

Agenda

Minnetonka Economic Development Authority

Monday, June 8, 2020

Following the Regular Meeting

Webex

1. Call to Order
2. Roll Call: Carter-Calvert-Schaeppi-Coakley-Kirk-Schack-Wiersum
3. Approval of Agenda
4. Approval of Minutes:
 - A. April 6, 2020 EDA Meeting
5. Business Items:
 - A. The Pointe at 801 Carlson Parkway

Recommendation: Adopt the resolution approving the contract for private development (4 votes)
6. Adjourn

Minutes
Minnetonka Economic Development Authority
Monday, April 6, 2020

1. Call to Order

President Wiersum called the meeting to order at 10:19 p.m.

2. Roll Call

President Brad Wiersum

Commissioners Deb Calvert, Bradley Schaeppi, Kissy Coakley, Brian Kirk, Rebecca Schack, and Susan Carter

3. Approval of Agenda

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

4. Approval of Minutes:

A. February 24, 2020 EDA minutes

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

5. Business Items:

A. Resolution approving emergency forgivable loans to address the impacts of COVID-19 on small businesses with the City of Minnetonka

City Manager Geralyn Barone noted this item parallels what was just approved at the preceding city council meeting.

Wiersum invited questions and discussion from the commissioners, if any remained.

Calvert moved, Schack seconded a motion to adopt EDA Resolution 2020-003. All voted "yes." Motion carried.

6. Adjournment

Schack moved, Kirk seconded a motion to adjourn the meeting at 10:24 p.m. All voted "yes." Motion carried.

Respectfully submitted,

Becky Koosman
City Clerk

**Economic Development Authority Agenda Item #5A
Meeting of June 8, 2020**

Brief Description The Pointe at 801 Carlson Parkway

Recommendation Adopt the resolution approving the contract for private development

Background

The Carlson Center is a 328-acre master-planned development that crosses both the Minnetonka/Plymouth municipal boundary and Interstate 494. The original master development plan for the area, as it pertained to property in Minnetonka, was approved in 1983. Amendments to the plan have occurred on several occasions during the succeeding three decades.

Proposed Project

United Properties has formally submitted an application and is proposing to develop an 8.93-acre parcel of the Carlson Center property located at 801 Carlson Parkway. The parcel is not developed but has lawn and landscaping improvements complementing the Carlson Center campus. The plan for The Pointe contemplates a two-phased development:

- Phase 1 – Six-story apartment building with 186 apartment units for active adults ages 55+ with a mix of alcove, 1, 2, and 3 bedroom units.

Unit Type	Total Units	Size (in sq. ft.)
Alcove	18	583
1 bedroom	69	724-1046
2 bedroom	88	1080-1378
3 bedroom	11	1439-1511
	186	

- Phase 2 – Extended-stay hotel (4 stories) with 136 rooms.

A number of on-site amenities shown in the plan include active and passive areas shared by residents and hotel guests. The apartment and hotel would also have their own on-site amenities, including pools and fitness centers.

The plan narrative, provided by United Properties, indicates the developments first phase apartment building would be completed by 2023. Phase 2 would follow.

EDAC Recommendation

On Dec. 12, 2019, and May 14, 2020, the EDAC reviewed the developer’s financing request and contract for private development. The feedback provided by the EDAC at those meetings was to provide up to \$400,000 in assistance to produce 19 affordable units. Additionally, the EDAC provided feedback on the following points in the contract:

- The developer requested removing the 55 and older age restriction requirement on the units and the possibility to convert units to condominiums in the future.

- The commissioners were in consensus that the age restriction requirement could be removed from the contract as market conditions could change in the future.
- Ms. Wischnack confirmed that a conversion of the rental apartments to owner-occupied condominiums would require city council approval. If a conversion is requested in the future, the city will review affordability requirements for owner-occupied units.
- Language was removed that required the developer to notify the city if any affordable units become vacant (the agreement continues to require an annual report for the affordable units).
- Commissioners asked for clarification on the ability of the developer to transfer the project to another entity in the future.
 - Ms. Eddington, the city's EDA attorney, explained that the applicant would be required to have United Properties as a majority owner.
 - If United Properties transferred the property, and was not a majority owner, the loan would be repaid to the city.
- Commissioners asked if the \$5,000 administrative allowance would cover city costs to negotiate the contract.
 - Staff confirmed that the \$5,000 was sufficient and that any unused balance would be returned to the developer.
- Language was removed that required the EDA to approve the developer's proposed financing.
- Language was removed that required the developer to reconstruct if damage occurs.
- Commissioners asked if the amount of assistance for the project was still appropriate for the project.
 - Keith Dahl, Ehlers, explained that Ehlers would review the proforma again prior to the disbursement of funds for the project.

The minutes from the Dec. 12, 2019, and May 14, 2020, EDAC meeting are attached to this report. In addition, Julie Eddington, the city's EDA attorney, has prepared the attached memorandum that documents the changes that were approved by the EDAC, changes that were made to the contract upon request by the developer, and changes requested by the developer that were not included in the contract.

Financing Request

City Council Policy 13.2 – Affordable Housing Policy recommends affordability for approximately 19 units (9 units at 60% AMI and 10 units at 50% AMI), without city assistance. Following a review of the development proforma and discussions with the city's financial consultant at Ehlers and Associates, the analysis projected a small gap of roughly \$400,000 (\$701 per unit/per year) for the production of 10% affordable housing units. While the policy's recommendation is the goal, the developer indicated a higher than anticipated project cost, due to the remediation of soil conditions and a common area maintenance agreement with Carlson Towers. Each project has potential for complications, and staff and the EDAC considered financial assistance of \$400,000 was appropriate to obtain the affordable units given the extraordinary costs associated with the soil conditions and common area maintenance agreement cost associated with Carlson Towers.

The developer has agreed to provide 5% of the units affordable at 50% AMI and 5% of the units at 60% AMI with the following mix of affordable units:

Unit Type	AMI	# of Units	Rent (2020 limits)	Income Limit
Studio	50%	2	\$905	\$36,200 - \$41,400
1BR	50%	4	\$970	\$36,200 - \$41,400
1BR +Den	50%	3	\$970	\$36,200 - \$41,400
2BR	50%	1	\$1,163	\$36,200 - \$51,700
2BR	60%	5	\$1,396	\$43,400 - \$62,040
2BR + Den	60%	3	\$1,396	\$43,400 - \$62,040
3BR	60%	1	\$1,613	\$43,400 - \$72,000
TOTAL:		19		

Staff is proposing the development fund as the source for funding for the assistance. The development fund was created with funds remaining after retiring the bonds of a single tax increment financing district in 1993. Under provisions of the TIF law, the development fund may only be used for costs associated with Minnetonka redevelopment and economic development activities. Staff is proposing that the financing is structured as a deferred loan, with an interest rate of 1%, repaid at sale, transfer, or at the end of the 30-year term.

Contract for Private Development

Construction Commencement and Completion

- Construction is anticipated to commence on or before Nov. 1, 2021, and be completed by Dec. 31, 2023.

Declaration of Restrictive Covenants

- The developer will make all 19 units affordable to households earning between 50% and 60% AMI or less. Additionally, the city’s policy requires a minimum of 30 years of affordability.
- Rents are anticipated to be between \$905 and \$1,613 per month (depending on the size of the unit). Utilities and parking will be included in the maximum allowable rent for each unit, which is established by the Minnesota Housing Finance Agency’s rent and income limits for housing tax credit projects (updated annually).

Deferred Loan

The EDAC recommended providing a deferred loan not to exceed \$400,000 to assist with financing. The funding source is TIF pooling dollars from the city’s development fund. Mr. Dahl, from 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:

- Provide up to \$400,000 in development fund assistance.
- The deferred loan is structured with a 1% interest rate, due at non-majority owner transfer, sale, or at the end of the 30-year term.

- A recapture provision requires the review of the developer's revised proforma in comparison to the initial proforma, prior to disbursement of the loan. If there is a reduction in the total development costs at the time of the disbursement, the loan will be reduced in the amount needed to cover the gap.

The assistance requested from the developer would result in a per-unit cost of approximately \$701 per year over a 30-year affordability period based on total assistance of \$400,000. The per-unit assistance on previously approved housing redevelopment projects ranges from \$500 per unit/per year to \$4,571 per unit/per year.

Recommendation

Staff recommends the Economic Development Authority adopt the resolution approving the contract for private development between the Economic Development Authority in and for the City of Minnetonka and United Properties Development LLC, and authorize city officials to approve non-substantive changes to the contract for private development.

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

May 14, 2020 – EDAC Meeting Unofficial Minutes

Memo from Julie Eddington (Kennedy & Graven)

Memo from Keith Dahl (Ehlers)

Affordable Housing Production

Affordable Housing Policy

Concept Plans

Contract for Private Development

Supplemental Information:

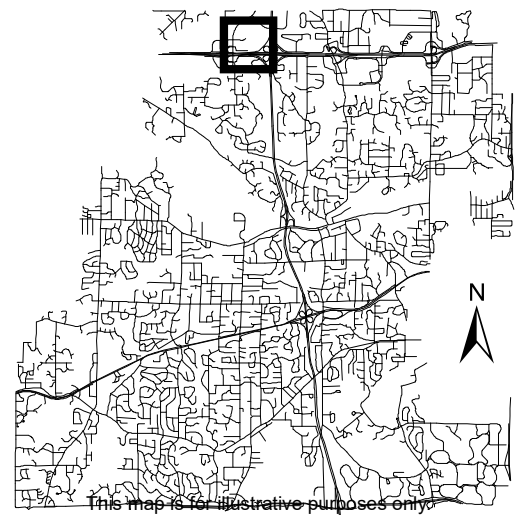
May 4, 2020 – [City Council Meeting](#)

Dec. 12, 2019 – [EDAC Meeting Minutes](#)



Location Map

Project: The Pointe
 Address: 801 Carlson Pkwy



This map is for illustrative purposes only.

Minnetonka
Economic Development Advisory Commission
Unapproved Virtual Meeting Minutes

May 14, 2020
6 p.m.

1. Call to Order

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

2. Roll Call

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

Hromatka was present at the start of the meeting, but was having technical difficulties for a few minutes.

Tyacke was listening and participating in the meeting, but was not visible for a few minutes.

Councilmember Deb Calvert was present.

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

Attorney Julie Eddington of Eddington and Associates and financial consultant Keith Dahl of Ehlers and Associates were present.

Hromatka joined the virtual meeting.

3. Approval of EDAC Jan. 9, 2020 Meeting Minutes

Johnston motioned, Jacobsohn seconded the motion to approve the Jan. 9, 2020 meeting minutes with modifications provided in the change memo dated May 14, 2020. Duginski-Cibulka, Jacobsohn, Johnston, and Yunker voted yes. Falk, Hromatka, and Tyacke abstained. Motion passed.

4. The Pointe at 801 Carlson Pkwy.

Gray and Ms. Eddington reported.

Tyacke asked how it would be determined that the entity receiving transfer of the proposal would be a credit-worthy party. Ms. Eddington explained that the applicant would like the ability to transfer ownership to an affiliate that would be required to have United Properties as a majority owner. These types of contracts typically do allow transfers to affiliates. The loan would be paid at the closing of a transfer. The city's

financial consultant from Ehlers would review the proposal to make sure that the pro forma has a financial gap before issuing the loan and review the pro forma after the project is completed to make sure that the \$400,000 was needed for the project.

Wischnack confirmed with Ms. Eddington that a disbursement agreement would outline when funds would be issued.

Hromatka asked if administrative costs would be limited to \$5,000. Gray felt that amount would be sufficient. Any unused balance would be returned to the developer.

Hromatka asked how the affordable units would remain affordable if they would be converted into condominiums. Wischnack noted that there would be additional land use approvals necessary to go along with financial restructuring. The loan would have to be renewed or restructured and new covenants implemented. Long-term thinking is positive.

Hromatka asked if consent from the city would be required for a sale. Ms. Eddington clarified that a transfer is the same as a sale. As the contract is written now, any transfer would require approval from the Minnetonka Economic Development Authority (EDA). The applicant is requesting that language be changed so United Properties would be able to transfer ownership to an affiliate that has United Properties as a majority owner without the city's consent.

Duginski-Cibulka asked if a trigger was identified to determine when residents under 55 years of age would be allowed.

Rick McKelvey, of United Properties, applicant, thanked staff and the city's consultants for their assistance. He stated that:

- The project has been improved and includes some nice, sustainable features.
- The market has changed since the project's inception. The long-term plan is being reconsidered. Now, residents may be delayed from moving out of a single-family house for some time.
- A transfer would equal a sale of ownership. The loan and interest would be paid at that time. United Properties, LLC does commonly sell a completed development to another entity. If United Properties would transfer to a United Properties affiliate, which would require a majority of the entity to be owned by United Properties, then the developer would not have to receive approval from the city because United Properties would still be the owner. It would streamline the process to complete the transaction.
- The affordability requirements would be in place for 30 years. Having the flexibility to decrease the age restriction; allow ownership rather than rental of units; and, or, converting affordable units to market-rate units may become necessary in the future if the market changes. He believes the proposal would thrive as a 55-years-of-age-and-up, rental-apartment building for the next 30 years, but the applicant would like to have

contingency plans in place to handle unforeseen circumstances.

- The affordability obligations would be honored whether the building would have rental units or individually-owned condominiums in the future.

Tyacke asked how changing the units from rental to owner-occupied units would occur. Wischnack stated that commissioners could recommend that the city council include a condition of approval that would outline a process that would require the city's approval for United Properties to change the units from rental to owner occupied. Johnston agreed. It is very early to discuss changing the use from rental units to owner-occupied condominiums.

Jacobsohn did not see an issue with the contract allowing residents of any age. If a unit would be sold rather than rented, then requiring the unit to be sold for 80 percent AMI would meet the affordable housing guidelines.

Calvert emphasized that if the proposal would be converted to condominiums, then there would be a different threshold regarding the number of affordable units. She imagined that councilmembers would like to explore those numbers and compare the differences.

Wischnack identified that commissioners were more comfortable with allowing more flexibility regarding the 55-years-of-age restriction than the applicant potentially being allowed to change the use from rental units to owner-occupied units.

Hromatka has no problem with the contract having no age restriction. Chair Yunker acknowledged that commissioners were nodding their heads in agreement.

Hromatka asked if the 10-day turnaround would be appropriate. Ms. Eddington explained that she was comfortable with a 10-day turn around for action to be taken by the city's EDA since the building permit approval process would be a separate approval that would be required before the project could begin. If the EDA did not act within 10 days, then the proposal would be considered to have the EDA's approval, but it would not have building permit approval.

In response to Tyacke's question, Wischnack explained that the future phases of the proposal do not impact the EDAC's decisions.

In response to Tyacke's question, Mr. Dahl confirmed that this would be an appropriate use for TIF funds. It is common practice.

Hromatka noted that the \$400,000 amount was calculated a while ago. He asked if that should be updated. Mr. Dahl stated that real estate is a long-term investment. Construction would begin in 2021. The pro forma would be looked at one more time before any funds would be disbursed.

Chair Yunker asked for commissioners' comments regarding the applicant's requested changes to the contract. Tyacke would like to add a conditional of approval that would

require approval by the city council before the units could be changed from rental units to owner-occupied condominiums.

Hromatka stated that staff and the consultants answered his questions. He was satisfied.

Jacobsohn agreed with the requested changes and general structure of the contract if clarity would be added regarding conditions to allow the units to go from rental to owner-occupied units.

Gray asked commissioners to comment on the amount of funds.

Hromatka was comfortable with the amount of the financing request. This project seems to be well in line with what would be adequate resources for the amount of dollars.

Duginski-Cibulka felt this would be a good investment for the city's funds. She was happy to see that the developer worked hard to get the amount of money down. The original request was for \$3 million. She was glad that the 10-percent-of-affordable-units policy would be followed.

Tyacke felt that the request is reasonable and is a reasonable use of funds. The proposal would benefit the city.

Chair Yunker agreed with commissioners.

Hromatka motioned, Tyacke seconded the motion to recommend that the city council adopt a resolution approving items for The Pointe at 801 Carlson Pkwy as submitted by Ms. Eddington with the addition of stipulations that must be met if the units would be converted from rental units to owner-occupied condominiums in the future. Duginski-Cibulka, Falk, Hromatka, Jacobsohn, Johnston, Tyacke and Yunker voted yes. Motion passed.

5. Staff Report

Gray and Wischnack gave the staff report:

- The Green Line Extension (SWLRT) is working on the tunnel excavation north of Hwy. 62. Grading and paving continue to connect loops of Red Circle Drive. The Opus Station foundation will be poured later in May. Smetana Road from Feltl to Nolan will continue to be closed for 2020. Red Circle Drive is closed. Bren Road West is closed through the 2020 construction season. Construction updates are available at www.swlrt.org.
- There is a construction information work group made up of Opus business owners hosted by Metro Transit that meet routinely.
- Metro Transit began a reduced schedule for all routes on March 25th. Weekday service levels through the region are based on Saturday schedules. The current Metro Transit Cooperation Agreement will expire August 1st. Staff will propose the extension of the current agreement for an additional two years.



Offices in 470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis MN 55402-1458
Minneapolis
Saint Paul (612) 337-9300 telephone
(612) 337-9310 fax
St. Cloud www.kennedy-graven.com
Affirmative Action, Equal Opportunity Employer

MEMORANDUM

TO: Alisha Gray
FROM: Julie Eddington
DATE: June 2, 2020
RE: Substantive Changes to Contract for Private Development for The Pointe

Alisha,

During the EDAC meeting, the following changes were approved by the EDAC Board and were made in the contract:

- 55+ age restriction removed
- Developer may request that EDA allow units within the Minimum Improvements to be converted to condominiums
- Removed required for reconstruction of Minimum Improvement if damage occurs (with provision that Loan would need to repaid)
- Removed requirement that EDA must approve financing
- Capped administrative costs to \$5,000
- Included 20 day period to provide certificate of completion
- Removed requirement that Developer must notify EDA if any affordable units are vacant

In addition to the changes noted above, upon request by the Developer, we also made the following changes to the contract:

- Developer name was changed to United Properties Investment LLC
- Pro Forma was removed as an exhibit of the Contract for privacy reasons
- "Unavoidable Delay definition was changed to include additional potential delays, including epidemics and unavailability of labor and materials
- Removed provision that required a refinancing to be considered a sale, which requires repayment of the Loan
- Removed language regarding Authority approving construction plans in Section 4.2 and noted the Authority would rely on the City's Community Development Department to approve all construction plans
- Added commencement and completion dates for construction of Minimum Improvements

The Developer requested additional changes that were not made:

- Extension of completion of construction date to July 1, 2024
- Changes to Section 8.2 to allow a transfer of the Minimum Improvements without consent of the EDA after certificate of completion for Minimum Improvements is issued
- Addition of provision that would allow lender to transfer Minimum Improvements without consent of EDA following foreclosure
- Changes to indemnification language in Section 8.3(b)
- Request to change Section 9.5 (Attorney Fees) to require the Authority to pay attorney fees if it defaults under contract
- Deletion of Section 13 of Declaration requiring Developer to pay attorneys' fees if Authority must take legal action to enforce Declaration
- Deletion of Section 15 of Declaration requiring Developer to provide notice if the Minimum Improvement will be sold

Memo

To: Alisha Gray, Economic Development and Housing Manager
From: Keith Dahl and Stacie Kvilvang, Ehlers
Date: May 7, 2020
Subject: United Properties Housing Project – Analysis of Financial Request

In October 2019, the City of Minnetonka (the “City”) received a request from United Properties (the “Developer”) seeking financial assistance in the amount of \$3 million to fill a development gap for a luxury senior living community. The Developer proposed to construct a 186-unit independent senior living apartment consisting of 1, 2, and 3-bedroom units (the “Project”) with 5% of the units affordable at 50% AMI and 5% of the units affordable at 60% AMI. The Project would be located on a portion of PID # 04-117-22-13-0004 with construction anticipated to start in August of 2020. The Project is anticipated to cost approximately \$61 million.

This memo has been prepared by Ehlers, at the request of the City, to conduct a review of the Project, specifically the Developer’s budget and pro forma based on industry standards for construction, land acquisition, and project costs; as well as to ensure that all development costs, revenues, and expenditures have been appropriately accounted for and considered.

Based on our review, the Developer’s financial request is more than what is necessary for the Project to be “financially feasible”. We’ve concluded that the Project would only require \$400,000 in financial assistance from the City to enable the project to move forward.

The tables below provide a synopsis of the sources and uses associated with the Project.

SOURCES			
	Amount	Pct.	Per Unit
First Mortgage	39,350,301	65%	211,561
Equity	21,188,624	35%	113,917
Local Assistance	400,000	1%	2,151
TOTAL SOURCES	60,938,925	100%	327,629

USES			
	Amount	Pct.	Per Unit
Acquisition Costs	3,000,000	5%	16,129
Construction Costs	48,416,052	79%	260,301
Professional Services	3,035,000	5%	16,317
Financing Costs	3,516,973	6%	18,908
Developer Fee	1,900,000	3%	10,215
Cash Accounts/Escrows/Reserves	1,070,900	2%	5,758
TOTAL USES	60,938,925	100%	327,629

Pro Forma Analysis:

1. **Acquisition Costs** – The proposed land acquisition cost of the Project is about \$16,000 per unit. This is within the expected market range of \$10,000 to \$20,000 per unit based on area and similar development projects of its type.
2. **Total Development Costs (the “TDC”)** – The TDC is approximately \$61 million or \$328,000 per unit. Independent senior living projects in this market generally range between \$225,000 and \$275,000 per unit so this Project is higher than the typical market range, however since it's a higher amenity and finish development the TDC is acceptable.
3. **Developer Fee** – The proposed developer fee is approximately 3.1% of the TDC, which is consistent with the typical industry range. Similar developments requesting City assistance have developer fees between 3% and 5%.
4. **Rents** – The proposed market rate rents range from \$1,516 per month for a studio unit to \$3,835 per month for a three-bedroom unit which is in line with similar development within the City and Metropolitan Area. The affordable units range from \$905 per month for a studio unit at 50% AMI to \$1,613 per month for a three-bedroom unit at 60% AMI. Rent and income limits for affordable units are derived by the United States Department of Housing and Urban Development (HUD) on an annual basis. The rents noted in the table below are the 2020 rent limits released on April 1, 2020.

Maximum Gross Monthly Rent				
Bedroom Size	50% AMI		60% AMI	
Studio	\$	905	\$	1,086
One Bedroom	\$	970	\$	1,164
Two Bedroom	\$	1,163	\$	1,396
Three Bedroom	\$	1,344	\$	1,613

5. **Operating Expenses** – The operating expenses on a per unit basis for the Project are \$6,913, which is higher than the typical market range of \$3,500 to \$4,500 per unit per year. Please note that this per unit expense is before management fees, property taxes, and replacement reserves. There are two main reasons for the higher than normal operating expenses; (1) the Project is a luxury senior living community with high-quality amenities and concierge services; and (2) a reciprocal easement and operating agreement with the Carlson Towers requires an annual Common Area Maintenance (CAM) charge of \$260,000/year or \$1,400/unit.
6. **Management Fee** – The proposed management fee is 2% of the effective gross income of the Project. This is lower than the typical 3% to 5% but an acceptable percentage.
7. **Reserves** – The annual deposit to replacement reserves is set at \$450 per unit per year, which is within the typical range of \$250 - \$450.
8. **First Mortgage** – The Developer proposes to finance the Project with a first mortgage in the approximate amount of \$39.4 million, which is 65% of the total development costs. Based on current underwriting conditions, the Developer is maximizing its amount of first mortgage debt. The Developer is proposing to bring approximately \$21 million in equity.

9. **Public Financial Assistance** – The requested \$3 million of assistance is more than what is necessary for the Project to become “financially feasible”. We’ve concluded that the Project would only require \$400,000 of assistance. This represents less than 1% of the total development costs.

Recommendation:

Based on our review of the Developer’s pro forma and under current market conditions, the Project may not reasonably be expected to occur solely through private investment within the near future. The cost associated with development of the Project is only feasible through public financial assistance from the City. We conclude that assistance in the amount of \$400,000 is supported for this Project.

Please contact Keith Dahl at 651-697-8595 with any questions.

Affordable Housing Production in Minnetonka

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
United Properties "The Pointe"	19	167	\$400,000 (est)	30	\$701	9@ 50% AMI, 9@ 60% AMI
Dominium	482	0	\$7,809,000	30	\$540	60% AMI
Homes Within Reach (2004-2012 grant years)	35	0	\$1,740,000	99	\$502	80% AMI
The Ridge	52	0	\$1,050,000	30	\$673	60% AMI
Shady Oak Redevelopment	23	52	\$1,900,000	30	\$2,753	60%AMI
West Ridge Market (Crown Ridge, Boulevard Gardens, Gables, West Ridge)	185	0	\$8,514,000	30	\$1,534	<i>Crown Ridge—60% AMI Boulevard Gardens—60% AMI Gables—initially 80% AMI, now no income limit West Ridge—50% AMI</i>
Beacon Hill (apartments)	62	48	\$2,484,000	25	\$1,602	50% AMI
Ridgebury	56	163	\$3,243,000	30	\$1,930	Initially--80% AMI, Now no income limit
Glen Lake (St. Therese, Exchange)	43	119	\$4,800,000	30	\$3,721	60% AMI
Cedar Point Townhomes	9	143	\$512,000	15	\$3,792	50% AMI
Tonka on the Creek	20	80	\$2,283,000	30	\$3,805	50% AMI
At Home (Rowland)	21	106	\$2,500,000	30	\$3,968	50% AMI
Applewood Pointe	9	80	\$1,290,000	Initial Sale/Ongoing maximum %	\$4,777	80% AMI
Doran (Marsh) - TIF Housing	35 (20% of units)	175	\$4,800,000	30	\$4,571	50% AMI

updated 05/06/2020

**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.

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

- 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

801 CARLSON PARKWAY



UNITED PROPERTIES

esc
ARCHITECTURE & DESIGN

MARCH 30, 2020





ABOUT UNITED PROPERTIES

United Properties has been creating deep roots in the commercial real estate industry for more than 100 years. United Properties is owned by the Pohlads Companies and is headquartered in Minneapolis with an office in Denver. The company has developed more than 20 million square feet of office, industrial, retail, mixed-use and senior living properties since 2000, and has topped Minneapolis St. Paul Business Journal's Top Developer List for the past 5 years.



ABOUT ESG

ESG is a national leader in the planning, design and development of award-winning residences and communities throughout the US. Our architects and designers base their work on timeless design principles. These principles include the integration of pedestrian-friendly streetscapes and landscaping, proximity to mass transit, generating density, and the incorporation of sustainable-design strategies and mixed-use commercial enterprises.

ESG is also a national leader in the master planning, space programming and design of hotels and hospitality facilities. To date, ESG has completed more than 70 hotel projects and 20 master plans, in 36 cities and in 15 states. Our unrivaled knowledge of the hotel and hospitality industries, the physical planning of hotels, and brand orientation and appropriateness makes ESG the go-to firm nationally in this highly competitive market sector. We've developed and implemented national prototypes for Hilton Worldwide, Marriott Corporation and Radisson Hotel Group, among others. We've resolved unique functional and aesthetic objectives for such brands as Embassy Suites, W Hotels, Westin, Le Meridien, Sheraton, Aloft, Marriott Renaissance, Hyatt Regency, Radisson Blu, Residence Inn, and Hilton Garden Inn.



03.30.2020



801 Carlson Parkway
Minnetonka, MN

CONTEXT MAP

Overview

The proposed development includes a two-phased project at the 801 Carlson Parkway property in Minnetonka. The project will transform an existing vacant lawn west of the existing Carlson Towers and parking garage into a mixed-use community with housing and hotel uses. On the northern portion of the site, Phase 1 will be a 6-story residential building with 186 apartments for 55+ residents, while Phase 2 is a four-story, 136-key, extended-stay hotel on the southern half of the property.

Site Redevelopment and Landscape Design

The Carlson Tower campus has always been iconic and revered. That holds true for the landscape design as well. The grand formal gardens, woodlands and picturesque pond has been impressive since the towers were initially constructed.

The proposed project utilizes the existing lawn and formal garden with a signature cross-axis entry court. The lawn is planned to be a flexible park-like outdoor event/play space for activities such as “movies in the park,” playing games, barbecuing, picnicking and other social events.

The residential building is planned to include an amenity deck with outdoor pool, hot tub, cabanas, arbors, grills, firepits, mini gaming lawn and other seating cluster gatherings. Between the residential and hotel building, there will be an outdoor promenade with bocce and pickleball courts, arbor/gazebos, larger play lawn and a series of flowering gardens.

The landscape design surrounding the proposed buildings will include native drought-tolerant trees and shrubs as well as pollinator-friendly flowering perennials throughout. The trees along the west side of the property are also proposed to be improved with woodland shade-loving species.

The amount of landscape maintenance currently needed for the existing turf (lawn) will be greatly reduced. The lawn requires constant mowing, fertilizing, and site irrigation. The total amount of potable site irrigation water is expected to be reduced by 86% (5,500,000 gallons of water per year). This is achieved with the reduction of turf area, use of highly efficient spray heads, drip irrigation and rain sensors.

Given the size of the development and amount of new, outdoor amenity spaces added to the overall site, natural surveillance and principle of “eyes-on-the-street” is vastly improved from current conditions. Currently, the overall site “sleeps” when the Carlson office building users vacate the site after a work day, but, by introducing residential dwelling units and extended-stay guest units, the overall site will become a 24-hour, naturally surveilled community – a principle of Crime Prevention Through Environmental Design (CPTED). Appropriate lighting levels will be included at the project’s exterior spaces, and proposed shrubs and vegetation will be well maintained to help aid in preventing crime by eliminating blind areas and increasing visibility within and through the surrounding environment.

Stormwater Management

Due to the presence of clay soils mostly in the form of fill material placed in the proposed development area from older construction projects within the Carlson property, our proposed project will not use at-grade infiltration basins, rain gardens, or traditional ponds as a means to provide water quality and volume control for the newly created impervious surfacing. Based on numerous soil borings, the material improves substantially at depths greater than 12’ deep. Given this, we will excavate to that level and use StormTech trademarked subsurface chambers, or approved equals in order to achieve stormwater management for the development.

With respect to water quality treatment, the site run-off collected in catch basins and directed to the sub-surface system by storm sewer is first passed thru the StormTech isolator row, a row of chambers wrapped in woven geotextile fabric. This serves as a filter strip that provides enhanced suspended solids and pollutant removal while providing surface area for infiltration and runoff reduction. From here it passes to the additional chamber rows for rate control and volume control. The storage capacity of the chambers will be designed to hold back storm events and discharge runoff at rates that are below those of the existing conditions.

From volume control standpoint, the surface area that the chamber rows are placed on will be sized so that it is able to infiltrate 1” of runoff from the site’s impervious surfaces in 48 hours given the improved percolation capacity of the existing soils at this elevation.

On the apartment side, the system is backfilled up to a level similar to the existing open space grade and can be planted to introduce pollinators back to the site. For the hotel side, the system will sit underneath the proposed surface parking lot. This dramatically improves site efficiency and sensible land use.

Parking

The residential building will include two levels of enclosed, attached parking for a total of 226 spaces. There are also 40 surface stalls for residential uses on the site. The parking characteristics of age-restricted housing developments tend to include lower vehicle ownership. This results in parking demands that are generally less than other residential uses by approximately one-third to one-half the parking rate of the same size. The hotel building provides 104 surface parking stalls for use by guests and staff at a ratio of .76% (stalls per guest room).

Building Design

The six-story residential building at the north end of the site will provide medium-density housing and amenity spaces while emphasizing green space and public realm at the street level. The four-story hotel building will provide extended-stay guest rooms, a pool, fitness facilities, lobby and café space.

The residential building is oriented with its main entry and building face to Lakeshore Parkway to create a welcoming entry court for the residential project. Entry to the parking ramp is located directly adjacent and to the west of the entry court. The exterior design of the residential building is contextual in nature

and comprised of high-quality materials including cast stone, brick, architectural metal panel and cementitious panel.

The hotel building is oriented with its main entry facing Deer Creek Parkway, thereby, creating an arrival feature as well as direct access to major freeway interchanges. The hotel's design and orientation on the site will better contain hotel vehicular circulation to the south end of the site. The exterior design of the hotel is transitional in nature and comprised of high-quality materials including brick, exterior insulation finish system and architectural metal panel.

The hotel will consist of a primary and secondary entrance for guests as well as a back-of-house entrance for deliveries and staff. Access control will be used on all exterior doors certain hours of the day. Remote capabilities to lock and unlock exterior doors from the front desk will be implemented to assist in off-hour check-in and guest arrivals. Security cameras at door entrances will assist in this process.

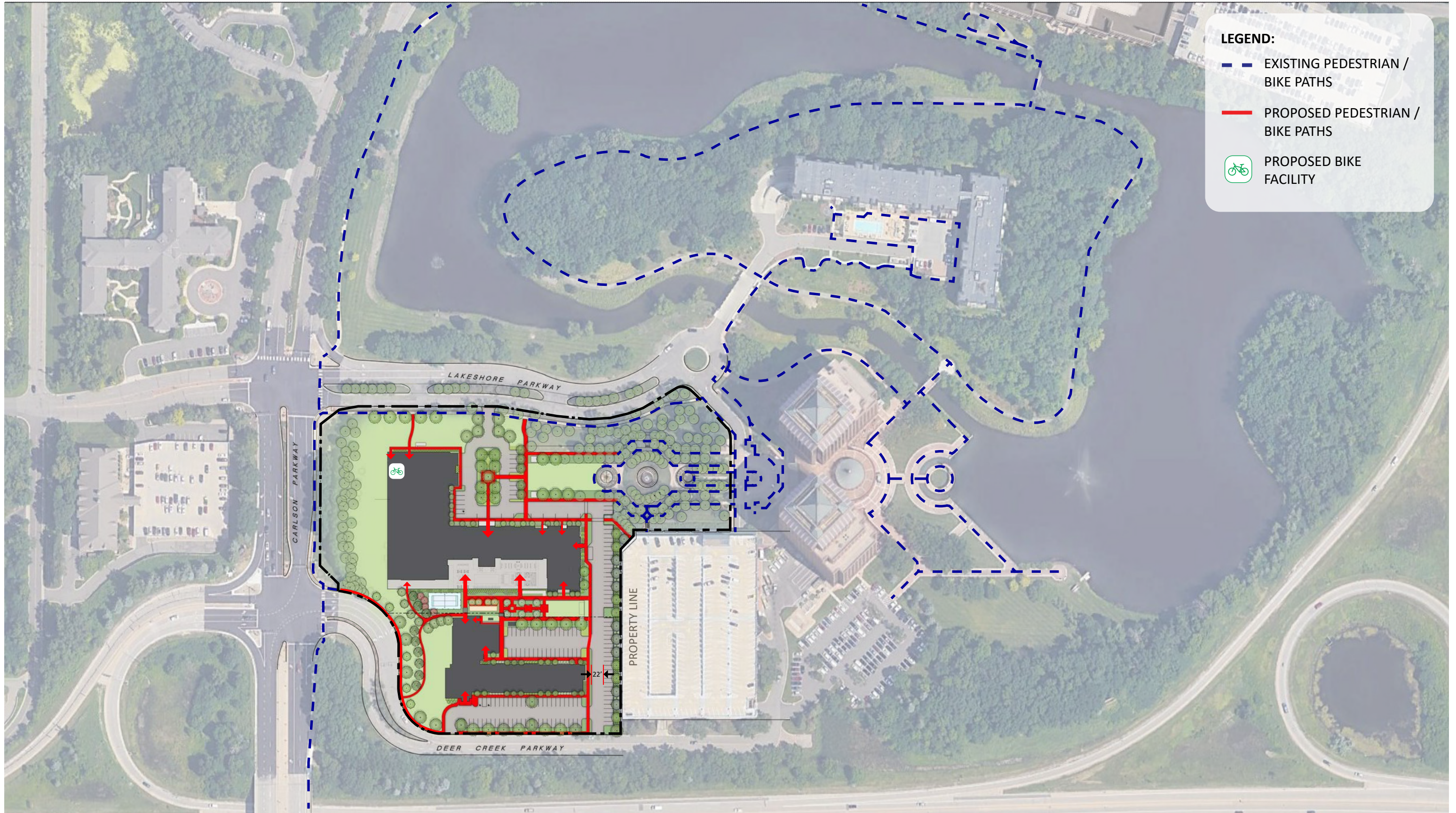
Sustainability

Sustainability, energy reduction and green real estate development are important parts of United Properties' work as an investor, developer and long-term property owner. We believe our buildings can have a profound impact on our communities' natural environment, economy, health and productivity. Enclosed is a comprehensive summary of the specific sustainable design strategies that we plan to incorporate into the 801 Carlson Parkway development.

Timeline

It is anticipated that the construction of the Residential building will commence in Fall of 2020 and be complete in Spring of 2022.

PEDESTRIAN WALKWAY/TRAIL EXHIBIT



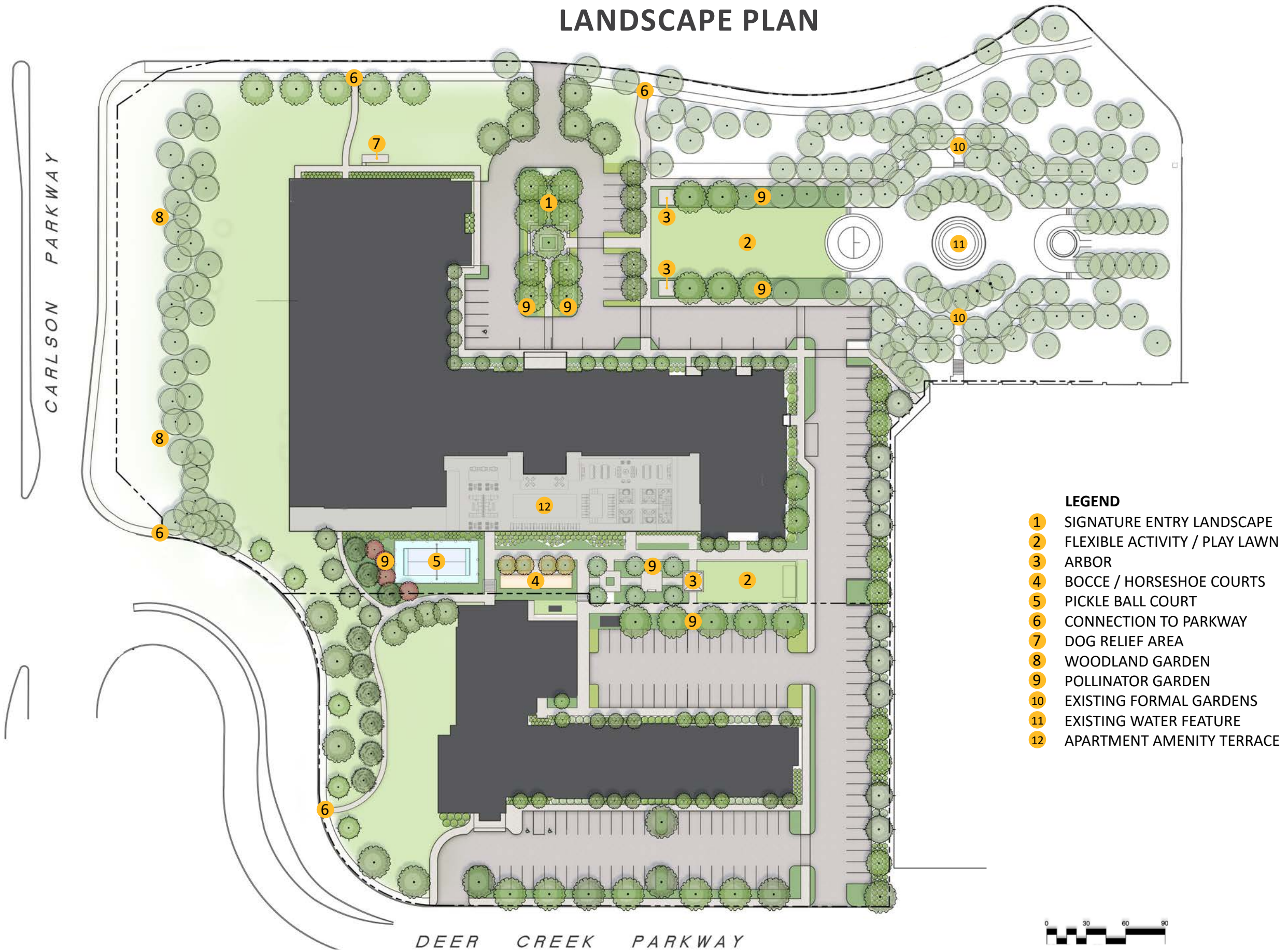
LEGEND:

- EXISTING PEDESTRIAN / BIKE PATHS
- PROPOSED PEDESTRIAN / BIKE PATHS
- 🚲 PROPOSED BIKE FACILITY

03.30.2020



LANDSCAPE PLAN



LEGEND

- 1 SIGNATURE ENTRY LANDSCAPE
- 2 FLEXIBLE ACTIVITY / PLAY LAWN
- 3 ARBOR
- 4 BOCCE / HORSESHOE COURTS
- 5 PICKLE BALL COURT
- 6 CONNECTION TO PARKWAY
- 7 DOG RELIEF AREA
- 8 WOODLAND GARDEN
- 9 POLLINATOR GARDEN
- 10 EXISTING FORMAL GARDENS
- 11 EXISTING WATER FEATURE
- 12 APARTMENT AMENITY TERRACE

03.30.20



LANDSCAPE VISIONING

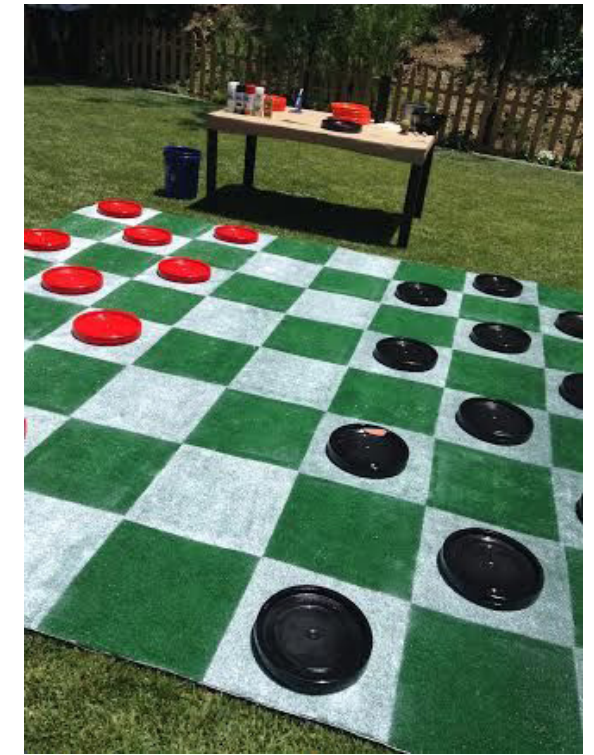
FLEXIBLE LAWNS



LAWN GAMES



HANGING OUT



MORE GAMES



'MOVIES IN THE PARK'



GAMES



YOGA

03.30.2020

LANDSCAPE VISIONING

PROMENADE (BETWEEN APARTMENT/HOTEL)



ARBOR



GARDENS



BOCCE BALL



SEATING



PICKLEBALL



BOCCE BALL

03.30.2020



03.30.2020



801 Carlson Parkway
Minnetonka, MN

BIRDSEYE VIEW - LOOKING SOUTH @ CAMPUS



03.30.2020



801 Carlson Parkway
Minnetonka, MN

BIRDSEYE VIEW - LOOKING SOUTH @
RESIDENTIAL ENTRANCE



03.30.2020



801 Carlson Parkway
Minnetonka, MN

PEDESTRIAN VIEW - LOOKING EAST TO
LAKESHORE PARKWAY



03.30.2020



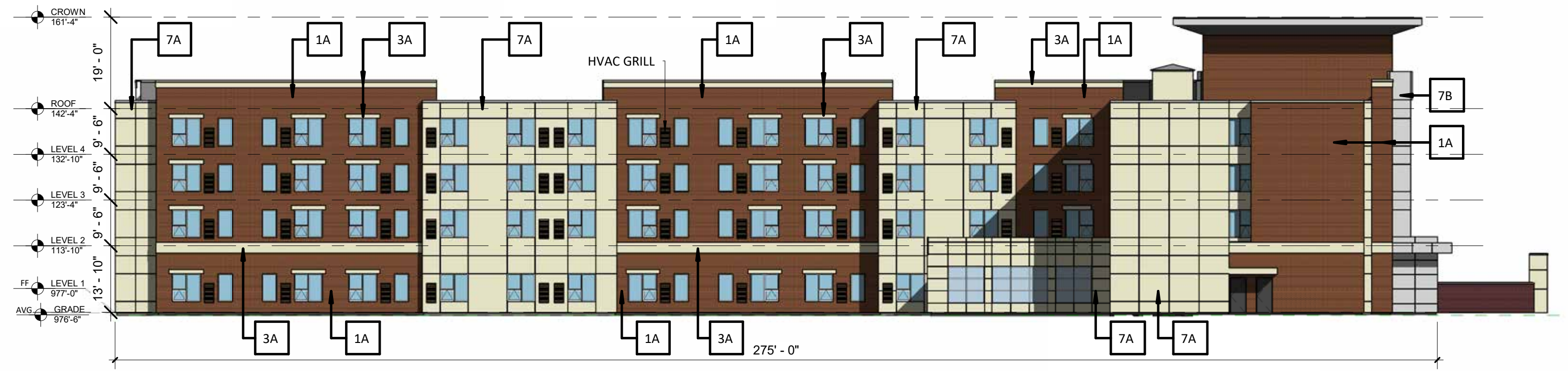
03.30.2020



03.30.2020

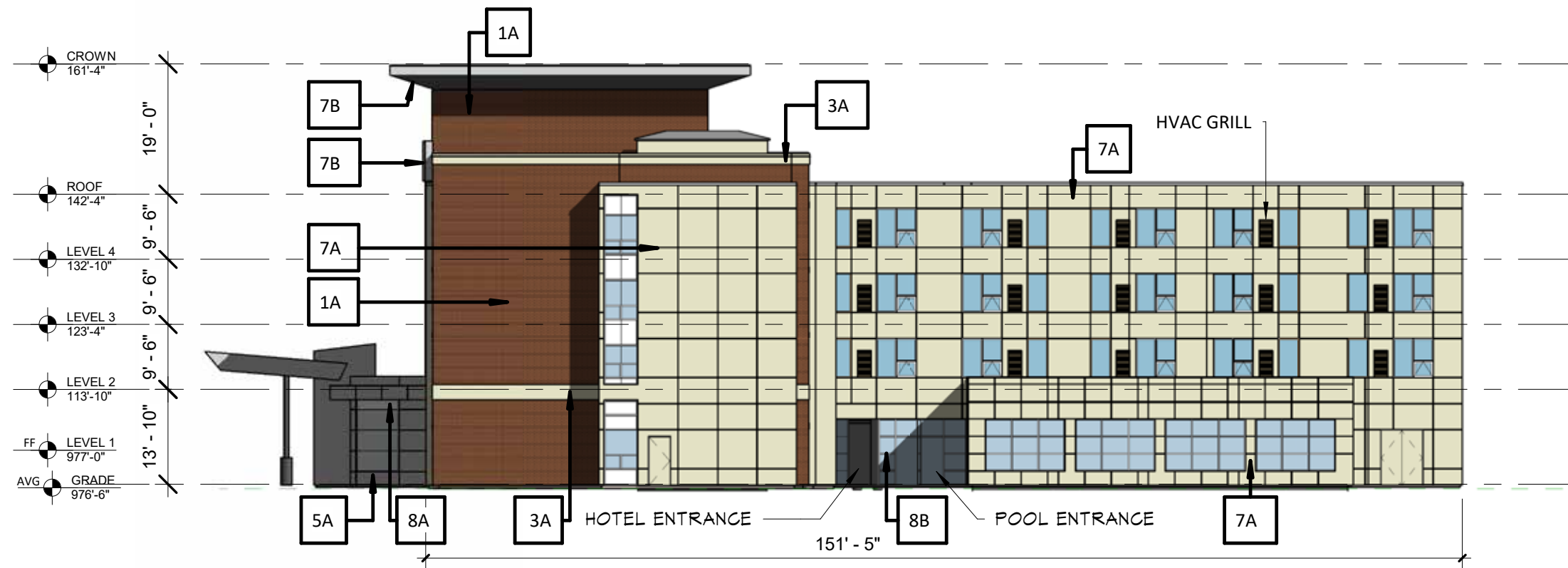


1 SOUTH ELEVATION - GRAPHIC
 A1.6 1" = 20'-0"

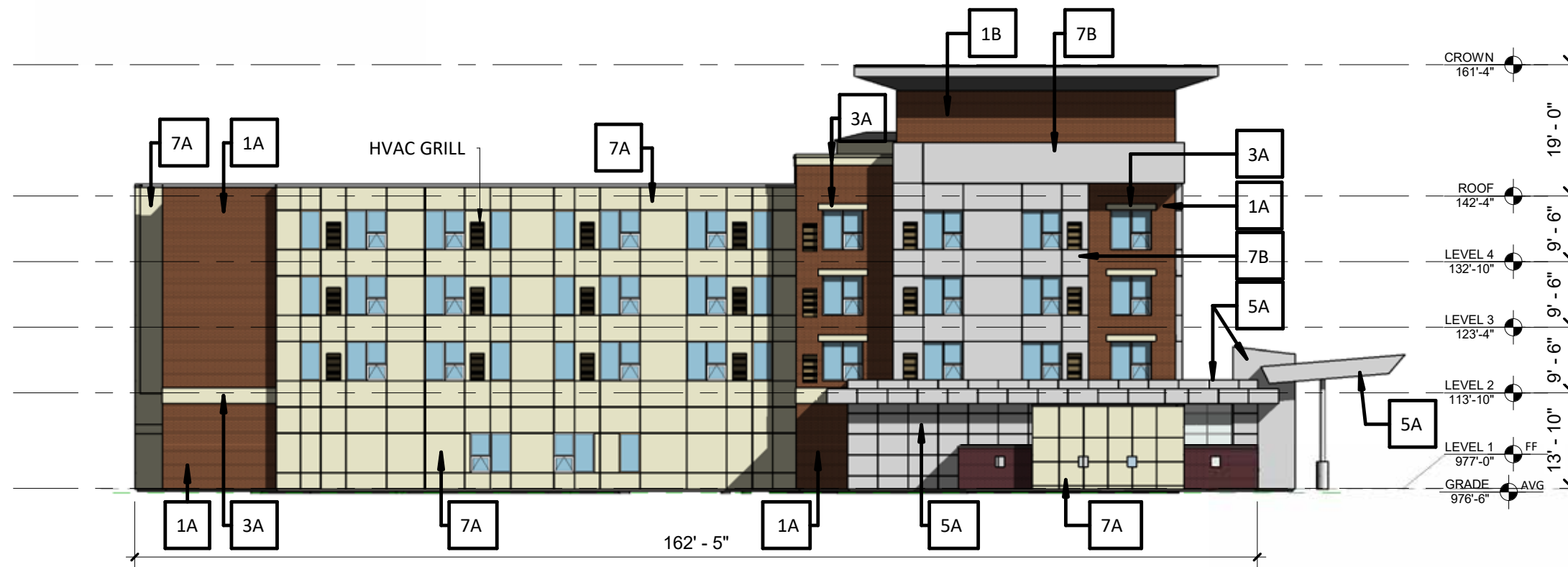


2 NORTH ELEVATION - GRAPHIC
 A1.6 1" = 20'-0"

03.30.2020



1 EAST ELEVATION - GRAPHIC
 A1.7 1" = 20'-0"



2 WEST ELEVATION GRAPHIC
 A1.7 1" = 20'-0"

03.30.2020

ROOM METRICS

Notes	Type	SF	%	Level 01	Level 02	Level 03	Level 04	Total	Total SF
	King 1-Bed	449	11.1%	1.00	4.00	4.00	4.00	13.00	5,837
	King Den	309	29.9%	9.00	14.00	14.00	14.00	51.00	15,759
	King Suite	406	50.8%	12.00	18.00	18.00	18.00	66.00	26,796
	Queen 1-Bed	720	8.2%	0.00	2.00	2.00	2.00	6.00	4,320
	Average/Total	388	100.0%	22	38	38	38	136	52,712

BUILDING METRICS

FL TO FL		TOTAL GSF	PARKING	STALLS	AMENITY GSF	GR GSF	# KEYS
13'-10"	LEVEL 1	22,914		104	12,622	10,292	22
9'-6"	LEVEL 2	19,679				19,679	38
9'-6"	LEVEL 3	19,679				19,679	38
9'-6"	LEVEL 4	19,679			725	19,679	38
		81,951	0	104	13,347	69,329	136

SURFACE STALLS	104
TOTAL STALLS	104
PARKING STALLS/UNIT	0.76

ANTICIPATED RESIDENTIAL AMENITIES

Fitness Center

Theater Room

Resident Library and Business Center

Club Room

Great Room with Dining/Lounge Areas

Mail and Package Rooms

Art Studio

Resident Workshop

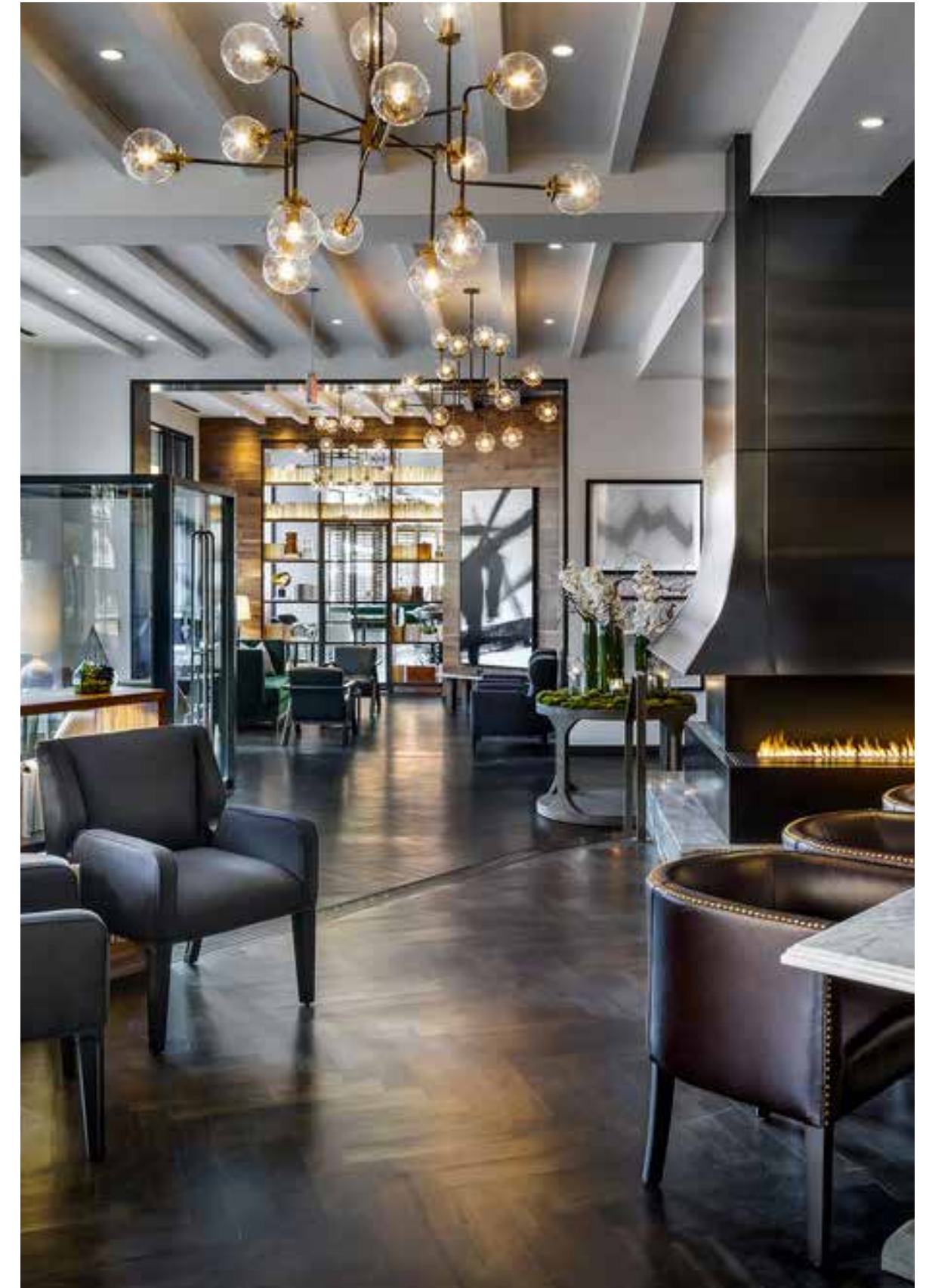
Game Lounge

Bistro

Private Dining Room

Outdoor Terrace

Outdoor Pool



03.30.2020

**Fifth Draft
June 2, 2020**

**CONTRACT
FOR
PRIVATE DEVELOPMENT**

between

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

and

UNITED PROPERTIES INVESTMENT 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

TABLE OF CONTENTS

PREAMBLE1

ARTICLE I
Definitions

Section 1.1. Definitions2

ARTICLE II
Representations and Warranties

Section 2.1. Representations of the Authority5
Section 2.2. Representations and Warranties by the Developer5

ARTICLE III
Financial Assistance

Section 3.1. Status of the Property7
Section 3.2. Environmental Conditions7
Section 3.3. Financial Assistance7
Section 3.4. Recapture8
Section 3.5. Payment of Administrative Costs9
Section 3.6. Exemption from Business Subsidy Act9

ARTICLE IV
Construction of Minimum Improvements

Section 4.1. Construction of Improvements10
Section 4.2. Construction Plans10
Section 4.3. Commencement and Completion of Construction10
Section 4.4. Certificate of Completion10
Section 4.5. Affordable Housing Covenants11
Section 4.6. Affordable Housing Reporting12
Section 4.7. Records12
Section 4.8. Property Management Covenant12
Section 4.9. Fees13
Section 4.10. Conversion to Condominium13

ARTICLE V
Insurance

Section 5.1. Insurance14
Section 5.2. Subordination15

ARTICLE VI
Taxes

Section 6.1. Right to Collect Delinquent Taxes16
Section 6.2. Review of Taxes16

ARTICLE VII
Financing

Section 7.1. Financing17

ARTICLE VIII
Prohibitions Against Assignment and Transfer; Indemnification

Section 8.1. Representation as to Redevelopment.....18
Section 8.2. Prohibition Against Transfer of Property and Assignment of Agreement18
Section 8.3. Release and Indemnification Covenants.....19

ARTICLE IX
Events of Default

Section 9.1. Events of Default Defined21
Section 9.2. Remedies on Default21
Section 9.3. No Remedy Exclusive21
Section 9.4. No Additional Waiver Implied by One Waiver.....22
Section 9.5. Attorneys' Fees.....22

ARTICLE X
Additional Provisions

Section 10.1. Conflict of Interests; Authority Representatives Not Individually Liable.....23
Section 10.2. Equal Employment Opportunity.....23
Section 10.3. Restrictions on Use.....23
Section 10.4. Provisions Not Merged With Deed.....23
Section 10.5. Titles of Articles and Sections.....23
Section 10.6. Notices and Demands23
Section 10.7. Counterparts24
Section 10.8. Recording24
Section 10.9. Amendment24
Section 10.10. Authority Approvals24
Section 10.11. Termination24

SIGNATURESS-1

EXHIBIT A Description of Development Property A-1
EXHIBIT B Certificate of CompletionB-1
EXHIBIT C Declaration of Restrictive CovenantsC-1

CONTRACT FOR PRIVATE DEVELOPMENT

THIS CONTRACT FOR PRIVATE DEVELOPMENT, made on or as of the ____ day of _____, 2020 (the “Agreement”), is between the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), and UNITED PROPERTIES INVESTMENT LLC, a Minnesota limited liability company (the “Developer”).

WITNESSETH:

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

WHEREAS, the Developer has proposed a development of a rental housing development for persons 55 years and older and described further herein as the “Minimum Improvements” on certain property (the “Development Property”) located in the City; and

WHEREAS, the Developer has proposed to construct the Minimum Improvements on the Development Property; and

WHEREAS, the Authority has proposed to provide the Developer with a loan in the amount of \$400,000 from funds on hand from loan repayments from a previous affordable housing project and the Authority’s Development Fund to assist in financing the acquisition and construction of the Minimum Improvements on the Development Property; and

WHEREAS, the Authority believes that the development of the Minimum Improvements 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

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 (a) any corporation, partnership, corporation 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 Developer owns at least fifty percent (50%) 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 Contract for Private Development, as the same may be from time to time modified, amended, or supplemented.

“Authority” means the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State, or any successor or assign.

“Authority Loan” has the meaning provided in Section 3.3(a) hereof.

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

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

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

“Certificate of Completion” means the certification to be provided the Developer, pursuant to Section 4.4 hereof and substantially in the form attached hereto as EXHIBIT B.

“City” means the City of Minnetonka, Minnesota.

“Closing Date” means the date of the closing on the construction financing for the Minimum Improvements.

“Construction Plans” means the plans, specifications, drawings and related documents on the construction work to be performed on the Development Property (including the Minimum Improvements) 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 (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); and (7) landscape plan.

“County” means the County of Hennepin, Minnesota.

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

“Developer” means United Properties Investment LLC, a Minnesota limited liability company, its successors and assigns.

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

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

“Holder” means the owner or mortgagee of a Mortgage.

“Initial Pro Forma” means the pro forma on file with the Authority as of June 8, 2020, which includes the estimated sources of funds to be used to finance the Minimum Improvements and the estimated costs related to the construction of Minimum Improvements.

“Material Change” means any change which would (i) cause the Construction Plans to fail to conform with the terms and conditions of this Agreement, the goals and objectives of the development contemplated under this Agreement and/or all applicable federal, State, and local laws, ordinances and regulations; or (ii) would materially alter the design and/or construction of the Minimum Improvements.

“Minimum Improvements” means the construction on the Development Property of a rental housing development with approximately 186 units, with certain Rental Housing Units subject to the affordability requirements described in Section 4.5 hereof, and approximately 226 enclosed parking spaces and 40 surface parking spaces.

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

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

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

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

“State” means the State of Minnesota.

“Tax Official” means any County assessor, County auditor, County or State board of equalization, the commissioner of revenue of the State, or any State or federal court including the tax court of the State.

“Termination Date” means the date the Authority Loan is paid in full in accordance with its terms.

“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, acts of God, war, unavailability of labor or materials, national emergency, acts of a public enemy, epidemics, infectious diseases, adverse weather conditions that are abnormal for the time of year and geographic location and have had a material and adverse effect on the construction schedule, concealed or unknown site conditions not revealed prior to the date of this Agreement, or other causes beyond the reasonable control of a party, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the Authority in 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, 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, acting in a timely manner to consider all approvals required under this Agreement and cooperating with the Developer in obtaining necessary administrative and land use approvals and construction and/or permanent financing pursuant to Section 7.1 hereof.

(c) The activities of the Authority are undertaken for the purpose of fostering the development of affordable rental housing, which will revitalize the City, increase the City's tax base, and alleviate a shortage of, and maintain existing supplies of, decent, safe, and sanitary housing.

(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.

(e) The Authority shall promptly advise the Developer in writing of all litigation or claims affecting any part of the Minimum Improvements.

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

(a) The Developer is a limited liability company organized and in good standing under the laws of the State, is not in violation of any provisions of its organization documents, or, to the best of its knowledge, the laws of the State, is duly authorized to transact business in 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 its 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.

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

ARTICLE III

Financial Assistance

Section 3.1. Status of the Property. As of the date of this Agreement, the Developer owns the Development Property. The Authority has no obligation to acquire the Development Property or any portion thereof.

Section 3.2. Environmental Conditions.

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

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

Section 3.3. Financial Assistance.

(a) *Authority Loan.* In order to make development of the Minimum Improvements financially feasible, the Authority will make a loan to the Developer in an amount of \$400,000 (the "Authority Loan"). The amount of the Authority Loan is subject to reduction as described in paragraphs (b) and (c) below and in Section 3.4 hereof, and the proceeds of the Authority Loan shall be disbursed in accordance with paragraph (b). The unpaid balance of the Authority Loan shall bear interest at the rate of 1.00% per annum, and interest shall accrue on a simple basis and will not be added to principal.

(b) *Disbursement of Authority Loan.* Notwithstanding anything to the contrary herein, if the total costs of developing the Minimum Improvements required to be financed as of the Closing Date are reduced below the amounts estimated in the Initial Pro Forma due to additional financing for the Minimum Improvements from other sources or a reduction in anticipated total development costs, such reduction shall be applied first to reduce the principal amount of the Authority Loan, prior to reducing any other funding sources. Subject to the immediately following conditions, the Authority Loan shall be funded in a single disbursement of funds to the Developer on the Closing Date. The Authority's obligation to fund the Authority Loan is subject to satisfaction of the following conditions as of the Closing Date:

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

(ii) the Community Development Department of the City having approved Construction Plans for the Minimum Improvements in accordance with Section 4.2 hereof;

(iii) the Developer having contributed its equity to the Minimum Improvements on the Closing Date;

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

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

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

(c) *Repayment of Authority Loan.* The Authority and the Developer agree that the principal of and accrued interest, if any, on the Authority Loan will be subject to repayment in full. The principal of the Authority Loan and all accrued interest must be paid in full on the earlier of (i) thirty (30) years following the Closing Date or (ii) upon the sale of the Property as set forth in paragraph (d) below.

(d) *Sale of Property.* The Developer shall repay the principal amount and interest on the Authority Loan in full upon a sale of the Minimum Improvements. The Authority hereby consents to the repayment in full of the Developer's construction financing for the Minimum Improvements, upon the completion of the Minimum Improvements, and the placement of permanent financing on the Development Property and agrees that such actions by the Developer shall not constitute a sale or refinancing requiring approval of the Authority hereunder. Additionally, a conveyance of any membership or partnership interest in the Developer pursuant to the membership or partnership agreement of the Developer shall not constitute a sale of the Development Property.

Notwithstanding anything to the contrary above, the following shall not be considered a sale of the Development Property and does not trigger the repayment of the Authority Loan: (i) construction, interim and/or permanent financing by the Developer for the Minimum Improvements or the purchase of the Development Property and any mortgage or security granted in the Development Property for such financing; or (ii) a transfer of the Minimum Improvements or Development Property to an Affiliate and the financing of such transfer and any mortgage or security granted in the Development Property for such financing.

(e) *Catastrophic Event.* In the case of damage exceeding \$250,000, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty, and the Developer determines not to rebuild, the principal amount and interest on the Authority Loan shall be repaid within the earlier of one hundred twenty (120) days after the determination not to rebuild or one (1) year after the catastrophic event.

Section 3.4. Recapture. After the Minimum Improvements are constructed, the Developer shall provide the Authority with a final sources and uses for the project in a similar form to what the Developer had provided to the Authority pursuant to Section 3.3(b)(v) hereof, including the actual costs of construction. The Authority's municipal advisor will review the final sources and uses to determine whether all or a portion of the amount of the Authority Loan was not necessary to cover a gap in the amount of funds needed to construct the Minimum Improvements, based on the Initial Pro Forma and the updated pro forma submitted to the Authority pursuant to Section 3.3(b)(v) hereof. If it is determined that

the entire amount of the Authority Loan was not necessary, the Authority Loan will be reduced to the amount necessary to cover the gap in the amount of funds needed to construct the Minimum Improvements and the Developer shall return such funds to the Authority within ninety (90) days, with interest.

Section 3.5. Payment of Administrative Costs. The Authority acknowledges that the Developer has deposited \$5,000 with the Authority. 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 related or attributable to or incurred in connection with this Agreement and other documents and agreements in connection with the development of the Development Property, and includes, but is not limited to, all third party costs incurred for Authority’s municipal advisor to review sources and uses and project development costs to determine if any gap exists, and all third party costs for the Authority’s review of the Construction Plans. Developer’s liability for Administrative Costs shall not exceed the \$5,000 deposited. At the Developer’s request, but no more often than monthly, the Authority 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 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 up to limit set forth above.

Section 3.6. Exemption from Business Subsidy Act. The parties agree and understand that all financial assistance provided by the Authority under this Agreement represents assistance for housing, and accordingly is not subject to the Business Subsidy Act.

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

ARTICLE IV

Construction of Minimum Improvements

Section 4.1. Construction of Improvements. The Developer agrees that it will construct the Minimum Improvements on the Development Property substantially in accordance with the approved Construction Plans. The Developer agrees that, at all times prior to the Termination Date, it will operate and maintain, preserve, and keep the Minimum Improvements or cause the improvements to be maintained, preserved, and kept with the appurtenances and every part and parcel thereof, in good repair and condition. The Authority will have no obligation to operate or maintain the Minimum Improvements.

Section 4.2. Construction Plans. The Authority shall rely on the Community Development Department of the City to review and approve the Construction Plans.

Section 4.3. Commencement and Completion of Construction.

(a) Subject to Unavoidable Delays, the Minimum Improvements must be constructed in accordance with the following schedule: the Developer shall commence construction on or before November 1, 2021 and complete construction by December 31, 2023. Construction is considered to be commenced upon the beginning of physical improvements beyond grading. If needed, the Developer may request from the Authority an extension of the date of complete construction of the Minimum Improvements.

(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), the Authority will furnish the Developer with a Certificate of Completion in substantially the form attached hereto as EXHIBIT B. Such certification by the Authority shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the Agreement and in any deed with respect to the obligations of the Developer, and its successors and assigns, to construct the Minimum Improvements and the dates for the completion thereof. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any Holder of a Mortgage, or any insurer of a Mortgage, securing money loaned to finance the Minimum Improvements, or any part thereof.

(b) The Certificate of Completion provided for in this Section 4.4 shall be in such form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments

pertaining to the Development Property. If the Authority shall refuse or fail to provide any certification in accordance with the provisions of this Section 4.4, the Authority shall, within twenty (20) days after written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Authority, for the Developer to take or perform in order to obtain such certification.

(c) The construction of the Minimum Improvements will be considered substantially complete when the Developer has received a certificate of occupancy from the City for all Rental Housing Units.

Section 4.5. Affordable Housing Covenants.

(a) The Developer expects that the Minimum Improvements will include a mix of studio, one-bedroom, one-bedroom plus den, two-bedroom, two-bedroom plus den, and three-bedroom units. The Developer shall cause (i) at least five percent (5%) of the Rental Housing Units to be available to individuals and their families at or below fifty percent (50%) of the area median income, all as further described in the Declaration attached hereto as EXHIBIT C; and (ii) at least five percent (5%) of the Rental Housing Units to be available to individuals and their families at or below sixty percent (60%) of the area median income, all as further described in the Declaration attached hereto as EXHIBIT C. As of the date of execution of this Agreement, the Developer expects that the Rental Housing Units will be affordable as set forth in the table below:

<u>Type of Unit</u>	<u>Area Median Income</u>	<u>Number of Units</u>
Studio	50%	2
One-Bedroom	50%	4
One-Bedroom Plus Den	50%	3
Two-Bedroom	50%	1
Two-Bedroom	60%	5
Two-Bedroom Plus Den	60%	3
Three-Bedroom	60%	1

(b) The Developer represents, warrants and covenants that the maximum gross rent for all Rental Housing Units occupied by tenants at or below sixty percent (60%) of the area median income shall not exceed 30 percent of the 60 percent income limitation and all Rental Housing Units occupied by tenants at or below fifty percent (50%) of the area median income shall not exceed 30 percent of the 50 percent income limitation. Monthly rent for the affordable Rental Housing Units includes base rent and utility costs in accordance with the City’s inclusionary housing policy. The Developer shall include the costs of one (1) parking space in the monthly base rent of the affordable Rental Housing Units. The base rent and utilities shall be calculated in accordance with the Minnesota Housing Finance Agency’s tax credit program, and all utilities to be included in the monthly rent shall be those allowed by Metropolitan Council Housing and Redevelopment Authority.

(c) The restrictions set forth in Section 4.5(a) and 4.5(b) shall remain in effect for the later of (i) the thirty (30) year period described in the Declaration; or (ii) the repayment of the Authority Loan. On or before the Closing Date, the Developer shall deliver the executed Declaration to the Authority in recordable form.

(d) The Authority and its 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 Developer and its successors and assigns relating to the Developer's satisfaction of the covenants described in this Section and in the Declaration.

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

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

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

Section 4.7. Records. The Authority, 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. The Developer shall maintain such records and provide such rights of inspection until the earlier of the Termination Date or six (6) years after issuance of the Certificate of Completion for the Minimum Improvements.

Section 4.8. Property Management Covenant. The Developer shall cause its property manager to operate the Minimum Improvements in accordance with the policies described in this Section. For any documented disorderly violations by a tenant or guest, including but not limited to prostitution, gang-related activity, intimidating or assaultive behavior (not including domestic), unlawful discharge of firearms, illegal activity, or drug complaints (each a "Violation"), the Developer agrees and understands that the following procedures shall apply:

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

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

(c) If a third Violation occurs regarding the same tenancy within twelve (12) continuous months after the first Violation, the City police department will notify the Developer and the property manager of the third Violation. Within ten (10) days after receiving such notice, the Developer or the property manager shall commence termination of the tenancy of all occupants of that unit. The Developer

shall not enter into a new lease agreement with the evicted tenant(s) for at least one (1) year after the effective date of the eviction.

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

(e) If the Developer and property manager fail to respond to the written notice under paragraph (d) above, 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 Holder of one (1) or more of the Other Loans on the Development Property.

Section 4.9. Fees. The Developer must pay all water and sewer hook-up fees, SAC, WAC, and REC fees, Engineering Inspection Fees and park dedication fees in accordance with applicable City policies and ordinances.

Section 4.10. Conversion to Condominiums. The Developer may request that the Authority consider amending this Agreement and the Declaration to allow for all or a portion of the units in the Minimum Improvements to be converted to condominiums.

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

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 a Protective Liability Policy with limits against bodily injury and property damage of not less than \$2,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used); and

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

(b) Upon completion of construction of the Minimum Improvements and prior to the Termination Date, the Developer shall maintain, or cause to be maintained, at its cost and expense, and from time to time at the request of the Authority shall furnish proof of the payment of premiums on, insurance as follows:

(i) Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses.

(ii) Comprehensive, 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 Authority as an additional insured.

(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 \$250,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty.

Section 5.2. Subordination. Notwithstanding anything to the contrary herein, the rights of the Authority and the obligations of the Developer 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.

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

ARTICLE VI

Tax Increment; Taxes

Section 6.1. Right to Collect Delinquent Taxes. The Developer acknowledges that the Authority is providing substantial aid and assistance in furtherance of the redevelopment described in this Agreement. The Developer understands that, while the Development Property itself is not located within a tax increment financing district, a purpose of the assistance under this Agreement is to increase the property tax base of the City. To that end, the Developer agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Development Property and the Minimum Improvements. The Developer acknowledges that this obligation creates a contractual right on behalf of the Authority through the Termination Date to sue the Developer or its successors and assigns to collect delinquent real estate taxes and any penalty or interest thereon and to pay over the same as a tax payment to the County auditor. In any such suit, the Authority shall also be entitled to recover its costs, expenses and reasonable attorneys' fees. Notwithstanding the foregoing, nothing in this Agreement in any way limits or prevents the Developer from contesting the assessor's proposed market values for the Development Property or the Minimum Improvements.

Section 6.2. Review of Taxes. The Developer agrees that prior to the Termination Date, it will not cause a reduction in the real property taxes paid in respect of the Development Property through: (A) willful destruction of the Development Property or any part thereof; or (B) willful refusal to reconstruct damaged or destroyed property pursuant to Section 5.1 hereof. The Developer also agrees that it will not, prior to the Termination Date, apply for a deferral of property tax on the Development Property pursuant to any law, or transfer or permit transfer of the Development Property to any entity whose ownership or operation of the property would result in the Development Property being exempt from real estate taxes under State law (other than any portion thereof dedicated or conveyed to the City or Authority in accordance with this Agreement).

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

ARTICLE VII

Financing

Section 7.1. Financing. Before the Closing Date, the Developer shall submit to the Authority evidence of 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 evidence may be submitted as short-term construction financing, long-term mortgage financing, a bridge loan with a long-term take-out financing commitment, or any combination of the foregoing.

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

ARTICLE VIII

Prohibitions Against Assignment and Transfer; Indemnification

Section 8.1. Representation as to Redevelopment. The Developer represents and agrees that 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 Termination Date:

(a) Except as specifically described in this Agreement, the Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same, to any person or entity (collectively, a "Transfer"), without the prior written approval of the Board of Commissioners of the Authority. 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; (iii) a transfer of any ownership interest in the Developer in accordance with the terms of the Developer's partnership agreement; or (iv) a transfer to an Affiliate.

(b) If the Developer seeks to effect a Transfer, the Authority 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, 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 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, 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) deprive the Authority 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 of the Authority 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 would have had, had there been no such transfer or change. In the absence of specific written agreement by the Authority to the contrary, no such transfer or approval by the Authority 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.

(c) If the conditions described in paragraph (b) above 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 Board of Commissioners of the Authority, 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. The provisions of this paragraph (c) apply to all subsequent transferors.

(d) Except as otherwise provided herein, upon the sale of the Minimum Improvements, the principal amount of the Authority Loan, and interest, if any, shall be due and payable in full in accordance with Section 3.3(d) hereof.

Section 8.3. Release and Indemnification Covenants.

(a) The Developer releases from and covenants and agrees that the Authority and its members, commissioners, officers, agents, servants and employees shall not be liable for and agrees to indemnify and hold harmless the Authority and its members, officers, commissioners, agents, servants and employees 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 its members, commissioners, officers, agents, servants and employees (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 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 contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations

of the Authority and not of any member, commissioner, officer, agent, servant or employee of the Authority 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) The Developer or the Authority fails 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:
 - (i) files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or State law;
 - (ii) makes an assignment for benefit of its creditors;
 - (iii) admits in writing its inability to pay its debts generally as they become due; or
 - (iv) is adjudicated as bankrupt or insolvent.

Section 9.2. Remedies on Default.

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

(b) Upon an Event of Default by the Developer, the Authority may (i) demand repayment of the outstanding principal and accrued interest on the Authority Loan from the Developer, and (ii) take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

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

Section 9.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority 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 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 9.4. 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 9.5. Attorneys' Fees. Whenever any Event of Default occurs and if the Authority employs 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 Authority prevails in the action, the Developer agrees that it will, within ten (10) days of written demand by the Authority, pay to the Authority the reasonable fees of the attorneys and the other expenses so incurred by the Authority.

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

ARTICLE X

Additional Provisions

Section 10.1. Conflict of Interests; Authority Representatives Not Individually Liable. The Authority and the Developer, to the best of their respective knowledge, represent and agree that no member, commissioner, official, or employee of the Authority 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, commissioner, official, or employee of the Authority shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Authority 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 itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in the Agreement it will comply with all applicable federal, State and local equal employment and non-discrimination laws and regulations.

Section 10.3. Restrictions on Use. The Developer agrees that until the Termination Date, the Developer, and such successors and assigns, shall devote the Development Property to the operation of the Minimum Improvements for uses described in the definition of such term in this Agreement and shall not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Development Property or any improvements erected or to be erected thereon or any part thereof.

Section 10.4. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring any interest in the Development Property and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 10.5. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 10.6. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, overnight mail, or delivered personally, or by email. Any notice by email shall be followed by delivery by one of the other means, which additional delivery by such other means shall not be subject to timing deadlines; and

(a) in the case of the Developer, is addressed to or delivered personally to the Developer at United Properties Investment LLC, 651 Nicollet Mall, Suite 450, Minneapolis, MN 55402, Attn: Rick McKelvey, email: rick.mckelvey@uproperties.com; and

(b) in the case of the Authority, is addressed to or delivered personally at 14600 Minnetonka Boulevard, Minnetonka, Minnesota 55345-1502, Attn: Community Development Director, email: jwischnack@minnetonkamn.gov;

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 may record this Agreement and any amendments thereto with the County Recorder or Registrar of Titles of the County, 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 and the Developer.

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

Section 10.11. Termination. This Agreement terminates on the Termination Date, except that termination of this Agreement does not terminate, limit or affect the rights of any party that arise before the Termination Date. The Declaration shall remain effective until it terminates in accordance with the terms of the Declaration. Following the Termination Date, upon the Developer's request, the City will execute a recordable document evidencing the termination of this Agreement and the release of the Developer's obligations hereunder.

Section 10.12. Assignment of Contract. Prior to the Closing Date, United Properties Investment LLC may assign this Agreement to an Affiliate.

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

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed in its name and behalf on or as of the date and year first written above.

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

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 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 ____ day of _____, 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

Execution page of the Developer to the Contract for Private Development, dated as of the date and year first written above.

UNITED PROPERTIES INVESTMENT LLC

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020,
by _____, the _____ of United Properties Investment LLC, a
_____, on behalf of the Developer.

Notary Public

EXHIBIT A

DESCRIPTION OF DEVELOPMENT PROPERTY

[Outlot D, Carlson Ninth Addition is proposed to be replatted as two lots described as Lots 1 and 2, Block 1, Carlson Center Eighteenth Addition. The Development Property is proposed to be described as Lot 1, Block 1, Carlson Center Eighteenth Addition, which lot is the north lot of Carlson Center Eighteenth Addition. The south lot of Carlson Center Eighteenth Addition is proposed to be described as Lot 2, Block 1, Carlson Center Eighteenth Addition, and is excluded from the definition of Development Property.]

EXHIBIT B

CERTIFICATE OF COMPLETION

The undersigned hereby certifies that United Properties Investment LLC, a _____ (the "Developer"), has fully complied with its obligations under Articles III and IV of that document titled "Contract for Private Development," dated _____, 2020 (the "Contract"), between the Economic Development Authority in and for 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 _____
Its 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

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

EXHIBIT C

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (THE “Declaration”) dated _____, 2020, by UNITED PROPERTIES INVESTMENT LLC, a _____ (the “Developer”), is given to 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”).

RECITALS

WHEREAS, the Authority entered into that certain Contract for Private Development, dated _____, 2020, filed _____, 20____ in the Office of the [County Recorder] [Registrar of Titles] of Hennepin County as Document No. _____ (the “Contract”), between the Authority and the Developer; and

WHEREAS, pursuant to the Contract, the Developer is obligated to cause construction of approximately 186 rental housing units (the “Rental Housing Units”) on the property described in EXHIBIT A attached hereto (the “Property”), and to cause compliance with certain affordability covenants described in Section 4.5 of the Contract; and

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

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

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

1. Term of Restrictions.

(a) Occupancy Restrictions. The term of the Occupancy Restrictions set forth in Section 3 hereof and the Rent Restrictions set forth in Section 4 hereof shall commence on the date a certificate of occupancy is received from the City of Minnetonka, Minnesota (the “City”) for all Rental Housing Units on the Property. The period from commencement to termination is the “Qualified Project Period.”

(b) Termination of Declaration. This Declaration shall terminate upon the later of (i) the date that is thirty (30) years after the commencement of the Qualified Project Period; or (ii) the repayment of the Authority Loan.

(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 19 of the Rental Housing Units shall be occupied (or treated as occupied as provided herein) or held vacant and available for occupancy by Qualifying Tenants. Qualifying Tenants shall mean one or more occupants of a unit who is determined from time to time by the Developer to have combined adjusted income that does not exceed fifty percent (50%) or sixty percent (60%) of the Minneapolis-St. Paul metropolitan statistical area (the "Metro Area") median income for the applicable calendar year, subject to the following: (1) at least five percent (5%) of the Rental Housing Units shall be occupied or held vacant and available for occupancy by Qualifying Tenants with a combined adjusted income that does not exceed fifty percent (50%) of the Metro Area median income for the applicable calendar year; and (2) at least five percent (5%) of the Rental Housing Units shall be occupied or held vacant and available for occupancy by Qualifying Tenants with a combined adjusted income of sixty percent (60%) of the Metro Area median income for the applicable calendar year. For purposes of this definition, the occupants of a residential unit shall not be deemed to be Qualifying Tenants if all the occupants of such residential unit at any time are "students," as defined in Section 151(c)(4) of the Internal Revenue Code of 1986, as amended (the "Code"), not entitled to an exemption under the Code. The determination of whether an individual or family is of low or moderate income shall be made at the time the tenancy commences and on an ongoing basis thereafter, determined at least annually. If during their tenancy a Qualifying Tenant's income exceeds one hundred forty percent (140%) of the maximum income qualifying as low or moderate income for a family of its size, the next available unit (determined in accordance with the Code and applicable regulations) (the "Next Available Unit Rule") must be leased to a Qualifying Tenant or held vacant and available for occupancy by a Qualifying Tenant. If the Next Available Unit Rule is violated, the Rental Housing Unit will not continue to be treated as a Qualifying Unit. The annual recertification and Next Available Unit Rule requirements of this paragraph 3(a)(i) shall not apply to a given year if,

during such year, no Rental Housing Unit is occupied by a new resident whose income exceeds the applicable income limit for Low Income Tenants.

(ii) Certification of Tenant Eligibility. As a condition to initial and continuing occupancy, each person who is intended to be a Qualifying Tenant shall be required annually to sign and deliver to the Developer a Certification of Tenant Eligibility substantially in the form attached as EXHIBIT B hereto, or in such other form as may be approved by the Authority (the "Eligibility Certification"), in which the prospective Qualifying Tenant certifies as to qualifying as low or moderate income. In addition, such person shall be required to provide whatever other information, documents, or certifications are deemed necessary by the Authority to substantiate the Eligibility Certification, on an ongoing annual basis, and to verify that such tenant continues to be a Qualifying Tenant within the meaning of Section 3(a)(i) hereof. Eligibility Certifications will be maintained on file by the Developer with respect to each Qualifying Tenant who resides in a Rental Housing Unit or resided therein during the immediately preceding calendar year.

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

(iv) Annual Report. The Developer covenants and agrees that during the term of this Declaration, it will prepare and submit to the Authority on or before January 31 of each year, a certificate substantially in the form of EXHIBIT C attached hereto, executed by the Developer, (a) identifying the tenancies and the dates of occupancy (or vacancy) for all Qualifying Tenants, including the percentage of the Rental Housing Units which were occupied by Qualifying Tenants (or held vacant and available for occupancy by Qualifying Tenants) at all times during the year preceding the date of such certificate; (b) describing all transfers or other changes in ownership of the Minimum Improvements 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 Rental Housing Units are not occupied or available for occupancy as required by the terms of this Declaration.

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

4. Rent Restrictions. The Developer represents, warrants and covenants that the maximum gross rent for all Rental Housing Units occupied by tenants at or below sixty percent (60%) of the area median income shall not exceed 30 percent of the 60 percent income limitation and all Rental Housing Units occupied by tenants at or below fifty percent (50%) of the area median income shall not exceed 30 percent of the 50 percent income limitation. Monthly rent for the affordable Rental Housing Units includes base rent and utility costs in accordance with the City's inclusionary housing policy. The Developer shall include the costs of one (1) parking stall in the monthly base rent of the affordable Rental Housing Units. The base rent and utilities shall be calculated in accordance with the Minnesota Housing

Finance Agency’s tax credit program, and all utilities to be included in the monthly rent shall be those allowed by Metropolitan Council Housing and Redevelopment Authority.

5. Transfer Restrictions. The Developer covenants and agrees that the Developer will cause or require as a condition precedent to any conveyance of fee simple title to the Property or the Minimum Improvements that the transferee 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 conveyance 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 any conveyance.

6. Rental Unit Mix. The Developer covenants and agrees that the Rental Housing Units will be affordable based on the unit mix set forth in the table below:

<u>Type of Unit</u>	<u>Area Median Income</u>	<u>Number of Units</u>
Studio	50%	2
One-Bedroom	50%	4
One-Bedroom Plus Den	50%	3
Two-Bedroom	50%	1
Two-Bedroom	60%	5
Two-Bedroom Plus Den	60%	3
Three-Bedroom	60%	1

7. Enforcement.

(15) 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 Minimum Improvements 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.

© 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 this Declaration, 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 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 thirty (30) days, 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 or email, 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. Any notice by email shall be followed by delivery by one of the other means, which additional delivery by such other means shall not be subject to timing deadlines. 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, MN 55345
Attention: Community Development Director
Email: jwischnack@minnetonkamn.gov

To the Developer: United Properties Investment LLC.
651 Nicollet Mall, Suite 450
Minneapolis, MN 55402
Attn: Rick McKelvey
Email: rick.mckelvey@uproperties.com

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

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

(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.

UNITED PROPERTIES INVESTMENT LLC

By _____
 Its _____

By _____
 Its _____

STATE OF MINNESOTA)
) SS.
 COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____, the _____ of United Properties Investment LLC, a Minnesota limited liability company, on behalf of the Developer.

 Notary Public

STATE OF MINNESOTA)
) SS.
 COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by _____, the _____ of United Properties Investment LLC, a Minnesota limited liability company, on behalf of the Developer.

 Notary Public

This document was drafted by:

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

This Declaration is acknowledged and consented to by:

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

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 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 ____ day of _____, 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

EXHIBIT A TO DECLARATION OF RESTRICTIVE COVENANTS

LEGAL DESCRIPTION

[Outlot D, Carlson Ninth Addition is proposed to be replatted as two lots described as Lots 1 and 2, Block 1, Carlson Center Eighteenth Addition. The Development Property is proposed to be described as Lot 1, Block 1, Carlson Center Eighteenth Addition, which lot is the north lot of Carlson Center Eighteenth Addition. The south lot of Carlson Center Eighteenth Addition is proposed to be described as Lot 2, Block 1, Carlson Center Eighteenth Addition, and is excluded from the definition of Development Property.]

EXHIBIT B TO DECLARATION OF RESTRICTIVE COVENANTS

CERTIFICATION OF TENANT ELIGIBILITY

Project: [Address], Minnetonka, Minnesota

Developer:

Unit Type: _____ Studio _____ 1 BR _____ 1 BR + Den _____ 2 BR _____ 2 BR + Den _____ 3 BR

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

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

Income Computation

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

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

(b) excluding casual, sporadic or irregular gifts; amounts which are specifically for or in reimbursement of medical expenses; lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen’s compensation), capital gains and settlement for personal or property losses; amounts of educational scholarships paid directly to the student or the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and

equipment, but in either case only to the extent used for such purposes; special pay to a serviceman head of a family who is away from home and exposed to hostile fire; relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; foster child care payments; the value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charged for the allotments; and payments received pursuant to participation in ACTION volunteer programs, is as follows: \$_____.

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

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

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

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

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

Yes _____

No _____

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

Yes _____

No _____

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

Head of Household

Spouse

FOR COMPLETION BY OWNER
(OR ITS MANAGER) ONLY

1. Calculation of Eligible Tenant Income:

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

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

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

2. The amount entered in 1(c) is less than or equal to _____ [50%] [60%] of median income for the area in which the Project is located, as defined in the Declaration. [50%] [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 [50%] [60%] of Median Income in the area.

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

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

[NAME OF OWNER], a _____

By _____
Its _____

EXHIBIT C TO DECLARATION OF RESTRICTIVE COVENANTS

CERTIFICATE OF
CONTINUING PROGRAM COMPLIANCE

Date: _____, _____.

The following information with respect to the project located at _____, Minnetonka, Minnesota (the "Project"), is being provided by United Properties Investment LLC, a _____ (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 _____, 2020 (the "Declaration"), with respect to the Project:

(A) The total number of residential units which are available for occupancy is 186. 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:

1 BR + Den Units:

2 BR Units:

2 BR + Den Units:

3 BR Units:

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

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

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

	Unit Number	Name of Tenant	Number of Persons Residing in the Unit	Number of Bedrooms	Total Adjusted Gross Income	Date of Initial Occupancy	Rent
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							
21							
22							
23							
24							
25							
etc.							

(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____.

UNITED PROPERTIES INVESTMENT LLC

By _____
Its _____

EDA Resolution No. 2020-

Resolution approving a contract for private development between the Economic Development Authority in and for the City of Minnetonka and United Properties Development LLC

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

Section 1. Background.

- 1.01. The Authority was created pursuant to Minnesota Statutes, Sections 469.090 through 469.1082, as amended, and was authorized to transact business and exercise its powers by a resolution adopted by the City Council of the City of Minnetonka, Minnesota (the "City").
- 1.02. The Authority and the City have undertaken a program to promote economic development and job opportunities, promote the development and redevelopment of land which is underutilized within the City, and facilitate the development of affordable housing.
- 1.03. United Properties Investment LLC, a Minnesota limited liability company (the "Developer"), proposes to develop approximately 186 units of rental housing, with at least 5% of the units to be affordable to individuals and families at or below 50% of the area median income and at least 5% of the units to 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 provide a loan to the Developer in an amount of up to \$400,000 (the "Authority Loan") from the Authority's Development Fund.
- 1.04. The Authority has caused to be prepared a Contract for Private Development (the "Contract") between the Authority and the Developer, which sets forth the terms of the construction by the Developer of the Minimum Improvements and the provision by the Authority of the Authority Loan to assist in financing the Minimum Improvements.
- 1.05. The Board has reviewed the Contract and finds that the execution thereof by the Authority and performance of the Authority's obligations thereunder are in the best interest of the City and its residents.

Section 2. Approval.

- 2.01. The Contract is approved in substantially the form on file in City Hall, subject to modifications that do not alter the substance of the transaction and are approved by the President and Executive Director of the Authority; provided that execution of the document will be conclusive evidence of their approval.
- 2.02. The President and Executive Director are authorized and directed to execute the Contract and any other documents or certificates necessary to carry out the transactions described therein.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on June 8, 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 June 8, 2020.

Becky Koosman, Secretary