

## ***Agenda***

### **Minnetonka Economic Development Authority**

**Monday, August 10, 2020**

**Following the Regular Meeting**

#### **Webex**

1. Call to Order
2. Roll Call: Kirk-Schack-Carter-Calvert-Schaeppi-Coakley-Wiersum
3. Approval of Agenda
4. Approval of Minutes:
  - A. June 8, 2020 EDA Meeting
5. Business Items:
  - A. Shady Oak Crossing  
Recommendation: Adopt the resolution (4 votes)
6. Adjourn

**Minutes**  
**Minnetonka Economic Development Authority**  
**Monday, June 8, 2020**

**1. Call to Order**

President Wiersum called the meeting to order at 12:19 a.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**

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

**4. Approval of Minutes:**

**A. April 6, 2020 EDA minutes**

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

**5. Business Items:**

**A. The Pointe at 801 Carlson Parkway**

Community Development Director Julie Wischnack stated she did not have any additional comments beyond those provided on the corresponding items at the preceding council meeting.

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

Kirk moved, Calvert seconded a motion to adopt EDA Resolution 2020-004 approving the contract for final development. All voted "yes." Motion carried.

**6. Adjournment**

Calvert moved, Schack seconded a motion to adjourn the meeting at 12:23 a.m. All voted "yes." Motion carried.

Respectfully submitted,

Kyle Salage  
Elections Specialist

**Economic Development Authority Agenda Item #5A  
Meeting of Aug. 10, 2020**

<b>Brief Description</b>	Shady Oak Crossing
<b>Recommendation</b>	Adopt the resolution
<b>Request</b>	Resolution approving the execution of an Assignment of Tax Increment Financing Note and Subordination Agreement; and a Consent and Estoppel Certificate in connection with the Shady Oak Crossing project.

**Background**

On Feb 24, 2020, the city council approved the master development plans, building plans, and financing for the Shady Oak Crossing redevelopment project. The city-owned property was sold to Ron Clark construction on July 26, 2020.

The Economic Development Authority (EDA) must now consider approval of the Assignment of the Tax Increment Financing Note, which includes the Subordination Consent and Estoppel Certificate. The attached memo from Julie Eddington, the city's EDA counsel, provides additional information on this recommendation.

This request requires approval from both the city council and EDA.

**Recommendation**

Staff recommends the economic development authority adopt the resolution:

- Resolution approving the execution of an Assignment of Tax Increment Financing Note and Subordination Agreement; and a Consent and Estoppel Certificate in connection with the Shady Oak Crossing project.

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**

Memo - Julie Eddington (Kennedy & Graven)  
Tax Increment Financing Assignment

**Supplemental Information:**

[Feb. 24, 2020 City Council Meeting](#)



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**JULIE A. EDDINGTON**  
Attorney at Law  
Direct Dial (612) 337-9213  
Email: [jeddington@kennedy-graven.com](mailto:jeddington@kennedy-graven.com)

August 3, 2020

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

Re: Resolutions approving the execution of an Assignment of Tax Increment Financing Note and Subordination Agreement and a Consent and Estoppel Certificate in connection with the Shady Oak Crossing project

Dear Alisha,

The City of Minnetonka (the "City") and the Economic Development Authority in and for the City of Minnetonka (the "EDA") have entered into an Amended and Restated Contract for Private Development, dated July 13, 2020 (the "Contract"), with Shady Oak Crossing LLC, a Minnesota limited liability company (the "Developer"). Under the terms of the Contract, the Developer will construct an approximately 75-unit rental housing facility on property located in the City (the "Minimum Improvements"), and the EDA will issue a tax increment revenue note (the "TIF Note") in the maximum principal amount of \$1,900,000 to reimburse the Developer for qualified public development costs incurred in connection with the construction of the Minimum Improvements.

North American Banking Company (the "Lender") has agreed to provide a loan to the Developer in the amount of \$14,300,000 (the "Loan") to finance a portion of the costs of the Minimum Improvements. In order to provide the Loan to the Developer, the Lender requires that the Developer assign its rights to and interests in the TIF Note, when issued by the EDA, to the Lender and that the City and the EDA subordinate certain of their rights to and interests in the Contract to the Lender under the documents to be executed in connection with the Loan (the "Loan Documents").

Enclosed are resolutions for consideration by the City Council of the City and the Board of Commissioners of the EDA on August 10, 2020. The resolutions approve the execution and delivery by the City and the EDA of an Assignment of Tax Increment Financing Note and Subordination Agreement (the "Assignment and Subordination Agreement") and a Consent and Estoppel Certificate (the "Consent and Estoppel Certificate"). The Assignment and Subordination Agreement sets forth the terms of the Developer's assignment of its rights to and interests in the TIF Note, if issued by the EDA, and the terms of the City's and the EDA's subordination of certain rights to and interests in the Contract to the rights of the Lender under the Loan Documents. Nothing in the Assignment and Subordination Agreement precludes the City or the Authority from exercising its rights and remedies under the Development

Agreement *except* that (i) the agreement subordinates the City and the Authority's rights to receive insurance and condemnation proceeds from the Minimum Improvements; and (i) if the Lender must foreclose on the property or the property is transferred to the Lender, the City and the Authority's rights to revert the property back to the City's ownership are subordinate to the Lender's interests in the property. The Consent and Estoppel Certificate provides the understanding of the City and the EDA with respect to the Assignment and Subordination Agreement.

Please contact me with any questions you may have prior to the meetings.

Sincerely,

Julie A. Eddington

**ASSIGNMENT OF TAX INCREMENT FINANCING NOTE AND  
SUBORDINATION AGREEMENT**

This Assignment of Tax Increment Financing Note and Subordination Agreement (“**Assignment**”) is made this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between **Shady Oak Crossing LLC**, a Minnesota limited liability company (“**Assignor**”), the City of Minnetonka, Minnesota, a home rule city duly organized and existing under its Charter and the laws of the State of Minnesota (“**City**”), 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 (“**Authority**”), and **North American Banking Company**, a Minnesota corporation (“**Lender**”).

**RECITALS**

**WHEREAS**, pursuant to a Construction Loan Agreement of even date herewith by and between Assignor and Lender (“**Loan Agreement**”), Lender has agreed to make a loan to Assignor in an original principal amount not to exceed Fourteen Million Three Hundred Thousand (\$14,300,000) Dollars (the “**Loan**”) to finance a portion of the costs of acquiring certain real property located in Hennepin County, Minnesota and legally described as set forth on *Exhibit A*, attached to the Loan Agreement (the “**Property**”) and constructing a seventy-five (75) unit apartment complex located on the Property (the “**Project**”); and

**WHEREAS**, the Loan is evidenced by a Promissory Note of even date herewith, executed and delivered by Assignor to Lender in the original amount not to exceed \$14,300,000 (the “**Note**”) and secured by a Combination Mortgage, Security Agreement and Fixture Financing Statement to be recorded as an encumbrance against the Property with the Registrar of Titles in and for Hennepin County, Minnesota (“**Mortgage**”); and

**WHEREAS**, pursuant to an Amended and Restated Contract for Private Development dated July 13, 2020 (“**Development Agreement**”) by and between the Authority, the City and Assignor, Assignor has agreed to construct the Project on the Property; and

**WHEREAS**, in exchange for developing and constructing the Project, upon satisfaction of the conditions set forth in Section 3.9 of the Development Agreement, Assignor will receive from Authority, among other things, a Tax Increment Revenue Note, Series 20\_\_ issued by the Authority in the maximum principal amount of One Million Nine Hundred Thousand (\$1,900,000) Dollars payable to Assignor (“**TIF Note**”). Unless the context indicates otherwise, capitalized terms used but not otherwise defined herein shall have the meanings given such terms in the Development Agreement; and

**WHEREAS**, in consideration of, and to secure the payment of the Loan, Lender has required an assignment of the TIF Note and Assignor’s rights thereunder;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**1. PRESENT PLEDGE AND ASSIGNMENT.** Pursuant to the provisions of the Uniform Commercial Code in effect in the State of Minnesota (“**UCC**”), as security for the Loan, the Assignor grants to Lender a security interest in all of the following property: (a) all right, title and interest of Assignor in the TIF Note; (b) all replacements, substitutions and proceeds (“**Proceeds**”) relating to the

TIF Note; and (c) all documents, ledgers and files of Assignor relating to the TIF Note (collectively, the “**Collateral**”). The term “**Proceeds**” shall include whatever is received by Assignor upon the sale, exchange or other disposition of any item of Collateral. This Assignment shall constitute a perfected, absolute and present pledge and assignment in connection with which Assignor shall deliver to Lender the Collateral documents endorsed and assigned to Lender. Assignor shall execute and deliver to Lender an Allonge in the form attached hereto as *Exhibit A*. The payments under the TIF Note shall be paid directly to Lender until such time as the Loan has been paid in full and Lender has no further obligation to make advances available to Assignor, at which time Lender shall promptly provide notice to the Authority, with a copy to Assignor, that such payments are to be made to Assignor and this Assignment and the security interest created hereby shall terminate. Prior to the full payment of the Loan and the termination of Lender’s commitment to make advances available to Assignor, if Assignor receives any payments or prepayments on the TIF Note, Assignor shall immediately remit such payments and prepayments to Lender.

**2. REPRESENTATIONS AND WARRANTIES.** Assignor represents and warrants to Lender that:

2.1 Assignor will be the true and lawful, absolute owner of the Collateral and, except for the liens and security interests created by this Assignment, the Collateral is free and clear of any lien, security interest, or encumbrance;

2.2 Subject only to receipt of consent from the Authority, Assignor has the full right and title to assign and pledge the Collateral; there are no outstanding claims, assignments or pledges thereof; and to Assignor’s knowledge, there are no existing defaults under the Collateral documents on the part of the parties thereof;

2.3 There are no defenses, setoffs or counterclaims against or with regard to the Development Agreement or the TIF Note or the indebtedness evidenced thereby;

2.4 As of the date hereof, no payment have been made under the TIF Note;

2.5 The TIF Note has not been amended or modified in any respect and is a valid and enforceable obligation of the Authority in accordance with the TIF Note’s terms;

2.6 The Development Agreement has not been further amended or modified in any respect;

2.7 The TIF Note has not yet been issued and Development Agreement remains in full force and effect; and

2.8 Except for the financing statement filed in connection with the pledge and security interest granted pursuant to this Assignment, no financing statement covering the Collateral is on file in any public office.

**3. COVENANTS OF ASSIGNOR.** Assignor covenants and agrees that so long as any of the indebtedness evidenced by the Note is outstanding and unsatisfied and until Lender’s commitment to make advances available to Assignor has terminated:



- 3.1 Assignor shall keep the Collateral: (a) free and clear of any lien, security interest or encumbrance, except for the liens and security interests created by this Assignment; and (b) free of all tax liens;
- 3.2 Assignor shall maintain and keep accurate records, books and accounts with respect to the Collateral;
- 3.3 Assignor shall join Lender in prepaying and filing at the appropriate offices one or more financing statements with regard to the Collateral complying with the UCC, in form satisfactory to Lender;
- 3.4 Assignor shall maintain, or cause to be maintained, insurance policies on the Project in accordance with the requirements of the Loan Agreement and Development Agreement;
- 3.5 Assignor shall do any additional acts as Lender may reasonably require for the purpose of more completely assuring to Lender its rights in the Collateral;
- 3.6 At any time Assignor receives a written notice of default under the Development Agreement, Assignor shall promptly provide a copy of such notice of default to Lender; and
- 3.7 Assignor shall fully comply with its obligations under the Development Agreement and shall not waive, excuse, condone or in any way release or discharge the City or the Authority of their respective obligations under the Development Agreement or TIF Note.

**4. SECURITY AGREEMENT.** This Assignment constitutes a “Security Agreement” under the UCC and shall be governed by the UCC.

**5. PREPAYMENTS OF THE TIF NOTE.** To the extent not directly paid to Lender, Assignor agrees that should the Authority at any time prepay the TIF Note, Assignor will deposit or cause to be deposited with Lender the entire amount of such prepayment. Any amount deposited with Lender shall, at Lender’s option, be applied by Lender to pay or prepay the Loan in accordance with the terms of the Loan Agreement or shall be held by Lender in an escrow account for payment of the Loan. The sums held in escrow pursuant hereto are held as security for the Loan, Assignor hereby granting a security interest in such sums to Lender as security for the same.

**6. AUTHORIZATION TO AUTHORITY.** So long as this Assignment remains in effect, the Authority is hereby irrevocably authorized and directed to make payments under the TIF Note directly to Lender, for the account of Assignor, and to recognize the claims of Lender or its successors or assigns without investigating the reason for any action taken or the validity of or the amount of indebtedness owing to Lender or its assigns or the existence of any default or Event of Default (as hereinafter defined), and Assignor hereby irrevocably directs and authorizes the Authority to pay exclusively to Lender or its assigns from and after the date hereof until such time as the Loan is paid in full and Lender’s commitment to make advances available to Assignor has terminated, all sums due under the TIF Note that are otherwise due and payable to Assignor under the TIF Note. To the extent any sum is paid to Lender or its assigns, Assignor agrees that the Authority shall have no further liability to Assignor for the same. The sole receipt by Lender or its assigns of any sum paid by the Authority shall be in discharge and release of that portion of any amount owed by the Authority to Assignor under the TIF Note. The Authority is intended to and shall be a third party beneficiary to the provisions of this

Section 6. The Authority has acknowledged Lender's rights under this Assignment pursuant to a Consent and Estoppel Certificate, dated on or about the date hereof, in the form attached hereto as **Exhibit B**.

**7. EVENTS OF DEFAULT.** The occurrence of any of the following events shall constitute an "Event of Default" under this Assignment:

7.1 Any failure of Assignor to fully and completely perform any of the duties or obligations of Assignor under this Assignment or any failure of Assignor to fully and completely observe, satisfy and comply with the terms, covenants and conditions of this Assignment and such failure is not cured within thirty (30) days after written notice of said default;

7.2 Any representation or warranty of Assignor contained in this Assignment shall be untrue or misleading in any material respect and Assignor fails to take such actions as may be required to make such representation or warranty true and not misleading in any material respect within thirty (30) days after written notice thereof; and

7.3 Any event designated as an "Event of Default" under the Note, the Loan Agreement or any other Loan Document as defined in the Loan Agreement.

**8. REMEDIES.** Upon the occurrence of and during the continuance of an Event of Default:

8.1 Lender may: (a) at Lender's option, cure the Event of Default if it involves the payment of money (i) for insurance or taxes, assessments or other charges which Assignor has not paid in accordance with the Loan Agreement, or (ii) for the satisfaction or discharge of any lien, security interest or encumbrance upon the Collateral, in which event the amount of any payments shall be added to the indebtedness secured by this Assignment, shall be secured, and shall be payable by Assignor to Lender on demand; (b) at Lender's option, declare the indebtedness secured by this Assignment and evidenced by the Note to be immediately due and payable; and (c) exercise any and all other rights and remedies accorded to Lender by the UCC. In the event any notice is required to be given under the UCC, such requirements for reasonable notice shall be satisfied by giving at least ten (10) days' notice prior to the event or thing giving rise to the notice requirement.

8.2 Except as set forth in a written notice of Lender, no course of dealing between the parties or any delay on the part of Lender in exercising any rights shall operate as a waiver of any rights or remedies of Lender.

8.3 The rights and remedies herein specified or in law or equity are cumulative and not exclusive of any rights or remedies which Lender would otherwise have and may be exercised together, separately, and in any order.

**9. SUBORDINATION.** In accordance with the applicable terms and conditions of the Development Agreement, the City and Authority hereby acknowledge and agree that all of their rights, title and interest under the Development Agreement, including, without limitation, the rights of the City and Authority with respect to the receipt and application of any insurance or condemnation awards set forth in Article V of the Development Agreement and any right to revest title set forth in Article IX of the Development Agreement ("**Revest Right**"), shall be subject and subordinate to the rights of Lender under the Loan Agreement, Mortgage and all other associated Loan Documents in all respects. The City

and Authority further acknowledge and agree that the Revest Right will be extinguished without further action upon: (a) the foreclosure of the Mortgage and expiration of any applicable redemption period; or (b) transfer of title to the Property to Lender, or any of Lender's successors or assigns, pursuant to a deed in lieu of foreclosure. Notwithstanding the foregoing, nothing herein precludes the City or the Authority from exercising its rights and remedies under the Development Agreement other than the limitations set forth in this Section 9.

## 10. MISCELLEANOUS.

10.1 **Notices.** All notices required under the terms of this Assignment are sufficient either: (a) three (3) days after their deposit in the United States mail, postage prepaid; (b) two (2) days after their deposit with a nationally recognized overnight courier service; or (c) on the day of personal delivery, if addressed or delivered to Lender or Assignor at their respective addresses set forth herein, or such other address as is specified in writing by any party to the other as provided herein. In any event, Assignor shall exercise reasonable due diligence to ensure that Lender is at all times advised of Assignor's correct address and any changes thereto, stipulated as the following as of the date of this Agreement.

If to Assignor: Shady Oak Crossing LLC  
7500 W 78<sup>th</sup> St  
Edina, MN 55439  
Attn: Mike Waldo

If to Lender: North American Banking Company  
4999 France Avenue South, Suite 120  
Minneapolis, MN 55410  
Attn: Joe Arends

If to City: City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, Minnesota 55345-1502  
Attn: City Manager

If to Authority: Economic Development Authority  
14600 Minnetonka Boulevard  
Minnetonka, Minnesota 55345-1502  
Attention: Executive Director

10.2 **Binding Effect; Assignment.** This Assignment shall be binding upon and inure to the benefit of Assignor and Lender and their respective successors and assigns. Lender may freely assign this Assignment upon five (5) business days' notice to Assignor and any assignee or successor in interest pursuant thereto shall enjoy all of the various rights and remedies afforded to Lender by the various provisions of this Assignment, and shall also tender any remaining performance required of Lender thereby. Except as expressly approved by Lender in writing, Assignor shall not assign any of Assignor's rights or obligations under this Assignment and any such attempted assignment by Assignor shall be null and void, of no effect, and not require recognition by Lender until approved by Lender in writing. With regard to any assignment permitted by this Section, the various provisions of this Assignment shall inure to the benefit of and be binding upon Assignor and Lender and their respective heirs, legal representatives, successors and assigns.

10.3 **Severability.** It is the intent of this Assignment to confer to Lender the rights and benefits hereunder to the fully extent allowable by law. The unenforceability or invalidity of any provision hereof shall not render any other provision or provisions contained herein unenforceable or invalid. Any provisions found to be unenforceable shall be severable from this Assignment.

10.4 **Governing Law.** This Assignment shall be governed by the laws of the State of Minnesota.

10.5 **Waiver of Trial by Jury.** ASSIGNOR AND LENDER HEREBY JOINTLY AND SEVERALLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS ASSIGNMENT, THE OBLIGATIONS HEREUNDER OR ANY TRANSACTION ARISING THEREFROM OR CONNECTED THERETO. ASSIGNOR AND LENDER EACH REPRESENT TO THE OTHERS THAT THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY GIVEN.

10.6 **Jurisdiction and Venue.** AT THE OPTION OF LENDER, THIS ASSIGNMENT MAY BE ENFORCED IN ANY FEDERAL COURT OR MINNESOTA STATE COURT SITTING IN MINNEAPOLIS OR ST. PAUL, MINNESOTA; AND ASSIGNOR CONSENTS TO THE JURISDICTION AND VENUE OF ANY SUCH COURT AND WAIVES ANY ARGUMENT THAT VENUE IN SUCH FORUMS IS NOT CONVENIENT. IN THE EVENT ASSIGNOR COMMENCES ANY ACTION IN ANOTHER JURISDICTION OR VENUE UNDER ANY TORT OR CONTRACT THEORY ARISING DIRECTLY OR INDIRECTLY FROM THE RELATIONSHIP CREATED BY THIS ASSIGNMENT, LENDER AT ITS OPTION SHALL BE ENTITLED TO HAVE THE CASE TRANSFERRED TO ONE OF THE JURISDICTIONS AND VENUES ABOVE-DESCRIBED, OR IF SUCH TRANSFER CANNOT BE ACCOMPLISHED UNDER APPLICABLE LAW, TO HAVE SUCH CASE DISMISSED WITHOUT PREJUDICE.

10.7 **Counterparts.** This Assignment may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, this Assignment is executed as of the date first set forth above.

[Signature Pages Follow]

**Signature Page – Assignor**

ASSIGNOR:

**Shady Oak Crossing LLC,**  
a Minnesota limited liability company

By: \_\_\_\_\_

J. Michael Waldo

Its: Vice President

**Signature Page – Lender**

LENDER:

**North American Banking Company,**  
a Minnesota corporation

By: \_\_\_\_\_  
Joe H. Arends  
Its: Senior Vice President

**Signature Page – Authority**

AUTHORITY:

**Economic Development Authority in and for the  
City of Minnetonka, Minnesota**

By: \_\_\_\_\_  
Brad Wiersum  
Its: President

By: \_\_\_\_\_  
Geraldyn Barone  
Its: Executive Director

**Signature Page – City**

CITY:

**The City of Minnetonka, Minnesota**

By: \_\_\_\_\_  
Brad Wiersum

Its: Mayor

By: \_\_\_\_\_  
Geraldyn Barone

Its: City Manager





## EXHIBIT B

### Consent and Estoppel Certificate

This Consent and Estoppel Certificate (“**Certificate**”) is dated this \_\_\_\_ day of July, 2020 by the **City of Minnetonka, Minnesota**, a home rule city duly organized and existing under its Charter and the laws of the State of Minnesota (“**City**”) and 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 (“**Authority**”) to **North American Banking Company**, its successors and assigns and participants (“**Lender**”).

The City and Authority hereby agree with Lender as follows:

1. Unless the context indicates otherwise, capitalized terms not otherwise defined herein shall have the definitions given such terms in that certain Amended and Restated Contract for Private Development dated July 13, 2020 (“**Development Agreement**”) by and between the City, the Authority and Shady Oak Crossing LLC, a Minnesota limited liability company (“**Borrower**”).
2. Authority understands that Lender contemplates making a loan to Borrower in an original amount not to exceed Fourteen Million Three Hundred Thousand (\$14,300,000) Dollars (the “**Loan**”), which Loan is secured by an Assignment of Tax Increment Financing Note dated \_\_\_\_\_, 2020 between Borrower and Lender (the “**Assignment**”). Pursuant to the Assignment, Borrower will collaterally assign to Lender and grant Lender a security interest in that certain Tax Increment Revenue Note, Series 20\_\_ in the original principal amount of One Million Nine Hundred Thousand (\$1,900,000) Dollars (“**TIF Note**”) upon issuance of the TIF Note after the Borrower satisfies the requirements for issuance of the Note set forth in Section 3.9 of the Development Agreement.
3. The City and Authority each understand that Lender has required this Certificate as a condition of making the Loan and Lender will rely on this Certificate in connection therewith.
4. The City and Authority each acknowledge that, in exchange for developing the Project (as defined in the Assignment), upon satisfaction of the conditions set forth in Section 3.9 of the Development Agreement, Borrower will receive from the Authority, among other things, the TIF Note. Further, the Authority acknowledges that, to secure the payment of the debt owed by Borrower to Lender arising by reason of the Loan, Borrower will collaterally assign to Lender and grant Lender a security interest in the TIF Note.
5. The City and Authority each further covenant, represent and warrant to and agree with Lender, as applicable, as follows:
  - 5.1 That upon satisfaction of the conditions set forth in Section 3.9 of the Development Agreement, the Authority will issue the TIF Note. Upon issuance of the TIF Note, the TIF Note will be a valid and binding special limited obligation of the Authority, subject to the terms and conditions thereof, payable from the sources provided therefor in the TIF Note and the Development Agreement.

5.2 The City and Authority each has the corporate power and authority to perform their respective obligations under the TIF Note and Development Agreement.

5.3 That the City and the Authority will deposit all payments due under the TIF Note, and any optional prepayments, either in whole or in part, with Lender at the address set forth herein, and upon such deposit its obligation under the TIF Note shall be deemed discharged to the extent paid to Lender.

5.4 That the City and the Authority hereby consent to the execution and delivery of the Assignment and associated documents and to the liens and security interest created therein, as security for the Loan.

6. The Development Agreement has not been further amended or modified in any respect and it, together with all exhibits thereto or other documents referred to in the Development Agreement or in the exhibits thereto, represent the entire agreement of the parties as to all of the subject matters dealt with therein. The Development Agreement is in full force and effect, and the Authority has given no notice of any default thereunder. As of the date hereof, no payments have been made on the TIF Note. To the City's and Authority's knowledge, Borrower has performed all of its obligations under the Development Agreement which are required to be performed as of the date hereof. To the City's and Authority's actual knowledge, Borrower is not in default in the performance or observance of any of Borrower's covenants or agreements under the Development Agreement or any other agreement with the City or Authority as of the date hereof and neither the City or Authority has actual knowledge of any current defenses, setoffs, or counterclaims against or with respect to the TIF Note or the indebtedness evidenced thereby.

7. Until termination of the Assignment, the City and Authority agree to give Lender a copy of each notice or demand given to Borrower with respect to any breach or default by Borrower in its obligations under the Development Agreement at the same time such notice, demand or other communication is given to Borrower, addressed to Lender at:

North American Banking Company  
4999 France Avenue South, Suite 120  
Minneapolis, MN 55410  
Attn: Joe Arends

8. The City and Authority each agree (a) to accept the cure by Lender of any monetary default by Borrower under the Development Agreement within ten (10) days after the later of (i) delivery of notice of such default to Lender pursuant to Section 7 and the Development Agreement, and (ii) the expiration of the cure periods afforded to Borrower in the Development Agreement; and (b) to accept the cure by Lender of any non-monetary default by Borrower under the Development Agreement within thirty (30) days after the later of (i) delivery of notice of such default to Lender pursuant to Section 7 and the Development Agreement, and (ii) the expiration of the cure periods afforded to Borrower in the Development Agreement, but acknowledges that Lender shall have no obligation to cure any such monetary or non-monetary default. No commencement of any performance by Lender or any obligation of Borrower required under the Development Agreement shall obligate Lender to continue or complete such performance or otherwise perform any of Borrower's obligations under the Development Agreement.

9. The City and Authority each acknowledge and agree that neither Lender, nor its successors or assigns shall be obligated to construct or complete the Project.

10. The City and Authority each agree to provide Lender with notice of any modifications or amendment to be made to the Development Agreement. The Borrower shall obtain Lender's approval for all modifications or amendments to the Development Agreement.

[Signature Pages Follow.]

IN WITNESS WHEREOF, the undersigned officers of the City and officers of the Authority have caused this Consent and Estoppel Certificate to be signed by its duly authorized representatives as of the date and year set forth above.

**Economic Development Authority in and for the City of Minnetonka, Minnesota**

By: \_\_\_\_\_  
Brad Wiersum  
Its: President

By: \_\_\_\_\_  
Geraldyn Barone  
Its: Executive Director

**The City of Minnetonka, Minnesota**

By: \_\_\_\_\_  
Brad Wiersum  
Its: Mayor

By: \_\_\_\_\_  
Geraldyn Barone  
Its: City Manager

**EDA Resolution No. 2020-\_\_\_\_\_**

**Resolution approving the execution of an assignment of tax increment financing note and subordination agreement and a consent and estoppel certificate**

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

Section 1. Background.

- 1.01. The Authority was created pursuant to Minnesota Statutes, Sections 469.090 through 469.1082, as amended, and was authorized to transact business and exercise its powers by a resolution adopted by the City Council of the City of Minnetonka, Minnesota (the "City").
- 1.02. The Authority and the City have undertaken a program to promote economic development and job opportunities, promote the development and redevelopment of land which is underutilized within the City, and facilitate the development of affordable housing.
- 1.03. The Authority, the City, and Shady Oak Crossing LLC, a Minnesota limited liability company (the "Developer"), entered into an Amended and Restated Contract for Private Development, dated July 13, 2020 (the "Contract"), pursuant to which the Developer agreed to construct an approximately 75-unit rental housing facility on certain property located in the City (the "Minimum Improvements") and the Authority agreed to issue a tax increment revenue note (the "TIF Note") in the maximum principal amount of \$1,900,000 to reimburse the Developer for land acquisition costs and other costs related to the Minimum Improvements that are reimbursable from tax increment revenue.
- 1.04. In order to finance a portion of the costs of the Minimum Improvements, the Developer is receiving a loan (the "Loan") from North American Banking Company, a Minnesota corporation (the "Lender"), in the maximum principal amount of \$14,300,000 pursuant to a Construction Loan Agreement (the "Loan Agreement") between the Developer and the Lender. The Developer will deliver a Mortgage (the "Mortgage") to the Lender to secure the Developer's repayment obligations under the Loan Agreement.
- 1.05. As a condition to providing the Loan to the Developer, the Lender requires that the Developer assign its rights to and interests in the TIF Note, if and when it is delivered by the Authority, to the Lender and that the Authority and the City subordinate certain of their rights to and interests in the Contract to the Lender under the Loan Agreement, the Mortgage, and the other documents to be executed in connection with the Loan (collectively, the "Loan Documents").
- 1.06. There have been presented before the Board (i) a form of Assignment of Tax Increment Financing Note and Subordination Agreement (the "Assignment and Subordination Agreement") to be executed by the Developer, the Authority, the City, and the Lender, which sets forth the terms of the Developer's assignment of its rights and interest in the TIF Note, if and when it is delivered by the Authority,

to the Lender and the subordination of the Authority's and the City's rights to and interests in the Contract to the Lender under the Loan Documents; and (ii) a form of Consent and Estoppel Certificate (the "Consent and Estoppel Certificate") to be executed by the Authority and the City in favor of the Lender.

Section 2. Board Action.

- 2.01. The Assignment and Subordination Agreement and the Consent and Estoppel Certificate are approved in substantially the forms 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 Assignment and Subordination Agreement and the Consent and Estoppel Certificate will be conclusive evidence of their approval.
- 2.02. The President and Executive Director are authorized and directed to execute the Assignment and Subordination Agreement, the Consent and Estoppel Certificate, 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 Aug. 10, 2020.

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Brad Wiersum, President

Attest:

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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 Aug. 10, 2020.

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Becky Koosman, Secretary