured in part by an HRA levy and in part by a city levy.) State law recognizes the distinct nature of HRAs and designates them as “special taxing districts.” The maximum general allowable operational levy of HRAs is 0.0185 percent of the previous year’s estimated market value of all property in the city.

RELEVANT LINKS:

The city's estimated market value is available from the county assessor. An HRA raises its own levy because it is a separate political subdivision and not a "local governmental unit." Therefore, an HRA levy is not subject to levy limits, but is subject to the 0.0185 percent estimated market value limit. Levies collected by an HRA must be used only for purposes listed in the HRA Act.

There is crossover between HRA and EDA levies that can be confusing. Typically, EDAs are not authorized to levy taxes under state law. However, many city EDA-enabling resolutions adopt all the powers of an HRA, and then the EDA functions as a special taxing district under state law. If the enabling resolution so allows, the EDA levies a separate tax or "HRA levy" not subject to levy limits or city debt limits—but again subject to the 0.0185 percent of the city's estimated market value limit in state law. The city attorney may verify the structure and levy authority of each city's HRA and/or EDA.

Minn. Stat. § 469.107.
Minn. Stat. § 275.066.

While HRAs have the legal authority to "do whatever is necessary and convenient" to implement redevelopment, they are subject to the ordinances and laws of the city. The city council must approve HRA plans before the housing and redevelopment authority may begin implementation.

Minn. Stat. § 469.012, subd. 4. Minn. Stat. § 469.028.

6. HRA contracting

All HRA construction work and purchases of equipment, supplies or materials that involve expenditure of more than $175,000 must be competitively bid. An HRA (and a city) may also use the "best value alternative." There are limited exceptions to these requirements for emergencies and certain projects, such as parking ramps.

Minn. Stat. § 469.015.
Minn. Stat. § 469.015, subds. 1a, 4.

7. HRA financing

Operating funds, capital improvements, and debt retirement expenses for HRA projects may be financed by any one, or combination of, the following methods:

- Federal grants.
- Revenue bonds the HRA or local governing body sells.
- General obligation bonds the local governing body sells.
- Tax increments from redevelopment projects.
- A limited levy for redevelopment projects and planning activities.

Minn. Stat. § 469.033.
Minn. Stat. § 469.034.

When an HRA issues bonds, the revenue generated must be used for the projects financed, or bond costs must be paid from income generated by designated projects.

Minn. Stat. § 469.034, subd. 1.

RELEVANT LINKS:

The law states that the principal and interest on bonds are payable exclusively from the income and revenues of the project financed with the proceeds of the bonds, or exclusively from the income and revenues of certain designated projects, whether or not they are financed in whole or in part with the proceeds of the bonds.

8. HRA certifications to state

The following documents relating to the establishment and activities of local HRAs must go to the DEED commissioner:

Minn. Stat. § 469.003, subds. 4, 6, 7.
Minn. Stat. § 469.018.
Minn. Stat. § 469.013 subd. 2.

- Resolution of need.
- Certificates of appointment or reappointment of HRA commissioners.
- Low-rent public housing project and management plans.

Minn. Stat. § 469.027.

The following additional documents relating to local HRA activities may also be requested by the DEED commissioner:

- Project reports.
- Applications for federal assistance.
- Contracts with federal agencies.
- Redevelopment plans.

Minn. Stat. § 469.013.

In addition, annual financial reports must go to the state auditor, DEED commissioner, and the city council.

9. HRA federal certification

24 C.F.R 982.51.

In order for a local HRA to use federal Department of Housing and Urban Development (HUD) assistance programs, it must submit a transcript of organizational documents to the HUD area office.

C. Economic development authorities

Minn. Stat. §§ 469.090 to 469.1082.
Minn. Stat. § 469.091.

Minn. Stat. § 469.093.
Minn. Stat. § 469.095.
Minnesota Department of Employment and Economic Development: The Economic Development Authorities Handbook.

All cities and townships have authority from the state Legislature to create economic development authorities. The city may consolidate the economic development authority (EDA) with an existing HRA or the city may grant the authority HRA powers. The city council may create an EDA by passing an enabling resolution. Before adopting the enabling resolution, the city must first conduct a public hearing. The enabling resolution establishes a board of commissioners for the EDA. The city council can choose to serve as the EDA board of commissioners or create a board composed of community members. The mayor, with approval of the council, appoints the commissioners.

The board may consist of three, five or seven members who serve six-year terms. The board is subject to the open meeting law.

RELEVANT LINKS:

1. EDA levies

Minn. Stat. § 275.70.

Minn. Stat. § 275.066.

Minn. Stat. § 469.107.

The typical EDA levy is different from the HRA levy discussed above. It is not a levy raised by the EDA—it is a levy set by a city at the request of the EDA.

Basically, the city simply appropriates part of the money the city collects in the general city levy to the EDA. Because the EDA levy is part of the city levy, it is not a "special levy" under state law and thus the EDA levy is subject to the city's overall levy limit. However, as noted above, many EDA enabling resolutions adopt all the powers of an HRA. If so, the EDA may levy a separate tax or "HRA levy," and then the EDA functions as a special taxing district as if it were an HRA and that levy is not subject to levy limits or to city debt limits. An EDA using the levy powers of an HRA is still limited to a levy no more than 0.0185 percent of the estimated market value in the city.

2. EDA loans

Minn. Stat. § 469.192.
Minn. Stat. §§ 469.090 to 469.1082.
Minn. Stat. § 469.098.

An EDA is authorized to make a loan to a business, a for-profit or nonprofit organization, or an individual. Before taking an action or making a decision which could substantially affect an EDA commissioner's or an employee's financial interests or those of an organization with which the commissioner or an employee is associated, a commissioner or employee of an authority must comply with specific requirements to disclose the conflict and obtain prior approval. Failure to do so may result in criminal charges.

Minn. Stat. § 469.102.

Loans must be for a purpose the EDA is authorized to carry out under the law. An authorized purpose must deal with or contribute to economic or industrial development. EDAs have the ability to use pooled bond reserving.

3. Other EDA powers

Minn. Stat. § 469.101, subds 1, 2.
Minn. Stat. § 475.58.
Minn. Stat. § 469.102.

EDAs can acquire property and facilities but cannot issue debt without an election. The city must authorize the issuance of debt in the resolution creating the EDA. In addition, EDAs can create economic development districts but the districts must be contiguous.

Current law eliminates the requirements that economic development districts established by EDAs meet the "blight test" under tax increment financing law for redevelopment districts.

RELEVANT LINKS:

EDAs may exercise powers under the housing and redevelopment authority (HRA) law (if a particular EDA enabling resolution includes HRA power) to create a redevelopment project, housing development, or housing project under which a restrictive blight test does not apply. These projects can be used for similar purposes to those of an economic development district under the EDA law.

D. Port authorities

Minn. Stat. §§ 469.048-469.068. Minn. Stat. § 469.053.
Minn. Stat. § 469.060 subd. 1.

The state Legislature authorizes city creation of port authorities. A port authority is a separate political entity with the right to sue and be sued in its own name and is generally organized to increase commerce in a city. Unlike EDAs and HRAs, a port authority may issue general obligation bonds without holding an election.

Minn. Stat. § 469.050.

Cities establish a port authority by passing an enabling resolution. The port authority may have three commissioners, appointed by the city council, or seven commissioners, two of whom must be city council members, with the remaining members appointed by the mayor and approved by the city council. Cities may adopt a different procedure and a different number of commissioners in the enabling law for the port authority. State law governs commissioner pay, vacancies, duties, and port authority bylaws.

Minn. Stat. § 469.051.

Minn. Stat. § 469.051, subd. 2.

A port authority shall annually elect a president or chair, vice-president or vice-chair, treasurer, secretary, and assistant treasurer. A commissioner may not serve as president or chair and vice-president or vice-chair at the same time. The other offices may be held by one commissioner. The offices of secretary and assistant treasurer need not be held by a commissioner.

Minn. Stat. § 469.051, subds. 4 to 6.

The treasurer of a port authority must be bonded to faithfully perform these duties:

- Receive and be responsible for port authority money.
- Be responsible for the acts of the assistant treasurer, if appointed.
- Disburse port authority money by check or electronic procedures.
- Keep an account of the source of all receipts, and the nature, purpose, and authority of all disbursements.
- File the authority's detailed financial statement with its secretary at least once a year at times set by the authority.

Minn. Stat. § 469.051, subd. 9.

The port authority's annual detailed financial statement must show all receipts and disbursements, their nature, the money on hand, the purposes to which the money on hand is to be applied, the authority's credits and assets, and its outstanding liabilities.

RELEVANT LINKS:

The authority must examine the statement together with the treasurer's vouchers. If the authority finds the statement and vouchers correct, it shall approve them by resolution and record the resolution.

Minn. Stat. §§ 469.048–469.068.

State law governs many other aspects of port authorities, including but not limited to use of city property by a port authority, employees, contracts, and audits. The city attorney also acts as the port authority's attorney.

E. Municipal or area redevelopment agencies

Minn. Stat. §§ 469.109 to 469.123.

Any rural municipality or group of municipalities may establish a public body, known as a municipal or area redevelopment agency, in and for the area the municipality covers. This law defines municipalities as home rule charter or statutory cities, counties, towns or school districts.

Minn. Stat. § 469.110, subd. 11. Minn. Stat. § 469.111.

The law includes only rural areas, which generally means all areas that are not within the boundary of any city having a population of 50,000 or more, and not immediately adjacent to urbanized and urbanizing areas with a population density of more than 100 persons per square mile—or areas with an unemployment rate of 6 percent or more. The restrictions limit applicability of the law to rural areas.

Minn. Stat. § 469.111. Minn. Stat. § 469.115.

The establishment of the municipal or area redevelopment agency is similar to the establishment of an HRA. A municipal or area redevelopment agency has similar powers to an HRA.

F. City development districts

Minn. Stat. §§ 469.124 to 469.134.

Any home rule charter or statutory city may designate development districts within the boundaries of the city. Within these districts, cities may:

- Adopt a development program to acquire, construct, reconstruct, improve, alter, extend, operate, maintain or promote developments aimed at improving the physical facilities, quality of life, and quality of transportation.
- Promote pedestrian skyway systems.
- Install special lighting systems, street signs and street furniture, landscaping of streets and public property, and snow removal systems.

Minn. Stat. § 469.127.

The law encourages pedestrian skyway systems, underground pedestrian concourses, people mover systems, and publicly owned parking structures. It exempts these structures from taxation even when they are attached to privately owned buildings.

RELEVANT LINKS:

G. City industrial development

Minn. Stat. §§ 469.152 to 469.1655.
Minn. Stat. § 469.152.

For the purpose of attracting industrial and commercial development and encouraging local governments to prevent economic deterioration, any home rule charter or statutory city or its redevelopment agency has the power to promote industrial development by:

- Acquiring, constructing, and holding lands, buildings, easements, improvements to lands and buildings, capital equipment, and inventory for industrial projects.
- Issuing revenue bonds and entering into revenue agreements to finance these activities to promote industrial projects.
- Refinancing health care and other facilities.

Minn. Stat. § 469.155, subd. 4.

Under the legislation, cities assist industries in starting operations and use generated revenues to repay the costs. This law is the basis for issuing most industrial revenue bonds.

Minn. Stat. § 469.153, subd. 2.

Industrial projects eligible for assistance include any revenue-producing enterprises engaged in assembling, fabricating, manufacturing, mixing, processing, storing, warehousing, or distributing any products of agriculture, forestry, mining, or manufacturing; or in research and development activity in these fields; or in the manufacturing, creation, or production of intangible property, including any patent, copyright, formula, process, design, know how, format, or other similar item. "Project" also includes any properties designated as a qualified green building and sustainable design project under state law. Eligible projects may include costs related to dewatering activities.

Minn. Stat. § 469.1655.

Minn. Stat. § 469.155, subd. 14.

The law prohibits a city from operating any of these projects as a business or in any other manner.

III. Other development strategies

A. Housing bonds

Minn. Stat. ch. 462C.

Cities may use revenue bonds for financing single- and multi-family housing, primarily for the benefit of low- and moderate-income families. The law contains single- and multi-family housing criteria and the specific actions cities must take to comply with the law.

Federal law limits the issuance of housing revenue bonds. Bonding authority is allocated by a state formula.

RELEVANT LINKS:

B. Industrial parks

An industrial park is a tract of land suitable for industrial use because of location, topography, proper zoning, availability to utilities, and accessibility to transportation. A single body has administrative control of the tract. In some cities, an industrial park may be little more than a tract of unimproved land, while in other cities it may be totally served by city services and have restrictive building requirements. An industrial park's purpose is to attract industrial development.

Minn. Stat. § 272.02 subd. 39.

Property a city holds for later sale for economic development purposes remains tax exempt for a period not to exceed nine years, or until buildings or other improvements that are constructed after acquisition reach one-half occupancy. For cities located outside of the metropolitan area with populations less than 20,000, the period must not exceed 15 years.

Currently, private enterprise creates most new industrial park development by establishing a for-profit community development corporation. A city can cooperate with that corporation through its land-use controls and methods of financing public improvements. Many cities have also established industrial parks complete with streets, water, and sewer, in spite of the possible tax ramifications. The city then sells or leases a portion of the park to a business needing a location for its building.

Minn. Stat. § 469.185.
Minn. Stat. § 465.035.
A.G. Op. 476-B-2 (Mar. 2, 1961).
City of Pipestone v. Madsen, 287 Minn. 357, 178 N.W.2d 594 (1970).

The law authorizes any city owning lands that are not restricted by deed to convey the lands for nominal consideration, to encourage and promote industry, and to provide employment for citizens. In finding that a conveyance of land for an indoor arena was not within the statute, the attorney general concluded the conveyance must encourage and promote industry and provide employment for citizens. A more direct promotion of industry is necessary, beyond the fact that more potential customers might be in town as a result of athletic contests. However, the courts have upheld the municipal industrial development revenue bond law, discussed subsequently, against the same objection. The city's attorney can best advise the city concerning the legality of a purchase of land for resale.

C. Industrial revenue bonds

Minn. Stat. §§ 469.152 to 469.1655.

The municipal industrial development laws help cities attract new commercial and industrial development, and keep existing businesses in the city. The law authorizes the council to issue revenue bonds, and use the proceeds to acquire and construct industrial sites and facilities. The city then leases these facilities to private industry and uses the rental fee proceeds to retire the bonds.

RELEVANT LINKS:

Minn. Stat. § 469.156.

Minn. Stat. § 469.162.

For more information, contact DEED 651.259.7114, 800.657.3858. Main Office: 1st National Bank Building 332 Minnesota Street, Suite E200 Saint Paul, MN 55101-1351.

A city may issue industrial revenue bonds, also known as municipal revenue bonds, without public referendum. It cannot pledge the full faith and credit of a community as security for these bonds. Thus, the city may not tax property owners to pay principal and interest on the bonds.

If a city decides to investigate the use of industrial bond financing, it should contact the Department of Employment and Economic Development. The department provides the city with information, advice, and technical assistance. This assistance is important, due to the adoption of federal and state laws allocating issuance authority among the states and their political subdivisions. The commissioner of Securities must approve the project.

D. Commercial rehabilitation

Minn. Stat. § 469.184.

Cities have authority to carry out programs for the rehabilitation of small- and medium-sized commercial buildings. The city must adopt a program ordinance that provides for the adoption of program regulations, including a definition of small- and medium-sized commercial buildings. Loans under the program may be for amounts up to $200,000. The city may finance the program through the sale of revenue bonds.

E. Tax increment financing (TIF)

Minn. Stat. §§ 469.174 to 469.1794.

Tax increment financing authority is available to most cities. Cities with housing and redevelopment authorities, economic development authorities, port authorities, redevelopment agencies, those cities administering development districts or development projects, or cities exercising port authority powers under a general or special law may use tax increment financing.

Tax increment financing is a funding technique that takes advantage of the increases in tax capacity and property taxes from development or redevelopment to pay upfront public development or redevelopment costs. The difference in the tax capacity and the tax revenues the property generates after new construction has occurred, compared with the tax capacity and tax revenues it generated before the construction, is the captured value. The taxes paid on the captured value are called “increments.” Unlike property taxes, increments are not used to pay for the general costs of cities, counties, and schools. Instead, increments go to the development authority and are used to repay public indebtedness or current costs the city incurred in acquiring the property, removing existing structures or installing public services.

RELEVANT LINKS:

Thus, the property owner in a TIF district continues to pay the full amount of property taxes. TIF involves only the increased property taxes generated within the district. It does not change the amount of property taxes currently derived from the redevelopment area, nor does it directly affect the amount or rate of general ad valorem taxes the city levies. The result of a TIF project is an increased tax base that will benefit all local taxing jurisdictions. Additionally, TIF districts usually spur economic development and redevelopment through creating jobs, removing blight, and providing more affordable housing.

Minn. Stat. § 469.177, subd. 1.

If the market value of a homestead property within a TIF district reduces the homestead market value in the district, the original tax capacity of the TIF district will be reduced by the same amount.

Thus, the tax increment collected by the city will remain the same. If a city has a TIF district with townhouses or condominiums, the city should verify that valuations are properly adjusted by the county auditor.

See Minn. Stat. § 469.174.

TIF is used to encourage four general types of private development: redevelopment, renovation and renewal, growth in low- to moderate-income housing, and economic development. Public financing using TIF funding for a privately owned facility does not make public space in the facility a public forum for free speech purposes.

State v. Wicklund, 589 N.W.2d 793 (Minn. 1999).

Minn. Stat. § 469.176, subd. 7.

In some specific situations, a TIF authority may request inclusion in a tax increment financing district and the county auditor may certify the original tax capacity of a parcel or a part of the following property types:

- Agricultural.
- Private outdoor recreational, open space and park land.
- Rural preserve property.
- Metropolitan agricultural preserves.

Minn. Stat. § 469.175, subds. 5, 6.

The city using TIF must report annually to the state auditor as to the status of the TIF district or districts and publish the report in a newspaper of general circulation in the municipality. The state auditor has established a uniform system of accounting and financial reporting for TIF districts. The city must annually submit to the state auditor a financial report in compliance with these standards.

Minn. Stat. § 469.1771, subds. 1, 2b.

The state auditor may audit TIF districts. If the state auditor notifies a TIF authority of an alleged violation, a copy of the notice is also forwarded to the county attorney. If no corrective action is brought within one year, the county attorney must notify the state auditor, who then notifies the attorney general.

RELEVANT LINKS:

If the attorney general finds a substantial violation, the attorney general will petition the state tax court to suspend the authority's power to use TIF for a period of up to five years.

Minn. Stat. § 469.177, subd. 8. *Lake Superior Paper Indus. v. State*, 624 N.W.2d 254 (Minn. 2001). *Brookfield Trade Center, Inc. v. County of Ramsey*, 609 N.W.2d 868 (Minn. 1998).

The TIF agreement with the developer is a complex document. Assistance from a financial advisor and the city attorney is necessary in order to anticipate the many potential problems. An agreement can establish a minimum market value for tax increment assessment purposes, as well as provide that the developer pay a certain level of taxes regardless of any classification rate changes or levy decreases. The agreement should be entered into before the assembly and acquisition of the land on which the completed improvements are to be located.

Minn. Stat. § 469.1771.

The law imposes a 180-day statute of limitations on actions to challenge the creation or modification of a TIF district. The law is complex including a "but-for" finding before a city approves a TIF plan and the creation of a TIF district.

Cities must follow statutory requirements including but not limited to administrative expenses, plan modifications, reporting requirements, use of increment in pre-1979 districts, excess increments, pooling, decertification, and use of funds outside the district.

Minn. Stat. § 469.175.

Before a district can be created, the law requires a detailed estimate of the impact of a proposed district on city-provided services, such as police and fire protection, public infrastructure, and borrowing costs attributable to the district, in addition to other complex estimations that must be prepared.

Walser Auto Sales, Inc. v. City of Richfield, 635 N.W.2d 391 (Minn. Ct. App. 2001); aff'd, 644 N.W.2d 425 (Minn. 2002).

Cities should use extreme care in establishing a TIF district and should follow all procedural requirements; otherwise, a court may find the district was not properly established. In one case, a TIF district was not properly established where minimal effort was made to ensure the thorough inspection of the properties, inaccurate methodology was used to establish the condition of the buildings, and the buildings found structurally substandard were not reasonably distributed throughout the district.

Chenoweth v. City of New Brighton, 655 N.W.2d 821 (Minn. Ct. App. 2003).

In another case, a cause of action for inverse condemnation did not arise where a city's involvement with an adjacent property owner's development consisted of establishing a TIF district, entering into a contract with a private developer specifying the size and value of structures to be built, and providing for substantial city assistance to facilitate development.

Given the complexity of the laws governing the use of TIF, cities or HRAs should not undertake this method of financing community development projects without the advice of an attorney and professional consultants.

RELEVANT LINKS:

F. Property tax abatement

Minn. Stat. §§ 469.1812 to 469.1815.

A city may use this development tool to segregate some or all of the taxes (or the increase in taxes) it imposes on a parcel of property if the city expects the benefits of the proposed abatement agreement at least to equal the costs of the proposed development. The term "abatement" is somewhat misleading, as in most cases the tax is not forgiven; it is paid normally, but the amount of property tax levied by the city is used to pay for the bonds. The city must determine that the agreement is in the public interest because it will increase or preserve tax base, provide employment opportunities, provide or help acquire or construct public facilities, help redevelop or renew blighted areas, or help provide access to services for residents of the city. Property taxes in a TIF district cannot be abated unless the period of the abatement will not occur until after the district is decertified.

Minn. Stat. § 469.1813.

A resolution must be adopted after notice and public hearing, specifying the terms of the abatement.

A city may issue bonds or other obligations to provide an amount equal to the sum of the abatements granted for a specific property. The maximum principal amount of these bonds may not exceed the estimated sum of the abatements for the property for the years authorized. The bonds may be general obligations of the city if the city council chooses to pledge the full faith and credit of the city in the resolution issuing the bonds. The law limits property tax abatements to 15 years. School districts and counties have similar abatement powers. A city, county, and school district can agree to abate their taxes on the same property.

G. Housing trust funds

Minn. Stat. § 462C.16.

Cities have authority to establish a local housing trust fund by ordinance or to participate in a joint powers agreement to establish a regional housing trust fund. These trust funds may also be administered through a nonprofit organization. If the fund is administered through a nonprofit organization, that organization may encourage private charitable donations to the fund.

A city may finance its local or regional housing trust fund with any money available to local government, unless expressly prohibited by state law. Sources of funding may include, but are not limited to:

- Donations
- Bond proceeds
- Grants and loans from a state, federal, or private source

RELEVANT LINKS:

- Appropriations by a local government to the fund
- Investment earnings of the fund
- Housing and redevelopment authority levies

Once the fund is established, the source of funding may be altered, but only if sufficient funds will exist to cover the projected debts or expenditures authorized by the fund in its budget.

Money in a local or regional housing trust fund may only be used to:

- Pay for administrative expenses, but not more than 10 percent of the balance of the fund may be spent on administration.
- Make grants, loans, and loan guarantees for the development, rehabilitation, or financing of housing.
- Match other funds from federal, state, or private resources for housing projects.
- Provide down payment assistance, rental assistance, and homebuyer counseling services.

The local or regional housing trust fund must report annually to the local government that created the fund, and the local government or governments must post this report on its public website.

A local or regional housing trust fund existing on July 1, 2017, is not required to alter the existing terms of its governing documents or take any additional authorizing actions required by the statute.

IV. State-sponsored development tools

A. Minnesota Housing Finance Agency

Minn. Stat. ch. 462A. For more information about MHFA programs, contact MHFA at 400 Wabasha Street North, Suite 400, St. Paul, MN 55102 (651) 296-7608 or (800) 657-3769.

The goals of the Minnesota Housing Finance Agency (MHFA) are to provide decent, affordable housing to low- and moderate-income people; preserve the existing housing stock in Minnesota; preserve existing neighborhoods and prevent them from deteriorating; and prevent mortgage foreclosures while promoting energy conservation in residential housing.

The Minnesota Legislature created the MHFA in response to a shortage of affordable housing for low- and moderate-income people. Private enterprise and private investment were unable, without public assistance, to provide an adequate supply of safe, sanitary, and decent housing at affordable prices and rents.

RELEVANT LINKS:

Minn. Stat. § 462A.073 et seq.
MHFA: Minnesota City Participation Program. Nicola Viana, Program Manager, 651-297-9510, Nicola.Viana@state.mn.us.

The sale of state tax-exempt bonds is the primary financing for MHFA programs. Through the Minnesota City Participation Program, Minnesota Housing sells mortgage revenue bonds on behalf of cities to meet locally identified housing needs. The proceeds of these bonds provide below-market interest rate home mortgage loans for low- and moderate-income, first-time homebuyers, or for the construction or rehabilitation of single- and multi-family housing. Appropriations from the Legislature provide additional funding for programs, including the promotion of energy conservation; an increase in home ownership opportunities for first time homebuyers; home improvement grants to very low-income homeowners; and programs to improve the housing available to Native Americans, large families, and people with disabilities.

B. Department of Employment and Economic Development (DEED)

Minn. Stat. ch. 116J. Minnesota Department of Employment and Economic Development.

The Minnesota Department of Employment and Economic Development is the primary economic development agency for Minnesota.

DEED staff is responsible for a wide range of grant and loan programs, as well as for providing technical assistance to businesses and communities.

Minn. Stat. §§ 116J.411 to 116J.424.
Minn. Stat. § 116J.575.
See, Minnesota Department of Employment and Economic Development for Local Government.

DEED also provides grants for contamination cleanup and redevelopment. A redevelopment account allows DEED to make grants to local units of government up to 50 percent of the cost of redeveloping blighted industrial, residential, or commercial property. DEED administers the rural development program; makes challenge grants to regional organizations to encourage private investment in rural areas; and administers a revolving loan fund to provide loans to new and expanding business in rural Minnesota. Local government units, including cities, may receive these loans if the community has established a local revolving loan fund and can provide at least an equal match to the loan received.

Minn. Stat. § 116J.431. Greater Minnesota Business Development Infrastructure Grant Program.

Cities outside the seven-county metropolitan area may receive grants from DEED for up to 50 percent of the capital costs of public infrastructure necessary for certain specified economic development projects, excluding retail and office space. For this program, “public infrastructure” means publicly owned physical infrastructure necessary to support economic development projects, including but not limited to sewers, water supply systems, utility extensions, streets, wastewater treatment systems, stormwater management systems, and facilities for pretreatment of wastewater to remove phosphorus.

RELEVANT LINKS:

Minn. Stat. § 116J.431, subd. 2.

Under this law, an "economic development project" for which a county or city may be eligible to receive a grant under this section includes manufacturing; technology; warehousing and distribution; research and development; agricultural processing or industrial park development that would be used by any one of these businesses.

Minn. Stat. § 116J.435.

DEED runs the Innovative Business Development Public Infrastructure (BDPI) program that provides grants to local governmental units on a competitive basis statewide for up to 50 percent of the capital cost of the public infrastructure necessary to expand or retain jobs.

Department of Employment and Economic Development: Innovative Business Development Program.

"Innovative business" means a business that is engaged in, or is committed to engage in, innovation in Minnesota in one of the following:

Minn. Stat. § 116J.435.

- Using proprietary technology to add value to a product, process, or service in a high technology field.
- Researching or developing a proprietary product, process, or service in a high technology field.
- Researching, developing, or producing a new proprietary technology for use in the fields of tourism, forestry, mining, transportation, or green manufacturing.

"Proprietary technology" means the technical innovations that are unique and legally owned or licensed by a business and includes, without limitation, those innovations that are patented, patent pending, a subject of trade secrets, or copyrighted. "Eligible project" means an innovative business development capital improvement project in this state, including:

- Manufacturing; technology; warehousing and distribution; research and development.
- Innovative business incubator.
- Agricultural processing; or industrial, office. or
- Research park development that would be used by an innovative business.

C. Enterprise Minnesota

Minn. Stat. ch. 116O.

Enterprise Minnesota is a nonprofit business consulting organization, set up by the Legislature that helps small and medium-sized manufacturing companies, education services, and government entities in Minnesota.

Enterprise Minnesota operates as a fee-for-services 501(c)(3) nonprofit. Enterprise Minnesota focuses on applied research and technology transfer and early stage funding.

RELEVANT LINKS:

Enterprise Minnesota 612-373-2900 or 800-325-3073. Minn. Stat. § 116O.061.

It may provide financial assistance, including loan guarantees, direct loans, interest subsidies, or equity investments, to sole proprietorships, corporations, other entities, nonprofit organizations, or joint ventures. Financial assistance includes but is not limited to assisting a qualified company or organization with business services and products that will enhance the operations of the entity.

D. Corporations

Minn. Stat. § 465.717. Minn. Stat. § 471.59. LMC information memo, *LMCIT Liability Coverage Guide, Section III-I, Joint powers entities*.

Cities must not create nonprofit corporations unless authorized to do so by special legislation. The law allows incorporation of a joint powers entity, but these must comply with all applicable public sector laws (open meeting, gift law, conflicts of interest, competitive bidding, etc.) and must be separately insured.

V. Federal development tools

A. Community development block grants

More information is available on the HUD web site.

The Community Development Block Grant (CDBG) program, under the U.S. Department of Housing and Urban Development (HUD), provides cities with federal funding to initiate and continue a diverse array of housing and community development projects.

B. Rural development grants

For more information, contact Rural Development State Office 410 Farm Credit Service Building 375 Jackson Street St. Paul, MN 55101-1853, (651) 602-7800; See also, Handbook, *Financing Public Improvements*.

A variety of grants and loans to encourage economic development are available to cities from the U. S. Department of Agriculture, rural development program. Sewer, water, rural enterprise, housing, and other types of grants and loans are available.

VI. How this chapter applies to home rule charter cities

All of the tools this chapter lists are available to charter cities. The general discussions also apply to all cities.

EDA Resolution No. 2020-_____

Resolution approving an amended and restated contract for private development between the Economic Development Authority in and for the City of Minnetonka, the City of Minnetonka, and Shady Oak Crossing LLC and the issuance of a tax increment revenue note

---

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

Section 1. Background.

1.01. The Authority was created pursuant to Minnesota Statutes, Sections 469.090 through 469.1082, as amended, and was authorized to transact business and exercise its powers by a resolution adopted by the City Council of the City of Minnetonka, Minnesota (the "City").

1.02. The Authority and the City have undertaken a program to promote economic development and job opportunities, promote the development and redevelopment of land which is underutilized within the City, and facilitate the development of affordable housing.

1.03. The Authority, the City, and Shady Oak Crossing LLC, a Minnesota limited liability company (the "Developer"), entered into a Contract for Private Development, dated September 25, 2017 (the "Original Contract"), pursuant to which the City agreed to convey to the Developer certain real property (the "Property"), the Developer agreed to construct 49 affordable rental housing units on the Property (the "Project"), and the Authority agreed to provide the Developer with a loan in the amount of up to $1,209,000 (the "TIF Loan") payable from tax increment generated from property within Redevelopment Tax Increment Financing District No. 2.

1.04. The Developer intended to finance the Project with the proceeds of the TIF Loan, proceeds of various grants, and low-income housing tax credits (the "Tax Credits"). After several rounds of application for the Tax Credits, the Developer did not receive the Tax Credits.

1.05. On the date hereof, the City and the Authority will consider establishing the Shady Oak Crossings Tax Increment Financing District (the "TIF District"), a redevelopment district, within Development District No. 1 in the City, pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended. The City is also in the process of annexing a portion of property (the "Annexed Property") to be included in the TIF District.

1.06. The Developer now proposes to acquire the Property from the City and acquire the Annexed Property (together, the "Development Property") and construct on the Development Property 75 units of rental housing, at least 30% of which will be affordable to individuals and families at or below 60% of the area median income (the "Minimum Improvements"). To make the Minimum Improvements economically feasible, the Authority proposes to issue a tax increment revenue note in the maximum principal amount of $1,900,000 (the "TIF Note") to the

Developer, rather than providing the TIF Loan to the Developer. The TIF Note will be payable from tax increment generated from property within the TIF District.

1.07. The City and the Authority have caused to be prepared an Amended and Restated Contract for Private Development (the "Amended and Restated Contract") between the Authority, the City, and the Developer, which amends and restates the Original Contract. The Amended and Restated Contract sets forth the terms of the City's conveyance of the Property to the Developer, the construction by the Developer of the Minimum Improvements, and the issuance of the TIF Note by the Authority to reimburse the Developer for certain costs related to the Minimum Improvements.

1.08. The Board has reviewed the Amended and Restated 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. The Amended and Restated Contract.

2.01. The Amended and Restated 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 Amended and Restated Contract and any other documents or certificates necessary to carry out the transactions described therein.

Section 3. The TIF Note.

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

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

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

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

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

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

(c) The TIF Note surrendered upon any transfer shall be promptly cancelled by the Registrar and thereafter disposed of as directed by the Authority.

(d) When the TIF Note is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such TIF Note or separate instrument of transfer is legally authorized. The Registrar shall incur no liability for its refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(e) The Authority and the Registrar may treat the person in whose name the TIF Note is at any time registered in the bond register as the absolute owner of the TIF Note, whether the TIF Note shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of such TIF Note and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability of the Authority upon such TIF Note to the extent of the sum or sums so paid.

(f) For every transfer or exchange of the TIF Note, the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee, or other governmental charge required to be paid with respect to such transfer or exchange.

(g) In case the TIF Note shall become mutilated or be lost, stolen, or destroyed, the Registrar shall deliver a new TIF Note of like amount, maturity dates and tenor in exchange and substitution for and upon cancellation of such mutilated TIF Note or in lieu of and in substitution for such TIF Note lost, stolen, or destroyed, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case the TIF Note lost, stolen, or destroyed, upon filing with the Registrar of evidence satisfactory to it that such TIF Note was lost, stolen, or destroyed, and of the ownership thereof, and upon furnishing to the Registrar of an

appropriate bond or indemnity in form, substance, and amount satisfactory to it, in which both the Authority and the Registrar shall be named as obligees. The TIF Note so surrendered to the Registrar shall be cancelled by it and evidence of such cancellation shall be given to the Authority. If the mutilated, lost, stolen, or destroyed TIF Note has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue a new TIF Note prior to payment.

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

Section 4. Security Provisions of the TIF Note.

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

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

Section 5. Miscellaneous.

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

5.02. The approvals provided herein are expressly conditioned upon the establishment of the TIF District and the City’s successful annexation of the Annexed Property.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on Feb. 24, 2020.

_____
Brad Wiersum, President

Attest:

_____
Becky Koosman, Secretary

Action on this resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, at a meeting held on Feb. 24, 2020.

_____
Becky Koosman, Secretary

Second Draft
February 17, 2020

AMENDED AND RESTATED CONTRACT

FOR

PRIVATE DEVELOPMENT

between

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

CITY OF MINNETONKA, MINNESOTA

and

SHADY OAK CROSSING LLC

Dated _____, 2020

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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AMENDED AND RESTATED
CONTRACT FOR PRIVATE DEVELOPMENT

THIS AMENDED AND RESTATED CONTRACT FOR PRIVATE DEVELOPMENT, made on or as of the _____ day of _____, 2020 (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 LLC, a Minnesota limited liability company (the "Developer"), and amends and restates the Contract for Private Development, dated September 25, 2017 (the "Original Agreement"), between the Authority, the City, and the Developer.

WITNESSETH:

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

WHEREAS, the Authority and 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 the Shady Oak Crossing Tax Increment Financing District (the "TIF District"), a redevelopment 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, the City owns certain property located within the Project (the "City Property") and is seeking to annex a small portion of property into the City (the "Annexed Property") to be included in the TIF District; and

WHEREAS, contingent upon the successful annexation of the Annexed Property, the City proposes to convey the City Property to the Developer, and the Developer will purchase the Annexed Property; and

WHEREAS, the Developer has proposed to construct on the City Property and the Annexed Property (together, the "Development Property") an approximately 75-unit rental

housing facility, with at least thirty percent (30%) of the units to be made affordable to individuals and families at or below sixty percent (60%) of the area median income (the "Minimum Improvements"); and

WHEREAS, to assist the Developer in financing the acquisition and construction of the Minimum Improvements on the Development Property, the Authority is prepared to reimburse the Developer for a portion of the land acquisition costs and other costs related to the Minimum Improvements that may be reimbursed with tax increment; 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; and

WHEREAS, it is the intention of the parties hereto that this Agreement replace the Original Agreement; and

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

(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.

"Annexed Property" means the property to be annexed by the City, as legally described in SCHEDULE A attached hereto.

"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.

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

"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 C.

"City" means the City of Minnetonka, Minnesota.

"City Property" means the property owned by the City, as legally described in SCHEDULE A attached hereto.

"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.

"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 D hereto.

"Developer" means Shady Oak Crossing LLC, a Minnesota limited liability company, 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 consisting of the City Property and the Annexed Property.

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

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

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

"Minimum Improvements" means the construction on the Development Property of a rental housing facility containing 75 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.

"Payment Date" has the meaning provided in the TIF Note.

"Public Development Costs" has the meaning provided in Section 3.9 hereof.

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

"State" means the State of Minnesota.

"Tax Increment" means that portion of the real property taxes which is paid with respect to the TIF District and which is remitted to the Authority as tax increment pursuant to the Tax Increment Act.

"Tax Increment Act" or "TIF Act" means the Tax Increment Financing Act, Minnesota Statutes, Sections 469.174 through 469.1794, as amended.

"Tax Increment District" or "TIF District" means the Authority's Shady Oak Crossing Tax Increment Financing District.

"Tax Increment Plan" or "TIF Plan" means the Authority's Tax Increment Financing Plan for the TIF District, as approved by the Authority and City on February 24, 2020, 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.

"TIF Note" means a Tax Increment Revenue Note, substantially in the form attached hereto as SCHEDULE B, to be delivered by the Authority to the Developer pursuant to Section 3.9 hereof, and any obligation issued to refund the TIF Note.

"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.

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

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 City 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 liability company duly organized and in good standing under the laws of the State, 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.

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

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 City Property and is seeking to annex the Annexed Property. The Developer will purchase the Annexed Property after the annexation process is complete. In order to assist the Developer in making construction of the Minimum Improvements economically feasible, but contingent upon the City's annexation of the Annexed Property, the City will convey title to and possession of the City 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) Contingent upon the City's annexation of the Annexed Property, the City will convey title to and possession of the City Property to the Developer by quit claim deed substantially in the form of the deed attached as SCHEDULE E to this Agreement for a purchase price of $734,400. $734,400 is the appraised value of the City Property but the cost to the City to purchase the City 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 pooled tax increment from an existing tax increment district. The City's obligation to convey the City Property to the Developer is subject to satisfaction of the following terms and conditions:

(1) The City having successfully annexed the Annexed Property;

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

(3) 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 City Property to the Developer;

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

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

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

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

Conditions (2) and (3) are solely for the benefit of the Authority and the City, and may be waived by the Authority and the City. Conditions (1) and (4) cannot be waived. Conditions (5) and (6) are solely for the benefit of the Developer, and may be waived by the Developer. Condition (7) 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 City Property from the City to the Developer must occur upon satisfaction of the conditions specified in this Section, but no later than September 1, 2020 ("Closing").

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 City 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 City 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 City Property and a survey of the City 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 City 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 the Developer's notice, and neither party will have any liability to the other under this Agreement, except that the Developer will remain obligated for Administrative Costs incurred through the date of termination, as provided in Section 3.11 hereof. The City has no obligation to take any action to

clear defects in the title to the City Property, other than the good faith efforts described above and the actions described in Section 3.4(b) hereof.

(b) The City will take no actions to encumber title to the City 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 City Property prior to Closing.

(c) The Developer will take no actions to encumber title to the City 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 City Property prior to Closing. Notwithstanding termination of this Agreement prior to Closing, the Developer is obligated to pay all costs to discharge any encumbrances to the City Property attributable to actions of the 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 City Property from the City to the Developer, the Developer may enter the City 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 City 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 City 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 City 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 City 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. If the grants received are not sufficient to cover the costs of the required remediation, the City will reimburse the Developer the remaining costs of the required remediation.

Section 3.6. Relocation of Tenants. Following execution of this Agreement and the successful annexation of the Annexed Property, the City will commence relocation of the existing tenant of a single family home presently on the City 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 any required relocation benefits.

Section 3.7. Cost of Acquiring Land and Land Write-Down. The costs to the City of acquiring the City 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 City Property) is estimated to be $1,249,889. The parties agree and understand that, in conveying the City Property to the Developer for $734,000, the City will sell the City Property for amount which is $515,889 less than what it paid to acquire the City 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 with tax increment from an existing tax increment district.

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 City 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) *Public Development Costs; Developer Reimbursement*. In order to make construction of the Minimum Improvements financially feasible, the Authority will reimburse the Developer for a portion of the Public Development Costs incurred by the Developer in accordance with this Section. The term "Public Development Costs" means costs of acquisition of the City Property or any other costs eligible to be reimbursed with tax increment.

(b) *Issuance of TIF Note*. To reimburse the Public Development Costs incurred by the Developer, the Authority will issue and the Developer will purchase the TIF Note in the principal amount of up to $1,900,000 in substantially the form set forth in SCHEDULE B attached hereto. The Authority and the Developer agree that the consideration from the Developer for the purchase of the TIF Note will consist of the Developer's payment of Public Development Costs incurred by the Developer in at least the principal amount of the TIF Note.

The Authority will deliver the TIF Note upon delivery by the Developer of an investment letter reasonably acceptable to the Authority, together with evidence reasonably satisfactory to the Authority that the Developer has paid the costs associated with Public Development Costs in the principal amount of the TIF Note. The evidence must include a signed closing statement and certificate of real estate value, as well as invoices for all other costs eligible to be reimbursed with Tax Increment.

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

The Authority acknowledges that the Developer may assign or sell the TIF Note to a lender or other party. The Authority consents to this type of assignment or sale, conditioned upon receipt of an investment letter from the lender or other party in a form reasonably acceptable to the Authority.

(c) *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 three percent (3%) 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 this Section 3.9(c).

Section 3.10. Additional Grants and Funding Sources. 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 III hereof, 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 Maturity 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 September 1, 2020 and complete construction by December 31, 2022. Construction is considered to be commenced upon the beginning of physical improvements beyond grading.

(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 C. 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) As of the date of this Agreement, the Developer expects that the Minimum Improvements will include the mix of studio, one-bedroom, and two-bedroom Rental Housing Units. The Developer will cause at least thirty percent (30%) of the Rental Housing Units (23 units) to be available to individuals and families at or below sixty percent (60)% of the area median income, all as further described in the Declaration attached as SCHEDULE D. Notwithstanding anything to the contrary in the TIF Act, such restrictions shall remain in effect for the thirty (30) year period described in the Declaration. 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.

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 Maturity 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. If the Developer fails to substantially complete any repair, reconstruction or restoration of the Minimum Improvements within twenty-four months from the date of damage, the Authority may, at its option, terminate the TIF Note as provided in Section 9.3(b) hereof. If the Authority terminates the TIF Note, the termination will constitute the Authority's sole remedy under this Agreement as a result of the Developer's failure to substantially complete any repair, reconstruction or restoration of the Minimum Improvements. Thereafter, the Authority will have no further obligations to make any payments under the TIF Note.

(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 through the issuance of the TIF Note. The Developer understands that the Tax Increment pledged to payment of the TIF Note is derived from real estate taxes on the Development Property, which taxes must be promptly and timely paid. To that end, the Developer agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Development Property and the Minimum Improvements. The Developer acknowledges that this obligation creates a contractual right on behalf of the Authority and the City through the Maturity 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, but the Developer recognizes that the action may affect the amount of Available Tax Increment.

Section 6.2. Review of Taxes. The Developer agrees that prior to the Maturity 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 Maturity Date, apply for a deferral of property tax on the Development Property pursuant to any law, or transfer or permit transfer of the Development Property to any entity whose ownership or operation of the 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 Developer acknowledges and understands that this type of action will result in less Tax Increment being disbursed by the Authority for payment of the principal of and interest on the TIF Note. 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.

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ARTICLE VII

Financing

Section 7.1. Financing.

(a) Before the Closing, the Developer shall submit to the Authority and the City evidence of one or more commitments for other financing 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 9.4 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

Prohibitions Against Assignment and Transfer; Indemnification

Section 8.1. Representation as to Redevelopment. 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. Prohibition Against Transfer of Property and Assignment of Agreement. The Developer represents and agrees that until the Maturity 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.

Section 8.3. Release and Indemnification Covenants.

(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, 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.

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

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 thirty (30) day period, provide assurances reasonably satisfactory to the party providing notice of default that the event will be cured and will be cured as soon as reasonably possible:

(a) 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; or

(c) The Developer having failed to comply with the requirements of the Declaration.

Section 9.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 hereof occurs and is continuing, the non-defaulting party may exercise its rights under this Section 9.2 after providing thirty (30) days' written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days or, if the Event of Default is by its nature incurable within thirty (30) days, the defaulting party does not provide assurances reasonably satisfactory to the non-defaulting party that the Event of Default will be cured and will be cured as soon as reasonably possible:

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

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

(c) Upon a default by the Developer, the Authority may suspend payments under the TIF Note or terminate the TIF Note and the TIF District, subject to the provisions of Section 9.3 hereof.

(d) Take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

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

(a) the Developer fails to pay real estate taxes or assessments on the Development Property or any part thereof when due, and the taxes or assessments have not been paid, or provision satisfactory to the Authority made for their payment, within thirty (30) days after written demand by the Authority to do so; or

(b) the Developer fails to comply with its obligations to operate and maintain, preserve and keep the Minimum Improvements or cause the improvements to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition, pursuant to Sections 4.1 and 5.1(e) hereof; provided that, upon failure to comply with the obligations under Section 4.1 or 5.1(e) hereof, if uncured after thirty (30) days' written notice to the Developer of the failure, the Authority may only suspend payments under the TIF Note until the Developer complies with said obligations; if the Developer fails to comply with said obligations for a period of eighteen (18) months, the Authority may terminate the TIF Note and the TIF District; or

(c) the Developer fails to comply with the income restrictions or to deliver annual income reports as provided in Section 4.5 hereof and the Declaration; provided that, upon the Developer's failure to provide annual reports, if uncured after thirty (30) days' written notice to the Developer of the failure, the Authority may only suspend payments under the TIF Note until the Developer delivers said reports. If the Developer fails to deliver income reports for a period of six months following the date the reports are due after written notice to the Developer of the failure, the Authority may terminate the TIF Note and the TIF District.

Section 9.4. Revesting Title in City Property in City Upon Happening of Event Subsequent to Conveyance to Developer. In the event that subsequent to conveyance of the City 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 thirty (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 thirty (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 City 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 City 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 City 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 9.4(a)-(f) have not been cured within the time periods provided above.

Section 9.5. Resale of Reacquired Property; Disposition of Proceeds. Upon the revesting in the City of title to and/or possession of the City Property or any part thereof as provided in Section 9.4 hereof, the City will, pursuant to its responsibilities under law, use reasonable efforts to sell the City 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 City 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 City Property or part thereof, less any gains or income withdrawn or made by it from this Agreement or the City Property. Any balance remaining after the reimbursements will be retained by the City as its property.

Section 9.6. 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 9.7. 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 9.8. 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 Maturity 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 LLC
7500 West 78th Street
Edina, Minnesota 55439
Attention: Mike Waldo

with copies to:

Felhaber Larson
220 South Sixth Street, Suite 2200
Minneapolis, MN 55402
Attention: Thomas J. Radio

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

Section 10.12. Annexation of Annexed Property. The parties hereto understand that the enforcement of this Agreement is expressly contingent upon the City's successful annexation of the Annexed Property.

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

IN WITNESS WHEREOF, each of the parties hereto has caused this Amended and Restated Contract for Private Development 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 _____, 2020, by Brad Wiersum, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

_____
Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____, 2020, 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 _____, 2020, by Brad Wiersum, 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 _____, 2020, by Geralyn Barone, the City Manager of the City of Minnetonka, Minnesota, on behalf of the City.

_____
Notary Public

SHADY OAK CROSSING LLC

By _____
J. Michael Waldo
Its President

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____, 2020, by J. Michael Waldo, the President of Shady Oak Crossing LLC, a Minnesota limited liability company, 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 CROSSING:

City Property

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

Annexed Property

[Insert legal description]

SCHEDULE B

FORM OF TIF NOTE

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

No. R-1 $_____

TAX INCREMENT REVENUE NOTE
SERIES 20___

Rate	Date of Original Issue
_____%	_____, 20___

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

1. Payments. Principal and interest (the "Payments") will be paid on _____ 1, 20___, and each February 1 and August 1 thereafter to and including _____ 1, 20___ (the "Payment Dates"), in the amounts and from the sources set forth in Section 3 herein. Payments will be applied first to accrued interest, and then to unpaid principal.

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

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

3. Available Tax Increment. Payments on this Note are payable on each Payment Date in the amount of and solely payable from Available Tax Increment. "Available Tax Increment" means, on each Payment Date, ninety percent (90%) of the Tax Increment

attributable to the Development Property and paid to the Authority by Hennepin County, Minnesota in the six (6) months preceding the Payment Date, all as the terms are defined in the Amended and Restated Contract for Private Development, dated _____, 2020 (the "Agreement"), between the Authority, the City of Minnetonka, Minnesota, and the Owner. Available Tax Increment will not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default (as defined in the Agreement) under the Agreement; provided, however, once an Event of Default is cured, any Tax Increment previously withheld shall be deemed Available Tax Increment on the next Payment Date.

The Authority will have no obligation to pay principal of and interest on this Note on each Payment Date from any source other than Available Tax Increment, and the failure of the Authority to pay the entire amount of principal or interest on this Note on any Payment Date will not constitute a default hereunder as long as the Authority pays principal and interest hereon to the extent of Available Tax Increment. The Authority will have no obligation to pay unpaid balance of principal or accrued interest that may remain after the final Payment on _____ 1, 20___.

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

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

6. Nature of Obligation. This Note is one of an issue in the total principal amount of $_____ all issued to aid in financing certain public development costs of Development District No. 1 (the "Development District") undertaken by the Authority pursuant to Minnesota Statutes, Sections 469.090 through 469.1082, as amended, and is issued pursuant to an authorizing resolution (the "Resolution") duly adopted by the Authority on February 24, 2020, and pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Sections 469.174 through 469.1794, as amended. This Note is a limited obligation of the Authority which is payable solely from Available Tax Increment pledged to the payment hereof under the Resolution. This Note and the interest hereon will not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the Authority. Neither the State of Minnesota, nor any political subdivision thereof will be obligated to pay the principal of or interest on this Note or other costs incident hereto except out of Available Tax Increment, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof is pledged to the payment of the principal of or interest on this Note or other costs incident hereto.

7. Estimated Tax Increment Payments. Any estimates of Tax Increment prepared by the Authority or its financial advisors in connection with the Shady Oak Crossing Tax Increment

Financing District within the Development District or the Agreement are for the benefit of the Authority, and are not intended as representations on which the Owner may rely.

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

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

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

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

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

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

Executive Director	President

REGISTRATION PROVISIONS

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

Date of Registration	Registered Owner	Signature of Executive Director
	Shady Oak Crossing LLC Federal ID #_____	

SCHEDULE C

CERTIFICATE OF COMPLETION

The undersigned hereby certifies that Shady Oak Crossing LLC, a Minnesota limited liability company (the "Developer"), has fully complied with their obligations under Articles III and IV of that document titled "Amended and Restated Contract for Private Development," dated _____, 2020 (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 D

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this "Declaration") dated as of _____, 20___, by SHADY OAK CROSSING LLC, a Minnesota limited liability company (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 Amended and Restated Contract for Private Development, dated _____, 2020, filed _____, 2020, 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 75 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 shall commence on the date the Project receives a certificate of occupancy. The period from commencement to termination is the "Qualified Project Period."

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

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

2. Project Restrictions.

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

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

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

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

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

3. Occupancy Restrictions.

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

(i) Qualifying Tenants. From the commencement of the Qualified Project Period, at least thirty percent (30%) (i.e., 23) of the Rental Housing Units shall be occupied (or treated as occupied as provided herein) or held vacant and available for occupancy by Qualifying Tenants. Qualifying Tenants shall mean 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. [Intentionally omitted.]

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

herein (the "Assumption Agreement"). The Developer shall deliver the Assumption Agreement to the Authority prior to the Transfer.

6. [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 LLC
7500 West 78th Street
Edina, Minnesota 55439
Attention: Mike Waldo

with copies to:

Felhaber Larson
220 South Sixth Street, Suite 2200
Minneapolis, MN 55402
Attention: Thomas J. Radio

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.

Drafted by:

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

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

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 LLC

By _____
J. Michael Waldo
Its President

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____, 20___, by J. Michael Waldo, the President of Shady Oak Crossing LLC, a Minnesota limited liability company, on behalf of the Developer.

_____
Notary Public

This Declaration is acknowledged and consented to by:

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

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____, 20___, by _____, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

_____
Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____, 20___, by _____, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

_____
Notary Public

EXHIBIT A TO DECLARATION OF RESTRICTIVE COVENANTS

Legal Description

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

City Property

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

Annexed Property

[Insert legal description]

EXHIBIT B TO DECLARATION OF RESTRICTIVE COVENANTS

Certification of Tenant Eligibility

(INCOME COMPUTATION AND CERTIFICATION)

Project: _____ Shady Oak Drive, Minnetonka, Minnesota

Developer: Shady Oak Crossing LLC

Unit Type: _____ Studio _____ 1 BR _____ 2 BR

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

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

Income Computation

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

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

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

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

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

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

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

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

Yes _____ No _____

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

Yes _____ No _____

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

_____

Head of Household

_____

Spouse

FOR COMPLETION BY OWNER
(OR ITS MANAGER) ONLY

1. Calculation of Eligible Tenant Income:

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

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

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

2. The amount entered in 1(c) is less than or equal to _____ 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.

SHADY OAK CROSSING LLC

By _____
Its _____

EXHIBIT C TO DECLARATION OF RESTRICTIVE COVENANTS

Certificate of
Continuing Program Compliance

Date: _____, _____.

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

(A) The total number of residential units which are available for occupancy is 75. The total number of such units occupied is _____.

(B) The following residential units (identified by unit number) have been designated for occupancy by "Qualifying Tenants," as such term is defined in the Declaration (for a total of ____units):

Studio Units:

1 BR Units:

2 BR Units:

(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							
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73							
74							
75							

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

_____, the date on which the last "Certificate of Continuing Program Compliance" was filed with the Authority by the Developer.

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

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

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

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

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

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

SHADY OAK CROSSING LLC

By _____
J. Michael Waldo
Its President

SCHEDULE E

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 LLC, a Minnesota limited liability company (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 _____, 2020, identified as "Amended and Restated 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 9.4 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 _____, 20___, 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 _____, 20___.

CITY OF MINNETONKA, MINNESOTA

By _____
Its Mayor

By _____
Its City Manager

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____, 20___, by _____, the Mayor or the City of Minnetonka, Minnesota, on behalf of the Grantor.

_____
Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____, 20___, by _____, the City Manager of the City of Minnetonka, Minnesota, on behalf of the Grantor.

_____
Notary Public

This instrument was drafted by:

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

MN140-173 (JAE)
636802v3

EDA Resolution No. 2020-_____

Resolution approving a tax increment financing plan for the Shady Oak Crossing Tax Increment Financing District and a modified development program for Development District No. 1

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

Section 1. Recitals.

1.01. The Authority was created pursuant to Minnesota Statutes, Sections 469.090 through 469.1082, as amended, and was authorized to transact business and exercise its powers by a resolution adopted by the City Council (the "Council") of the City of Minnetonka, Minnesota (the "City").

1.02. The City previously established and the Authority administers Development District No. 1 (the "Development District") located within the City, pursuant to Minnesota Statutes, Sections 469.124 through 469.134, as amended, and has caused to be created a Development Program (the "Development Program") therefor.

1.03. The Authority and the City have determined to modify the Development Program and approve a new tax increment financing plan (the "TIF Plan") for the Shady Oak Crossing Tax Increment Financing District (the "TIF District"), a redevelopment district, within the Development District, pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended (the "TIF Act"), all as described in a plan document presented to the Board on this date.

1.04. The City is seeking to annex a small portion of the property that will be included in the TIF District, which is located at 2 Shady Oak Road, Hopkins, Minnesota (the "Annexed Property").

1.05. The proposed TIF Plan was presented to the commissioner of Hennepin County, Minnesota (the "County") representing the area included in the TIF District in accordance with Section 469.175, subdivision 2a of the TIF Act.

1.06. Pursuant to Section 469.175, subdivision 2 of the TIF Act, the proposed TIF Plan and the estimates of the fiscal and economic implications of the TIF Plan were presented to the Board of Education of Independent School District No. 270 and to the Board of Commissioners of the County on or about January 24, 2020.

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

Section 2. Board Action.

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

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

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

2.05. The approvals provided herein are expressly conditioned upon the City's successful annexation of the Annexed Property.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on Feb. 24, 2020.

_____
Brad Wiersum, President

Attest:

_____
Becky Koosman, Secretary

Action on this resolution:

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, at a meeting held on Feb. 24, 2020.

_____
Becky Koosman, Secretary

MN140-173 (JAE)
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