**EDA Agenda Item #5**
**Meeting of July 23, 2018**

**Brief Description** Items concerning a multi-family residential development by Dominium, at 11001 Bren Road East.

**Recommendation** Recommend the Economic Development Authority adopt:

1) Resolution Establishing the Dominium Tax Increment Financing District within the Opus Redevelopment Project by adopting a redevelopment plan, establishing a tax increment financing district and adopting a tax increment financing plan.

2) Resolutions approving the contracts for private redevelopment between the Economic Development Authority in and for the City of Minnetonka, the City of Minnetonka, and Minnetonka Leased Housing Associates II and III, LLLP for Senior and Workforce Housing and issuance of a tax increment revenue notes.

## Request

The Economic Development Authority (EDA) is required to be a party to the documents and approvals contained in the attachments by adopting the resolutions approving the establishment of the Tax Increment Financing (TIF) District. Additionally, the EDA must approve the Contracts for Private Development and issue the tax increment revenue notes for the properties located at 11001 Bren Road East. These actions are required in addition to the previous city council actions.

## Background

Dominium is proposing to redevelop the existing commercial property at 11001 Bren Road East. The plan includes redevelopment of the existing office building to construct a 6-story, 262-unit independent senior building and 220-units of affordable workforce rental housing within three 4 to 5-story buildings on a 9.8 acre site. The proposed 482 units would provide a housing density of 49 units per acre. (The original concept plan indicated 475 units.)

The plan includes a mix of workforce and senior housing units ranging from one to three bedrooms. The developer is proposing that all units would consist entirely of affordable workforce and senior tenants (55+) earning up to 60% AMI (Area Median Income) (approximately $56,580 for a household of four or $45,300 for a two person household). The rents are structured to be capped at approximately 30% of the income level and are estimated to range from $1,062 for a one-bedroom, $1,273 for a two-bedroom, and $1,471 for a three-bedroom unit (before utility allowances).

**Prior Meeting Review and Summary**

***EDAC (Economic Development Advisory Commission) Subcommittee Review – October 25, 2017***

On October 25, EDAC Commissioners Isaacson, Yunker, and Jacobsohn met as a subcommittee to review the request using Council Policy 2.14, the council's policy on TIF Financing as a guide for the assistance request. The EDAC subcommittee expressed that the request for TIF assistance with 2% inflation was reasonable and concluded that it met the following criteria:

- The project is compatible with the Comprehensive Guide Plan as a proposed mixed-use development;
- The project would not occur "but for" the assistance;
- The project is in a high priority "village area" as identified in the Comprehensive Guide Plan;
    - Project is located in Opus and is a high priority "village area"
- The project includes affordable housing units, which meets the city's affordable housing standards;
    - 100% of units with rents at 60% AMI.
- The proposed project amenities will benefit a larger area than identified in the development; and
- The project will maximize and leverage the use of other financial resources.
    - Developer is proposing a mix of financing sources.

In addition, the EDAC subcommittee provided feedback on items for the EDAC to consider at the November 27 meeting. The EDAC subcommittee requested the following additional information:

- The commissioners asked staff to prepare an analysis on the historical context of property value inflation on a sample of Minnetonka multifamily projects. Staff analyzed the historical property valuation on Belgrove (1988-2017), Boulevard Gardens (1998-2017), and Claremont (1988-2017). The Belgrove and Claremont both experienced a 14% cumulative increase in valuation while Boulevard Gardens experienced an 11% cumulative increase in valuation. Both the Belgrove and Claremont apartments experienced short timeframes with a decline in valuation year over year. However, the cumulative individual valuations for the three properties is positive.

- The commissioners requested information on the existing and proposed housing developments in OPUS. The attached map includes an overview of housing in Opus. There are currently 1,030 units of existing housing (red), 332 units under construction (yellow), and 700 proposed (blue). The Southwest LRT Housing Gaps Analysis recommended the following housing production in Opus in 2015-2030.
    - Rental
        - 120 units at 80-100% AMI
        - 340 units at 100%+ AMI
    - Ownership
        - 70 units entry-level
        - 70 units mid-market

- Total of 600 rental and ownership units

In addition, Minnetonka has currently met 50% (122 units) of the city's 2011-2020 Livable Communities Affordable housing goals for production of new affordable (rental and ownership) and 136% (509 units) of the new lifecycle housing as of 2017.

Lastly, recent housing data prepared for the 2040 comprehensive plan by Marquette Advisor's indicated that Minnetonka lost approximately 2,200 units affordable to households earning <80% of the AMI between 2010 and 2015. It is anticipated that this trend will continue on naturally occurring affordable housing (NOAH) properties as rents continue to rise, vacancy rates remain historically low, and new households enter the market.

***EDAC Review – November 27, 2017***

The EDAC reviewed the TIF financing request at the November 27 meeting. The EDAC generally concurred that the request for the 26-year TIF Housing District, with the inclusion of two-percent inflation, met the requirements of the TIF policy and that the request was consistent with the city's treatment of similar projects. The commissioners did concur that the remaining $880,000 gap should be Dominium's responsibility to solve. The attached unapproved minutes from the November 27, 2017 meeting cover the commissioner's feedback in greater detail.

***City Council Review - December 4, 2017***

On Dec. 4, 2017, the city council discussed the initial concept plan and financing inquiry from Dominium. The discussion focused on the density, quality of construction, and height of the project, and the existing and proposed housing in Opus. The council expressed initial concern regarding the amount of affordable units in one project. However, the council members agreed that additional senior and workforce affordable housing would assist Minnetonka in meeting current and future housing demand. The council requested that staff research future trail, park planning, and retail opportunities in the area. Lastly, the council expressed the financial assistance request was reasonable for the size of the project and would further review the financial request as the project progresses.

***City Council Review of Bond Financing and MHFA Request - April 16, 2018***

- On Dec. 18, 2017, the council provided preliminary approval for the issuance of tax-exempt multifamily housing revenue bonds up to $120 Million to finance both the workforce units and the senior units. On Jan 9. 2018, the developer was awarded the bonding allocation from the state in the amount of $65 million (which provided half of the financing for the project as anticipated) to finance the workforce and senior housing. The developer returned a portion of the workforce bond allocation and applied for a new bond allocation for the senior units in May 2018.

- On April 16, the developer requested that the city call a public hearing on the proposed tax-exempt multifamily revenue bonds in the amount of $36,500,000 for the senior housing. The developer also requested that the city issue a multifamily housing revenue note in the amount of $30,500,000 to provide short-term financing for the workforce housing (previously approved in December 2017). ). The council approved the issuance of the multifamily revenue bonds and issuance of the note at the April 16 meeting. Staff anticipates that bonds will be issued as permanent financing for the workforce project within one year (the bonds will refund the note and finance the remaining costs of the

project). As part of this request, the city also adopted a housing program for workforce housing which is a requirement of the Federal Housing Act.

- On April 16, the developer also requested that the city council adopt supporting applications to Minnesota Housing Finance Agency (MHFA) for 4% Low Income Housing Tax Credits (LIHTC) in the amount of $35,623,000 to assist with financing both the workforce and senior housing. The council also approved the request to support the tax credit applications on April 16. The city's finance director, Merrill King, recently reviewed the 42m(finance director approval of tax credit request) letters which confirm the demonstrated need for 4% low income housing tax credits.

***EDAC Feedback on the Contract for Private Development – April 19, 2018***

Ms. Eddington drafted the attached Contracts for Private Development that were developed based upon the requests for city assistance by the developer with feedback from the EDAC and city council. The workforce and senior contracts outline the major points associated with the TIF request as well as other expectations for the development.

TIF Assistance

- Commissioners inquired about the funding gap of approximately $900,000 that was indicated at the review on November 27, 2017. Staff confirmed that the additional gap (above the TIF request) was no longer an issue as the developer was able to secure additional sources to address the shortfall.

Declaration of Restrictive Covenants

- Commissioners inquired if the developer would be required to accept Section 8 vouchers/certificates.
    - Staff confirmed that language in the contracts specifically prohibits the developer from adopting policies prohibiting the acceptance of to tenants with Section 8 housing vouchers/certificates.
    - Staff noted that other tax credit projects in the city have the same stipulation.
- Commissioners asked if both the senior and workforce housing would fall under the same income requirements.
    - The developer confirmed that all units in the senior and workforce housing would have the same 60% AMI Requirements.
- The city's EDA (Economic Development Authority) attorney, Julie Eddington of Kennedy and Graven, confirmed that the city typically requires 30 years of affordability even if the TIF district term is shorter. The proposed TIF district for Dominium is 26 years.

Events of Default

- Commissioners inquired about the status of the project if either the workforce housing or senior housing components were not constructed.
    - Ms. Eddington noted that language was added under the Events of Default section of each agreement to ensure both the workforce and senior are constructed. If a default were to occur, the EDA could suspend TIF payments or terminate the agreement.

Commissioners unanimously recommended that the city council approve the contracts for private development. Commissioner Johnson was absent from the meeting.

**Final Contracts for Private Development Overview**

Ms. Eddington drafted the attached Contracts for Private Development that were developed based upon the requests for city assistance by the developer with feedback from the EDAC and city council. The contracts outline the major points associated with the TIF request as well as other expectations for the development. Given that the workforce housing "Preserve at Shady Oak" and the senior housing "Legends of Minnetonka" will have separate ownership entities, each project will have its own contract for private development.

**Highlights of the Contracts for Private Development are listed below:**

**Declaration of Restrictive Covenants**

- Given that the developer is requesting TIF assistance and utilizing tax credit financing through the MHFA, there are certain income and rent restriction requirements the developer must follow. The developer is proposing to make all 482 units affordable to those at 60% AMI or less. In addition, rent limits on those affordable may not exceed 30% of the income calculated for that unit. Additionally, it has historically been the city's position to require a minimum of 30 years of affordability.

    - Following the EDAC review of the contract on April 19, the developer requested adding a provision for "income averaging" as an option for determining household income of the overall mix of units. The provision allows the developer to rent to households with incomes up to 80% AMI as long as the total income calculation for all units in the project does not exceed 60% AMI. Recently, federal legislation introduced this option for the low-income housing tax credit program but MHFA did not include this provision for projects applying for tax credits in the 2018/2019 round. The developer may choose to use the income-averaging option if it is allowed in the future.

- Rents are anticipated to be $1,062 -$ 1,471 per month (depending on the size of the unit). At 60% AMI, the maximum estimated annual income allowable for one person is approximately $39,600 ($19.03/hourly). For a four-person household, the estimated annual income allowable is approximately $56,580 ($27.20/hourly). In similar developments in Minnetonka, residents indicated employment in retail, administrative, and health professional careers.

- The declaration also requires the developer to accept tenants who are recipients of Section 8 certificates/vouchers during the 30-year affordability period.

- The developer must provide the city with a 90-day notification in the event of a sale.

- The property management covenant outlines steps to be taken by management if a tenant or guest is disorderly, or engaged in illegal activities. If a third violation occurs within a continuous 12 months after the first violation, the property manager shall terminate the tenancy of occupants in that unit.

**TIF and Other Funding Sources**

The developer has asked the city to consider a "pay-as-you-go" TIF Note in the amount of $7.809 million to assist with financing for the project. The TIF assistance would be split between the workforce housing ($3.648 million) and the senior housing ($4.161 million), each noted in a separate contract for private development. Mr. Lehnhoff with Ehlers, the city's financial consultant, 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 $7.809 million in TIF, structured as a pay-as-you-go-TIF note over a maximum term of 26 years, including a 2% inflationary factor.
    - Interest rate on the TIF Note will be set at the lesser of 5.15% or the developer's actual interest rate.
    - The developer increased the first mortgage to accommodate the reduction in TIF assistance.

The assistance requested from the developer would result in a per unit cost of approximately $540 per year over a 30 year affordability period based on total assistance of $7.809 million. The per unit assistance on previously approved housing redevelopment projects ranges from $377 per unit/per year to $4,777 per unit/per year.

The EDAC reviewed the TIF financing request at the November 27 meeting and the Contracts for Private Development at the April 19 meeting. The EDAC generally concurred that the request for the 26-year TIF Housing District, with the inclusion of two-percent inflation, met the requirements of the TIF policy and "but for" test and that the request was consistent with the city's treatment of similar projects.

**Other Grants**

- The developer is in the process of applying for grant funding through the Metropolitan Council's Livable Communities Demonstration Account (LCDA) and is requesting that the council approve the attached resolution authorizing an application requesting up to $2M to assist with the solar energy system, stormwater management, demolition, and site preparation. The developer applied for funding through the Hennepin County TOD (Transit Oriented Development) grant program in 2018 but was not awarded funding.

**Minimum Improvements**

- 262 affordable apartment units for seniors, 55 years of age or older (Legends of Minnetonka), with at least 262 parking spaces.
- 220 affordable workforce units (Preserve at Shady Oak), with at least 220 parking spaces.

**Commencement and Completion of Construction**

- Construction will commence by March 1, 2019
- Construction will be completed by December 31, 2020

**Site Improvements Construction Addendum**

- Site improvements required under the agreement including:
    - Relocation of public sewer line
    - Dynamic predication crossing safety improvements
    - Pedestrian underpass beneath Bren Rd

- Other standard site improvements
- There is a notation in the contract for a future construction addendum. The addendum would need to be approved by the city council and would further define public infrastructure projects and the costs or credits relating to the project.

**Minimum Assessment Agreement**

- The developer agrees to not cause a reduction on the Minimum Market Value assessed in respect to the minimum improvements as of January 2, 2020 for taxes payable beginning in 2021 through the repayment of the TIF note.
  - Minimum Market Value of $47,160,000 for Legends of Minnetonka
  - Minimum Market Value of $39,600,000 for Preserve at Shady Oak

**Events of Default**

- If the developer fails to construct the senior housing component of the project, the developer would be in default of the workforce housing agreement. Similar language was added to the contract for the senior housing component, noting default if the workforce housing is not constructed.

Both Ms. Eddington and Mr. Lehnhoff will be available at the EDA meeting on July 23, 2018 to answer any questions regarding the Contracts for Private Development, TIF Documents, and to answer any additional questions related to the financial request.

**Next Steps**

If the two contracts for private development are approved on July 23, 2018, the developer plans to proceed with the financing for both of the projects. The tentative timeline for financing the two developments is as follows:

- Hold public hearing for refunding workforce housing note on August 27, 2018
- Hold public hearing for senior housing bonds on August 27, 2018
- Closing on senior housing bonds on or before September 15, 2018
- Closing on workforce housing bonds on or before October 31, 2018

**Staff Recommendation**

Staff recommends that the EDA adopt the following related to the Bren Road Development, a multi-family residential development by Dominium, at 11001 Bren Road East; and authorize the EDA president and Executive Director of the EDA to approve non-substantive changes to the documents:

1. Resolution Establishing the Dominium Tax Increment Financing District within the Opus Redevelopment Project by adopting a redevelopment plan, establishing a tax increment financing district and adopting a tax increment financing plan.

2. Resolutions approving contracts for private redevelopment between the Economic Development Authority in and for the City of Minnetonka, the City of Minnetonka, and Minnetonka Leased Housing Associates II and III, LLLP for Senior and Workforce Housing and issuance of a tax increment revenue notes.

Submitted through:
Julie Wischnack, AICP, Community Development Director
Merrill King, Finance Director

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

**Supplemental Information:**

Memo from James Lehnhoff – Ehlers

Memo from Julie Eddington – Kennedy & Graven

TIF Policy 2.18

Opus Area Housing Map

Affordability Chart

Contracts for Private Development

Tax Increment Financing District - Overview

Tax Increment Financing Plan

EDAC Meeting- April 19, 2018

City Council – April 16, 2018

City Council Meeting – December 18, 2017

City Council Meeting– December 4, 2017

EDAC Meeting – November 27, 2017

**EDA Resolution No. 2018-_____**

**Resolution adopting a redevelopment plan for the Opus Redevelopment Project, establishing the Dominium Housing Tax Increment Financing District therein, and adopting a tax increment financing plan therefor**

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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. It has been proposed by the Board and the City of Minnetonka (the "City") that the Authority adopt a Redevelopment Plan (the "Redevelopment Plan") for the Opus Redevelopment Project (the "Project Area") and establish the Dominium Housing Tax Increment Financing District (the "District") and adopt a Tax Increment Financing Plan (the "TIF Plan") therefor (the Redevelopment Plan and the TIF Plan are referred to collectively herein as the "Plans"), all pursuant to and in conformity with applicable law, including Minnesota Statutes, Sections 469.090 to 469.1082, and Sections 469.174 to 469.1794, inclusive, as amended (the "Act"), all as reflected in the Plans and presented for the Board's consideration.

1.02. The Authority has investigated the facts relating to the Plans and has caused the Plans to be prepared.

1.03. The Authority has performed all actions required by law to be performed prior to the adoption of the Plans. The Authority has also requested the City Planning Commission to provide for review of and written comment on Plans and that the Council schedule a public hearing on the Plans upon published notice as required by law.

Section 2. Approval of Redevelopment Plan.

2.01. The Authority approves the Redevelopment Plan, and specifically finds that: (a) the land within the Redevelopment Project would not be available for redevelopment without the financial aid to be sought under this Redevelopment Plan; (b) the Redevelopment Plan will afford maximum opportunity, consistent with the needs of the City as a whole, for the development of the Redevelopment Project by private enterprise; and (c) that the Redevelopment Plan, as modified, conforms to the general plans for the development of the City as a whole.

2.02. The Authority further specifically finds that the proposed redevelopment described in the Redevelopment Plan would not occur solely through private investment within the reasonably foreseeable future and therefore the use of tax increment financing is deemed necessary, that the Redevelopment Plan conforms to the general plans for the development or redevelopment of the City as a whole; and that the Redevelopment Plan will afford maximum opportunity consistent with the sound needs of the City as a whole, for the development or redevelopment of the Redevelopment Project by private enterprise.

Section 3. Approval of TIF Plan.

3.01. The Authority hereby finds that the District is in the public interest and is a "housing district" under Minnesota Statutes, Section 469.174, Subd. 11, and finds that the adoption of the proposed Plans conform in all respects to the requirements of the Act and will help fulfill a need to develop an area of the State of Minnesota for affordable and high quality housing.

3.02. The Authority further finds that the Plans will afford maximum opportunity, consistent with the sound needs for the City as a whole, for the development or redevelopment of the Project Area by private enterprise in that the intent is to provide only that public assistance necessary to make the private developments financially feasible.

3.03. The reasons and facts supporting the findings in this resolution are described in the Plans.

3.04. The Authority elects to calculate fiscal disparities for the District in accordance with Minnesota Statutes, Section 469.177, Subd. 3, clause b, which means the fiscal disparities contribution would be taken from inside the District. It is not anticipated that the District will contain commercial/industrial property. As a result, there should be no impact due to the fiscal disparities provision on the District.

3.05. The Plans, as presented to the Authority on this date, are hereby approved, established and adopted and shall be placed on file in the office of the Executive Director of the Authority.

3.06. The staff, the Authority's advisors and legal counsel are authorized and directed to proceed with the implementation of the Plans and for this purpose to negotiate, draft, prepare and present to this Board for its consideration all further plans, resolutions, documents and contracts necessary for this purpose. Approval of the Plans does not constitute approval of any project or a Development Agreement with any developer.

3.07. The Executive Director of the Authority is authorized and directed to forward a copy of the Plans to the Minnesota Department of Revenue and the Office of the State Auditor pursuant to Minnesota Statutes 469.175, Subd. 4a.

3.08. The Executive Director of the Authority is authorized and directed to forward a copy of the Plans to the Hennepin County Auditor and request that the Auditor certify the original tax capacity of the District as described in the Plans, all in accordance with Minnesota Statutes 469.177.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota on July 23, 2018.

Brad Wiersum, President

ATTEST:

David E. Maeda, Secretary

**Action on this resolution:**

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, at a duly authorized meeting held on July 23, 2018.

Secretary

**EDA Resolution No. 2018-_____**

**Resolution approving contract for private development with Minnetonka Leased Housing Associates III, LLLP and the issuance of a tax increment revenue note**

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

Section 1. Background.

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

1.02. The Authority and the City have undertaken a program to promote economic development and job opportunities, promote the development and redevelopment of land which is underutilized within the City, and facilitate the development of affordable housing, and in this connection created a redevelopment project known as the Opus Redevelopment Project (the "Redevelopment Project") in the City, pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended.

1.03. The City and the Authority have established within the Redevelopment Project the Dominium Housing Tax Increment Financing District, a housing district (the "TIF District"), and have adopted a financing plan for the TIF District in order to facilitate development of certain property in the Redevelopment Project and promote the development of affordable housing within the City, all pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended.

1.04. Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the "Developer"), proposes to acquire certain property (the "Development Property") within the TIF District and develop approximately 262 affordable apartment units for seniors, to be located at or about 11001 Bren Road East in the City, with one hundred percent (100%) of the apartment units made affordable to seniors at or below sixty percent (60%) of the area median income (the "Minimum Improvements").

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

1.06. Pursuant to the Agreement, the Authority has proposed to issue a Tax Increment Revenue Note (the "TIF Note") in the maximum principal amount of $4,161,000, to reimburse the Developer for certain qualified costs related to the Minimum Improvements (the "Qualified Public Development Costs").

Section 2. The Agreement.

2.01. The Board approves the Agreement in substantially the form on file in City Hall. The President and Executive Director are hereby authorized and directed to execute and

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

Section 3. The TIF Note.

3.01. The Authority hereby approves and authorizes the President and Executive Director to execute the TIF Note. The Authority authorizes the Executive Director to issue the TIF Note upon the satisfaction of the conditions to issuance of the TIF Note set forth in Section 3.4 of the Agreement.

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

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

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

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

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

Payment Date and until such Payment Date.

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

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

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

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

(g) In case any Note shall become mutilated or be lost, stolen, or destroyed, the Registrar shall deliver a new TIF Note of like amount, maturity dates and tenor in exchange and substitution for and upon cancellation of such mutilated Note or in lieu of and in substitution for such TIF Note lost, stolen, or destroyed, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case the TIF Note lost, stolen, or destroyed, upon filing with the Registrar of evidence satisfactory to it that such TIF Note was lost, stolen, or destroyed, and of the ownership thereof, and upon furnishing to the Registrar of an appropriate bond or indemnity in form, substance, and amount satisfactory to it, in which both the Authority and the Registrar shall be named as obligees. The TIF Note so surrendered to the Registrar shall be cancelled by it and evidence of such cancellation shall be given to the Authority. If the mutilated, lost, stolen, or destroyed TIF Note has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue a new TIF Note prior to payment.

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

Section 4. Security Provisions of the TIF Note.

4.01. The Authority hereby pledges to the payment of the principal of the TIF Note all

Available Tax Increment (as defined in the Agreement). Available Tax Increment shall be applied to payment of the principal of and interest on the TIF Note in accordance with the terms of the form of TIF Note.

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

Section 5. Miscellaneous.

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

5.02. This resolution shall be effective upon full execution of the Agreement.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota on July 23, 2018.

_____
Brad Wiersum, President

ATTEST:

_____
David E. Maeda, Secretary

**Action on this resolution:**

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, at a duly authorized meeting held on July 23, 2018.

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Secretary

**EDA Resolution No. 2018-_____**

**Resolution approving contract for private development with Minnetonka Leased Housing Associates II, LLLP and the issuance of a tax increment revenue note**

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

Section 1. Background.

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

1.02. The Authority and the City have undertaken a program to promote economic development and job opportunities, promote the development and redevelopment of land which is underutilized within the City, and facilitate the development of affordable housing, and in this connection created a redevelopment project known as the Opus Redevelopment Project (the "Redevelopment Project") in the City, pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended.

1.03. The City and the Authority have established within the Redevelopment Project the Dominium Housing Tax Increment Financing District, a housing district (the "TIF District"), and have adopted a financing plan for the TIF District in order to facilitate development of certain property in the Redevelopment Project and promote the development of affordable housing within the City, all pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended.

1.04. Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the "Developer"), proposes to acquire certain property (the "Development Property") within the TIF District and develop approximately 220 affordable multifamily housing apartment units, to be located at or about 11001 Bren Road East in the City, with one hundred percent (100%) of the apartment units made affordable to families at or below sixty percent (60%) of the area median income (the "Minimum Improvements").

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

1.06. Pursuant to the Agreement, the Authority has proposed to issue a Tax Increment Revenue Note (the "TIF Note") in the maximum principal amount of $3,648,000, to reimburse the Developer for certain qualified costs related to the Minimum Improvements (the "Qualified Public Development Costs").

Section 2. The Agreement.

2.01. The Board approves the Agreement in substantially the form on file in City Hall. The President and Executive Director are hereby authorized and directed to execute and

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

Section 3. The TIF Note.

3.01. The Authority hereby approves and authorizes the President and Executive Director to execute the TIF Note. The Authority authorizes the Executive Director to issue the TIF Note upon the satisfaction of the conditions to issuance of the TIF Note set forth in Section 3.4 of the Agreement.

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

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

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

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

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

for registration of any transfer after the fifteenth day of the month preceding each Payment Date and until such Payment Date.

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

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

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

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

(g) In case any Note shall become mutilated or be lost, stolen, or destroyed, the Registrar shall deliver a new TIF Note of like amount, maturity dates and tenor in exchange and substitution for and upon cancellation of such mutilated Note or in lieu of and in substitution for such TIF Note lost, stolen, or destroyed, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case the TIF Note lost, stolen, or destroyed, upon filing with the Registrar of evidence satisfactory to it that such TIF Note was lost, stolen, or destroyed, and of the ownership thereof, and upon furnishing to the Registrar of an appropriate bond or indemnity in form, substance, and amount satisfactory to it, in which both the Authority and the Registrar shall be named as obligees. The TIF Note so surrendered to the Registrar shall be cancelled by it and evidence of such cancellation shall be given to the Authority. If the mutilated, lost, stolen, or destroyed TIF Note has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue a new TIF Note prior to payment.

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

Section 4. Security Provisions of the TIF Note.

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

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

Section 5. Miscellaneous.

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

5.02. This resolution shall be effective upon full execution of the Agreement.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota on July 23, 2018.

_____

Brad Wiersum, President

ATTEST:

_____

David E. Maeda, Secretary

**Action on this resolution:**

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, at a duly authorized meeting held on July 23, 2018.

_____
Secretary

# Memo

**To:** Alisha Gray, Economic Development and Housing Manager

**From:** James Lehnhoff - Ehlers

**Date:** April 6, 2018

**Subject:** Dominium Project Proposal Review: Digi Site Redevelopment

In November 2017, the City of Minnetonka requested that Ehlers review the development pro forma and Tax Increment Financing (TIF) request from Dominium for their proposal to construct approximately 475 affordable apartments at 11001 Bren Road East. The original redevelopment concept included demolishing the existing office building and constructing 210 general occupancy affordable apartments and 265 age-restricted affordable apartments. To help close a nearly $8.5 million project financing gap, the Economic Development Advisory Commission ("EDAC") and the City Council subsequently considered a $7.6 million TIF request from Dominium (includes a 2% inflationary factor). The remaining gap amount was to be addressed through a combination of project cost reductions and other funding sources.

Since last November, Dominium has conducted additional design work, revised the project budget, and submitted an updated development pro forma for analysis. The revised project proposes a total of 482 apartments—an increase of seven apartments. The "Legends of Minnetonka" includes 262 age-restricted affordable apartments and the "Preserve at Shady Oak" includes 220 general occupancy affordable apartments. As before, all the apartments would be affordable to households at or below 60% of area median income (AMI). The 2017 income limits as published by HUD:

| Income Limit by Household Size | |
|---|---|
| Household Size | 60% AMI Income Limit |
| 1 | $37,980 |
| 2 | $43,440 |
| 3 | $48,840 |
| 4 | $54,240 |

*HUD has not yet released the 2018 updates*

The project must comply with the statutory required income restrictions for the term of the Housing TIF District (statutes do not require rent restrictions). However, the City has extended the compliance period to 30 years and required rent restrictions in prior projects.

**Analysis**

We have reviewed the updated development pro forma based on general industry standards for construction, land, and project costs; affordable rental rates and operating



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expenses; developer fees; available funding sources; underwriting criteria; and, project cash flow.

While the total development costs ("TDC") increased from approximately $240,000 per unit to $274,000 per unit, the development pro forma assumptions are generally reasonable and within industry standards in the current market. The cost increase is primarily due to three factors: 1) construction costs, 2) financing costs, and 3) the developer/contractor fee. In addition to construction costs generally increasing in this market, more detailed designs and design changes contributed to a majority of the overall cost increase (i.e. a large retaining wall to address grade changes, shallow groundwater issues, additional stormwater management, and a 5-6 story building instead of the original 4-story building).

The financing costs increased due to higher interest rates and a need to "park" their bond allocation, which adds to the carrying costs. Finally, while the developer/contractor fee increased from the prior analysis, the increase was entirely offset by an even larger deferred fee to help reduce the gap (this is a financing technique used in LIHTC projects that can result in additional tax credit proceeds that actually reduces the overall financing gap). The developer/contractor fees still conform to Minnesota Housing underwriting requirements. The updated summary sources and uses are as follows:

| Revised Sources and Uses | | | |
|---|---|---|---|
| **Sources** | **Amount** | **Per Unit** | **% of Cost** |
| First Mortgage | $69,780,000 | $144,772 | 53% |
| TIF Note Request (26 years with 2% Inflation) | $7,809,000 | $16,201 | 6% |
| 4% LIHTC | $35,623,000 | $73,907 | 27% |
| Met Council/Hennepin County Grants | $1,500,000 | $3,112 | 1% |
| Deferred Developer/Contractor Fee (83% of total fee) | $14,494,976 | $30,073 | 11% |
| Cash from Operations | $3,071,523 | $6,372 | 2% |
| ***Total*** | $132,278,499 | $274,437 | 100% |
| **Uses** | **Amount** | **Per Unit** | **% of Cost** |
| Acquisition Costs | $10,000,000 | $20,747 | 8% |
| Construction Costs | $87,689,878 | $181,929 | 66% |
| Professional Services | $4,622,578 | $9,590 | 3% |
| Financing Costs | $10,684,951 | $22,168 | 8% |
| Developer/Contractor Fee | $17,439,080 | $36,181 | 13% |
| Reserves | $1,842,012 | $3,822 | 1% |
| ***Total*** | $132,278,499 | $274,437 | 100% |

Dominium has maximized the first mortgage and 4% low-income housing tax credit equity. They expect to apply for $1,500,000 in additional public resources from such entities as Hennepin County and the Metropolitan Council. Finally, Dominium will use future project cash flow from operations for the remaining project costs.

The TIF Note size increased from approximately $7.6 million in the prior analysis to $7.8 million in this analysis because of the additional units and applying the final 2018 property tax rates. However, this also means the property is paying more in annual property taxes than previously assumed. Other than this adjustment to the tax increment calculation, the project cost increases are addressed by Dominium through other sources.

**Recommendation**

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

TIF assistance would be provided on a "pay-as-you-go" basis in the amount of $7,809,000 over a maximum 26-year term. As discussed at the November meeting, the TIF assistance includes a 2% inflationary factor. The interest rate on the TIF Note will be set at the lesser of 5.15% or the Developer's actual interest rate.

With "pay-as-you-go" TIF assistance, the City does not provide any up-front funding. Instead, the City enters into an agreement to provide tax increment payments that are generated solely from a portion of the development's actual increased property taxes for up to 26 years. The applicant uses those future tax increment payments to obtain additional financing from a private lender. If the tax increment is insufficient to pay the $7,809,000 TIF note in 26 years, the City does not make up the shortfall. Conversely, if the tax increment provides the $7,809,000 before the end of the 26-year term, the City may end the TIF district early.

Please contact me at 651-697-8552 with any questions.

Kennedy & Graven CHARTERED

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July 16, 2018

Alisha Gray
Economic Development and Housing Manager
City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, MN 55345-1502

Re: Resolutions approving two contracts for private development related to a workforce housing development and senior housing development in the City of Minnetonka

Dear Alisha,

Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership (the "Workforce Housing Developer"), has proposed a development consisting of approximately 220 affordable multifamily housing apartment units, to be located at or about 11001 Bren Road East in the City of Minnetonka (the "Workforce Housing Development"). Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the "Senior Housing Developer"), has proposed a development consisting of approximately 262 affordable apartments for seniors to be located at or about 11001 Bren Road East in the City of Minnetonka (the "Senior Housing Development"). One hundred percent (100%) of the apartment units in both developments will be affordable to families or seniors (as applicable) at or below sixty percent (60%) of the area median income

The Workforce Housing Developer and the Senior Housing Developer (together, the "Developers") have requested that the two developments be treated as separate projects for financing purposes. For this reason, we have drafted a contract for private development for each of the two developments. Attached please find resolutions for consideration by both the City Council and Board of the Economic Development Authority in and for the City of Minnetonka (the "EDA") to approve the two contracts for private development.

If the two contracts for private development are approved, the Developers plan to proceed with the financings for both of the projects. The tentative timeline for financing the two developments is as follows:

- Hold public hearing for refunding workforce housing Note on August 27, 2018
- Hold public hearing for senior housing bonds on August 27, 2018
- Closing on senior housing bonds on or before September 15, 2018
- Closing on workforce housing bonds on or before October 31, 2018

I will be attending the City Council meeting on July 23, 2018 and can answer any questions that may arise during the meeting. Please contact me with any questions you may have prior to the City Council meeting.

Sincerely,

Julie Eddington

**Policy Number 2.18**
**Tax Increment Financing and Tax Abatement**

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

## Introduction

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

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

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

## TAX INCREMENT FINANCING

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

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

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

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

- Priority will be given to those projects which:

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

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

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

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

    - maximize and leverage the use of other financial resources.

**Costs Eligible for Tax Increment Financing Assistance**

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

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

| | |
|---|---|
| Title insurance | Landscape design |

**Forms of Assistance**

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

**Fiscal Disparities**

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

**TAX ABATEMENT**

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

**Projects Eligible for Tax Abatement Assistance**

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

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

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

**Fiscal Disparities**

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

**REVIEW PROCESS**

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

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

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

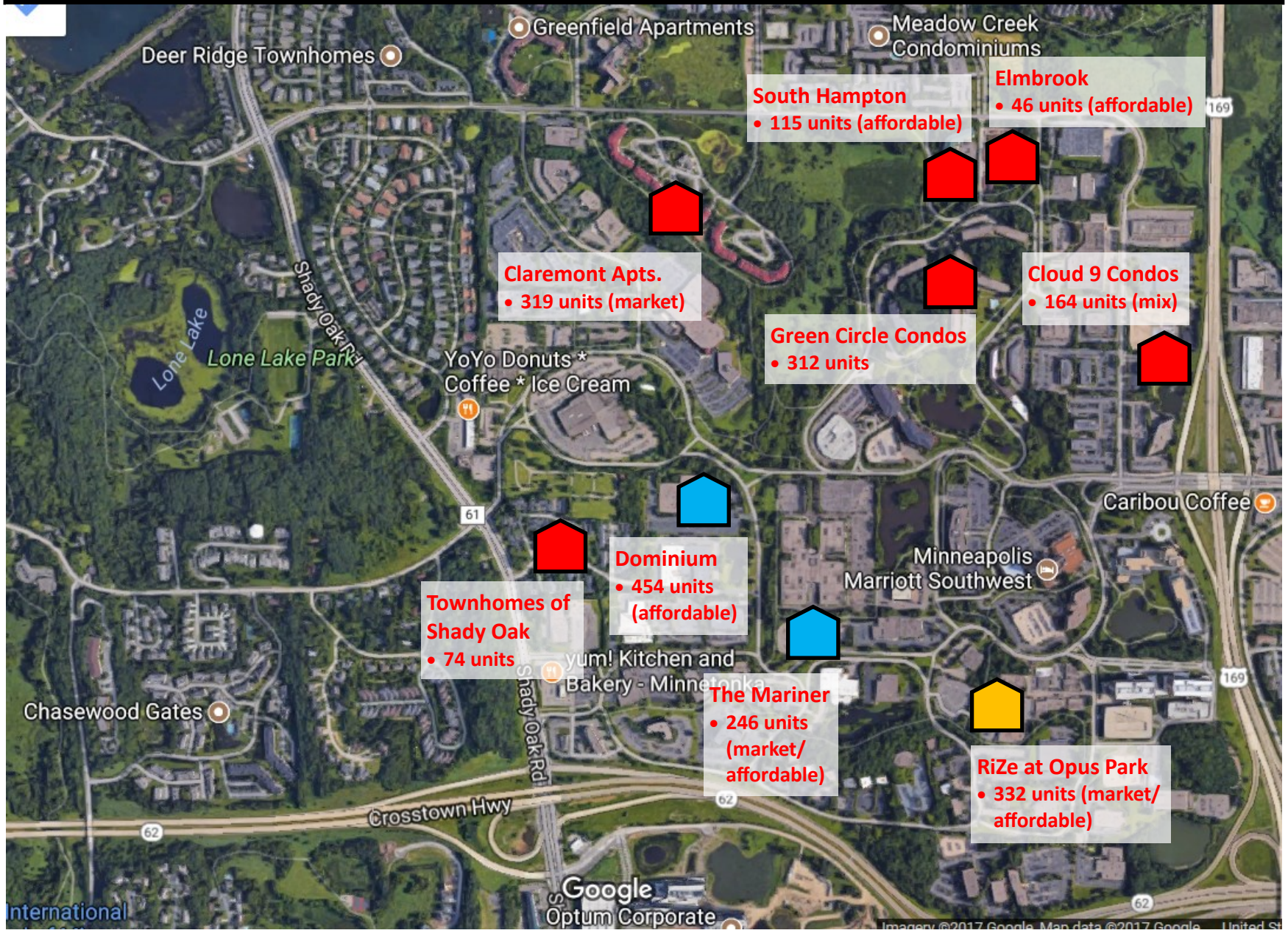
# Opus Housing

November 2017

1,030 existing units

332 units under construction

700 units proposed



| Name of Project | Number of Affordable Units | Total Assistance | Years of Affordability | Assistance per Unit, per Year | Affordability Level |
|---|---|---|---|---|---|
| **Dominium Apartments** | **482** | **7,890,000 (est)** | **30** | **$540** | **60% AMI** |
| Newport Partners (Mariner) | 55 | $556,179 (est) | 30 | $337 | 60% AMI |
| Homes Within Reach (2004-2012 grant years) | 35 | $1,740,000 | 99 | $502 | 80% AMI |
| The Ridge | 52 | $1,050,000 | 30 | $673 | 60% AMI |
| Shady Oak Redevelopment | 49 | $1,209,000 (est) | 30 | $822 | 60%AMI |
| West Ridge Market (Crown Ridge, Boulevard Gardens, Gables, West Ridge) | 185 | $8,514,000 | 30 | $1,534 | *Crown Ridge*—60% AMI Boulevard Gardens—60% AMI Gables—initially 80% AMI, now no income limit West Ridge—50% AMI |
| Beacon Hill (apartments) | 62 | $2,484,000 | 25 | $1,602 | 50% AMI |
| Ridgebury | 56 | $3,243,000 | 30 | $1,930 | Initially--80% AMI Now no income limit |
| Glen Lake (St. Therese, Exchange) | 43 | $4,800,000 | 30 | $3,721 | 60% AMI |
| Cedar Point Townhomes | 9 | $512,000 | 15 | $3,792 | 50% AMI |
| Tonka on the Creek | 20 | $2,283,000 | 30 | $3,805 | 50% AMI |
| At Home (Rowland) | 21 | $2,500,000 | 30 | $3,968 | 50% AMI |
| Applewood Pointe | 9 | $1,290,000 | Initial Sale/Ongoing maximum % | $4,777 | 80% AMI |

**Fifth Draft**
**July 17, 2018**

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**CONTRACT**

**FOR**

**PRIVATE DEVELOPMENT**

**between**

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

**CITY OF MINNETONKA, MINNESOTA,**

**and**

**MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP**

Dated _____, 2018

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

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**CONTRACT FOR PRIVATE DEVELOPMENT**

THIS CONTRACT FOR PRIVATE DEVELOPMENT, made as of the _____ day of _____, 2018 (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"), the CITY OF MINNETONKA, MINNESOTA, a home rule city organized under its Charter and the laws of the State of Minnesota (the "City"), and MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP, a Minnesota limited liability limited partnership (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 adopted by the City Council of the City; and

WHEREAS, the Authority and the City have undertaken a program to promote economic development and job opportunities, promote the development and redevelopment of land which is underutilized within the City, and facilitate the development of affordable housing, and in this connection created a redevelopment project known as the Opus Redevelopment Project (the "Redevelopment Project") in the City, pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended; and

WHEREAS, the City and the Authority have established within the Project the Dominium Housing Tax Increment Financing District, a housing district (the "TIF District"), and have adopted a financing plan (the "TIF Plan") for the TIF District in order to facilitate development of certain property in the Redevelopment Project and promote the development of affordable housing within the City, all pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended; and

WHEREAS, the Developer proposes to acquire certain property described in EXHIBIT A attached hereto (the "Development Property") within the TIF District and develop approximately 220 affordable multifamily housing apartment units, to be located at or about 11001 Bren Road East in the City, with one hundred percent (100%) of the apartment units made affordable to families at or below sixty percent (60%) of the area median income (the "Minimum Improvements"); and

WHEREAS, in order to make the Minimum Improvements economically feasible for the Developer to construct, the Authority is prepared to reimburse the Developer for certain land acquisition costs, site improvement costs, and costs of constructing housing related to the Minimum Improvements, which are eligible to be reimbursed with tax increment; and

WHEREAS, the Authority and the City believe that the development of the TIF District pursuant to this Agreement, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State of Minnesota and local laws and requirements under which the Redevelopment Project has been undertaken and is being assisted.

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

## ARTICLE I

## Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context, the following terms have the following defined meanings:

"Administrative Costs" means the costs described in Section 3.5 hereof.

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

"Assessor" means the assessor of the City.

"Authority" means the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State.

"Authority Representative" means the Executive Director of the Authority.

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

"Board" means the Board of Commissioners of the Authority.

"Certificate of Completion" means the certification provided to the Developer pursuant to Section 4.4 hereof.

"City" means the City of Minnetonka, Minnesota.

"Closing" means the date the Developer purchases the Development Property.

"Code" means the Internal Revenue Code of 1986, as amended, and the treasury regulations promulgated thereunder.

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

"County" means Hennepin County, Minnesota.

"Declaration" means the Declaration of Restrictive Covenants attached as EXHIBIT D hereto.

"Developer" means Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, or its permitted successors and assigns.

"Development Property" means the real property described in EXHIBIT A attached hereto.

"EDA Act" means Minnesota Statutes, Sections 469.090 through 469.1082, as amended.

"Event of Default" means an action by the Developer listed in Article IX hereof.

"Holder" means the owner of a Mortgage.

"HRA Act" means Minnesota Statutes, Sections 469.001 through 469.047, as amended.

"Material Change" means a change in construction plans that adversely affects generation of Tax Increment or changes the number of Rental Housing Units.

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

"Minimum Assessment Agreement" means the Minimum Assessment Agreement establishing a Minimum Market Value of the Development Property and the Minimum Improvements substantially in the form attached hereto as EXHIBIT G.

"Minimum Improvements" means the construction of a multifamily housing development consisting of two buildings with at least 220 parking spaces but no less than the parking spaces required by the applicable Planned Unit Development (or such lesser amount of parking spaces as may be permitted from time to time under this Agreement), on the Development Property.

"Minimum Market Value" means a minimum market value for real estate tax purposes of $39,600,000 with respect to the Development Property and Minimum Improvements as of January 2, 2020 for taxes payable beginning in 2021 through the Maturity Date.

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

"Payment Date" means each February 1 and August 1, commencing August 1, 2021, on which principal of the TIF Note is paid.

"Public Development Costs" has the meaning provided in Section 3.3 hereof.

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

"Redevelopment Project" means the Opus Redevelopment Project.

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

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

"Senior Housing Project" means the construction of approximately 262 affordable apartment units for seniors by Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, on property adjacent to the Development Property.

"Site Improvements" has the meaning provided in Section 4.8 hereof.

"State" means the State of Minnesota.

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

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

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

"Tax Increment District" or "TIF District" means the Dominium Housing Tax Increment Financing District, a housing district.

"Tax Increment Plan" or "TIF Plan" means the Tax Increment Financing Plan for the Dominium Housing Tax Increment Financing District, as approved July 23, 2018, and as it may be amended from time to time.

"Tax Official" means the Assessor; County auditor; County or State board of equalization, the commissioner of revenue of the State, or any State or federal district court, the tax court of the State, or the State Supreme Court.

"TIF Note" means a Tax Increment Revenue Note, substantially in the form attached hereto as EXHIBIT B, to be delivered by the Authority to the Developer pursuant to Section 3.4 hereof, and any obligation issued to refund the TIF Note.

"Unavoidable Delays" means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of strikes, lockouts or other labor troubles, prolonged adverse weather or acts of God, fire or other casualty to the Minimum Improvements, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the Authority in properly exercising its rights under this Agreement) which directly result in delays. Unavoidable Delays shall not include delays experienced by the Developer in obtaining permits or governmental approvals necessary to enable construction of the Minimum Improvements by the dates such construction is required under Section 4.3 hereof, so long as the Construction Plans have been approved in accordance with Section 4.2 hereof. Unavoidable Delays shall include delays resulting from market conditions which make the Redevelopment Project financially infeasible.

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## ARTICLE II

## Representations and Warranties

Section 2.1. Representations by the Authority. The Authority makes the following representations:

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

(b) The Authority proposes to assist in financing certain land acquisition costs, site improvement costs, and costs of constructing affordable housing necessary to facilitate the construction of the Minimum Improvements in accordance with the terms of this Agreement to further the objectives of the Redevelopment Plan.

(c) The Authority finds that the Minimum Improvements are necessary to alleviate a shortage of, and maintain existing supplies of, decent, safe, and sanitary housing for persons of low or moderate income and their families.

(d) The execution, delivery and performance of this Agreement and of any other documents or instruments required pursuant to this Agreement by the Authority, and consummation of the transactions contemplated therein and the fulfillment of the terms thereof, do not and will not conflict with or constitute a breach of or default under any existing (i) indenture, mortgage, deed of trust or other agreement or instrument to which the Authority is a party or by which the Authority or any of its property is or may be bound; or (ii) legislative act, constitution or other proceedings establishing or relating to the establishment of the Authority or its officers or its resolutions.

(e) There is not pending, nor to the best of the Authority's knowledge is there threatened, any suit, action or proceeding against the Authority before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the Authority to perform its obligations hereunder, or the validity or enforcement of this Agreement.

Section 2.2. Representations by the City. The City makes the following representations:

(a) The City is a home rule city duly organized and existing under its Charter and the laws of the State. Under the provisions of the TIF Act, the City has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The City proposes to provide the Developer the ability to offset certain park dedication fees in exchange for the Developer constructing certain Site Improvements described in EXHIBIT H.

(c) The City finds that the Minimum Improvements are necessary to alleviate a shortage of, and maintain existing supplies of, decent, safe, and sanitary housing for persons of low or moderate income and their families.

(c) The execution, delivery and performance of this Agreement and of any other documents or instruments required pursuant to this Agreement by the City, and consummation of the transactions contemplated therein and the fulfillment of the terms thereof, do not and will not conflict with or constitute a

breach of or default under any existing (i) indenture, mortgage, deed of trust or other agreement or instrument to which the City is a party or by which the City or any of its property is or may be bound; or (ii) legislative act, constitution or other proceedings establishing or relating to the establishment of the City or its officers or its resolutions.

(d) There is not pending, nor to the best of the City's knowledge is there threatened, any suit, action or proceeding against the City before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the City to perform its obligations hereunder, or the validity or enforcement of this Agreement.

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

(a) The Developer is a limited liability limited partnership duly organized and in good standing under the laws of the State, is duly authorized to transact business within the State, and has the power to enter into this Agreement.

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

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

(d) The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed. The Developer did not obtain a building permit for any portion of the Minimum Improvements before July 23, 2018, the date of approval of the TIF Plan for the TIF District.

(e) The Developer has received no notice or communication from any local, State, or federal official that the activities of the Developer on the Development Property may be or will be in violation of any environmental law or regulation. The Developer is aware of no facts the existence of which would cause it to be in violation of or give any person a valid claim under any local, State, or federal environmental law, regulation or review procedure.

(f) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any corporate restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(g) The proposed development by the Developer hereunder would not occur but for the tax increment financing assistance and other assistance being provided by the Authority hereunder.

(h) The Developer must promptly advise the City and the Authority in writing of all litigation or claims affecting any part of the Minimum Improvements and all written complaints and charges made by any governmental authority materially affecting the Minimum Improvements or materially affecting

Developer or its business which may delay or require changes in construction of the Minimum Improvements.

(i) The Developer represents that no more than twenty percent (20%) of the square footage of the Minimum Improvements will consist of commercial, retail or other nonresidential use. For purposes of this covenant, the underground parking constructed for use by the tenants of the Minimum Improvements constitutes a residential use.

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## ARTICLE III

## Property Acquisition; Financing

Section 3.1. Status of Development Property. As of the date of this Agreement, the Developer has entered into a purchase agreement to acquire the Development Property. The Developer shall acquire the Development Property pursuant to the terms of such purchase agreement. Neither the Authority nor the City has any obligation to acquire any portion of the Development Property.

Section 3.2. Environmental Conditions.

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

(b) Without limiting its obligations under Section 8.3 hereof, the Developer further agrees that it will indemnify, defend, and hold harmless the Authority, the City, and their respective governing body members, officers, and employees (the "Indemnitees") 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. Reimbursement of Certain Developer Costs. The Authority is authorized to acquire real property and convey real property to private entities at a price determined by the Authority in order to facilitate development of the property. The Authority has determined that, in order to make development of the Minimum Improvements financially feasible, it is necessary to reduce the costs of acquisition of the Development Property, site preparation costs, costs of constructing housing, or any other costs eligible to reimbursed with tax increment (collectively, the "Public Development Costs"). The Authority has also determined that, in light of potential liability that could be incurred by the Authority if the Authority takes title to the Development Property, it is in the best interest of the Authority for the Developer to acquire the Development Property directly. The Authority will reimburse the Developer for a portion of the actual cost of acquiring the Development Property in accordance with the terms of this Agreement.

Section 3.4. Issuance of Pay-As-You-Go Note.

(a) In consideration of the Developer constructing the Minimum Improvements and to finance the reimbursement of Public Development Costs incurred by the Developer, the Authority will issue and the Developer will purchase the TIF Note in the principal amount of $3,648,000. The Authority and the Developer agree that the consideration from the Developer for the purchase of the TIF Note will consist of the Developer's payment of the Public Development Costs incurred by the Developer in at least the principal amount of the TIF Note.

The Authority shall issue the TIF Note on the date of closing on the financing for the Minimum Improvements upon satisfaction of the following conditions:

(i) the Developer has submitted Construction Plans to the Authority and obtained approval for the Construction Plans by the Authority;

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

(iii) the Developer has delivered to the Authority an investment letter in substantially the form set forth in EXHIBIT C attached hereto or another form reasonably satisfactory to the Authority; and

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

With respect to the payment of principal of and interest on the TIF Note, however, the principal of the TIF Note shall not be payable and the interest on the TIF Note shall not accrue until the date upon which the Authority receives and approves written evidence that the Developer has paid Public Development Costs in at least the principal amount of $3,648,000.

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

(c) The Authority acknowledges that the Developer may assign the TIF Note to a lender that provides the financing for the acquisition of the Development Property, the construction of the Minimum Improvements, and/or the permanent financing for the Development Property and the Minimum Improvements. The Authority acknowledges that the Developer may collaterally assign the TIF Note to the lender that provides the financing for the acquisition of the Development Property or the construction of the Minimum Improvements. Any assignment agreement must be approved by the Board of the Authority.

(d) If the TIF District is disqualified as described in Section 4.5 hereof, the Authority is required by the TIF Act to stop payments of Available Tax Increment to pay principal of and interest on the TIF Note.

Section 3.5. Payment of Administrative Costs.

(a) The Developer is responsible to pay "Administrative Costs," which term means out-of-pocket-costs incurred by the Authority or the City from and after September 1, 2017 in connection with the negotiation and execution of this Agreement, creation of the Tax Increment Plan, and all other similar out-of-pocket expenses and fees of the City and the Authority arising from this Agreement that are of an administrative nature, including: (i) the Authority's and the City's municipal advisor in connection with the Authority's financial participation in development of the Development Property; and (ii) the Authority's and the City's legal counsel in connection with negotiation and drafting of this Agreement.

(b) On and after the date of execution of this Agreement, but not more often than monthly, the City and the Authority may request payment of Administrative Costs, and the Developer agrees to pay all Administrative Costs within ten (10) days of the Authority's or the City's written request, supported by suitable billings, receipts or other evidence of the amount and nature of Administrative Costs incurred. At the Developer's request, but no more often than monthly, the Authority will provide the Developer

with a written report on current and anticipated expenditures for Administrative Costs, including invoices or other comparable evidence.

Section 3.6. Records. The Authority and its representatives will have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and records of Developer relating to the Minimum Improvements and the costs for which the Developer has been reimbursed with Available Tax Increment.

Section 3.7. Exemption from Business Subsidy Act. The parties agree and understand that the purpose of the Authority's financial assistance to the Developer is to facilitate development of affordable residential rental housing for persons of low and moderate income, and is not a "business subsidy" within the meaning of Minnesota Statutes, Sections 116J.993 to 116J.995, as amended.

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## ARTICLE IV

### Construction and Maintenance of Minimum Improvements

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 Maturity Date, it will operate and maintain, preserve and keep the Minimum Improvements or cause the improvements to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition. The Authority will have no obligation to operate or maintain the Minimum Improvements.

Section 4.2. Construction Plans.

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

(b) If the Developer desires to make any Material Change in the Construction Plans after their approval by the Authority, the Developer must submit the proposed change to the Authority for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2 with respect to the previously approved Construction Plans, the Authority will approve the proposed change and notify the Developer in writing of its approval. Any change in the Construction Plans will, in any event, be deemed approved by the Authority unless rejected, in whole or in part, by written notice by the Authority to the Developer, setting forth in detail the reasons therefor. Any rejection must be made within twenty (20) days after receipt of the notice of such change. The Authority's approval of any change in the Construction Plans will not be unreasonably withheld.

Section 4.3. Commencement and Completion of Construction.

(a) Subject to Unavoidable Delays, the Developer will commence the construction of the Minimum Improvements by March 1, 2019 and shall substantially complete the Minimum Improvements by December 31, 2020.

(b) Construction is considered to be commenced upon the beginning of physical improvements to the Development Property beyond grading.

(c) All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Development Property must be in substantial conformity with the Construction Plans as submitted by the Developer and approved by the Authority. The Developer agrees for itself, its successors and assigns, and every successor in interest to the Development Property, or any part thereof, that the Developer, and its successors and assigns, will promptly begin and diligently prosecute to completion the development of the Development Property through the construction of the Minimum Improvements thereon, and that the construction will in any event be commenced and completed within the period specified in Section 4.3(a) hereof. Until construction of the Minimum Improvements has been completed, the Developer will make reports, in the detail and at the times as may reasonably be requested by the Authority, as to the actual progress of the Developer with respect to the construction.

Section 4.4. Certificate of Completion.

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

(b) The Certificate of Completion provided for in this Section 4.4 will be in the form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Development Property. If the Authority refuses or fails to provide any certification in accordance with the provisions of this Section 4.4, the Authority will, within thirty (30) days after written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Authority, for the Developer to take or perform in order to obtain the certification.

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

Section 4.5. Affordability Covenants; Qualification of the TIF District. The Developer agrees that the Minimum Improvements are subject to the following affordability covenants:

(a) As of the date hereof, the Developer expects that the Minimum Improvements will include the mix of Rental Housing Units set forth in EXHIBIT F. The Developer will cause one hundred

percent (100%) of the Rental Housing Units in the Minimum Improvements to be affordable to families at or below sixty percent (60%) of the area median income and to be rent-restricted in accordance with the Tax Credit Law, all as further described in the Declaration attached hereto as EXHIBIT D. Notwithstanding anything to the contrary in the Tax Credit Law, the restrictions will remain in effect for the thirty (30) year period described in the Declaration. On or before the Closing, the Developer will deliver the executed Declaration to the Authority in recordable form.

(b) The Developer will initially provide at least 220 parking spaces for the Minimum Improvements. If, from time to time, the City gives its written permission to reduce the number of parking spaces, the number of parking spaces required by this Agreement shall be automatically reduced by such number without the need for a written amendment to this Agreement.

(c) The Authority and its representatives will have the right at all reasonable times while the covenants in this Section are in effect, after reasonable notice to inspect, examine and copy all books and records of the Developer and its successors and assigns relating to the covenants described in this Section and in the Declaration.

(d) On or before April 1 of each year during the term of the Declaration, commencing on the first April 1 after issuance of the Certificate of Completion for the Minimum Improvements, the Developer must submit evidence of tenant incomes and rents, showing that the Minimum Improvements meet the income and rent requirements set forth in the Declaration. The Authority will review the submitted evidence related to the income restrictions required by Section 469.1761 of the TIF Act to determine that the TIF District remains a housing district under the TIF Act.

(e) If the Authority determines, based on the reports submitted by the Developer or if the Authority receives notice from the State Department of Revenue, the State Auditor, any Tax Official or any court of competent jurisdiction that the TIF District does not qualify as a "housing district" due to action or inaction of the Developer, this type of event will be deemed an Event of Default of the Developer under this Agreement; provided, however, that the Authority may not exercise any remedy under this Agreement so long as the determination is being contested and has not been finally adjudicated. In addition to any remedies available to the Authority under Article IX hereof, the Developer will indemnify, defend and hold harmless the Authority for any damages or costs resulting therefrom.

(f) 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.

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

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

(i) This Agreement and the Declaration requires the Developer to cause one hundred percent (100%) of the Rental Housing Units in the Minimum Improvements to be affordable to families at or below sixty percent (60%) of the area median income, all as further described in the Declaration attached hereto as EXHIBIT D. Recent Federal legislation has introduced an income-averaging option for the low-income housing tax credit program. This legislation allows projects to accept residents with higher average median incomes as along as the overall average of the income of tenants in the project does not exceed 60% of the

area median income, which provides LIHTC projects the ability to serve tenants with a greater range of incomes. Minnesota Housing does not currently allow for income-averaging. However, if in the future Minnesota Housing allows the income-averaging option for the low-income housing tax credit program to be used for the Minimum Improvements, the Developer may opt to use the income-averaging methodology; provided, however, that the Developer must cause at least forty percent (40%) of the Rental Housing Units in the Minimum Improvements to be affordable to families at or below sixty percent (60%) of the area median income in order to comply with Section 469.1763, subdivision 3 of the TIF Act. The Developer must provide the Authority at least thirty (30) days' notice before opting into the income-averaging methodology and will cooperate with the Authority to revise this Agreement and the Declaration, if necessary.

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 TIF District is decertified. If the Developer fails to provide the annual reporting required under this Section, the Authority may withhold payments of Available Tax Increment under the TIF Note.

Section 4.7. Property Management Covenant. The Developer shall cause its property manager to operate the Minimum Improvements in accordance with the policies described in this Section. For any documented disorderly violations by a tenant or guest, including but not limited to prostitution, gang-related activity, intimidating or assaultive behavior (not including domestic), unlawful discharge of firearms, illegal activity, or drug complaints (each a "Violation"), the Developer agrees and understands that the following procedures shall apply:

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

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

(c) If a third Violation occurs regarding the same tenancy within twelve (12) continuous months after the first Violation, the City police department will notify the Developer and the property manager of the third Violation. Within ten (10) days after receiving such notice and subject to paragraph (f) below, the Developer to the property manager shall commence termination of the tenancy of all occupants of that unit. Subject to paragraph (f) below, neither the Developer nor the property manager shall 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), 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 be subject to consent by the Tax Credit Investor (as defined in Section 8.2 hereof) and each Holder of a Mortgage on the Development Property.

(f) Notwithstanding anything to the contrary in this Section 4.7, neither the Developer nor the property manager shall be obligated to take any action if such party reasonably believes such action is contrary to or in violation of applicable law, including, without limitation, Section 42 of the Code, the Section 8 program, State and federal fair housing laws, and State landlord-tenant law.

Section 4.8. Construction of Site Improvements.

(a) In consideration of the assistance provided to the Developer by the City and the Authority, subject to the limitations set forth in Sections 4.9 and 4.10, the Developer agrees that it will install or cause to be installed, in conformance with City standards and specifications, the Site Improvements on the Development Property or adjacent to the Development Property, as applicable, as described in EXHIBIT H attached hereto.

(b) When constructing the Site Improvements, the Developer is responsible for compliance with all conditions outlined in Resolution No. 2018-_____ and Resolution No. 2018- ____.

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

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

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

Section 4.9. Site Improvements Construction Addendum. Prior to the issuance of any permits, the City and the Developer shall enter into a mutually agreeable Construction Addendum containing (i) timeframes for the construction of the Site Improvements; (ii) the security to be provided by the Developer to the City to ensure the quality and completion of the Site Improvements; (iii) the methods of acceptance related to the Site Improvements; (iv) the process by which the security provided to the City may be reduced; (v) the process to obtain a certificate of occupancy from the City; (vi) final design details (including tunnels and trails); and (vii) the amount of credits provided by the City to offset the park dedication fees, as described in Section 4.10.

Section 4.10. Fees. The Developer must pay all water and sewer hook-up fees, SAC, WAC, and REC fees, Engineering Inspection Fees and park dedication fees in accordance with applicable City policies and ordinances. Based on the size of the Minimum Improvements, it is anticipated that the Developer will owe approximately $5,000 per unit in park dedication fees. However, the City will consider offsetting the park dedication fees with credits for the costs incurred by the Developer in designing, constructing and other related costs (*e.g.* engineering costs, surveying costs, and soil remediation) of certain Site Improvements described in EXHIBIT H attached hereto (specifically the pedestrian underpass beneath Bren Road East and the dynamic predication crossing safety improvements on the east side of the Development Property and adjacent to Bren Road East. The Developer must provide the Authority with the estimates for the cost of the work described in EXHIBIT H and must provide the Authority with the final invoices for the work as the work is completed. The Developer will not be required to pay the costs of the pedestrian underpass beneath Bren Road East and the dynamic predication crossing safety improvements on the east side of the Development Property and adjacent to Bren Road East that exceed the amount of the Developer's park dedication fees.

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## ARTICLE V

## Insurance

Section 5.1. Insurance.

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

(i) Builder's risk insurance, written on the so-called "Builder's Risk – Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called "all risk" form of policy. The interest of the Authority must be protected in accordance with a clause in form and content satisfactory to the Authority;

(ii) Commercial general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with a Protective Liability Policy with limits against bodily injury and property damage of not less than $2,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used); the Authority must be listed as an additional insured on the policy; and

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

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

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

(ii) Comprehensive general public liability insurance, including personal injury liability (with employee exclusion deleted), against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of $2,000,000, and must be endorsed to show the Authority as an additional insured.

(iii) Other insurance, including workers' compensation insurance respecting all employees, if any, of the Developer, in an amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Developer may be self-insured with respect to all or any part of its liability for workers' compensation.

(c) All insurance required in this Article V must be taken out and maintained in responsible insurance companies selected by the Developer which are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Developer will deposit annually with the Authority policies evidencing all the insurance, or a certificate or certificates or binders of the respective insurers stating that the insurance is in force and effect. Unless otherwise provided in this Article V, each policy must contain a provision that the insurer will not cancel nor modify it in such a way as to reduce the coverage provided below the amounts required herein without giving written notice to the Developer and

the Authority at least thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, the Developer may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Developer will deposit with the Authority a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

(d) The Developer agrees to notify the Authority immediately in the case of damage exceeding $250,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. In the event this type of damage or destruction occurs, the Developer will forthwith repair, reconstruct and restore the Minimum Improvements to substantially the same or an improved condition or value as it existed prior to the event causing the damage and, to the extent necessary to accomplish the repair, reconstruction and restoration, the Developer will apply the net proceeds of any insurance relating to the damage received by the Developer to the payment or reimbursement of the costs thereof.

The Developer will complete the repair, reconstruction and restoration of the Minimum Improvements, whether or not the net proceeds of insurance received by the Developer is sufficient to pay for the same. Any net proceeds remaining after completion of the repairs, construction and restoration will be the property of the Developer.

(e) Notwithstanding anything to the contrary contained in this Agreement, in the event of damage to the Minimum Improvements in excess of $250,000 and the Developer fails to complete any repair, reconstruction or restoration of the Minimum Improvements within eighteen (18) months from the date of damage, the Authority may, at its option, terminate the TIF Note as provided in Section 9.3(b) hereof. If the Authority terminates the TIF Note, the termination will constitute the Authority's sole remedy under this Agreement as a result of the Developer's failure to repair, reconstruct or restore the Minimum Improvements. Thereafter, the Authority will have no further obligations to make any payments under the TIF Note.

(f) The Developer and the Authority agree that all of the insurance provisions set forth in this Article V will terminate upon the termination of this Agreement.

Section 5.2. Subordination. Notwithstanding anything to the contrary contained in this Article V, the rights of the Authority with respect to the receipt and application of any proceeds of insurance will, in all respects, be subject and subordinate to the rights of any lender under a Mortgage approved pursuant to Article VII hereof.

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## ARTICLE VI

### Tax Increment; Taxes; Minimum Assessment Agreement

Section 6.1. Right to Collect Delinquent Taxes. The Developer acknowledges that the Authority is providing substantial aid and assistance in furtherance of the redevelopment through issuance of the TIF Note. The Developer understands that the Available Tax Increment pledged to payment of the TIF Note is derived from real estate taxes on the Development Property, which taxes must be promptly and timely paid. To that end, the Developer agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Development Property and the Minimum Improvements. The Developer acknowledges that this obligation creates a contractual right on behalf of the Authority 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 will also be entitled to recover its costs, expenses and reasonable attorney fees. The Developer further agrees that it was not cause a reduction in the Minimum Market Value assessed in respect of the Minimum Improvements or the Development Property below the Minimum Market Value described in Section 6.2(a) hereof through:

(a) willful destruction of the Minimum Improvements or any part thereof;

(b) failure to reconstruct damaged or destroyed property pursuant to Section 4.3 hereof;

(c) a request to the Assessor to reduce the Minimum Market Value of all or any portion of the Minimum Improvements or the Development Property;

(d) a petition to the board of equalization of the County to reduce the Minimum Market Value of all or any portion of the Minimum Improvements or the Development Property;

(e) a petition to the board of equalization of the State or the commissioner of revenue of the State to reduce the Minimum Market Value of all or any portion of the Minimum Improvements or the Development Property;

(f) an action in a district court of the State or the tax court of the State seeking a reduction in the Minimum Market Value of the Minimum Improvements or the Development Property;

(g) an application to the commissioner of revenue of the State or to any local taxing jurisdiction requesting an abatement or deferral of real estate taxes on the Minimum Improvements or the Development Property;

(h) a transfer of the Minimum Improvements or the Development Property, or any part thereof, to an entity exempt from the payment of real estate taxes under State law and that entity applies for tax exemption; or

(i) any other proceedings, whether administrative, legal or equitable, with any administrative body within the County or the State or with any court of the State or the federal government.

Section 6.2. Minimum Assessment Agreement.

(a) At the time of execution of this Agreement, the Authority and the Developer shall execute the Minimum Assessment Agreement for the Development Property and Minimum Improvements. The Assessment Agreement shall specify the Minimum Market Value, notwithstanding any failure to start or complete the Minimum Improvements on the Development Property by the Maturity Date or any failure to reconstruct the Minimum Improvements after damage or destruction before the Maturity Date.

(b) Nothing in the Minimum Assessment Agreement shall limit the discretion of the Assessor to assign a market value to the Minimum Improvements or the Development Property in excess of the Assessor's Minimum Market Value or prohibit the Developer from seeking through the exercise of legal or administrative remedies a reduction in any increase in the market value established pursuant to subsection (a) above; provided, however, that the Developer shall not seek a reduction of such market value below the Assessor's Minimum Market Value set forth in the Minimum Assessment Agreement in any year so long as such Minimum Assessment Agreement shall remain in effect. The Minimum Assessment Agreement shall remain in effect until the Maturity Date; provided that, if at any time before the Maturity Date, the Minimum Assessment Agreement is found to be terminated or unenforceable by any Tax Official or court of competent jurisdiction, the Minimum Market Value described in this Section 6.2 shall remain an obligation of the Developer or its successors and assigns (whether or not such value is binding on the Assessor), it being the intent of the parties that the obligation of the Developer to maintain, and not seek reduction of, the Minimum Market Value specified in this Section 6.2 is an obligation under this Agreement as well as under the Minimum Assessment Agreement, and is enforceable by the Authority against the Developer, its successors and assigns, in accordance with the terms of this Agreement and the Minimum Assessment Agreement. Notwithstanding anything contained in this Agreement to the contrary, the Developer shall not be precluded from contesting the Minimum Market Value if the Minimum Improvements or the Development Property, or any substantial portion thereof, is acquired by a public entity through eminent domain prior to the Maturity Date.

Section 6.3. Reduction of Taxes. The Developer agrees that after the date of certification of the TIF District and prior to completion of the Minimum Improvements, it will not cause a reduction in the real property taxes paid in respect of the Development Property through: (A) willful destruction of the Development Property or any part thereof (except for the demolition of structures required for the construction of the Minimum Improvements); or (B) willful refusal to reconstruct damaged or destroyed property pursuant to Section 5.1 hereof.

The Developer also agrees that it will not, prior to the Maturity Date, (i) seek exemption from property tax for the Development Property; or (ii) convey or transfer or allow conveyance or transfer of the Development Property to any entity that is exempt from payment of real property taxes under State law (other than any portion thereof dedicated or conveyed to the Authority in accordance with this Agreement).

The Developer may, at any time following the issuance of the Certificate of Completion, seek through petition or other means to have the estimated market value for the Development Property reduced to not less than the Minimum Market Value. Prior to seeking a reduction in the estimated market value, the Developer must provide the Authority with written notice indicating its intention to do so. The Developer acknowledges and understands that this type of action will result in less Available Tax Increment being disbursed by the Authority for payment of the principal of and interest on the TIF Note.

Upon receiving notice from the Developer of its intention to cause the reduction of the estimated market value of the Development Property, or otherwise learning of the Developer's intentions, the

Authority may partially suspend or reduce payments due under the TIF Note until the actual amount of the reduction in market value is determined, whereupon the Authority will make the partially suspended payments less any amount that the Authority is required to repay the County as a result of any retroactive reduction in market value of the Development Property; provided, however, during the period that the payments are subject to partial suspension, the Authority shall make partial payments on the TIF Note, based on, in its reasonable discretion, the Available Tax Increment generated by the portion of the assessed value that is not being challenged.

The Authority's suspension of payments on the TIF Note pursuant to this Section will not be considered a default under Section 9.1 hereof.

Section 6.4. Qualifications. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that upon the transfer of the Development Property to another person or entity, the Developer will no longer be obligated under Sections 6.1 and 6.3 hereof, unless the transfer is made in violation of the provisions of Section 8.2 hereof.

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## ARTICLE VII

## Financing

Section 7.1. Mortgage Financing.

(a) Before commencement of construction of the Minimum Improvements, the Developer must submit to the Authority evidence of one or more commitments or plan of finance for financing which, together with committed equity for the construction, is sufficient for payment of the Minimum Improvements. The commitments may be submitted as short term financing, long-term mortgage financing, a bridge loan with a long-term take-out financing commitment, or any combination of the foregoing.

(b) If the Authority finds that the financing is sufficiently committed and adequate in amount to pay the costs specified in subsection (a) then the Authority will notify the Developer in writing of its approval. The approval will not be unreasonably withheld and either approval or rejection will be given within twenty (20) days from the date when the Authority is provided the evidence of financing. A failure by the Authority to respond to the evidence of financing will be deemed to constitute an approval hereunder. If the Authority rejects the evidence of financing as inadequate, it will do so in writing specifying the basis for the rejection. In any event the Developer will submit adequate evidence of financing within ten (10) days after any rejection for reconsideration by the Authority. The approval and execution by Authority officials of a bond purchase contract or agreement secured by the Developer's pledge of the TIF Note is deemed approval of such financing and approval of a mortgage on the Development Property.

Section 7.2. Authority's Option to Cure Default on Mortgage. In the event that any portion of the Developer's funds is provided through mortgage financing, and there occurs a default under any Mortgage authorized pursuant to this Article VII, the Developer will cause the Authority to receive copies of any notice of default received by the Developer from the Holder of the Mortgage. Thereafter, the Authority will have the right, but not the obligation, to cure any Mortgage default on behalf of the Developer within the cure periods as are available to the Developer under the Mortgage documents.

Section 7.3. Modification; Subordination. In order to facilitate the Developer obtaining financing for the development of the Minimum Improvements, the Authority and the City agree to subordinate their rights under this Agreement to the Holder of any Mortgage securing construction or permanent financing, under terms and conditions reasonably acceptable to the Authority. Any subordination agreement must be approved by the Board of the Authority and the City Council.

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## ARTICLE VIII

### Prohibitions Against Assignment and Transfer; Indemnification

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

Section 8.2. Prohibition Against Developer's Transfer of Property and Assignment of Agreement. The Developer represents and agrees that prior to issuance of the Certificate of Completion for the Minimum Improvements:

(a) Except only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Development Property, or any part thereof, to perform its obligations with respect to making the Minimum Improvements under this Agreement, and any other purpose authorized by this Agreement, the Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to 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 (except a lease to a residential occupant), without the prior written approval of the City and the Authority unless the Developer remains liable and bound by this Agreement in which event the City and the Authority's approval is not required. Any transfer of this type will be subject to the provisions of this Agreement.

(b) In the event the Developer, upon transfer or assignment of the Development Property seeks to be released from its obligations under this Agreement, the City and the Authority will be entitled to require, except as otherwise provided in this Agreement, as conditions to any release that:

(i) Any proposed transferee will have the qualifications and financial responsibility, in the reasonable judgment of the City and the Authority, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer.

(ii) Any proposed transferee, by instrument in writing satisfactory to the City and the Authority and in form recordable among the land records, will, for itself and its successors and assigns, and expressly for the benefit of the City and the Authority, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property, or any part thereof, will not, for whatever reason, have assumed these obligations or so agreed, and will not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City and the Authority) deprive the City and the Authority of any rights or remedies or controls with respect to the Development Property or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Development Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, will operate, legally or practically, to deprive or limit the City and the Authority of or with respect to any rights or remedies on controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the City and the Authority would have had, had there been no transfer or change. In the absence of specific written

agreement by the City and the Authority to the contrary, no transfer or approval by the City and the Authority thereof will be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto.

(iii) Any and all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Development Property governed by this Article VIII, must be in a form reasonably satisfactory to the City and the Authority.

In the event the foregoing conditions are satisfied then the Developer will be released from its obligation under this Agreement.

After issuance of the Certificate of Completion for the Minimum Improvements, the Developer may transfer or assign the Development Property or the Developer's interest in this Agreement if it obtains the prior written consent of the City and the Authority (which consent will not be unreasonably withheld) and the transferee or assignee is bound by all the Developer's obligations hereunder. The Developer must submit to the City and the Authority written evidence of any transfer or assignment, including the transferee or assignee's express assumption of the Developer's obligations under this Agreement. If the Developer fails to provide evidence of transfer and assumption, the Developer will remain bound by all its obligations under this Agreement.

Nothing contained in this Section shall prohibit the Developer, without the consent or approval of the City and the Authority, from (i) entering into leases with tenants in the ordinary course of business, (ii) entering into easement or other agreements necessary for the operation of the Minimum Improvements, (iii) admitting or removing limited partners or transferring limited partner interests in the Developer or admitting or removing members in accordance with the applicable organizational documents or any documents referenced therein or attached thereto, (iv) substituting and/or removing the general partner of the Developer for cause at the direction of its limited partner(s) (whether one or more, the "Tax Credit Investor") in accordance with the Developer's partnership agreement, (v) pledging and/or collaterally assigning partnership interests as collateral for financing, and the exercise of remedies in connection therewith, or (vi) transferring or allowing the transfer of direct or indirect ownership interests in any partner of the Developer.

Section 8.3. Release and Indemnification Covenants.

(a) The Developer releases from and covenants and agrees that the City and the Authority and their respective governing body members, officers, agents, servants and employees thereof will not be liable for and agrees to indemnify and hold harmless the City and the Authority and their respective governing body members, officers, agents, servants and employees thereof against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements.

(b) Except for any willful misrepresentation or any willful or wanton misconduct of the following named parties, the Developer agrees to protect and defend the City and the Authority and their respective governing body members, officers, agents, servants and employees thereof, now or forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, maintenance and operation of the Minimum Improvements.

(c) The City and the Authority and their respective governing body members, officers, agents, servants and employees thereof will not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Development Property or Minimum Improvements due to any act of negligence of any person, except if such damage or injury to persons or property is due to any act of negligence by the City and the Authority and their respective governing body members, officers, agents, servants and employees.

(d) All covenants, stipulations, promises, agreements and obligations of the City and the Authority contained herein will be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and the Authority and not of any governing body member, officer, agent, servant or employee of the City and the Authority in the individual capacity thereof.

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## ARTICLE IX

## Events of Default

Section 9.1. Events of Default Defined. The following will be "Events of Default" under this Agreement and the term "Event of Default" means, whenever it is used in this Agreement, any one or more of the following events, after the non-defaulting party provides thirty (30) days' written notice to the defaulting party of the event, but only if the event has not been cured within said thirty (30) days or, if the event is by its nature incurable within thirty (30) days, the defaulting party does not, within the thirty (30) day period, provide assurances reasonably satisfactory to the party providing notice of default that the event will be cured and will be cured as soon as reasonably possible:

(a) The Developer, the City, 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; or

(c) The Senior Housing Project is not constructed; or

(d) Prior to the Maturity Date, the Developer appeals or challenges the Minimum Market Value of the Development Property or the Minimum Improvements under this Agreement or the Minimum Assessment Agreement, except as otherwise permitted in Article VI hereof.

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

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

(b) Cancel and rescind or terminate the Agreement.

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

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

Section 9.3. Termination or Suspension of TIF Note. After the Authority has issued the Certificate of Completion for the Minimum Improvements, the Authority and the City may exercise its rights under Section 9.2(c) hereof or any other right under this Agreement that operates to suspend, cancel, or terminate payments under the TIF Note only for the following Events of Default:

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

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

(c) the Developer fails to comply with the rent and income restrictions or to deliver annual rent and income reports as provided in Section 4.5 hereof and the Declaration; provided that, upon the Developer's failure to provide annual reports, if uncured after thirty (30) days' written notice to the Developer of the failure, the Authority may only suspend payments under the TIF Note until the Developer delivers said reports. If the Developer fails to deliver rent and income reports for a period of six (6) months following the date the reports are due after written notice to the Developer of the failure, the Authority may terminate the TIF Note and the TIF District.

Section 9.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority or the Developer is intended to be exclusive of any other available remedy or remedies, but each and every remedy will be cumulative and will be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default will impair any right or power or will be construed to be a waiver thereof, but any right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it, it will not be necessary to give notice, other than the notices already required in Sections 9.2 and 9.3 hereof.

Section 9.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, the waiver will be limited to the particular breach so waived and will not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 9.6. Attorneys' Fees. Whenever any Event of Default occurs and if the City or the Authority employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer under this Agreement, and the City or the Authority prevails in the action, the Developer agrees that it will, within ten (10) days of written demand by the City or the Authority, pay to the City or

the Authority the reasonable fees of the attorneys and the other expenses so incurred by the City or the Authority.

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## ARTICLE X

## Additional Provisions

Section 10.1. Conflict of Interests; Authority Representatives Not Individually Liable. The Authority and the Developer, to the best of their respective knowledge, represent and agree that no member, official, or employee of the Authority has any personal interest, direct or indirect, in the Agreement, nor has any member, official, or employee participated in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the Authority will be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Authority or County or for any amount which may become due to the Developer or successor or on any obligations under the terms of the Agreement.

Section 10.2. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in the Agreement it will comply with all applicable federal, State, and local equal employment and non-discrimination laws and regulations.

Section 10.3. Restrictions on Use. The Developer agrees that, prior to the Maturity Date, the Developer, and its successors and assigns, will use the Development Property solely for the development of residential rental housing in accordance with the terms of this Agreement, and will not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Development Property or any improvements erected or to be erected thereon, or any part thereof.

Section 10.4. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of the Agreement are inserted for convenience of reference only and will be disregarded in construing or interpreting any of its provisions.

Section 10.5. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the Agreement by either party to the other will be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(a) in the case of the Developer, is addressed to or delivered personally to the Developer at 2905 Northwest Blvd. Suite 150, Plymouth, MN 55441-2644, Attn: Mark S. Moorhouse and Ryan J. Lunderby with a copy to John Stern, Winthrop & Weinstine, P.A., Capella Tower, Suite 3500, 225 South Sixth Street, Minneapolis, MN 55402-4629;

(b) in the case of the Authority, is addressed to or delivered personally to the Authority at 14600 Minnetonka Blvd, Minnetonka, Minnesota 55345-1502, Attn: Executive Director; and

(c) in the case of the City, is addressed to or delivered personally to the Authority at 14600 Minnetonka Blvd, Minnetonka, Minnesota 55345-1502, Attn: City Manager;

or at any other address with respect to any party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

Section 10.6. Counterparts. This Agreement may be executed in any number of counterparts, each of which will constitute one and the same instrument.

Section 10.7. Recording. The Authority may record this Agreement and any amendments thereto with the County Recorder or Registrar of Titles of the County. The Developer must pay all costs for recording.

Section 10.8. Amendment. Except as specifically provided in Section 4.5(b) hereof, this Agreement may be amended only by written agreement approved by the Authority, the City, and the Developer.

Section 10.9. Authority Approvals. Unless otherwise specified, any approval required by the Authority under this Agreement may be given by the Authority Representative.

Section 10.10. Termination. This Agreement terminates on the Maturity Date, except that termination of the Agreement does not terminate, limit or affect the rights of any party that arise before the Maturity Date.

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

IN WITNESS WHEREOF, the Authority has caused this Contract for Private Development to be duly executed in its name and behalf and the Developer has caused this Contract for Private Development to be duly executed in its name and behalf, all 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 _____, 2018, by Brad Wiersum, the President of 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, on behalf of the Authority.

_____
Notary Public

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____, 2018, by Geralyn Barone, the Executive Director of 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, on behalf of the Authority.

_____
Notary Public

**MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP,** a Minnesota limited liability limited partnership

By: Minnetonka Leased Housing Associates II, LLC
Its: General Partner

By: _____
Name: Ryan J. Lunderby
Its: Vice President

STATE OF MINNESOTA )
) SS.
COUNTY OF _____ )

The foregoing instrument was acknowledged before me this _____, 2018, by Ryan J. Lunderby, the Vice President of Minnetonka Leased Housing Associates II, LLC, a Minnesota limited liability company, the general partner of Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, on behalf of the Developer.

_____
Notary Public

**EXHIBIT A**

**DESCRIPTION OF DEVELOPMENT PROPERTY**

Lot 2, Block 1, DOMINIUM 2ND ADDITION, Hennepin County, Minnesota

**EXHIBIT B**

**FORM OF TIF NOTE**

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

No. R-1 $_____

TAX INCREMENT REVENUE NOTE
SERIES 20__

| Rate | Accrual Date |
|---|---|
| [5.15% or the developer's actual rate of financing, whichever is less]% | (to be determined) |

The Economic Development Authority in and for the City of Minnetonka, Minnesota (the "Authority"), for value received, certifies that it is indebted and hereby promises to pay to Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, or registered assigns (the "Owner"), the principal sum of $_____ and to pay interest thereon at the annual interest rate set forth above, as and to the extent set forth herein.

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

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

2. Interest. Interest at the rate stated herein will accrue on the unpaid principal, commencing on the date the Authority receives and approves written evidence of the Owner's expenditures related to land acquisition, site preparation, constructions of constructing housing, and other costs eligible to be reimbursed with tax increment related to the Minimum Improvements in an amount at least equal to $_____ (the "Accrual Date"), all in accordance with Section 3.4 of the Agreement (hereinafter defined). Interest accruing from and after the Accrual Date shall accrue on a simple basis and will not be added to principal. Interest will be computed on the basis of a year of three hundred sixty (360) days comprised of twelve (12) months of thirty (30) days.

3. Available Tax Increment. Payments on this Note are payable on each Payment Date in the amount of and solely payable from "Available Tax Increment," which will mean, on each Payment Date, ninety percent (90%) of the Tax Increment attributable to the Development and paid to the Authority by Hennepin County in the six (6) months preceding the Payment Date, all as the terms are

defined in the Contract for Private Development, dated _____, 2018 (the "Agreement"), between the Authority, the City of Minnetonka, Minnesota, and Owner. Available Tax Increment will not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default under the Agreement; provided, however, that once an Event of Default is cured, any Available Tax Increment withheld shall be deemed Available Tax Increment for the next Payment Date.

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

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

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

6. Nature of Obligation. This Note is one of an issue in the total principal amount of $_____ all issued to aid in financing certain public development costs and administrative costs of a Redevelopment Project undertaken by the Authority pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended, and is issued pursuant to an authorizing resolution (the "Resolution") duly adopted by the Authority on July 23, 2018, and pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Sections 469.174 through 469.1794, as amended. This Note is a limited obligation of the Authority which is payable solely from Available Tax Increment pledged to the payment hereof under the Resolution. This Note and the interest hereon will not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the Authority. Neither the State of Minnesota nor any political subdivision thereof will be obligated to pay the principal of or interest on this Note or other costs incident hereto except out of Available Tax Increment, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof is pledged to the payment of the principal of or interest on this Note or other costs incident hereto.

7. Estimated Tax Increment Payments. Any estimates of Tax Increment prepared by the Authority or its municipal advisors in connection with the TIF District or the Agreement are for the benefit of the Authority, and are not intended as representations on which the Developer may rely.

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

8. Registration and Transfer. This Note is issuable only as a fully registered note without coupons. As provided in the Resolution, and subject to certain limitations set forth therein, this Note is transferable upon the books of the Authority kept for that purpose at the principal office of the Executive Director of the Authority, by the Owner hereof in person or by the Owner's attorney duly authorized in writing, upon surrender of this Note together with a written instrument of transfer satisfactory to the

Authority, duly executed by the Owner. Upon the transfer or exchange and the payment by the Owner of any tax, fee, or governmental charge required to be paid by the Authority with respect to the transfer or exchange, there will be issued in the name of the transferee a new Note of the same aggregate principal amount, bearing interest at the same rate and maturing on the same dates.

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

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

IN WITNESS WHEREOF, the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, has caused this Note to be executed with the manual signatures of its President and Executive Director, all as of _____, 20___.

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

| | |
|---|---|
| _____ | _____ |
| Executive Director | President |

**REGISTRATION PROVISIONS**

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

| Date of Registration | Registered Owner | Signature of Executive Director |
|---|---|---|
| | Minnetonka Leased Housing Associates II, LLLP<br>Federal ID #82-2656566 | |

**EXHIBIT C**

**INVESTMENT LETTER**

To: Economic Development Authority in and for the City of Minnetonka, Minnesota (the "Authority")
Attention: Executive Director

Re: Tax Increment Revenue Note, Series 20___, in the original aggregate principal amount of $_____

The undersigned, as Owner of $_____ in principal amount of the above-captioned Note (the "Note") pursuant to a resolution of the Authority adopted on July 23, 2018 (the "Resolution"), hereby represents to you as follows:

1. We understand and acknowledge that the TIF Note is delivered to the Owner as of this date pursuant to the Resolution and the Contract for Private Development, dated _____, 2018 (the "Contract"), between the Authority, the City of Minnetonka, Minnesota, and the Owner.

2. We understand that the TIF Note is payable as to principal and interest solely from Available Tax Increment as defined in the TIF Note and the provisions of the Contract.

3. We understand that the TIF Note does not accrue interest until the "Accrual Date," as defined in the TIF Note.

4. We further understand that any estimates of Tax Increment prepared by the Authority or its municipal advisors in connection with the TIF District, the Contract or the TIF Note are for the benefit of the Authority, and are not intended as representations on which the Owner may rely.

5. We acknowledge and understand that, if at any time, the Owner fails to meet the housing income restrictions required for a housing tax increment district as set forth in Minnesota Statutes, Section 469.174, subdivision 11 and Section 469.1761, and therefore, the tax increment district will no longer qualify as a housing tax increment district, no further payments will be made under the TIF Note.

6. We have sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the above-stated principal amount of the TIF Note.

7. We acknowledge that no offering statement, prospectus, offering circular or other comprehensive offering statement containing material information with respect to the Authority and the TIF Note has been issued or prepared by the Authority, and that, in due diligence, we have made our own inquiry and analysis with respect to the Authority, the TIF Note and the security therefor, and other material factors affecting the security and payment of the TIF Note.

8. We acknowledge that we have either been supplied with or have access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and we have had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Authority, the TIF Note and the security therefor, and that as a reasonable investor we have been able to make our decision to purchase the above-stated principal amount of the TIF Note.

9. We have been informed that the TIF Note (i) is not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, or under federal securities laws or regulations, (ii) will not be listed on any stock or other securities exchange, and (iii) will carry no rating from any rating service.

10. We acknowledge that neither the Authority nor Kennedy & Graven, Chartered has made any representations as to the status of interest on the TIF Note for state or federal income tax purposes.

11. All capitalized terms used herein have the meaning provided in the Contract unless the context clearly requires otherwise.

12. The Owner's federal tax identification number is _____.

13. We acknowledge receipt of the TIF Note as of the date hereof.

(The remainder of this page intentionally left blank.)

**MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP,** a Minnesota limited liability limited partnership

By: Minnetonka Leased Housing Associates II, LLC
Its: General Partner

By: _____
Name: Ryan J. Lunderby
Its: Vice President

Dated: _____

**EXHIBIT D**

**FORM OF DECLARATION OF RESTRICTIVE COVENANTS**

THIS DECLARATION OF RESTRICTIVE COVENANTS (the "Declaration"), dated _____, 2018, by MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP, a Minnesota limited liability limited partnership (the "Developer"), is given to the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, a public body corporate and politic under the laws of the State of Minnesota (the "Authority").

RECITALS

WHEREAS, the Authority entered into that certain Contract for Private Development, dated _____, 2018 (the "Contract"), filed _____, 2018 in the Office of the [Recorder] [Registrar of Titles] for Hennepin County, Minnesota as Document No. _____, between the Authority and the Developer; and

WHEREAS, pursuant to the Contract, the Developer is obligated to cause construction of 220 housing units of rental housing on the property described in Exhibit A hereto (the "Property"), and to cause compliance with certain affordability covenants described in Section 4.5 of the Contract; and

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

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

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

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

1. Term of Restrictions.

(a) Occupancy and Rental Restrictions. The term of the Occupancy Restrictions set forth in Section 3 and the Rental Restriction set forth in Section 4 of this Declaration will commence on the date a certificate of occupancy is received from the City of Minnetonka, Minnesota for all rental units on the Property. The period from commencement to termination is the "Qualified Project Period."

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

(c) Removal from Real Estate Records. Upon termination of this Declaration, the Authority will, 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. The Developer represents, warrants, and covenants that:

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

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

(ii) Agrees that the family income at the time the lease is executed will 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 will be deemed a violation of a substantial obligation of the lessee's tenancy.

(b) The Developer will 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, one hundred percent (100%) of the Rental Housing Units will be occupied (or treated as occupied as provided herein) or held vacant and available for occupancy by Qualifying Tenants. Qualifying Tenants means those persons and families who are determined from time to time by the Developer to have combined adjusted income that does not exceed sixty percent (60%) of the Minneapolis-St. Paul metropolitan statistical area (the "Metro Area") median income for the applicable calendar year. For purposes of this definition, the occupants of a residential unit will 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 will 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 of comparable or smaller size (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 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 residential unit in the Project is occupied by a new resident whose income exceeds the applicable income limit for Low Income Tenants.

(ii) Certification of Tenant Eligibility. As a condition to initial and continuing occupancy, each person who is intended to be a Qualifying Tenant will be required annually to sign and deliver to the Developer a Certification of Tenant Eligibility substantially in (A) the form attached as Exhibit B hereto,(B) the form of tenant income certification used by the Minnesota Housing Finance Agency, or (C) any 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, the person will 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 the tenant continues to be a Qualifying Tenant within the meaning of Section 3(a) hereof. Eligibility Certifications will be maintained on file by the Developer with respect to each Qualifying Tenant who resides in a Project unit or resided therein during the immediately preceding calendar year. The requirement of this paragraph 3(a)(ii) to perform annual Eligibility Certifications shall not apply to a given year if, during such year, no residential unit in the Project is occupied by a new resident whose income exceeds the applicable income limit for Low Income Tenants. The preceding sentence shall not affect the Developer's obligation to obtain an initial Eligibility Certification from each person who is intended to be a Qualifying Tenant.

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

(iv) Annual Report. The Developer covenants and agrees that during the term of this Declaration, it will prepare and submit to the Authority on or before January 31 of each year, a certificate substantially in the form of Exhibit C hereto (or a similar report produced by Yardi Property Management Software or another property management software acceptable to the Authority), executed by the Developer, (a) identifying the tenancies and the dates of occupancy (or vacancy) for all Qualifying Tenants in the Project, including the percentage of the dwelling units of the Project which were occupied by Qualifying Tenants (or held vacant and available for occupancy by Qualifying Tenants) at all times during the year preceding the date of the certificate; (b) describing all transfers or other changes in ownership of the Project or any interest therein which causes a change in control of the Developer; and (c) stating, that to the best knowledge of the person executing the certificate after due inquiry, all the units were rented or available for rental on a continuous basis during the year to members of the general public and that the Developer was not otherwise in default under this Declaration during the year.

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

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

4. Rental Restrictions. The Developer represents, warrants and covenants that the maximum gross rent for all units occupied by Qualifying Tenants must not exceed thirty percent (30%) of the imputed income limitation applicable to the unit, all in accordance with Section 42 of the Internal Revenue Code of 1986, as amended (the "Tax Credit Law").

5. Transfer Restrictions. The Developer covenants and agrees that the Developer will cause or require as a condition precedent to any conveyance, transfer, assignment, or any other disposition of the Project prior to the termination of the Rental Restrictions and Occupancy Restrictions provided herein (the "Transfer") that the transferee of the Project pursuant to the Transfer assume in writing, in a form

acceptable to the Authority, all duties and obligations of the Developer under this Declaration, including this Section 5, in the event of a subsequent Transfer by the transferee prior to expiration of the Rental Restrictions and Occupancy Restrictions provided herein (the "Assumption Agreement"). The Developer will deliver the Assumption Agreement to the Authority prior to the Transfer.

6. [Intentionally omitted.]

7. Enforcement.

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

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

(c) The Developer acknowledges that the primary purpose for requiring compliance by the Developer with the restrictions provided in this Declaration is to ensure compliance of the property with the housing affordability covenants set forth in Section 4.5 of the Contract, and by reason thereof, the Developer, in consideration for assistance provided by the Authority under the Contract that makes possible the construction of the Minimum Improvements (as defined in the Contract) on the Property, hereby agrees and consents that the Authority will be entitled, for any breach of the provisions of this Declaration, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Developer of its obligations under this Declaration in a state court of competent jurisdiction. The Developer hereby further specifically acknowledges that the Authority cannot be adequately compensated by monetary damages in the event of any default hereunder.

(d) The Developer understands and acknowledges that, in addition to any remedy set forth herein for failure to comply with the restrictions set forth in this Declaration, the Authority may exercise any remedy available to it under Article IX of the Contract.

8. Indemnification. The Developer hereby indemnifies, and agrees to defend and hold harmless, the Authority from and against all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses), causes of action, suits, allegations, 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 will have the right to appoint an agent to carry out any of its duties and obligations hereunder, and will inform the Developer of any agency appointment by written notice.

10. Severability. The invalidity of any clause, part or provision of this Declaration will not affect the validity of the remaining portions thereof.

11. Notices. All notices to be given pursuant to this Declaration must be in writing and will be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to any other place as a party may from time to time designate in writing. The Developer and the Authority may, by notice given hereunder, designate any further or

different addresses to which subsequent notices, certificates, or other communications are 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<br>14600 Minnetonka Boulevard<br>Minnetonka, MN 55345<br>Attention: Community Development Director |
| To the Developer: | Minnetonka Leased Housing Associates II, LLLP<br>2905 Northwest Blvd. Suite 150<br>Plymouth, MN 55441-2644<br>Attention: Mark S. Moorhouse and Ryan J. Lunderby |
| With copy to: | Winthrop & Weinstine, P.A.<br>Capella Tower, Suite 3500<br>225 South Sixth Street<br>Minneapolis, MN 55402-4629<br>Attention: John Stern |

12. Governing Law. This Declaration is 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 the action.

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

15. Relationship to Tax Credit Law Requirements. Notwithstanding anything to the contrary, during any period while one hundred percent (100%) of the units in the Property are subject to income and rent limitations under the Tax Credit Law, evidence of compliance with the Tax Credit Law requirements filed with the Authority at least annually will satisfy any requirements otherwise imposed under this Declaration. During any portion of the Qualified Project Period as defined herein when the Tax Credit Law income and rent restrictions do not apply to the Property, this Declaration controls.

16. Notice of Sale. In consideration for the issuance of the TIF Note, the Developer agrees to provide the Authority with at least ninety (90) days' notice of any sale of the Project.

17. Foreclosure. In the event of foreclosure (or deed in lieu of foreclosure) of the [Construction Mortgage or Freddie Mac Mortgage], dated _____, 2018 which was executed by the Developer to secure repayment of the _____ (the "Bonds"), issued by the City of Minnetonka in the original aggregate principal amount of $_____, this Declaration (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate.

(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.

**MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP,** a Minnesota limited liability limited partnership

By: Minnetonka Leased Housing Associates II, LLC
Its: General Partner

By: _____
Name: Ryan J. Lunderby
Its: Vice President

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____, 2018, by Ryan J. Lunderby, the Vice President of Minnetonka Leased Housing Associates II, LLC, a Minnesota limited liability company, the general partner of Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, on behalf of the Developer.

_____
Notary Public

This document 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 _____, 20___, by _____, the President of 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, on behalf of the Authority.

_____
Notary Public

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____, 20___, by _____, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

_____
Notary Public

EXHIBIT A

Legal Description

The land referred to is situated in the State of Minnesota, County of Hennepin, and is described as follows:

Lot 2, Block 1, DOMINIUM 2ND ADDITION, Hennepin County, Minnesota

EXHIBIT B

Certification of Tenant Eligibility

(INCOME COMPUTATION AND CERTIFICATION)

Project: [Address]

Owner:

Unit Type: _____ 1 BR _____ 2 BR _____ 3 BR

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

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

Income Computation

2. The anticipated income of all the above persons during the twelve (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 these types of 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 twelve (12) month period commencing this date: $_____; and

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

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

Yes _____ No _____

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

Yes _____ No _____

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

_____

Head of Household

_____

Spouse

FOR COMPLETION BY OWNER
(OR ITS MANAGER) ONLY

1. Calculation of Eligible Tenant Income:

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

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

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

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

3. Rent:

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

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

4. Number of apartment unit assigned: _____.

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

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

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

MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP, a Minnesota limited liability limited partnership

By _____
Its _____

EXHIBIT C

Certificate of
Continuing Program Compliance

Date: _____

The following information with respect to the Project located at _____, Minnetonka, Minnesota (the "Project"), is being provided by Minnetonka Leased Housing Associates II, LLLP (the "Owner") to the Economic Development Authority in and for the City of Minnetonka, Minnesota (the "Authority"), pursuant to that certain Declaration of Restrictive Covenants, dated _____, 2018 (the "Declaration"), with respect to the Project:

(A) The total number of residential units which are available for occupancy is 220. The total number of these units occupied is _____.

(B) The following residential units (identified by unit number) are currently occupied by "Qualifying Tenants," as the term is defined in the Declaration (for a total of ____units):

1 BR Units:

2 BR Units:

3 BR Units:

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

| 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 | | | | | | | |
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| 30 | | | | | | | |

(E) The Owner has obtained a "Certification of Tenant Eligibility," in the form required by the Declaration, from each Tenant named in (D) above (to the extent required by the Declaration), and each such Certificate is being maintained by the Owner 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 Owner.

(F) In renting the residential units in the Project, the Owner 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 twelve (12) 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 Owner 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 Owner certifies that as of the date hereof one hundred percent (100%) 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 Owner, on _____, 2018.

**MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP,** a Minnesota limited liability limited partnership

By: Minnetonka Leased Housing Associates II, LLC
Its: General Partner

By: _____
Name: Ryan J. Lunderby
Its: Vice President

**EXHIBIT E**

**CERTIFICATE OF COMPLETION**

The undersigned hereby certifies that Minnetonka Leased Housing Associates II, LLLP (the "Developer"), has fully complied with its obligations under Article IV of that document titled "Contract for Private Development," dated _____, 2018 (the "Agreement"), 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 Article IV of the Agreement, and that the Developer is released and forever discharged from its obligations with respect to construction of the Minimum Improvements under Articles III and IV of the Agreement.

Dated: _____, 20___.

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

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____, 20___, by _____, the President of 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, on behalf of the Authority.

_____
Notary Public

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____, 20___, by _____, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State of 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

**EXHIBIT F**

**RENTAL HOUSING UNITS BY UNIT TYPE**

| Unit Type | Number of Units in Minimum Improvements |
|---|---|
| One Bedroom | 55 units |
| Two Bedroom | 120 units |
| Three Bedroom | 45 units |

**EXHIBIT G**

**FORM OF MINIMUM ASSESSMENT AGREEMENT**

**MINIMUM ASSESSMENT AGREEMENT**

**and**

**ASSESSOR'S CERTIFICATION**

**between**

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

**MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP,**

**and**

**CITY ASSESSOR FOR THE CITY OF MINNETONKA, MINNESOTA**

This Document was drafted by:

KENNEDY & GRAVEN, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

THIS MINIMUM ASSESSMENT AGREEMENT, dated as of this ____ day of _____, 2018 (the "Minimum Assessment Agreement"), is between the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the "Authority"), and MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP, a Minnesota limited liability limited partnership, its successors and assigns (the "Owner").

WITNESSETH:

WHEREAS, the Authority and the Owner have entered into a Contract for Private Development, dated _____, 2018 (the "Agreement"), concerning the property legally described on EXHIBIT A attached hereto (the "Development Property"); and

WHEREAS, pursuant to the Agreement, the Owner will construct approximately 220 affordable multifamily housing apartment units, with one hundred percent (100%) of the apartment units made affordable to families at or below sixty percent (60%) of the area median income, on the Development Property (the "Minimum Improvements"); and

WHEREAS, the Authority and the Owner desires to establish a minimum market value for the Development Property and the Minimum Improvements to be constructed thereon, pursuant to Minnesota Statutes, Section 469.177, subdivision 8; and

WHEREAS, the Authority and the City Assessor for the City of Minnetonka, Minnesota have reviewed the Plans for the Minimum Improvements which the Owner has agreed to construct on the Development Property pursuant to the Agreement; and

NOW, THEREFORE, the parties to this Minimum Assessment Agreement, in consideration of the promises, covenants and agreements made herein and in the Agreement by each to the other, do hereby agree as follows:

1. The Minimum Market Value for the Development Property with the Minimum Improvements shall be $39,600,000. The parties agree that this Minimum Market Value shall be placed against the Development Property as of January 2, 2020, for taxes payable beginning in 2021, notwithstanding any failure to start or complete construction of such Minimum Improvements by that date.

2. The Minimum Market Value herein established shall be of no further force and effect and this Minimum Assessment Agreement shall terminate on the Maturity Date. The Maturity Date has the meaning given to it under the Agreement.

3. This Minimum Assessment Agreement shall be promptly recorded by the Owner with a copy of Minnesota Statutes, Section 469.177, subdivision 8 set forth in EXHIBIT B attached hereto. The Owner shall pay all costs of recording this Minimum Assessment Agreement.

4. Neither the preambles nor the provisions of this Minimum Assessment Agreement are intended to, nor shall they be construed as, modifying the terms of the Agreement. Unless the context indicates clearly to the contrary, the terms used in this Minimum Assessment Agreement shall have the same meaning as the terms used in the Agreement.

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

6. Each of the parties has authority to enter into this Minimum Assessment Agreement and to take all actions required of it and has taken all actions necessary to authorize the execution and delivery of this Minimum Assessment Agreement.

7. In the event any provision of this Minimum Assessment Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

8. The parties hereto agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements, amendments and modifications hereto, and such further instruments as may reasonably be required for correcting any inadequate, or incorrect, or amended description of the Development Property, or for carrying out the expressed intention of this Minimum Assessment Agreement.

9. Except as provided in Section 8 hereof, this Minimum Assessment Agreement may not be amended nor any of its terms modified except by a writing authorized and executed by all parties hereto.

10. This Minimum Assessment Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

11. This Minimum Assessment Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, the Authority and the Owner have executed this Minimum Assessment Agreement as of the date and year first written above.

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

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____, 2018, by Brad Wiersum, the President of 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, on behalf of the Authority.

_____
Notary Public

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____, 2018, by Geralyn Barone, the Executive Director of 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, on behalf of the Authority.

_____
Notary Public

**MINNETONKA LEASED HOUSING ASSOCIATES II, LLLP,** a Minnesota limited liability limited partnership

By: Minnetonka Leased Housing Associates II, LLC
Its: General Partner

By: _____
Name: Ryan J. Lunderby
Its: Vice President

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____, 2018, by Ryan J. Lunderby, the Vice President of Minnetonka Leased Housing Associates II, LLC, a Minnesota limited liability company, the general partner of Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, on behalf of the Developer.

_____
Notary Public

**CERTIFICATION BY ASSESSOR**

The undersigned, having reviewed the plans and specifications for the improvements to be constructed and the market value assigned to the land upon which the improvements are to be constructed, and being of the opinion that the minimum market value contained in the foregoing Agreement appears reasonable, hereby certify as follows: The undersigned Assessor being legally responsible for the assessment of the described property, hereby certifies that the market value assigned to such land and improvements at the property, legally described on EXHIBIT A attached hereto, shall be not less than $39,600,000 as of January 2, 2020, for taxes payable beginning in 2021, until termination of this Agreement.

_____

City Assessor for Minnetonka, Minnesota

STATE OF MINNESOTA )
) ss.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____, the City Assessor, City of Minnetonka, Hennepin County, Minnesota.

_____

Notary Public

**EXHIBIT A**
**TO ASSESSMENT AGREEMENT**

The Development Property is legally described as follows:

Lot 2, Block 1, DOMINIUM 2ND ADDITION, Hennepin County, Minnesota

**EXHIBIT B**
**TO ASSESSMENT AGREEMENT**

Section 469.177, subd. 8. **Assessment Agreements**. An authority may enter into a written assessment agreement with any person establishing a minimum market value of land, existing improvements, or improvements to be constructed in a district, if the property is owned or will be owned by the person. The minimum market value established by an assessment agreement may be fixed, or increase or decrease in later years from the initial minimum market value. If an agreement is fully executed before July 1 of an assessment year, the market value as provided under the agreement must be used by the county or local assessor as the taxable market value of the property for that assessment. Agreements executed on or after July 1 of an assessment year become effective for assessment purposes in the following assessment year. An assessment agreement terminates on the earliest of the date on which conditions in the assessment agreement for termination are satisfied, the Maturity Date specified in the agreement, or the date when tax increment is no longer paid to the authority under section 469.176, subdivision 1. The assessment agreement shall be presented to the county assessor, or city assessor having the powers of the county assessor, of the jurisdiction in which the tax increment financing district and the property that is the subject of the agreement is located. The assessor shall review the plans and specifications for the improvements to be constructed, review the market value previously assigned to the land upon which the improvements are to be constructed and, so long as the minimum market value contained in the assessment agreement appears, in the judgment of the assessor, to be a reasonable estimate, shall execute the following certification upon the agreement:

> The undersigned assessor, being legally responsible for the assessment of the above described property, certifies that the market values assigned to the land and improvements are reasonable

The assessment agreement shall be filed for record and recorded in the office of the county recorder or the registrar of titles of each county where the real estate or any part thereof is situated. After the agreement becomes effective for assessment purposes, the assessor shall value the property under Section 273.11, except that the market value assigned shall not be less than the minimum market value established by the assessment agreement. The assessor may assign a market value to the property in excess of the minimum market value established by the assessment agreement. The owner of the property may seek, through the exercise of administrative and legal remedies, a reduction in market value for property tax purposes, but no city assessor, county assessor, county auditor, board of review, board of equalization, commissioner of revenue, or court of this state shall grant a reduction of the market value below the minimum market value established by the assessment agreement during the term of the agreement filed of record regardless of actual market values which may result from incomplete construction of improvements, destruction, or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording an assessment agreement constitutes notice of the agreement to anyone who acquires any interest in the land or improvements that is subject to the assessment agreement, and the agreement is binding upon them.

An assessment agreement may be modified or terminated by mutual consent of the current parties to the agreement. Modification or termination of an assessment agreement must be approved by the governing body of the municipality. If the estimated market value for the property for the most recently available assessment is less than the minimum market value established by the assessment agreement for that or any later year and if bond counsel does not conclude that termination of the agreement is necessary to preserve the tax exempt status of outstanding bonds or refunding bonds to be issued, the modification or termination of the assessment agreement also must be approved by the governing bodies of the county and the school district. A document modifying or terminating an agreement, including records of the municipality, county, and school district approval, must be filed for record. The assessor's review and certification is not required if the document terminates an agreement. A change to an agreement not fully

executed before July 1 of an assessment year is not effective for assessment purposes for that assessment year. If an assessment agreement has been modified or prematurely terminated, a person may seek a reduction in market value or tax through the exercise of any administrative or legal remedy. The remedy may not provide for reduction of the market value below the minimum provided under a modified assessment agreement that remains in effect. In no event may a reduction be sought for a year other than the current taxes payable year.

**EXHIBIT H**

**SITE IMPROVEMENTS**

The following improvements are the Site Improvements required under this Agreement:

- Surveying and staking;
- Surface improvements, including but not limited to streets, curbs, sidewalks and trails;
- Water main;
- Sanitary sewer;
- Storm sewer and stormwater management facilities;
- Lot and block monuments;
- Gas, electric, telephone and cable lines;
- Site grading;
- Landscaping;
- Street lighting;
- Street signs;
- Relocation of the public sewer line in the western portion of the Development Property;
- Pedestrian underpass beneath Bren Road East;
- Dynamic predication crossing safety improvements on the east side of the Development Property, adjacent to Bren Road East; and
- All other items as necessary to complete the Project as stipulated in Resolution Nos. 2018-____, 2018-____ and this Agreement.

**Third Draft**
**July 17, 2018**

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**CONTRACT**

**FOR**

**PRIVATE DEVELOPMENT**

**between**

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

**CITY OF MINNETONKA, MINNESOTA,**

**and**

**MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP**

Dated _____, 2018

---

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

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**ARTICLE X**
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**CONTRACT FOR PRIVATE DEVELOPMENT**

THIS CONTRACT FOR PRIVATE DEVELOPMENT, made as of the _____ day of _____, 2018 (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"), the CITY OF MINNETONKA, MINNESOTA (the "City"), and MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP, a Minnesota limited liability limited partnership (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 adopted by the City Council of the City; and

WHEREAS, the Authority and the City have undertaken a program to promote economic development and job opportunities, promote the development and redevelopment of land which is underutilized within the City, and facilitate the development of affordable housing, and in this connection created a redevelopment project known as the Opus Redevelopment Project (the "Redevelopment Project") in the City, pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended; and

WHEREAS, the City and the Authority have established within the Project the Dominium Housing Tax Increment Financing District, a housing district (the "TIF District"), and have adopted a financing plan (the "TIF Plan") for the TIF District in order to facilitate development of certain property in the Redevelopment Project and promote the development of affordable housing within the City, all pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended; and

WHEREAS, the Developer proposes to acquire certain property described in EXHIBIT A attached hereto (the "Development Property") within the TIF District and develop approximately 262 affordable apartment units intended to be occupied by at least one individual who, at the time of initial occupancy of such unit, is 55 years of age or older, to be located at or about 11001 Bren Road East in the City, with one hundred percent (100%) of the apartment units made affordable to such tenants at or below sixty percent (60%) of the area median income (the "Minimum Improvements"); and

WHEREAS, in order to make the Minimum Improvements economically feasible for the Developer to construct, the Authority is prepared to reimburse the Developer for certain land acquisition costs, site improvement costs, and costs of constructing housing related to the Minimum Improvements, which are eligible to be reimbursed with tax increment; and

WHEREAS, the Authority and the City believe that the development of the TIF District pursuant to this Agreement, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State of Minnesota and local laws and requirements under which the Redevelopment Project has been undertaken and is being assisted.

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

## ARTICLE I

## Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context, the following terms have the following defined meanings:

"Administrative Costs" means the costs described in Section 3.5 hereof.

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

"Assessor" means the assessor of the City.

"Authority" means the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State.

"Authority Representative" means the Executive Director of the Authority.

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

"Board" means the Board of Commissioners of the Authority.

"Certificate of Completion" means the certification provided to the Developer pursuant to Section 4.4 hereof.

"City" means the City of Minnetonka, Minnesota.

"Closing" means the date the Developer purchases the Development Property.

"Code" means the Internal Revenue Code of 1986, as amended, and the treasury regulations promulgated thereunder.

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

"County" means Hennepin County, Minnesota.

"Declaration" means the Declaration of Restrictive Covenants attached as EXHIBIT D hereto.

"Developer" means Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, or its permitted successors and assigns.

"Development Property" means the real property described in EXHIBIT A attached hereto.

"EDA Act" means Minnesota Statutes, Sections 469.090 through 469.1082, as amended.

"Event of Default" means an action by the Developer listed in Article IX hereof.

"Holder" means the owner of a Mortgage.

"HRA Act" means Minnesota Statutes, Sections 469.001 through 469.047, as amended.

"Material Change" means a change in construction plans that adversely affects generation of Tax Increment or changes the number of Rental Housing Units.

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

"Minimum Assessment Agreement" means the Minimum Assessment Agreement establishing a Minimum Market Value of the Development Property and the Minimum Improvements substantially in the form attached hereto as EXHIBIT G.

"Minimum Improvements" means the construction of a multifamily housing development consisting of one buildings with approximately 262 affordable apartment units, intended to be occupied by at least one individual who at the time of initial occupancy of such unit, is 55 years of age or older, with at least 262 parking spaces but no less than the parking spaces required by the applicable Planned Unit Development (or such lesser amount of parking spaces as may be permitted from time to time under this Agreement) on the Development Property.

"Minimum Market Value" means a minimum market value for real estate tax purposes of $47,160,000 with respect to the Development Property and Minimum Improvements as of January 2, 2020 for taxes payable beginning in 2021 through the Maturity Date.

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

"Payment Date" means each February 1 and August 1, commencing August 1, 2021, on which principal of the TIF Note is paid.

"Public Development Costs" has the meaning provided in Section 3.3 hereof.

"Qualifying Tenants" means one or more occupants of a unit within the Minimum Improvements, so long as at least one of the occupants of the unit, at the time of initial occupancy of such unit, is 55 years of age or older; provided, however, if one or more of the occupants that qualifies as a Qualifying Tenant dies, the then current tenant of the until shall be deemed a Qualifying Tenant.

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

"Redevelopment Project" means the Opus Redevelopment Project.

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

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

"Site Improvements" has the meaning provided in Section 4.8 hereof.

"State" means the State of Minnesota.

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

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

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

"Tax Increment District" or "TIF District" means the Dominium Housing Tax Increment Financing District, a housing district.

"Tax Increment Plan" or "TIF Plan" means the Tax Increment Financing Plan for the Dominium Housing Tax Increment Financing District, as approved July 23, 2018, and as it may be amended from time to time.

"Tax Official" means the Assessor; County auditor; County or State board of equalization, the commissioner of revenue of the State, or any State or federal district court, the tax court of the State, or the State Supreme Court.

"TIF Note" means a Tax Increment Revenue Note, substantially in the form attached hereto as EXHIBIT B, to be delivered by the Authority to the Developer pursuant to Section 3.4 hereof, and any obligation issued to refund the TIF Note.

"Unavoidable Delays" means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of strikes, lockouts or other labor troubles, prolonged adverse weather or acts of God, fire or other casualty to the Minimum Improvements, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the Authority in properly exercising its rights under this Agreement) which directly result in delays. Unavoidable Delays shall not include delays experienced by the Developer in obtaining permits or governmental approvals necessary to enable construction of the Minimum Improvements by the dates such construction is required under Section 4.3 hereof, so long as the Construction Plans have been approved in accordance with Section 4.2 hereof. Unavoidable Delays shall include delays resulting from market conditions which make the Redevelopment Project financially infeasible.

"Workforce Housing Project" means the construction of approximately 220 affordable multifamily housing apartment units by Minnetonka Leased Housing Associates II, LLLP, a Minnesota limited liability limited partnership, on property adjacent to the Development Property.

## ARTICLE II

## Representations and Warranties

Section 2.1. Representations by the Authority. The Authority makes the following representations:

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

(b) The Authority proposes to assist in financing certain land acquisition costs, site improvement costs, and costs of constructing affordable housing necessary to facilitate the construction of the Minimum Improvements in accordance with the terms of this Agreement to further the objectives of the Redevelopment Plan.

(c) The Authority finds that the Minimum Improvements are necessary to alleviate a shortage of, and maintain existing supplies of, decent, safe, and sanitary housing for Qualifying Tenants of low or moderate income.

(d) The execution, delivery and performance of this Agreement and of any other documents or instruments required pursuant to this Agreement by the Authority, and consummation of the transactions contemplated therein and the fulfillment of the terms thereof, do not and will not conflict with or constitute a breach of or default under any existing (i) indenture, mortgage, deed of trust or other agreement or instrument to which the Authority is a party or by which the Authority or any of its property is or may be bound; or (ii) legislative act, constitution or other proceedings establishing or relating to the establishment of the Authority or its officers or its resolutions.

(e) There is not pending, nor to the best of the Authority's knowledge is there threatened, any suit, action or proceeding against the Authority before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the Authority to perform its obligations hereunder, or the validity or enforcement of this Agreement.

Section 2.2. Representations by the City. The City makes the following representations:

(a) The City is a home rule city duly organized and existing under its Charter and the laws of the State. Under the provisions of the TIF Act, the City has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The City proposes to provide the Developer the ability to offset certain park dedication fees in exchange for the Developer constructing certain Site Improvements described in EXHIBIT H.

(c) The City finds that the Minimum Improvements are necessary to alleviate a shortage of, and maintain existing supplies of, decent, safe, and sanitary housing for Qualifying Tenants of low or moderate income and their families.

(c) The execution, delivery and performance of this Agreement and of any other documents or instruments required pursuant to this Agreement by the City, and consummation of the transactions contemplated therein and the fulfillment of the terms thereof, do not and will not conflict with or constitute a

breach of or default under any existing (i) indenture, mortgage, deed of trust or other agreement or instrument to which the City is a party or by which the City or any of its property is or may be bound; or (ii) legislative act, constitution or other proceedings establishing or relating to the establishment of the City or its officers or its resolutions.

(d) There is not pending, nor to the best of the City's knowledge is there threatened, any suit, action or proceeding against the City before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the City to perform its obligations hereunder, or the validity or enforcement of this Agreement.

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

(a) The Developer is a limited liability limited partnership duly organized and in good standing under the laws of the State, is duly authorized to transact business within the State, and has the power to enter into this Agreement.

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

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

(d) The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed. The Developer did not obtain a building permit for any portion of the Minimum Improvements before July 23, 2018, the date of approval of the TIF Plan for the TIF District.

(e) The Developer has received no notice or communication from any local, State, or federal official that the activities of the Developer on the Development Property may be or will be in violation of any environmental law or regulation. The Developer is aware of no facts the existence of which would cause it to be in violation of or give any person a valid claim under any local, State, or federal environmental law, regulation or review procedure.

(f) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any corporate restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(g) The proposed development by the Developer hereunder would not occur but for the tax increment financing assistance and other assistance being provided by the Authority hereunder.

(h) The Developer must promptly advise the City and the Authority in writing of all litigation or claims affecting any part of the Minimum Improvements and all written complaints and charges made by any governmental authority materially affecting the Minimum Improvements or materially affecting

Developer or its business which may delay or require changes in construction of the Minimum Improvements.

(i) The Developer represents that no more than twenty percent (20%) of the square footage of the Minimum Improvements will consist of commercial, retail or other nonresidential use. For purposes of this covenant, the underground parking constructed for use by the tenants of the Minimum Improvements constitutes a residential use.

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## ARTICLE III

## Property Acquisition; Financing

Section 3.1. Status of Development Property. As of the date of this Agreement, the Developer has entered into a purchase agreement to acquire the Development Property. The Developer shall acquire the Development Property pursuant to the terms of such purchase agreement. Neither the Authority nor the City has any obligation to acquire any portion of the Development Property.

Section 3.2. Environmental Conditions.

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

(b) Without limiting its obligations under Section 8.3 hereof, the Developer further agrees that it will indemnify, defend, and hold harmless the Authority, the City, and their respective governing body members, officers, and employees (the "Indemnitees") 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. Reimbursement of Certain Developer Costs. The Authority is authorized to acquire real property and convey real property to private entities at a price determined by the Authority in order to facilitate development of the property. The Authority has determined that, in order to make development of the Minimum Improvements financially feasible, it is necessary to reduce the costs of acquisition of the Development Property, site preparation costs, costs of constructing housing, or any other costs eligible to reimbursed with tax increment (collectively, the "Public Development Costs"). The Authority has also determined that, in light of potential liability that could be incurred by the Authority if the Authority takes title to the Development Property, it is in the best interest of the Authority for the Developer to acquire the Development Property directly. The Authority will reimburse the Developer for a portion of the actual cost of acquiring the Development Property in accordance with the terms of this Agreement.

Section 3.4. Issuance of Pay-As-You-Go Note.

(a) In consideration of the Developer constructing the Minimum Improvements and to finance the reimbursement of Public Development Costs incurred by the Developer, the Authority will issue and the Developer will purchase the TIF Note in the principal amount of $4,161,000. The Authority and the Developer agree that the consideration from the Developer for the purchase of the TIF Note will consist of the Developer's payment of the Public Development Costs incurred by the Developer in at least the principal amount of the TIF Note.

The Authority shall issue the TIF Note on the date of closing on the financing for the Minimum Improvements upon satisfaction of the following conditions:

(i) the Developer has submitted Construction Plans to the Authority and obtained approval for the Construction Plans by the Authority;

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

(iii) the Developer has delivered to the Authority an investment letter in substantially the form set forth in EXHIBIT C attached hereto or another form reasonably satisfactory to the Authority; and

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

With respect to the payment of principal of and interest on the TIF Note, however, the principal of the TIF Note shall not be payable and the interest on the TIF Note shall not accrue until the date upon which the Authority receives and approves written evidence that the Developer has paid Public Development Costs in at least the principal amount of $4,161,000.

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

(c) The Authority acknowledges that the Developer may assign the TIF Note to a lender that provides the financing for the acquisition of the Development Property, the construction of the Minimum Improvements, and/or the permanent financing for the Development Property and the Minimum Improvements. The Authority acknowledges that the Developer may collaterally assign the TIF Note to the lender that provides the financing for the acquisition of the Development Property or the construction of the Minimum Improvements. Any assignment agreement must be approved by the Board of the Authority.

(d) If the TIF District is disqualified as described in Section 4.5 hereof, the Authority is required by the TIF Act to stop payments of Available Tax Increment to pay principal of and interest on the TIF Note.

Section 3.5. Payment of Administrative Costs.

(a) The Developer is responsible to pay "Administrative Costs," which term means out-of-pocket-costs incurred by the Authority or the City from and after September 1, 2017 in connection with the negotiation and execution of this Agreement, creation of the Tax Increment Plan, and all other similar out-of-pocket expenses and fees of the City and the Authority arising from this Agreement that are of an administrative nature, including: (i) the Authority's and the City's municipal advisor in connection with the Authority's financial participation in development of the Development Property; and (ii) the Authority's and the City's legal counsel in connection with negotiation and drafting of this Agreement.

(b) On and after the date of execution of this Agreement, but not more often than monthly, the City and the Authority may request payment of Administrative Costs, and the Developer agrees to pay all Administrative Costs within ten (10) days of the Authority's or the City's written request, supported by suitable billings, receipts or other evidence of the amount and nature of Administrative Costs incurred. At the Developer's request, but no more often than monthly, the Authority will provide the Developer

with a written report on current and anticipated expenditures for Administrative Costs, including invoices or other comparable evidence.

Section 3.6. Records. The Authority and its representatives will have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and records of Developer relating to the Minimum Improvements and the costs for which the Developer has been reimbursed with Available Tax Increment.

Section 3.7. Exemption from Business Subsidy Act. The parties agree and understand that the purpose of the Authority's financial assistance to the Developer is to facilitate development of affordable residential rental housing for Qualifying Tenants of low and moderate income, and is not a "business subsidy" within the meaning of Minnesota Statutes, Sections 116J.993 to 116J.995, as amended.

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## ARTICLE IV

### Construction and Maintenance of Minimum Improvements

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 Maturity Date, it will operate and maintain, preserve and keep the Minimum Improvements or cause the improvements to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition. The Authority will have no obligation to operate or maintain the Minimum Improvements.

Section 4.2. Construction Plans.

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

(b) If the Developer desires to make any Material Change in the Construction Plans after their approval by the Authority, the Developer must submit the proposed change to the Authority for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2 with respect to the previously approved Construction Plans, the Authority will approve the proposed change and notify the Developer in writing of its approval. Any change in the Construction Plans will, in any event, be deemed approved by the Authority unless rejected, in whole or in part, by written notice by the Authority to the Developer, setting forth in detail the reasons therefor. Any rejection must be made within twenty (20) days after receipt of the notice of such change. The Authority's approval of any change in the Construction Plans will not be unreasonably withheld.

Section 4.3. Commencement and Completion of Construction.

(a) Subject to Unavoidable Delays, the Developer will commence the construction of the Minimum Improvements by March 1, 2019 and shall substantially complete the Minimum Improvements by December 31, 2020.

(b) Construction is considered to be commenced upon the beginning of physical improvements to the Development Property beyond grading.

(c) All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Development Property must be in substantial conformity with the Construction Plans as submitted by the Developer and approved by the Authority. The Developer agrees for itself, its successors and assigns, and every successor in interest to the Development Property, or any part thereof, that the Developer, and its successors and assigns, will promptly begin and diligently prosecute to completion the development of the Development Property through the construction of the Minimum Improvements thereon, and that the construction will in any event be commenced and completed within the period specified in Section 4.3(a) hereof. Until construction of the Minimum Improvements has been completed, the Developer will make reports, in the detail and at the times as may reasonably be requested by the Authority, as to the actual progress of the Developer with respect to the construction.

Section 4.4. Certificate of Completion.

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

(b) The Certificate of Completion provided for in this Section 4.4 will be in the form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Development Property. If the Authority refuses or fails to provide any certification in accordance with the provisions of this Section 4.4, the Authority will, within thirty (30) days after written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Authority, for the Developer to take or perform in order to obtain the certification.

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

Section 4.5. Affordability Covenants; Qualification of the TIF District. The Developer agrees that the Minimum Improvements are subject to the following affordability covenants:

(a) As of the date hereof, the Developer expects that the Minimum Improvements will include the mix of Rental Housing Units set forth in EXHIBIT F. The Developer will cause one hundred

percent (100%) of the Rental Housing Units in the Minimum Improvements to be affordable to Qualifying Tenants at or below sixty percent (60%) of the area median income and to be rent-restricted in accordance with the Tax Credit Law, all as further described in the Declaration attached hereto as EXHIBIT D. Notwithstanding anything to the contrary in the Tax Credit Law, the restrictions will remain in effect for the thirty (30) year period described in the Declaration. On or before the Closing, the Developer will deliver the executed Declaration to the Authority in recordable form.

(b) The Developer will initially provide at least 262 parking spaces for the Minimum Improvements. If, from time to time, the City gives its written permission to reduce the number of parking spaces, the number of parking spaces required by this Agreement shall be automatically reduced by such number without the need for a written amendment to this Agreement.

(c) The Authority and its representatives will have the right at all reasonable times while the covenants in this Section are in effect, after reasonable notice to inspect, examine and copy all books and records of the Developer and its successors and assigns relating to the covenants described in this Section and in the Declaration.

(d) On or before April 1 of each year during the term of the Declaration, commencing on the first April 1 after issuance of the Certificate of Completion for the Minimum Improvements, the Developer must submit evidence of tenant incomes and rents, showing that the Minimum Improvements meet the income and rent requirements set forth in the Declaration. The Authority will review the submitted evidence related to the income restrictions required by Section 469.1761 of the TIF Act to determine that the TIF District remains a housing district under the TIF Act.

(e) If the Authority determines, based on the reports submitted by the Developer or if the Authority receives notice from the State Department of Revenue, the State Auditor, any Tax Official or any court of competent jurisdiction that the TIF District does not qualify as a "housing district" due to action or inaction of the Developer, this type of event will be deemed an Event of Default of the Developer under this Agreement; provided, however, that the Authority may not exercise any remedy under this Agreement so long as the determination is being contested and has not been finally adjudicated. In addition to any remedies available to the Authority under Article IX hereof, the Developer will indemnify, defend and hold harmless the Authority for any damages or costs resulting therefrom.

(f) 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.

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

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

(i) This Agreement and the Declaration requires the Developer to cause one hundred percent (100%) of the Rental Housing Units in the Minimum Improvements to be affordable to families at or below sixty percent (60%) of the area median income, all as further described in the Declaration attached hereto as EXHIBIT D. Recent Federal legislation has introduced an income-averaging option for the low-income housing tax credit program. This legislation allows projects to accept residents with higher average median incomes as along as the overall average of the income of tenants in the project does not exceed 60% of the

area median income, which provides LIHTC projects the ability to serve tenants with a greater range of incomes. Minnesota Housing does not currently allow for income-averaging. However, if in the future Minnesota Housing allows the income-averaging option for the low-income housing tax credit program to be used for the Minimum Improvements, the Developer may opt to use the income-averaging methodology; provided, however, that the Developer must cause at least forty percent (40%) of the Rental Housing Units in the Minimum Improvements to be affordable to families at or below sixty percent (60%) of the area median income in order to comply with Section 469.1763, subdivision 3 of the TIF Act. The Developer must provide the Authority at least thirty (30) days' notice before opting into the income-averaging methodology and will cooperate with the Authority to revise this Agreement and the Declaration, if necessary.

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 TIF District is decertified. If the Developer fails to provide the annual reporting required under this Section, the Authority may withhold payments of Available Tax Increment under the TIF Note.

Section 4.7. Property Management Covenant. The Developer shall cause its property manager to operate the Minimum Improvements in accordance with the policies described in this Section. For any documented disorderly violations by a tenant or guest, including but not limited to prostitution, gang-related activity, intimidating or assaultive behavior (not including domestic), unlawful discharge of firearms, illegal activity, or drug complaints (each a "Violation"), the Developer agrees and understands that the following procedures shall apply:

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

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

(c) If a third Violation occurs regarding the same tenancy within twelve (12) continuous months after the first Violation, the City police department will notify the Developer and the property manager of the third Violation. Within ten (10) days after receiving such notice and subject to paragraph (f) below, the Developer to the property manager shall commence termination of the tenancy of all occupants of that unit. Subject to paragraph (f) below, neither the Developer nor the property manager shall 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), 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 be subject to consent by the Tax Credit Investor (as defined in Section 8.2 hereof) and each Holder of a Mortgage on the Development Property.

(f) Notwithstanding anything to the contrary in this Section 4.7, neither the Developer nor the property manager shall be obligated to take any action if such party reasonably believes such action is contrary to or in violation of applicable law, including, without limitation, Section 42 of the Code, the Section 8 program, State and federal fair housing laws, and State landlord-tenant law.

Section 4.8. Construction of Site Improvements.

(a) In consideration of the assistance provided to the Developer by the City and the Authority, subject to the limitations set forth in Sections 4.9 and 4.10, the Developer agrees that it will install or cause to be installed, in conformance with City standards and specifications, the Site Improvements on the Development Property or adjacent to the Development Property, as applicable, as described in EXHIBIT H attached hereto.

(b) When constructing the Site Improvements, the Developer is responsible for compliance with all conditions outlined in Resolution No. 2018-_____ and Resolution No. 2018- ____.

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

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

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

Section 4.9. Site Improvements Construction Addendum. Prior to the issuance of any permits, the City and the Developer shall enter into a mutually agreeable Construction Addendum containing (i) timeframes for the construction of the Site Improvements; (ii) the security to be provided by the Developer to the City to ensure the quality and completion of the Site Improvements; (iii) the methods of acceptance related to the Site Improvements; (iv) the process by which the security provided to the City may be reduced; (v) the process to obtain a certificate of occupancy from the City; (vi) final design details (including tunnels and trails); and (vii) the amount of credits provided by the City to offset the park dedication fees, as described in Section 4.10.

Section 4.10. Fees. The Developer must pay all water and sewer hook-up fees, SAC, WAC, and

REC fees, Engineering Inspection Fees and park dedication fees in accordance with applicable City policies and ordinances. Based on the size of the Minimum Improvements, it is anticipated that the Developer will owe approximately $5,000 per unit in park dedication fees. However, the City will consider offsetting the park dedication fees with credits for the costs incurred by the Developer in designing, constructing and other related costs (*e.g.* engineering costs, surveying costs, and soil remediation) of certain Site Improvements described in EXHIBIT H attached hereto (specifically the pedestrian underpass beneath Bren Road East and the dynamic predication crossing safety improvements on the east side of the Development Property and adjacent to Bren Road East. The Developer must provide the Authority with the estimates for the cost of the work described in EXHIBIT H and must provide the Authority with the final invoices for the work as the work is completed. The Developer will not be required to pay the costs of the pedestrian underpass beneath Bren Road East and the dynamic predication crossing safety improvements on the east side of the Development Property and adjacent to Bren Road East that exceed the amount of the Developer's park dedication fees.

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## ARTICLE V

## Insurance

Section 5.1. Insurance.

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

(i) Builder's risk insurance, written on the so-called "Builder's Risk – Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called "all risk" form of policy. The interest of the Authority must be protected in accordance with a clause in form and content satisfactory to the Authority;

(ii) Commercial general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with a Protective Liability Policy with limits against bodily injury and property damage of not less than $2,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used); the Authority must be listed as an additional insured on the policy; and

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

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

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

(ii) Comprehensive general public liability insurance, including personal injury liability (with employee exclusion deleted), against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of $2,000,000, and must be endorsed to show the Authority as an additional insured.

(iii) Other insurance, including workers' compensation insurance respecting all employees, if any, of the Developer, in an amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Developer may be self-insured with respect to all or any part of its liability for workers' compensation.

(c) All insurance required in this Article V must be taken out and maintained in responsible insurance companies selected by the Developer which are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Developer will deposit annually with the Authority policies evidencing all the insurance, or a certificate or certificates or binders of the respective insurers stating that the insurance is in force and effect. Unless otherwise provided in this Article V, each policy must contain a provision that the insurer will not cancel nor modify it in such a way as to reduce the coverage provided below the amounts required herein without giving written notice to the Developer and

the Authority at least thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, the Developer may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Developer will deposit with the Authority a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

(d) The Developer agrees to notify the Authority immediately in the case of damage exceeding $250,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. In the event this type of damage or destruction occurs, the Developer will forthwith repair, reconstruct and restore the Minimum Improvements to substantially the same or an improved condition or value as it existed prior to the event causing the damage and, to the extent necessary to accomplish the repair, reconstruction and restoration, the Developer will apply the net proceeds of any insurance relating to the damage received by the Developer to the payment or reimbursement of the costs thereof.

The Developer will complete the repair, reconstruction and restoration of the Minimum Improvements, whether or not the net proceeds of insurance received by the Developer is sufficient to pay for the same. Any net proceeds remaining after completion of the repairs, construction and restoration will be the property of the Developer.

(e) Notwithstanding anything to the contrary contained in this Agreement, in the event of damage to the Minimum Improvements in excess of $250,000 and the Developer fails to complete any repair, reconstruction or restoration of the Minimum Improvements within eighteen (18) months from the date of damage, the Authority may, at its option, terminate the TIF Note as provided in Section 9.3(b) hereof. If the Authority terminates the TIF Note, the termination will constitute the Authority's sole remedy under this Agreement as a result of the Developer's failure to repair, reconstruct or restore the Minimum Improvements. Thereafter, the Authority will have no further obligations to make any payments under the TIF Note.

(f) The Developer and the Authority agree that all of the insurance provisions set forth in this Article V will terminate upon the termination of this Agreement.

Section 5.2. Subordination. Notwithstanding anything to the contrary contained in this Article V, the rights of the Authority with respect to the receipt and application of any proceeds of insurance will, in all respects, be subject and subordinate to the rights of any lender under a Mortgage approved pursuant to Article VII hereof.

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## ARTICLE VI

### Tax Increment; Taxes; Minimum Assessment Agreement

Section 6.1. Right to Collect Delinquent Taxes. The Developer acknowledges that the Authority is providing substantial aid and assistance in furtherance of the redevelopment through issuance of the TIF Note. The Developer understands that the Available Tax Increment pledged to payment of the TIF Note is derived from real estate taxes on the Development Property, which taxes must be promptly and timely paid. To that end, the Developer agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Development Property and the Minimum Improvements. The Developer acknowledges that this obligation creates a contractual right on behalf of the Authority 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 will also be entitled to recover its costs, expenses and reasonable attorney fees. The Developer further agrees that it was not cause a reduction in the Minimum Market Value assessed in respect of the Minimum Improvements or the Development Property below the Minimum Market Value described in Section 6.2(a) hereof through:

(a) willful destruction of the Minimum Improvements or any part thereof;

(b) failure to reconstruct damaged or destroyed property pursuant to Section 4.3 hereof;

(c) a request to the Assessor to reduce the Minimum Market Value of all or any portion of the Minimum Improvements or the Development Property;

(d) a petition to the board of equalization of the County to reduce the Minimum Market Value of all or any portion of the Minimum Improvements or the Development Property;

(e) a petition to the board of equalization of the State or the commissioner of revenue of the State to reduce the Minimum Market Value of all or any portion of the Minimum Improvements or the Development Property;

(f) an action in a district court of the State or the tax court of the State seeking a reduction in the Minimum Market Value of the Minimum Improvements or the Development Property;

(g) an application to the commissioner of revenue of the State or to any local taxing jurisdiction requesting an abatement or deferral of real estate taxes on the Minimum Improvements or the Development Property;

(h) a transfer of the Minimum Improvements or the Development Property, or any part thereof, to an entity exempt from the payment of real estate taxes under State law and that entity applies for tax exemption; or

(i) any other proceedings, whether administrative, legal or equitable, with any administrative body within the County or the State or with any court of the State or the federal government.

Section 6.2. Minimum Assessment Agreement.

(a) At the time of execution of this Agreement, the Authority and the Developer shall execute the Minimum Assessment Agreement for the Development Property and Minimum Improvements. The Assessment Agreement shall specify the Minimum Market Value, notwithstanding any failure to start or complete the Minimum Improvements on the Development Property by the Maturity Date or any failure to reconstruct the Minimum Improvements after damage or destruction before the Maturity Date.

(b) Nothing in the Minimum Assessment Agreement shall limit the discretion of the Assessor to assign a market value to the Minimum Improvements or the Development Property in excess of the Assessor's Minimum Market Value or prohibit the Developer from seeking through the exercise of legal or administrative remedies a reduction in any increase in the market value established pursuant to subsection (a) above; provided, however, that the Developer shall not seek a reduction of such market value below the Assessor's Minimum Market Value set forth in the Minimum Assessment Agreement in any year so long as such Minimum Assessment Agreement shall remain in effect. The Minimum Assessment Agreement shall remain in effect until the Maturity Date; provided that, if at any time before the Maturity Date, the Minimum Assessment Agreement is found to be terminated or unenforceable by any Tax Official or court of competent jurisdiction, the Minimum Market Value described in this Section 6.2 shall remain an obligation of the Developer or its successors and assigns (whether or not such value is binding on the Assessor), it being the intent of the parties that the obligation of the Developer to maintain, and not seek reduction of, the Minimum Market Value specified in this Section 6.2 is an obligation under this Agreement as well as under the Minimum Assessment Agreement, and is enforceable by the Authority against the Developer, its successors and assigns, in accordance with the terms of this Agreement and the Minimum Assessment Agreement. Notwithstanding anything contained in this Agreement to the contrary, the Developer shall not be precluded from contesting the Minimum Market Value if the Minimum Improvements or the Development Property, or any substantial portion thereof, is acquired by a public entity through eminent domain prior to the Maturity Date.

Section 6.3. Reduction of Taxes. The Developer agrees that after the date of certification of the TIF District and prior to completion of the Minimum Improvements, it will not cause a reduction in the real property taxes paid in respect of the Development Property through: (A) willful destruction of the Development Property or any part thereof (except for the demolition of structures required for the construction of the Minimum Improvements); or (B) willful refusal to reconstruct damaged or destroyed property pursuant to Section 5.1 hereof.

The Developer also agrees that it will not, prior to the Maturity Date, (i) seek exemption from property tax for the Development Property; or (ii) convey or transfer or allow conveyance or transfer of the Development Property to any entity that is exempt from payment of real property taxes under State law (other than any portion thereof dedicated or conveyed to the Authority in accordance with this Agreement).

The Developer may, at any time following the issuance of the Certificate of Completion, seek through petition or other means to have the estimated market value for the Development Property reduced to not less than the Minimum Market Value. Prior to seeking a reduction in the estimated market value, the Developer must provide the Authority with written notice indicating its intention to do so. The Developer acknowledges and understands that this type of action will result in less Available Tax Increment being disbursed by the Authority for payment of the principal of and interest on the TIF Note.

Upon receiving notice from the Developer of its intention to cause the reduction of the estimated market value of the Development Property, or otherwise learning of the Developer's intentions, the

Authority may partially suspend or reduce payments due under the TIF Note until the actual amount of the reduction in market value is determined, whereupon the Authority will make the partially suspended payments less any amount that the Authority is required to repay the County as a result of any retroactive reduction in market value of the Development Property; provided, however, during the period that the payments are subject to partial suspension, the Authority shall make partial payments on the TIF Note, based on, in its reasonable discretion, the Available Tax Increment generated by the portion of the assessed value that is not being challenged.

The Authority's suspension of payments on the TIF Note pursuant to this Section will not be considered a default under Section 9.1 hereof.

Section 6.4. Qualifications. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that upon the transfer of the Development Property to another person or entity, the Developer will no longer be obligated under Sections 6.1 and 6.3 hereof, unless the transfer is made in violation of the provisions of Section 8.2 hereof.

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## ARTICLE VII

## Financing

Section 7.1. Mortgage Financing.

(a) Before commencement of construction of the Minimum Improvements, the Developer must submit to the Authority evidence of one or more commitments or plan of finance for financing which, together with committed equity for the construction, is sufficient for payment of the Minimum Improvements. The commitments may be submitted as short term financing, long-term mortgage financing, a bridge loan with a long-term take-out financing commitment, or any combination of the foregoing.

(b) If the Authority finds that the financing is sufficiently committed and adequate in amount to pay the costs specified in subsection (a) then the Authority will notify the Developer in writing of its approval. The approval will not be unreasonably withheld and either approval or rejection will be given within twenty (20) days from the date when the Authority is provided the evidence of financing. A failure by the Authority to respond to the evidence of financing will be deemed to constitute an approval hereunder. If the Authority rejects the evidence of financing as inadequate, it will do so in writing specifying the basis for the rejection. In any event the Developer will submit adequate evidence of financing within ten (10) days after any rejection for reconsideration by the Authority. The approval and execution by Authority officials of a bond purchase contract or agreement secured by the Developer's pledge of the TIF Note is deemed approval of such financing and approval of a mortgage on the Development Property.

Section 7.2. Authority's Option to Cure Default on Mortgage. In the event that any portion of the Developer's funds is provided through mortgage financing, and there occurs a default under any Mortgage authorized pursuant to this Article VII, the Developer will cause the Authority to receive copies of any notice of default received by the Developer from the Holder of the Mortgage. Thereafter, the Authority will have the right, but not the obligation, to cure any Mortgage default on behalf of the Developer within the cure periods as are available to the Developer under the Mortgage documents.

Section 7.3. Modification; Subordination. In order to facilitate the Developer obtaining financing for the development of the Minimum Improvements, the Authority and the City agree to subordinate their rights under this Agreement to the Holder of any Mortgage securing construction or permanent financing, under terms and conditions reasonably acceptable to the Authority. Any subordination agreement must be approved by the Board of the Authority and the City Council.

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

## ARTICLE VIII

### Prohibitions Against Assignment and Transfer; Indemnification

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

Section 8.2. Prohibition Against Developer's Transfer of Property and Assignment of Agreement. The Developer represents and agrees that prior to issuance of the Certificate of Completion for the Minimum Improvements:

(a) Except only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Development Property, or any part thereof, to perform its obligations with respect to making the Minimum Improvements under this Agreement, and any other purpose authorized by this Agreement, the Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to 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 (except a lease to a residential occupant), without the prior written approval of the City and the Authority unless the Developer remains liable and bound by this Agreement in which event the City and the Authority's approval is not required. Any transfer of this type will be subject to the provisions of this Agreement.

(b) In the event the Developer, upon transfer or assignment of the Development Property seeks to be released from its obligations under this Agreement, the City and the Authority will be entitled to require, except as otherwise provided in this Agreement, as conditions to any release that:

(i) Any proposed transferee will have the qualifications and financial responsibility, in the reasonable judgment of the City and the Authority, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer.

(ii) Any proposed transferee, by instrument in writing satisfactory to the City and the Authority and in form recordable among the land records, will, for itself and its successors and assigns, and expressly for the benefit of the City and the Authority, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property, or any part thereof, will not, for whatever reason, have assumed these obligations or so agreed, and will not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City and the Authority) deprive the City and the Authority of any rights or remedies or controls with respect to the Development Property or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Development Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, will operate, legally or practically, to deprive or limit the City and the Authority of or with respect to any rights or remedies on controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the City and the Authority would have had, had there been no transfer or change. In the absence of specific written

agreement by the City and the Authority to the contrary, no transfer or approval by the City and the Authority thereof will be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto.

(iii) Any and all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Development Property governed by this Article VIII, must be in a form reasonably satisfactory to the City and the Authority.

In the event the foregoing conditions are satisfied then the Developer will be released from its obligation under this Agreement.

After issuance of the Certificate of Completion for the Minimum Improvements, the Developer may transfer or assign the Development Property or the Developer's interest in this Agreement if it obtains the prior written consent of the City and the Authority (which consent will not be unreasonably withheld) and the transferee or assignee is bound by all the Developer's obligations hereunder. The Developer must submit to the City and the Authority written evidence of any transfer or assignment, including the transferee or assignee's express assumption of the Developer's obligations under this Agreement. If the Developer fails to provide evidence of transfer and assumption, the Developer will remain bound by all its obligations under this Agreement.

Nothing contained in this Section shall prohibit the Developer, without the consent or approval of the City and the Authority, from (i) entering into leases with tenants in the ordinary course of business, (ii) entering into easement or other agreements necessary for the operation of the Minimum Improvements, (iii) admitting or removing limited partners or transferring limited partner interests in the Developer or admitting or removing members in accordance with the applicable organizational documents or any documents referenced therein or attached thereto, (iv) substituting and/or removing the general partner of the Developer for cause at the direction of its limited partner(s) (whether one or more, the "Tax Credit Investor") in accordance with the Developer's partnership agreement, (v) pledging and/or collaterally assigning partnership interests as collateral for financing, and the exercise of remedies in connection therewith, or (vi) transferring or allowing the transfer of direct or indirect ownership interests in any partner of the Developer.

Section 8.3. Release and Indemnification Covenants.

(a) The Developer releases from and covenants and agrees that the City and the Authority and their respective governing body members, officers, agents, servants and employees thereof will not be liable for and agrees to indemnify and hold harmless the City and the Authority and their respective governing body members, officers, agents, servants and employees thereof against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements.

(b) Except for any willful misrepresentation or any willful or wanton misconduct of the following named parties, the Developer agrees to protect and defend the City and the Authority and their respective governing body members, officers, agents, servants and employees thereof, now or forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, maintenance and operation of the Minimum Improvements.

(c) The City and the Authority and their respective governing body members, officers, agents, servants and employees thereof will not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Development Property or Minimum Improvements due to any act of negligence of any person, except if such damage or injury to persons or property is due to any act of negligence by the City and the Authority and their respective governing body members, officers, agents, servants and employees.

(d) All covenants, stipulations, promises, agreements and obligations of the City and the Authority contained herein will be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and the Authority and not of any governing body member, officer, agent, servant or employee of the City and the Authority in the individual capacity thereof.

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## ARTICLE IX

## Events of Default

Section 9.1. Events of Default Defined. The following will be "Events of Default" under this Agreement and the term "Event of Default" means, whenever it is used in this Agreement, any one or more of the following events, after the non-defaulting party provides thirty (30) days' written notice to the defaulting party of the event, but only if the event has not been cured within said thirty (30) days or, if the event is by its nature incurable within thirty (30) days, the defaulting party does not, within the thirty (30) day period, provide assurances reasonably satisfactory to the party providing notice of default that the event will be cured and will be cured as soon as reasonably possible:

(a) The Developer, the City, 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; or

(c) The Workforce Housing Project is not constructed; or

(d) Prior to the Maturity Date, the Developer appeals or challenges the Minimum Market Value of the Development Property or the Minimum Improvements under this Agreement or the Minimum Assessment Agreement, except as otherwise permitted in Article VI hereof.

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

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

(b) Cancel and rescind or terminate the Agreement.

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

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

Section 9.3. Termination or Suspension of TIF Note. After the Authority has issued the Certificate of Completion for the Minimum Improvements, the Authority and the City may exercise its rights under Section 9.2(c) hereof or any other right under this Agreement that operates to suspend, cancel, or terminate payments under the TIF Note only for the following Events of Default:

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

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

(c) the Developer fails to comply with the rent and income restrictions or to deliver annual rent and income reports as provided in Section 4.5 hereof and the Declaration; provided that, upon the Developer's failure to provide annual reports, if uncured after thirty (30) days' written notice to the Developer of the failure, the Authority may only suspend payments under the TIF Note until the Developer delivers said reports. If the Developer fails to deliver rent and income reports for a period of six (6) months following the date the reports are due after written notice to the Developer of the failure, the Authority may terminate the TIF Note and the TIF District.

Section 9.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority or the Developer is intended to be exclusive of any other available remedy or remedies, but each and every remedy will be cumulative and will be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default will impair any right or power or will be construed to be a waiver thereof, but any right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it, it will not be necessary to give notice, other than the notices already required in Sections 9.2 and 9.3 hereof.

Section 9.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, the waiver will be limited to the particular breach so waived and will not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 9.6. Attorneys' Fees. Whenever any Event of Default occurs and if the City or the Authority employs attorneys or incurs other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer under this Agreement, and the City or the Authority prevails in the action, the Developer agrees that it will, within ten (10) days of written demand by the City or the Authority, pay to the City or

the Authority the reasonable fees of the attorneys and the other expenses so incurred by the City or 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, official, or employee of the Authority has any personal interest, direct or indirect, in the Agreement, nor has any member, official, or employee participated in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he or she is, directly or indirectly, interested. No member, official, or employee of the Authority will be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Authority or County or for any amount which may become due to the Developer or successor or on any obligations under the terms of the Agreement.

Section 10.2. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in the Agreement it will comply with all applicable federal, State, and local equal employment and non-discrimination laws and regulations.

Section 10.3. Restrictions on Use. The Developer agrees that, prior to the Maturity Date, the Developer, and its successors and assigns, will use the Development Property solely for the development of residential rental housing in accordance with the terms of this Agreement, and will not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Development Property or any improvements erected or to be erected thereon, or any part thereof.

Section 10.4. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of the Agreement are inserted for convenience of reference only and will be disregarded in construing or interpreting any of its provisions.

Section 10.5. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the Agreement by either party to the other will be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(a) in the case of the Developer, is addressed to or delivered personally to the Developer at 2905 Northwest Blvd. Suite 150, Plymouth, MN 55441-2644, Attn: Mark S. Moorhouse and Ryan J. Lunderby with a copy to John Stern, Winthrop & Weinstine, P.A., Capella Tower, Suite 3500, 225 South Sixth Street, Minneapolis, MN 55402-4629;

(b) in the case of the Authority, is addressed to or delivered personally to the Authority at 14600 Minnetonka Blvd, Minnetonka, Minnesota 55345-1502, Attn: Executive Director; and

(c) in the case of the City, is addressed to or delivered personally to the Authority at 14600 Minnetonka Blvd, Minnetonka, Minnesota 55345-1502, Attn: City Manager;

or at any other address with respect to any party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

Section 10.6. Counterparts. This Agreement may be executed in any number of counterparts, each of which will constitute one and the same instrument.

Section 10.7. Recording. The Authority may record this Agreement and any amendments thereto with the County Recorder or Registrar of Titles of the County. The Developer must pay all costs for recording.

Section 10.8. Amendment. Except as specifically provided in Section 4.5(b) hereof, this Agreement may be amended only by written agreement approved by the Authority, the City, and the Developer.

Section 10.9. Authority Approvals. Unless otherwise specified, any approval required by the Authority under this Agreement may be given by the Authority Representative.

Section 10.10. Termination. This Agreement terminates on the Maturity Date, except that termination of the Agreement does not terminate, limit or affect the rights of any party that arise before the Maturity Date.

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

IN WITNESS WHEREOF, the Authority has caused this Contract for Private Development to be duly executed in its name and behalf and the Developer has caused this Contract for Private Development to be duly executed in its name and behalf, all 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 _____, 2018, by Brad Wiersum, the President of 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, on behalf of the Authority.

_____
Notary Public

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____, 2018, by Geralyn Barone, the Executive Director of 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, on behalf of the Authority.

_____
Notary Public

**MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP,** a Minnesota limited liability limited partnership

By: Minnetonka Leased Housing Associates III, LLC
Its: General Partner

By: _____
Name: Ryan J. Lunderby
Its: Vice President

STATE OF MINNESOTA )
) SS.
COUNTY OF _____ )

The foregoing instrument was acknowledged before me this _____, 2018, by Ryan J. Lunderby, the Vice President of Minnetonka Leased Housing Associates III, LLC, a Minnesota limited liability company, the general partner of Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, on behalf of the Developer.

_____
Notary Public

**EXHIBIT A**

**DESCRIPTION OF DEVELOPMENT PROPERTY**

Lot 1, Block 1, DOMINIUM 2ND ADDITION, Hennepin County, Minnesota

**EXHIBIT B**

**FORM OF TIF NOTE**

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

No. R-1 $_____

TAX INCREMENT REVENUE NOTE
SERIES 20__

| Rate | Accrual Date |
|---|---|
| [5.15% or the developer's actual rate of financing, whichever is less]% | (to be determined) |

The Economic Development Authority in and for the City of Minnetonka, Minnesota (the "Authority"), for value received, certifies that it is indebted and hereby promises to pay to Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, or registered assigns (the "Owner"), the principal sum of $_____ and to pay interest thereon at the annual interest rate set forth above, as and to the extent set forth herein.

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

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

2. Interest. Interest at the rate stated herein will accrue on the unpaid principal, commencing on the date the Authority receives and approves written evidence of the Owner's expenditures related to land acquisition, site preparation, constructions of constructing housing, and other costs eligible to be reimbursed with tax increment related to the Minimum Improvements in an amount at least equal to $_____ (the "Accrual Date"), all in accordance with Section 3.4 of the Agreement (hereinafter defined). Interest accruing from and after the Accrual Date shall accrue on a simple basis and will not be added to principal. Interest will be computed on the basis of a year of three hundred sixty (360) days comprised of twelve (12) months of thirty (30) days.

3. Available Tax Increment. Payments on this Note are payable on each Payment Date in the amount of and solely payable from "Available Tax Increment," which will mean, on each Payment Date, ninety percent (90%) of the Tax Increment attributable to the Development and paid to the Authority by Hennepin County in the six (6) months preceding the Payment Date, all as the terms are

defined in the Contract for Private Development, dated _____, 2018 (the "Agreement"), between the Authority, the City of Minnetonka, Minnesota, and Owner. Available Tax Increment will not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default under the Agreement; provided, however, that once an Event of Default is cured, any Available Tax Increment withheld shall be deemed Available Tax Increment for the next Payment Date.

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

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

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

6. Nature of Obligation. This Note is one of an issue in the total principal amount of $_____ all issued to aid in financing certain public development costs and administrative costs of a Redevelopment Project undertaken by the Authority pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended, and is issued pursuant to an authorizing resolution (the "Resolution") duly adopted by the Authority on July 23, 2018, and pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Sections 469.174 through 469.1794, as amended. This Note is a limited obligation of the Authority which is payable solely from Available Tax Increment pledged to the payment hereof under the Resolution. This Note and the interest hereon will not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the Authority. Neither the State of Minnesota nor any political subdivision thereof will be obligated to pay the principal of or interest on this Note or other costs incident hereto except out of Available Tax Increment, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof is pledged to the payment of the principal of or interest on this Note or other costs incident hereto.

7. Estimated Tax Increment Payments. Any estimates of Tax Increment prepared by the Authority or its municipal advisors in connection with the TIF District or the Agreement are for the benefit of the Authority, and are not intended as representations on which the Developer may rely.

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

8. Registration and Transfer. This Note is issuable only as a fully registered note without coupons. As provided in the Resolution, and subject to certain limitations set forth therein, this Note is transferable upon the books of the Authority kept for that purpose at the principal office of the Executive Director of the Authority, by the Owner hereof in person or by the Owner's attorney duly authorized in writing, upon surrender of this Note together with a written instrument of transfer satisfactory to the

Authority, duly executed by the Owner. Upon the transfer or exchange and the payment by the Owner of any tax, fee, or governmental charge required to be paid by the Authority with respect to the transfer or exchange, there will be issued in the name of the transferee a new Note of the same aggregate principal amount, bearing interest at the same rate and maturing on the same dates.

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

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

IN WITNESS WHEREOF, the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, has caused this Note to be executed with the manual signatures of its President and Executive Director, all as of _____, 20___.

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

| | |
|---|---|
| Executive Director | President |

**REGISTRATION PROVISIONS**

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

| Date of Registration | Registered Owner | Signature of Executive Director |
|---|---|---|
| | Minnetonka Leased Housing Associates III, LLLP<br>Federal ID #82-5073497 | |

**EXHIBIT C**

**INVESTMENT LETTER**

To: Economic Development Authority in and for the City of Minnetonka, Minnesota (the "Authority")
Attention: Executive Director

Re: Tax Increment Revenue Note, Series 20___, in the original aggregate principal amount of $_____

The undersigned, as Owner of $_____ in principal amount of the above-captioned Note (the "Note") pursuant to a resolution of the Authority adopted on July 23, 2018 (the "Resolution"), hereby represents to you as follows:

1. We understand and acknowledge that the TIF Note is delivered to the Owner as of this date pursuant to the Resolution and the Contract for Private Development, dated _____, 2018 (the "Contract"), between the Authority, the City of Minnetonka, Minnesota, and the Owner.

2. We understand that the TIF Note is payable as to principal and interest solely from Available Tax Increment as defined in the TIF Note and the provisions of the Contract.

3. We understand that the TIF Note does not accrue interest until the "Accrual Date," as defined in the TIF Note.

4. We further understand that any estimates of Tax Increment prepared by the Authority or its municipal advisors in connection with the TIF District, the Contract or the TIF Note are for the benefit of the Authority, and are not intended as representations on which the Owner may rely.

5. We acknowledge and understand that, if at any time, the Owner fails to meet the housing income restrictions required for a housing tax increment district as set forth in Minnesota Statutes, Section 469.174, subdivision 11 and Section 469.1761, and therefore, the tax increment district will no longer qualify as a housing tax increment district, no further payments will be made under the TIF Note.

6. We have sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the above-stated principal amount of the TIF Note.

7. We acknowledge that no offering statement, prospectus, offering circular or other comprehensive offering statement containing material information with respect to the Authority and the TIF Note has been issued or prepared by the Authority, and that, in due diligence, we have made our own inquiry and analysis with respect to the Authority, the TIF Note and the security therefor, and other material factors affecting the security and payment of the TIF Note.

8. We acknowledge that we have either been supplied with or have access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and we have had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Authority, the TIF Note and the security therefor, and that as a reasonable investor we have been able to make our decision to purchase the above-stated principal amount of the TIF Note.

9. We have been informed that the TIF Note (i) is not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, or under federal securities laws or regulations, (ii) will not be listed on any stock or other securities exchange, and (iii) will carry no rating from any rating service.

10. We acknowledge that neither the Authority nor Kennedy & Graven, Chartered has made any representations as to the status of interest on the TIF Note for state or federal income tax purposes.

11. All capitalized terms used herein have the meaning provided in the Contract unless the context clearly requires otherwise.

12. The Owner's federal tax identification number is _____.

13. We acknowledge receipt of the TIF Note as of the date hereof.

(The remainder of this page intentionally left blank.)

**MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP,** a Minnesota limited liability limited partnership

By: Minnetonka Leased Housing Associates III, LLC
Its: General Partner

By: _____
Name: Ryan J. Lunderby
Its: Vice President

Dated: _____

**EXHIBIT D**

**FORM OF DECLARATION OF RESTRICTIVE COVENANTS**

THIS DECLARATION OF RESTRICTIVE COVENANTS (the "Declaration"), dated _____, 2018, by MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP, a Minnesota limited liability limited partnership (the "Developer"), is given to the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, a public body corporate and politic under the laws of the State of Minnesota (the "Authority").

RECITALS

WHEREAS, the Authority entered into that certain Contract for Private Development, dated _____, 2018 (the "Contract"), filed _____, 2018 in the Office of the [Recorder] [Registrar of Titles] for Hennepin County, Minnesota as Document No. _____, between the Authority and the Developer; and

WHEREAS, pursuant to the Contract, the Developer is obligated to cause construction of 262 housing units intended to be occupied by at least one individual who, at the time of initial occupancy of such unit, is 55 years of age or older on the property described in Exhibit A hereto (the "Property"), and to cause compliance with certain affordability covenants described in Section 4.5 of the Contract; and

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

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

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

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

1. Term of Restrictions.

(a) Occupancy and Rental Restrictions. The term of the Occupancy Restrictions set forth in Section 3 and the Rental Restriction set forth in Section 4 of this Declaration will commence on the date a certificate of occupancy is received from the City of Minnetonka, Minnesota for all rental units on the Property. The period from commencement to termination is the "Qualified Project Period."

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

(c) Removal from Real Estate Records. Upon termination of this Declaration, the Authority will, 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. The Developer represents, warrants, and covenants that:

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

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

(ii) Agrees that the family income at the time the lease is executed will 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 will be deemed a violation of a substantial obligation of the lessee's tenancy.

(b) The Developer will 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, one hundred percent (100%) of the Rental Housing Units will be occupied (or treated as occupied as provided herein) or held vacant and available for occupancy by Qualifying Tenants. Qualifying Tenants means one or more occupants of a unit, so long as at least one of the occupants of the unit, at the time of initial occupancy of such unit, is 55 years of age or older and who are determined from time to time by the Developer to have combined adjusted income that does not exceed sixty percent (60%) of the Minneapolis-St. Paul metropolitan statistical area (the "Metro Area") median income for the applicable calendar year. For purposes of this definition, the occupants of a residential unit will 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 will 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 of comparable or smaller size (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 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 residential unit in the Project is occupied by a new resident whose income exceeds the applicable income limit for Low Income Tenants.

(ii) Certification of Tenant Eligibility. As a condition to initial and continuing occupancy, each person who is intended to be a Qualifying Tenant will be required annually to sign and deliver to the Developer a Certification of Tenant Eligibility substantially in (A) the form attached as Exhibit B hereto, (B) the form of tenant income certification used by the Minnesota Housing Finance Agency, or (C) any 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, the person will 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 the tenant continues to be a Qualifying Tenant within the meaning of Section 3(a) hereof. Eligibility Certifications will be maintained on file by the Developer with respect to each Qualifying Tenant who resides in a Project unit or resided therein during the immediately preceding calendar year. The requirement of this paragraph 3(a)(ii) to perform annual Eligibility Certifications shall not apply to a given year if, during such year, no residential unit in the Project is occupied by a new resident whose income exceeds the applicable income limit for Low Income Tenants. The preceding sentence shall not affect the Developer's obligation to obtain an initial Eligibility Certification from each person who is intended to be a Qualifying Tenant.

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

(iv) Annual Report. The Developer covenants and agrees that during the term of this Declaration, it will prepare and submit to the Authority on or before January 31 of each year, a certificate substantially in the form of Exhibit C hereto (or a similar report produced by Yardi Property Management Software or another property management software acceptable to the Authority), executed by the Developer, (a) identifying the tenancies and the dates of occupancy (or vacancy) for all Qualifying Tenants in the Project, including the percentage of the dwelling units of the Project which were occupied by Qualifying Tenants (or held vacant and available for occupancy by Qualifying Tenants) at all times during the year preceding the date of the certificate; (b) describing all transfers or other changes in ownership of the Project or any interest therein which causes a change in control of the Developer; and (c) stating, that to the best knowledge of the person executing the certificate after due inquiry, all the units were rented or available for rental on a continuous basis during the year to members of the general public and that the Developer was not otherwise in default under this Declaration during the year.

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

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

4. Rental Restrictions. The Developer represents, warrants and covenants that the maximum gross rent for all units occupied by Qualifying Tenants must not exceed thirty percent (30%) of the imputed income limitation applicable to the unit, all in accordance with Section 42 of the Internal Revenue Code of 1986, as amended (the "Tax Credit Law").

5. Transfer Restrictions. The Developer covenants and agrees that the Developer will cause or require as a condition precedent to any conveyance, transfer, assignment, or any other disposition of the Project prior to the termination of the Rental Restrictions and Occupancy Restrictions provided herein (the "Transfer") that the transferee of the Project pursuant to the Transfer assume in writing, in a form acceptable to the Authority, all duties and obligations of the Developer under this Declaration, including this Section 5, in the event of a subsequent Transfer by the transferee prior to expiration of the Rental Restrictions and Occupancy Restrictions provided herein (the "Assumption Agreement"). The Developer will deliver the Assumption Agreement to the Authority prior to the Transfer.

6. [Intentionally omitted.]

7. Enforcement.

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

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

(c) The Developer acknowledges that the primary purpose for requiring compliance by the Developer with the restrictions provided in this Declaration is to ensure compliance of the property with the housing affordability covenants set forth in Section 4.5 of the Contract, and by reason thereof, the Developer, in consideration for assistance provided by the Authority under the Contract that makes possible the construction of the Minimum Improvements (as defined in the Contract) on the Property, hereby agrees and consents that the Authority will be entitled, for any breach of the provisions of this Declaration, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Developer of its obligations under this Declaration in a state court of competent jurisdiction. The Developer hereby further specifically acknowledges that the Authority cannot be adequately compensated by monetary damages in the event of any default hereunder.

(d) The Developer understands and acknowledges that, in addition to any remedy set forth herein for failure to comply with the restrictions set forth in this Declaration, the Authority may exercise any remedy available to it under Article IX of the Contract.

8. Indemnification. The Developer hereby indemnifies, and agrees to defend and hold harmless, the Authority from and against all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses), causes of action, suits, allegations, 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 will have the right to appoint an agent to carry out any of its duties and obligations hereunder, and will inform the Developer of any agency appointment by written notice.

10. Severability. The invalidity of any clause, part or provision of this Declaration will not affect the validity of the remaining portions thereof.

11. Notices. All notices to be given pursuant to this Declaration must be in writing and will be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to any other place as a party may from time to time designate in writing. The Developer and the Authority may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, or other communications are 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<br>14600 Minnetonka Boulevard<br>Minnetonka, MN 55345<br>Attention: Community Development Director |
| To the Developer: | Minnetonka Leased Housing Associates III, LLLP<br>2905 Northwest Blvd. Suite 150<br>Plymouth, MN 55441-2644<br>Attention: Mark S. Moorhouse and Ryan J. Lunderby |
| With copy to: | Winthrop & Weinstine, P.A.<br>Capella Tower, Suite 3500<br>225 South Sixth Street<br>Minneapolis, MN 55402-4629<br>Attention: John Stern |

12. Governing Law. This Declaration is 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 the action.

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

15. Relationship to Tax Credit Law Requirements. Notwithstanding anything to the contrary, during any period while one hundred percent (100%) of the units in the Property are subject to income and rent limitations under the Tax Credit Law, evidence of compliance with the Tax Credit Law requirements filed with the Authority at least annually will satisfy any requirements otherwise imposed under this Declaration. During any portion of the Qualified Project Period as defined herein when the Tax Credit Law income and rent restrictions do not apply to the Property, this Declaration controls.

16. Notice of Sale. In consideration for the issuance of the TIF Note, the Developer agrees to provide the Authority with at least ninety (90) days' notice of any sale of the Project.

17. Foreclosure. In the event of foreclosure (or deed in lieu of foreclosure) of the [Construction Mortgage or Freddie Mac Mortgage], dated _____, 2018 which was executed by the Developer to secure repayment of the _____ (the "Bonds"), issued by the City of Minnetonka in the original aggregate principal amount of $_____, this

Declaration (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate.

(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.

**MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP,** a Minnesota limited liability limited partnership

By: Minnetonka Leased Housing Associates III, LLC
Its: General Partner

By: _____
Name: Ryan J. Lunderby
Its: Vice President

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____, 2018, by Ryan J. Lunderby, the Vice President of Minnetonka Leased Housing Associates III, LLC, a Minnesota limited liability company, the general partner of Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, on behalf of the Developer.

_____
Notary Public

This document 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 _____, 20___, by _____, the President of 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, on behalf of the Authority.

_____
Notary Public

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____, 20___, by _____, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

_____
Notary Public

EXHIBIT A

Legal Description

The land referred to is situated in the State of Minnesota, County of Hennepin, and is described as follows:

Lot 1, Block 1, DOMINIUM 2ND ADDITION, Hennepin County, Minnesota

EXHIBIT B

Certification of Tenant Eligibility

(INCOME COMPUTATION AND CERTIFICATION)

Project: [Address]

Owner:

Unit Type: _____ 1 BR _____ 2 BR _____ 3 BR

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

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

Income Computation

2. The anticipated income of all the above persons during the twelve (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 these types of 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 twelve (12) month period commencing this date: $_____; and

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

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

Yes _____ No _____

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

Yes _____ No _____

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

_____

Head of Household

_____

Spouse

FOR COMPLETION BY OWNER
(OR ITS MANAGER) ONLY

1. Calculation of Eligible Tenant Income:

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

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

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

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

3. Rent:

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

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

4. Number of apartment unit assigned: _____.

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

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

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

MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP, a Minnesota limited liability limited partnership

By _____
Its _____

EXHIBIT C

Certificate of
Continuing Program Compliance

Date: _____

The following information with respect to the Project located at _____, Minnetonka, Minnesota (the "Project"), is being provided by Minnetonka Leased Housing Associates III, LLLP (the "Owner") to the Economic Development Authority in and for the City of Minnetonka, Minnesota (the "Authority"), pursuant to that certain Declaration of Restrictive Covenants, dated _____, 2018 (the "Declaration"), with respect to the Project:

(A) The total number of residential units which are available for occupancy is 262. The total number of these units occupied is _____.

(B) The following residential units (identified by unit number) are currently occupied by "Qualifying Tenants," as the term is defined in the Declaration (for a total of ____units):

1 BR Units:

2 BR Units:

3 BR Units:

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

| 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 | | | | | | | |
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(E) The Owner has obtained a "Certification of Tenant Eligibility," in the form required by the Declaration, from each Tenant named in (D) above (to the extent required by the Declaration), and each such Certificate is being maintained by the Owner 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 Owner.

(F) In renting the residential units in the Project, the Owner 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 twelve (12) 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 Owner 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 Owner certifies that as of the date hereof one hundred percent (100%) 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 Owner, on _____, 2018.

**MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP,** a Minnesota limited liability limited partnership

By: Minnetonka Leased Housing Associates III, LLC
Its: General Partner

By: _____
Name: Ryan J. Lunderby
Its: Vice President

**EXHIBIT E**

**CERTIFICATE OF COMPLETION**

The undersigned hereby certifies that Minnetonka Leased Housing Associates III, LLLP (the "Developer"), has fully complied with its obligations under Article IV of that document titled "Contract for Private Development," dated _____, 2018 (the "Agreement"), 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 Article IV of the Agreement, and that the Developer is released and forever discharged from its obligations with respect to construction of the Minimum Improvements under Articles III and IV of the Agreement.

Dated: _____, 20___.

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

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____, 20___, by _____, the President of 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, on behalf of the Authority.

_____
Notary Public

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____, 20___, by _____, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State of 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

**EXHIBIT F**

**RENTAL HOUSING UNITS BY UNIT TYPE**

| Unit Type | Number of Units in Minimum Improvements |
|---|---|
| One Bedroom | 59 units |
| Two Bedroom | 149 units |
| Three Bedroom | 54 units |

**EXHIBIT G**

**FORM OF MINIMUM ASSESSMENT AGREEMENT**

**MINIMUM ASSESSMENT AGREEMENT**

**and**

**ASSESSOR'S CERTIFICATION**

**between**

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

**MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP,**

**and**

**CITY ASSESSOR FOR THE CITY OF MINNETONKA, MINNESOTA**

This Document was drafted by:

KENNEDY & GRAVEN, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300

THIS MINIMUM ASSESSMENT AGREEMENT, dated as of this ____ day of _____, 2018 (the "Minimum Assessment Agreement"), is between the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the "Authority"), and MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP, a Minnesota limited liability limited partnership, its successors and assigns (the "Owner").

WITNESSETH:

WHEREAS, the Authority and the Owner have entered into a Contract for Private Development, dated _____, 2018 (the "Agreement"), concerning the property legally described on EXHIBIT A attached hereto (the "Development Property"); and

WHEREAS, pursuant to the Agreement, the Owner will construct approximately 262 affordable apartment units intended to be occupied by at least one individual who, at the time of initial occupancy of such unit, is 55 years of age or older, with one hundred percent (100%) of the apartment units made affordable such tenants at or below sixty percent (60%) of the area median income, on the Development Property (the "Minimum Improvements"); and

WHEREAS, the Authority and the Owner desires to establish a minimum market value for the Development Property and the Minimum Improvements to be constructed thereon, pursuant to Minnesota Statutes, Section 469.177, subdivision 8; and

WHEREAS, the Authority and the City Assessor for the City of Minnetonka, Minnesota have reviewed the Plans for the Minimum Improvements which the Owner has agreed to construct on the Development Property pursuant to the Agreement; and

NOW, THEREFORE, the parties to this Minimum Assessment Agreement, in consideration of the promises, covenants and agreements made herein and in the Agreement by each to the other, do hereby agree as follows:

1. The Minimum Market Value for the Development Property with the Minimum Improvements shall be $47,160,000. The parties agree that this Minimum Market Value shall be placed against the Development Property as of January 2, 2020, for taxes payable beginning in 2021, notwithstanding any failure to start or complete construction of such Minimum Improvements by that date.

2. The Minimum Market Value herein established shall be of no further force and effect and this Minimum Assessment Agreement shall terminate on the Maturity Date. The Maturity Date has the meaning given to it under the Agreement.

3. This Minimum Assessment Agreement shall be promptly recorded by the Owner with a copy of Minnesota Statutes, Section 469.177, subdivision 8 set forth in EXHIBIT B attached hereto. The Owner shall pay all costs of recording this Minimum Assessment Agreement.

4. Neither the preambles nor the provisions of this Minimum Assessment Agreement are intended to, nor shall they be construed as, modifying the terms of the Agreement. Unless the context indicates clearly to the contrary, the terms used in this Minimum Assessment Agreement shall have the same meaning as the terms used in the Agreement.

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

the parties and their successors and assigns.

6. Each of the parties has authority to enter into this Minimum Assessment Agreement and to take all actions required of it and has taken all actions necessary to authorize the execution and delivery of this Minimum Assessment Agreement.

7. In the event any provision of this Minimum Assessment Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

8. The parties hereto agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements, amendments and modifications hereto, and such further instruments as may reasonably be required for correcting any inadequate, or incorrect, or amended description of the Development Property, or for carrying out the expressed intention of this Minimum Assessment Agreement.

9. Except as provided in Section 8 hereof, this Minimum Assessment Agreement may not be amended nor any of its terms modified except by a writing authorized and executed by all parties hereto.

10. This Minimum Assessment Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

11. This Minimum Assessment Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, the Authority and the Owner have executed this Minimum Assessment Agreement as of the date and year first written above.

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

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____, 2018, by Brad Wiersum, the President of 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, on behalf of the Authority.

_____
Notary Public

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____, 2018, by Geralyn Barone, the Executive Director of 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, on behalf of the Authority.

_____
Notary Public

**MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP,** a Minnesota limited liability limited partnership

By: Minnetonka Leased Housing Associates III, LLC
Its: General Partner

By: _____
Name: Ryan J. Lunderby
Its: Vice President

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____, 2018, by Ryan J. Lunderby, the Vice President of Minnetonka Leased Housing Associates III, LLC, a Minnesota limited liability company, the general partner of Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, on behalf of the Developer.

_____
Notary Public

**CERTIFICATION BY ASSESSOR**

The undersigned, having reviewed the plans and specifications for the improvements to be constructed and the market value assigned to the land upon which the improvements are to be constructed, and being of the opinion that the minimum market value contained in the foregoing Agreement appears reasonable, hereby certify as follows: The undersigned Assessor being legally responsible for the assessment of the described property, hereby certifies that the market value assigned to such land and improvements at the property, legally described on EXHIBIT A attached hereto, shall be not less than $47,160,000 as of January 2, 2020, for taxes payable beginning in 2021, until termination of this Agreement.

_____

City Assessor for Minnetonka, Minnesota

STATE OF MINNESOTA )
) ss.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by _____, the City Assessor, City of Minnetonka, Hennepin County, Minnesota.

_____

Notary Public

**EXHIBIT A**
**TO ASSESSMENT AGREEMENT**

The Development Property is legally described as follows:

Lot 1, Block 1, DOMINIUM 2ND ADDITION, Hennepin County, Minnesota

**EXHIBIT B**
**TO ASSESSMENT AGREEMENT**

Section 469.177, subd. 8. **Assessment Agreements**. An authority may enter into a written assessment agreement with any person establishing a minimum market value of land, existing improvements, or improvements to be constructed in a district, if the property is owned or will be owned by the person. The minimum market value established by an assessment agreement may be fixed, or increase or decrease in later years from the initial minimum market value. If an agreement is fully executed before July 1 of an assessment year, the market value as provided under the agreement must be used by the county or local assessor as the taxable market value of the property for that assessment. Agreements executed on or after July 1 of an assessment year become effective for assessment purposes in the following assessment year. An assessment agreement terminates on the earliest of the date on which conditions in the assessment agreement for termination are satisfied, the Maturity Date specified in the agreement, or the date when tax increment is no longer paid to the authority under section 469.176, subdivision 1. The assessment agreement shall be presented to the county assessor, or city assessor having the powers of the county assessor, of the jurisdiction in which the tax increment financing district and the property that is the subject of the agreement is located. The assessor shall review the plans and specifications for the improvements to be constructed, review the market value previously assigned to the land upon which the improvements are to be constructed and, so long as the minimum market value contained in the assessment agreement appears, in the judgment of the assessor, to be a reasonable estimate, shall execute the following certification upon the agreement:

> The undersigned assessor, being legally responsible for the assessment of the above described property, certifies that the market values assigned to the land and improvements are reasonable

The assessment agreement shall be filed for record and recorded in the office of the county recorder or the registrar of titles of each county where the real estate or any part thereof is situated. After the agreement becomes effective for assessment purposes, the assessor shall value the property under Section 273.11, except that the market value assigned shall not be less than the minimum market value established by the assessment agreement. The assessor may assign a market value to the property in excess of the minimum market value established by the assessment agreement. The owner of the property may seek, through the exercise of administrative and legal remedies, a reduction in market value for property tax purposes, but no city assessor, county assessor, county auditor, board of review, board of equalization, commissioner of revenue, or court of this state shall grant a reduction of the market value below the minimum market value established by the assessment agreement during the term of the agreement filed of record regardless of actual market values which may result from incomplete construction of improvements, destruction, or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording an assessment agreement constitutes notice of the agreement to anyone who acquires any interest in the land or improvements that is subject to the assessment agreement, and the agreement is binding upon them.

An assessment agreement may be modified or terminated by mutual consent of the current parties to the agreement. Modification or termination of an assessment agreement must be approved by the governing body of the municipality. If the estimated market value for the property for the most recently available assessment is less than the minimum market value established by the assessment agreement for that or any later year and if bond counsel does not conclude that termination of the agreement is necessary to preserve the tax exempt status of outstanding bonds or refunding bonds to be issued, the modification or termination of the assessment agreement also must be approved by the governing bodies of the county and the school district. A document modifying or terminating an agreement, including records of the municipality, county, and school district approval, must be filed for record. The assessor's review and certification is not required if the document terminates an agreement. A change to an agreement not fully

executed before July 1 of an assessment year is not effective for assessment purposes for that assessment year. If an assessment agreement has been modified or prematurely terminated, a person may seek a reduction in market value or tax through the exercise of any administrative or legal remedy. The remedy may not provide for reduction of the market value below the minimum provided under a modified assessment agreement that remains in effect. In no event may a reduction be sought for a year other than the current taxes payable year.

**EXHIBIT H**

**SITE IMPROVEMENTS**

The following improvements are the Site Improvements required under this Agreement:

- Surveying and staking;
- Surface improvements, including but not limited to streets, curbs, sidewalks and trails;
- Water main;
- Sanitary sewer;
- Storm sewer and stormwater management facilities;
- Lot and block monuments;
- Gas, electric, telephone and cable lines;
- Site grading;
- Landscaping;
- Street lighting;
- Street signs;
- Relocation of the public sewer line in the western portion of the Development Property;
- Pedestrian underpass beneath Bren Road East;
- Dynamic predication crossing safety improvements on the east side of the Development Property, adjacent to Bren Road East; and
- All other items as necessary to complete the Project as stipulated in Resolution Nos. 2018-____, 2018-____ and this Agreement.

# Tax Increment Financing District Overview

## City of Minnetonka

## Dominium Housing Tax Increment Financing District

The following summary contains an overview of the basic elements of the Tax Increment Financing Plan for the Dominium Housing Tax Increment Financing District. More detailed information on each of these topics can be found in the complete Tax Increment Financing Plan.

| | |
|---|---|
| Proposed action: | Establishment of the Dominium Tax Increment Financing District (the "District") within the Opus Redevelopment Project and the adoption of a Tax Increment Financing Plan (the "TIF Plan").<br><br>Establishment of the Opus Redevelopment Project and the adoption of a Redevelopment Plan therefor. |
| Type of TIF District: | A housing district |
| Parcel Number: | 36-117-22-31-0015*<br>*The City anticipates splitting the existing parcel into two separate parcels during the land use review process. Each parcel will have its own unique parcel number. |
| Proposed Development: | The District is being created to facilitate the construction of approximately 482 affordable apartment units in the City. Please see Appendix A of the TIF Plan for a more detailed project description. |
| Maximum duration: | The duration of the District will be 25 years from the date of receipt of the first increment (26 years of increment). The City expects the date of first tax increment to be 2020. It is estimated that the District, including any modifications of the TIF Plan for subsequent phases or other changes, would terminate after December 31, 2045, or when the TIF Plan is satisfied. |
| Estimated annual tax increment: | Up to $1,135,294 |

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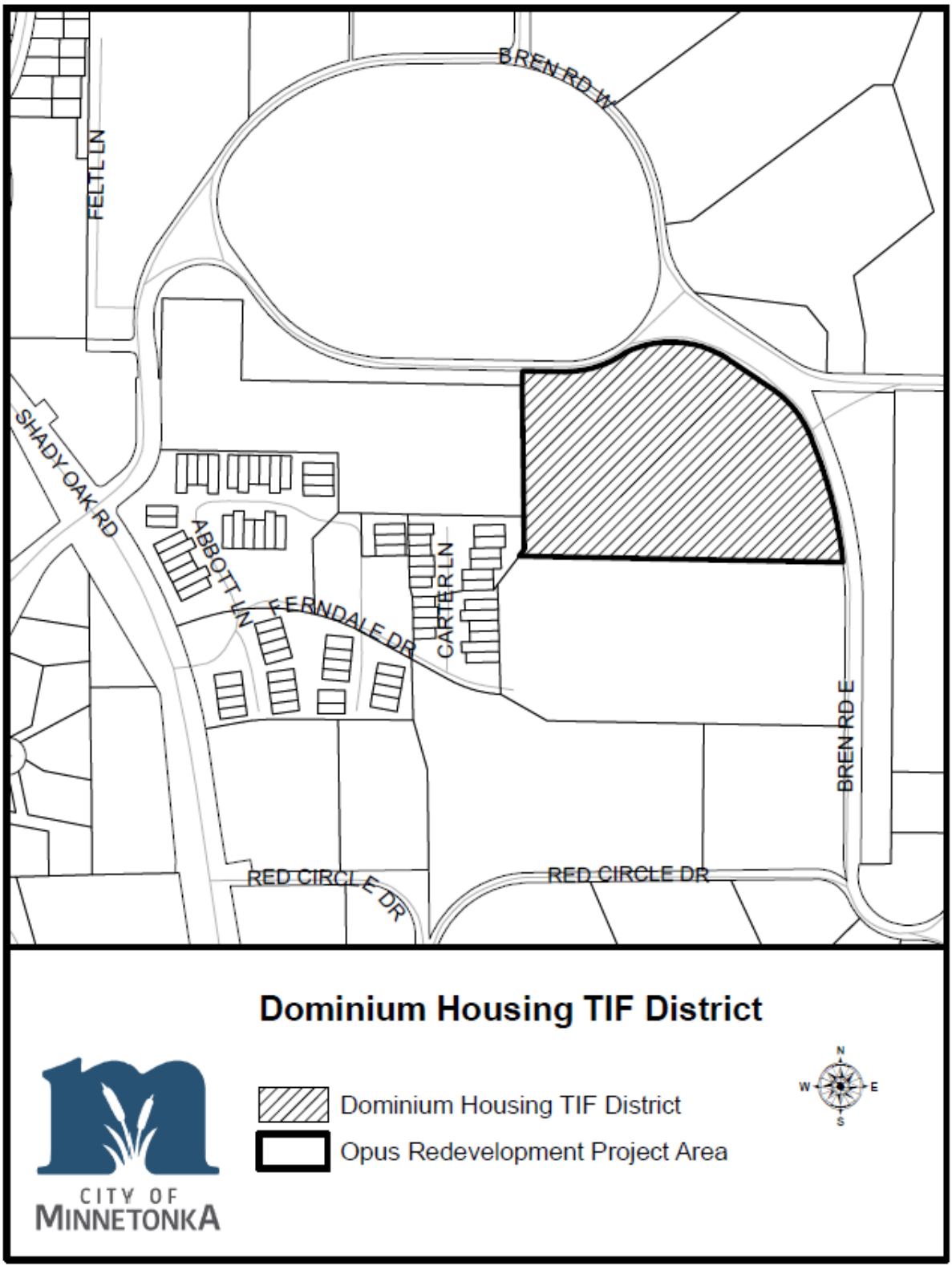
| | |
|---|---|
| Authorized uses: | The TIF Plan contains a budget that authorizes the maximum amount that may be expended:<br><br>Land/Building Acquisition.....$10,000,000<br>Site Improvements/Preparation.....$250,000<br>Utilities.....$250,000<br>Affordable Housing .....$1,200,000<br>Other Qualifying Improvements .....$363,936<br>Administrative Costs (up to 10%).....$1,981,165<br>PROJECT COSTS TOTAL .....$14,045,101<br>Interest .....$7,747,717<br>**PROJECT COSTS TOTAL**.....**$21,792,818**<br><br>See Subsection 1-10, on page 1-6 of the TIF Plan for the full budget authorization. |
| Form of financing: | The project is proposed to be financed by a pay-as-you-go note and interfund loan. |
| Administrative fee: | Up to 10% of annual increment, if costs are justified. |
| Interfund Loan Requirement: | If the City wants to pay for administrative expenditures from a tax increment fund, it is recommended that a resolution authorizing a loan from another fund be passed *PRIOR* to, or within 60 days of, the issuance of the check. |
| 4 Year Activity Rule *(§ 469.176 Subd. 6)* | After four years from the date of certification of the District one of the following activities must have been commenced on each parcel in the District:<br>• Demolition<br>• Rehabilitation<br>• Renovation<br>• Other site preparation (not including utility services such as sewer and water)<br>If the activity has not been started by approximately June 2022, no additional tax increment may be taken from that parcel until the commencement of a qualifying activity. |

The reasons and facts supporting the findings for the adoption of the TIF Plan for the District, as required pursuant to *M.S., Section 469.175, Subd. 3,* are included in Exhibit A of the City resolution.



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*As of July 10, 2018*
*Draft for Public Hearing*

# Tax Increment Financing Plan

# for the establishment of

# the Dominium Housing Tax Increment Financing District (a housing district)

# within

# the Opus Redevelopment Project

Minnetonka Economic Development Authority
City of Minnetonka
Hennepin County
State of Minnesota

Public Hearing: July23, 2018
Adopted:

Prepared by: EHLERS & ASSOCIATES, INC.
3060 Centre Pointe Drive, Roseville, Minnesota 55113-1105
651-697-8500 fax: 651-697-8555 www.ehlers-inc.com

# Table of Contents
**(for reference purposes only)**

## *Section 1 - Tax Increment Financing Plan for the Dominium Housing Tax Increment Financing District*

### Subsection 1-1. Foreword

The Minnetonka Economic Development Authority (the "EDA"), the City of Minnetonka (the "City"), staff and consultants have prepared the following information to expedite the establishment of the Dominium Housing Tax Increment Financing District (the "District"), a housing tax increment financing district, located in the Opus Redevelopment Project.

### Subsection 1-2. Statutory Authority

Within the City, there exist areas where public involvement is necessary to cause development or redevelopment to occur. To this end, the EDA and City have certain statutory powers pursuant to *Minnesota Statutes ("M.S."), Sections 469.090 to 469.1082*, inclusive, as amended, and *M.S., Sections 469.174 to 469.1794*, inclusive, as amended (the "Tax Increment Financing Act" or "TIF Act"), to assist in financing public costs related to this project.

This section contains the Tax Increment Financing Plan (the "TIF Plan") for the District. Other relevant information is contained in the Redevelopment Plan for the Opus Redevelopment Project.

### Subsection 1-3. Statement of Objectives

The District currently consists of one parcel of land and adjacent and internal rights-of-way. The District is being created to facilitate the construction of approximately 482 affordable apartment units in the City. Please see Appendix A for further District information. The EDA has not entered into an agreement but anticipates entering into an agreement with Minnetonka Leased Housing Associates II, Limited Liability Limited Partnership (“LLLP”) and another LLLP or Limited Partnership that will be formed by Dominium. Development is anticipated to start by the end of 2018 and be completed in 2020. This TIF Plan is expected to achieve many of the objectives outlined in the Redevelopment Plan for the Opus Redevelopment Project.

The activities contemplated in the Redevelopment Plan and the TIF Plan do not preclude the undertaking of other qualified development or redevelopment activities. These activities are anticipated to occur over the life of the Opus Redevelopment Project and the District.

### Subsection 1-4. Redevelopment Plan Overview

1. Property to be Acquired - Selected property located within the District may be acquired by the EDA or City and is further described in this TIF Plan.

2. Relocation - Relocation services, to the extent required by law, are available pursuant to *M.S., Chapter 117* and other relevant state and federal laws.

3. Upon approval of a developer's plan relating to the project and completion of the necessary legal requirements, the EDA or City may sell to a developer selected properties that it may acquire within the District or may lease land or facilities to a developer.

4. The EDA or City may perform or provide for some or all necessary acquisition, construction, relocation, demolition, and required utilities and public street work within the District.

## Subsection 1-5. Description of Property in the District and Property To Be Acquired

The District encompasses all property and adjacent rights-of-way and abutting roadways identified by the parcels listed in Appendix C of this TIF Plan. Please also see the map in Appendix B for further information on the location of the District.

The EDA or City may acquire any parcel within the District including interior and adjacent street rights of way. Any properties identified for acquisition will be acquired by the EDA or City only in order to accomplish one or more of the following: storm sewer improvements; provide land for needed public streets, utilities and facilities; carry out land acquisition, site improvements, clearance and/or development to accomplish the uses and objectives set forth in this plan. The EDA or City may acquire property by gift, dedication, condemnation or direct purchase from willing sellers in order to achieve the objectives of this TIF Plan. Such acquisitions will be undertaken only when there is assurance of funding to finance the acquisition and related costs.

## Subsection 1-6. Classification of the District

The EDA and City, in determining the need to create a tax increment financing district in accordance with *M.S., Sections 469.174 to 469.1794*, as amended, inclusive, find that the District, to be established, is a housing district pursuant to *M.S., Section 469.174, Subd. 11 and M.S., Section 469.1761* as defined below:

*M.S., Section 469.174, Subd.11:*

> *"Housing district" means a type of tax increment financing district which consists of a project, or a portion of a project, intended for occupancy, in part, by persons or families of low and moderate income, as defined in chapter 462A, Title II of the National Housing Act of 1934, the National Housing Act of 1959, the United States Housing Act of 1937, as amended, Title V of the Housing Act of 1949, as amended, any other similar present or future federal, state, or municipal legislation, or the regulations promulgated under any of those acts, and that satisfies the requirements of M.S., Section 469.1761. Housing project means a project, or portion of a project, that meets all the qualifications of a housing district under this subdivision, whether or not actually established as a housing district.*

*M.S., Section 469.1761:*

*Subd. 1. Requirement imposed.*

*(a) In order for a tax increment financing district to qualify as a housing district:*

*(1) the income limitations provided in this section must be satisfied; and*

*(2) no more than 20 percent of the square footage of buildings that receive assistance from tax increments may consist of commercial, retail, or other nonresidential uses.*

*(b) The requirements imposed by this section apply to property receiving assistance financed with tax increments, including interest reduction, land transfers at less than the authority's cost of acquisition, utility service or connections, roads, parking facilities, or other subsidies. The provisions of this section do not apply to districts located within a targeted area as defined in Section 462C.02 Subd 9, clause (e).*

*© For purposes of the requirements of paragraph (a), the authority may elect to treat an addition*

*to an existing structure as a separate building if:*

*(1) construction of the addition begins more than three years after construction of the existing structure was completed; and*

*(2) for an addition that does not meet the requirements of paragraph (a), clause (2),if it is treated as a separate building, the addition was not contemplated by the tax increment financing plan which includes the existing structure.*

*Subd. 2. Owner occupied housing.*

*For owner occupied residential property, 95 percent of the housing units must be initially purchased and occupied by individuals whose family income is less than or equal to the income requirements for qualified mortgage bond projects under section 143(f) of the Internal Revenue Code.*

*Subd. 3. Rental property.*

*For residential rental property, the property must satisfy the income requirements for a qualified residential rental project as defined in section 142(d) of the Internal Revenue Code. The requirements of this subdivision apply for the duration of the tax increment financing district.*

*Subd. 4. Noncompliance; enforcement.*

*Failure to comply with the requirements of this section is subject to M.S., Section 469.1771.*

In meeting the statutory criteria the EDA and City rely on the following facts and findings:

- The District currently consists of one parcel, which the City expects to divide into two separate parcels, each of which will be developed into multi-family rental housing.
- The development will consist of approximately 482 units of multi-family rental housing
- At least 40% of the units will be occupied by person with incomes less than 60% of median income

Pursuant to *M.S., Section 469.176, Subd. 7*, the District does not contain any parcel or part of a parcel that qualified under the provisions of *M.S., Sections 273.111*, *273.112, or 273.114* or *Chapter 473H* for taxes payable in any of the five calendar years before the filing of the request for certification of the District.

## Subsection 1-7. Duration and First Year of Tax Increment of the District

Pursuant to *M.S., Section 469.175, Subd. 1, and Section 469.176, Subd. 1*, the duration and first year of tax increment of the District must be indicated within the TIF Plan. Pursuant to *M.S., Section 469.176, Subd. 1b.*, the duration of the District will be 25 years after receipt of the first increment by the EDA or City (a total of 26 years of tax increment). The EDA or City elects to receive the first tax increment in 2020, which is no later than four years following the year of approval of the District. Thus, it is estimated that the District, including any modifications of the TIF Plan for subsequent phases or other changes, would terminate after 2045, or when the TIF Plan is satisfied. The EDA or City reserves the right to decertify the District prior to the legally required date.

## Subsection 1-8. Original Tax Capacity, Tax Rate and Estimated Captured Net Tax Capacity Value/Increment and Notification of Prior Planned Improvements

Pursuant to *M.S., Section 469.174, Subd. 7 and M.S., Section 469.177, Subd. 1*, the Original Net Tax Capacity (ONTC) as certified for the District will be based on the market values placed on the property by the assessor in 2017 for taxes payable 2018.

Pursuant to *M.S., Section 469.177, Subds. 1 and 2*, the County Auditor shall certify in each year (beginning in the payment year 2020) the amount by which the original value has increased or decreased as a result of:

1. Change in tax exempt status of property;
2. Reduction or enlargement of the geographic boundaries of the district;
3. Change due to adjustments, negotiated or court-ordered abatements;
4. Change in the use of the property and classification;
5. Change in state law governing class rates; or
6. Change in previously issued building permits.

In any year in which the current Net Tax Capacity (NTC) value of the District declines below the ONTC, no value will be captured and no tax increment will be payable to the EDA or City.

The original local tax rate for the District will be the local tax rate for taxes payable 2019, assuming the request for certification is made before June 30, 2019. The ONTC and the Original Local Tax Rate for the District appear in the table below.

Pursuant to *M.S., Section 469.174 Subd. 4 and M.S., Section 469.177, Subd. 1, 2, and 4*, the estimated Captured Net Tax Capacity (CTC) of the District, within the Opus Redevelopment Project, upon completion of the projects within the District, will annually approximate tax increment revenues as shown in the table below. The EDA and City request 100 percent of the available increase in tax capacity for repayment of its obligations and current expenditures, beginning in the tax year payable 2020. The Project Tax Capacity (PTC) listed is an estimate of values when the projects within the District are completed.

| | | |
|---|---|---|
| **Project Estimated Tax Capacity upon Completion (PTC)** | **$1,017,331** | |
| **Original Estimated Net Tax Capacity (ONTC)** | **$55,095** | |
| **Estimated Captured Tax Capacity (CTC)** | **$962,236** | |
| **Original Local Tax Rate** | **1.17985** | Pay 2018 |
| **Estimated Annual Tax Increment (CTC x Local Tax Rate)** | **$1,135,294** | |
| **Percent Retained by the EDA** | **100%** | |

Tax capacity includes a 3% inflation factor for the duration of the District. The tax capacity included in this chart is the estimated tax capacity of the District in year 25. The tax capacity of the District in year one is estimated to be $99,487.

Pursuant to *M.S., Section 469.177, Subd. 4*, the EDA shall, after a due and diligent search, accompany its request for certification to the County Auditor or its notice of the District enlargement pursuant to *M.S., Section 469.175, Subd. 4*, with a listing of all properties within the District or area of enlargement for which building permits have been issued during the eighteen (18) months immediately preceding approval of the TIF Plan by the municipality pursuant to *M.S., Section 469.175, Subd. 3.* The County Auditor shall increase the original net tax capacity of the District by the net tax capacity of improvements for which a building

permit was issued.

The City has reviewed the area to be included in the District and found no parcels for which building permits have been issued during the 18 months immediately preceding approval of the TIF Plan by the City.

### Subsection 1-9. Sources of Revenue/Bonds to be Issued

The costs outlined in the Uses of Funds will be financed primarily through the annual collection of tax increments. The EDA or City reserves the right to incur bonds or other indebtedness as a result of the TIF Plan. As presently proposed, the projects within the District will be financed by a pay-as-you-go note and interfund loan. Any refunding amounts will be deemed a budgeted cost without a formal TIF Plan Modification. This provision does not obligate the EDA or City to incur debt. The EDA or City will issue bonds or incur other debt only upon the determination that such action is in the best interest of the City.

The total estimated tax increment revenues for the District are shown in the table below:

| **SOURCES OF FUNDS** | **TOTAL** |
|---|---|
| Tax Increment | $19,811,654 |
| Interest | $1,981,165 |
| **TOTAL** | **$21,792,819** |

The EDA or City may issue bonds (as defined in the TIF Act) secured in whole or in part with tax increments from the District in a maximum principal amount of $14,045,101. Such bonds may be in the form of pay-as-you-go notes, revenue bonds or notes, general obligation bonds, or interfund loans. This estimate of total bonded indebtedness is a cumulative statement of authority under this TIF Plan as of the date of approval.

### Subsection 1-10. Uses of Funds

Currently under consideration for the District is a proposal to facilitate the construction of approximately 482 affordable apartment units. The EDA and City have determined that it will be necessary to provide assistance to the project(s) for certain District costs, as described. The EDA has studied the feasibility of the development or redevelopment of property in and around the District. To facilitate the establishment and development or redevelopment of the District, this TIF Plan authorizes the use of tax increment financing to pay for the cost of certain eligible expenses. The estimate of public costs and uses of funds associated with the District is outlined in the table on the following page.

| USES OF TAX INCREMENT FUNDS | TOTAL |
|---|---|
| Land/Building Acquisition | $10,000,000 |
| Site Improvements/Preparation | $250,000 |
| Utilities | $250,000 |
| Affordable Housing | $1,200,000 |
| Other Qualifying Improvements | $363,937 |
| Administrative Costs (up to 10%) | $1,981,165 |
| PROJECT COST TOTAL | $14,045,102 |
| Interest | $7,747,717 |
| **PROJECT AND INTEREST COSTS TOTAL** | **$21,792,819** |

The total project cost, including financing costs (interest) listed in the table above does not exceed the total projected tax increments for the District as shown in Subsection 2-9.

Estimated costs associated with the District are subject to change among categories without a modification to this TIF Plan. The cost of all activities to be considered for tax increment financing will not exceed, without formal modification, the budget above pursuant to the applicable statutory requirements. The EDA may expend funds for qualified housing activities outside of the District boundaries.

### Subsection 1-11. Fiscal Disparities Election

Pursuant to *M.S., Section 469.177, Subd. 3*, the City may elect one of two methods to calculate fiscal disparities. If the calculations pursuant to *M.S., Section 469.177, Subd. 3, clause b*, (inside the District) are followed, the following method of computation shall apply:

*(1) The original net tax capacity shall be determined before the application of the fiscal disparity provisions of Chapter 276A or 473F. The current net tax capacity shall exclude any fiscal disparity commercial-industrial net tax capacity increase between the original year and the current year multiplied by the fiscal disparity ratio determined pursuant to M.S., Section 276A.06, subdivision 7 or M.S., Section 473F.08, subdivision 6. Where the original net tax capacity is equal to or greater than the current net tax capacity, there is no captured tax capacity and no tax increment determination. Where the original tax capacity is less than the current tax capacity, the difference between the original net tax capacity and the current net tax capacity is the captured net tax capacity. This amount less any portion thereof which the authority has designated, in its tax increment financing plan, to share with the local taxing districts is the retained captured net tax capacity of the authority.*

*(2) The county auditor shall exclude the retained captured net tax capacity of the authority from the net tax capacity of the local taxing districts in determining local taxing district tax rates. The local tax rates so determined are to be extended against the retained captured net tax capacity of the authority as well as the net tax capacity of the local taxing districts. The tax generated by the extension of the less of (A) the local taxing district tax rates or (B) the original local tax rate to the retained captured net tax capacity of the authority is the tax increment of the authority.*

**The City will choose to calculate fiscal disparities by clause b. It is not anticipated that the District will contain commercial/industrial property. As a result, there should be no impact due to the fiscal disparities provision on the District.**

According to *M.S., Section 469.177, Subd. 3:*

> *(c) The method of computation of tax increment applied to a district pursuant to paragraph (a) or (b) shall remain the same for the duration of the district, except that the governing body may elect to change its election from the method of computation in paragraph (a) to the method in paragraph (b).*

## Subsection 1-12. Business Subsidies

Pursuant to *M.S., Section 116J.993, Subd. 3*, the following forms of financial assistance are not considered a business subsidy:

(1) A business subsidy of less than $150,000;
(2) Assistance that is generally available to all businesses or to a general class of similar businesses, such as a line of business, size, location, or similar general criteria;
(3) Public improvements to buildings or lands owned by the state or local government that serve a public purpose and do not principally benefit a single business or defined group of businesses at the time the improvements are made;
(4) Redevelopment property polluted by contaminants as defined in *M.S., Section 116J.552, Subd. 3;*
(5) Assistance provided for the sole purpose of renovating old or decaying building stock or bringing it up to code and assistance provided for designated historic preservation districts, provided that the assistance is equal to or less than 50% of the total cost;
(6) Assistance to provide job readiness and training services if the sole purpose of the assistance is to provide those services;
(7) Assistance for housing;
(8) Assistance for pollution control or abatement, including assistance for a tax increment financing hazardous substance subdistrict as defined under *M.S., Section 469.174, Subd. 23*;
(9) Assistance for energy conservation;
(10) Tax reductions resulting from conformity with federal tax law;
(11) Workers' compensation and unemployment compensation;
(12) Benefits derived from regulation;
(13) Indirect benefits derived from assistance to educational institutions;
(14) Funds from bonds allocated under chapter 474A, bonds issued to refund outstanding bonds, and bonds issued for the benefit of an organization described in section 501 © (3) of the Internal Revenue Code of 1986, as amended through December 31, 1999;
(15) Assistance for a collaboration between a Minnesota higher education institution and a business;
(16) Assistance for a tax increment financing soils condition district as defined under *M.S., Section 469.174, Subd. 19*;
(17) Redevelopment when the recipient's investment in the purchase of the site and in site preparation is 70 percent or more of the assessor's current year's estimated market value;
(18) General changes in tax increment financing law and other general tax law changes of a principally technical nature;
(19) Federal assistance until the assistance has been repaid to, and reinvested by, the state or local government agency;
(20) Funds from dock and wharf bonds issued by a seaway port authority;

(21) Business loans and loan guarantees of $150,000 or less;
(22) Federal loan funds provided through the United States Department of Commerce, Economic Development Administration; and
(23) Property tax abatements granted under *M.S., Section 469.1813* to property that is subject to valuation under Minnesota Rules, chapter 8100.

The EDA will comply with *M.S., Sections 116J.993 to 116J.995* to the extent the tax increment assistance under this TIF Plan does not fall under any of the above exemptions.

### Subsection 1-13. County Road Costs

Pursuant to *M.S., Section 469.175, Subd. 1a*, the county board may require the EDA or City to pay for all or part of the cost of county road improvements if the proposed development to be assisted by tax increment will, in the judgment of the county, substantially increase the use of county roads requiring construction of road improvements or other road costs and if the road improvements are not scheduled within the next five years under a capital improvement plan or within five years under another county plan.

If the county elects to use increments to improve county roads, it must notify the EDA or City within forty-five days of receipt of this TIF Plan. In the opinion of the EDA and City and consultants, the proposed development outlined in this TIF Plan will have little or no impact upon county roads, therefore the TIF Plan was not forwarded to the county 45 days prior to the public hearing. The EDA and City are aware that the county could claim that tax increment should be used for county roads, even after the public hearing.

### Subsection 1-14. Estimated Impact on Other Taxing Jurisdictions

The estimated impact on other taxing jurisdictions assumes that the redevelopment contemplated by the TIF Plan would occur without the creation of the District. However, the EDA or City has determined that such development or redevelopment would not occur "but for" tax increment financing and that, therefore, the fiscal impact on other taxing jurisdictions is $0. The estimated fiscal impact of the District would be as follows if the "but for" test was not met:

**IMPACT ON TAX BASE**

| | 2017/Pay 2018 Total Net Tax Capacity | Estimated Captured Tax Capacity (CTC) Upon Completion | Percent of CTC to Entity Total |
|---|---|---|---|
| Hennepin County | 1,685,924,784 | 962,236 | **0.0571%** |
| City of Minnetonka | 95,091,802 | 962,236 | **1.0119%** |
| Hopkins ISD No. 270 | 112,892,334 | 962,236 | **0.8523%** |

## IMPACT ON TAX RATES

| | Pay 2018 Extension Rates | Percent of Total | CTC | Potential Taxes |
|---|---|---|---|---|
| Hennepin County | 0.428080 | 36.28% | 962,236 | **411,914** |
| City of Minnetonka | 0.359650 | 30.48% | 962,236 | **346,068** |
| Hopkins ISD No. 270 | 0.290350 | 24.61% | 962,236 | **279,385** |
| Other | 0.101770 | 8.63% | 962,236 | **97,927** |
| **Total** | 1.179850 | 100.00% | | **1,135,294** |

The estimates listed above display the captured tax capacity when all construction is completed. The tax rate used for calculations is the actual Pay 2018 rate. The total net capacity for the entities listed above are based on actual Pay 2018 figures. The District will be certified under the actual Pay 2019 rates, which were unavailable at the time this TIF Plan was prepared.

Pursuant to *M.S. Section 469.175 Subd. 2(b)*:

(1) Estimate of total tax increment. It is estimated that the total amount of tax increment that will be generated over the life of the District is $19,811,654;

(2) Probable impact of the District on city provided services and ability to issue debt. An impact of the District on police protection is not expected. The City police department does track all calls for service including property-type calls and crimes. With any addition of new residents or businesses, police calls for service will be increased. New developments add an increase in traffic, and additional overall demands to the call load. The City does not expect that the proposed development, in and of itself, will necessitate new capital investment.

The probable impact of the District on fire protection is not expected to be significant. Typically new buildings generate few calls, if any, and are of superior construction.

The impact of the District on public infrastructure is expected to be minimal. The development is not expected to significantly impact any traffic movements in the area. The current infrastructure for sanitary sewer, storm sewer and water will be able to handle the additional volume generated from the proposed development. Based on the development plans, there are no additional costs associated with street maintenance, sweeping, plowing, lighting and sidewalks. The development in the District is expected to contribute to sanitary sewer (SAC) and water (WAC) connection fees.

The probable impact of any District general obligation tax increment bonds on the ability to issue debt for general fund purposes is expected to be minimal. It is not anticipated that there will be any general obligation debt issued in relation to this project, therefore there will be no impact on the City's ability to issue future debt or on the City's debt limit.

(3) Estimated amount of tax increment attributable to school district levies. It is estimated that the amount of tax increments over the life of the District that would be attributable to school district levies, assuming the school district's share of the total local tax rate for all taxing jurisdictions remained the same, is $4,875,648;

(4) Estimated amount of tax increment attributable to county levies. It is estimated that the amount of

tax increments over the life of the District that would be attributable to county levies, assuming the county's share of the total local tax rate for all taxing jurisdictions remained the same, is $7,187,668;

(5) Additional information requested by the county or school district. The City is not aware of any standard questions in a county or school district written policy regarding tax increment districts and impact on county or school district services. The county or school district must request additional information pursuant to *M.S. Section 469.175 Subd. 2(b)* within 15 days after receipt of the tax increment financing plan.

No requests for additional information from the county or school district regarding the proposed development for the District have been received.

### Subsection 1-15. Supporting Documentation

Pursuant to *M.S. Section 469.175, Subd. 1 (a), clause 7* the TIF Plan must contain identification and description of studies and analyses used to make the findings are required in the resolution approving the District. Following is a list of reports and studies on file at the City that support the EDA and City's findings:

- 2030 Comprehensive Plan Guide
- SWLRT Housing Gaps Analysis (2014)

### Subsection 1-16. Definition of Tax Increment Revenues

Pursuant to *M.S., Section 469.174, Subd. 25*, tax increment revenues derived from a tax increment financing district include all of the following potential revenue sources:

1. Taxes paid by the captured net tax capacity, but excluding any excess taxes, as computed under *M.S., Section 469.177*;
2. The proceeds from the sale or lease of property, tangible or intangible, to the extent the property was purchased by the authority with tax increments;
3. Principal and interest received on loans or other advances made by the authority with tax increments;
4. Interest or other investment earnings on or from tax increments;
5. Repayments or return of tax increments made to the Authority under agreements for districts for which the request for certification was made after August 1, 1993; and
6. The market value homestead credit paid to the Authority under *M.S., Section 273.1384*.

### Subsection 1-17. Modifications to the District

In accordance with *M.S., Section 469.175, Subd. 4*, any:

1. Reduction or enlargement of the geographic area of the District, if the reduction does not meet the requirements of *M.S., Section 469.175, Subd. 4(e)*;
2. Increase in amount of bonded indebtedness to be incurred;
3. A determination to capitalize interest on debt if that determination was not a part of the original TIF Plan;
4. Increase in the portion of the captured net tax capacity to be retained by the EDA or City;
5. Increase in the estimate of the cost of the District, including administrative expenses, that will be paid or financed with tax increment from the District; or
6. Designation of additional property to be acquired by the EDA or City,

shall be approved upon the notice and after the discussion, public hearing and findings required for approval of the original TIF Plan.

Pursuant to *M.S. Section 469.175 Subd. 4(f)*, the geographic area of the District may be reduced, but shall not be enlarged after five years following the date of certification of the original net tax capacity by the county auditor. If a housing district is enlarged, the reasons and supporting facts for the determination that the addition to the district meets the criteria of *M.S., Section 469.174, Subd. 11* must be documented. The requirements of this paragraph do not apply if (1) the only modification is elimination of parcel(s) from the District and (2) (A) the current net tax capacity of the parcel(s) eliminated from the District equals or exceeds the net tax capacity of those parcel(s) in the District's original net tax capacity or (B) the EDA agrees that, notwithstanding *M.S., Section 469.177, Subd. 1*, the original net tax capacity will be reduced by no more than the current net tax capacity of the parcel(s) eliminated from the District.

The EDA or City must notify the County Auditor of any modification to the District. Modifications to the District in the form of a budget modification or an expansion of the boundaries will be recorded in the TIF Plan.

### Subsection 1-18. Administrative Expenses

In accordance with *M.S., Section 469.174, Subd. 14,* administrative expenses means all expenditures of the EDA or City, *other than*:

1. Amounts paid for the purchase of land;
2. Amounts paid to contractors or others providing materials and services, including architectural and engineering services, directly connected with the physical development of the real property in the District;
3. Relocation benefits paid to or services provided for persons residing or businesses located in the District;
4. Amounts used to pay principal or interest on, fund a reserve for, or sell at a discount bonds issued pursuant to *M.S., Section 469.178*; or
5. Amounts used to pay other financial obligations to the extent those obligations were used to finance costs described in clauses (1) to (3).

For districts for which the request for certification were made before August 1, 1979, or after June 30, 1982, and before August 1, 2001, administrative expenses also include amounts paid for services provided by bond counsel, fiscal consultants, and planning or economic development consultants. Pursuant to *M.S., Section 469.176, Subd. 3*, tax increment may be used to pay any **authorized and documented** administrative expenses for the District up to but not to exceed 10 percent of the total estimated tax increment expenditures authorized by the TIF Plan or the total tax increments, as defined by *M.S., Section 469.174, Subd. 25, clause (1)*, from the District, whichever is less.

For districts for which certification was requested after July 31, 2001, no tax increment may be used to pay any administrative expenses for District costs which exceed ten percent of total estimated tax increment expenditures authorized by the TIF Plan or the total tax increments, as defined in *M.S., Section 469.174, Subd. 25, clause (1)*, from the District, whichever is less.

Pursuant to *M.S., Section 469.176, Subd. 4h*, tax increments may be used to pay for the County's actual administrative expenses incurred in connection with the District and are not subject to the percentage limits of *M.S., Section 469.176, Subd. 3*. The county may require payment of those expenses by February 15 of the year following the year the expenses were incurred.

Pursuant to *M.S., Section 469. 177, Subd. 11*, the County Treasurer shall deduct an amount (currently .36 percent) of any increment distributed to the EDA or City and the County Treasurer shall pay the amount deducted to the State Commissioner of Management and Budget for deposit in the state general fund to be appropriated to the State Auditor for the cost of financial reporting of tax increment financing information and the cost of examining and auditing authorities' use of tax increment financing. This amount may be adjusted annually by the Commissioner of Revenue.

## Subsection 1-19. Limitation of Increment

The tax increment pledged to the payment of bonds and interest thereon may be discharged and the District may be terminated if sufficient funds have been irrevocably deposited in the debt service fund or other escrow account held in trust for all outstanding bonds to provide for the payment of the bonds at maturity or redemption date.

Pursuant to *M.S., Section 469.176, Subd. 6*:

> *if, after four years from the date of certification of the original net tax capacity of the tax increment financing district pursuant to M.S., Section 469.177, no demolition, rehabilitation or renovation of property or other site preparation, including qualified improvement of a street adjacent to a parcel but not installation of utility service including sewer or water systems, has been commenced on a parcel located within a tax increment financing district by the authority or by the owner of the parcel in accordance with the tax increment financing plan, no additional tax increment may be taken from that parcel, and the original net tax capacity of that parcel shall be excluded from the original net tax capacity of the tax increment financing district. If the authority or the owner of the parcel subsequently commences demolition, rehabilitation or renovation or other site preparation on that parcel including qualified improvement of a street adjacent to that parcel, in accordance with the tax increment financing plan, the authority shall certify to the county auditor that the activity has commenced and the county auditor shall certify the net tax capacity thereof as most recently certified by the commissioner of revenue and add it to the original net tax capacity of the tax increment financing district. The county auditor must enforce the provisions of this subdivision. The authority must submit to the county auditor evidence that the required activity has taken place for each parcel in the district. The evidence for a parcel must be submitted by February 1 of the fifth year following the year in which the parcel was certified as included in the district. For purposes of this subdivision, qualified improvements of a street are limited to (1) construction or opening of a new street, (2) relocation of a street, and (3) substantial reconstruction or rebuilding of an existing street.*

The EDA or City or a property owner must improve parcels within the District by approximately June 2022 and report such actions to the County Auditor.

## Subsection 1-20. Use of Tax Increment

The EDA or City hereby determines that it will use 100 percent of the captured net tax capacity of taxable property located in the District for the following purposes:

1. To pay the principal of and interest on bonds issued to finance a project;
2. To finance, or otherwise pay the cost of redevelopment of the Opus Redevelopment Project pursuant to *M.S., Sections 469.090 to 469.1082*;
3. To pay for project costs as identified in the budget set forth in the TIF Plan;

4. To finance, or otherwise pay for other purposes as provided in *M.S., Section 469.176, Subd. 4*;
5. To pay principal and interest on any loans, advances or other payments made to or on behalf of the EDA or City or for the benefit of the Opus Redevelopment Project by a developer;
6. To finance or otherwise pay premiums and other costs for insurance or other security guaranteeing the payment when due of principal of and interest on bonds pursuant to the TIF Plan or pursuant to *M.S., Chapter 462C. M.S., Sections 469.152 through 469.165*, and/or *M.S., Sections 469.178*; and
7. To accumulate or maintain a reserve securing the payment when due of the principal and interest on the tax increment bonds or bonds issued pursuant to *M.S., Chapter 462C, M.S., Sections 469.152 through 469.165*, and/or *M.S., Sections 469.178*.

**Revenues derived from tax increment from a housing district must be used solely to finance the cost of housing projects as defined in *M.S., Sections 469.174, Subd. 11 and 469.1761*. The cost of public improvements directly related to the housing projects and the allocated administrative expenses of the EDA or City may be included in the cost of a housing project.**

These revenues shall not be used to circumvent any levy limitations applicable to the City nor for other purposes prohibited by *M.S., Section 469.176, Subd. 4.*

Tax increments generated in the District will be paid by Hennepin County to the EDA for the Tax Increment Fund of said District. The EDA or City will pay to the developer(s) annually an amount not to exceed an amount as specified in a developer's agreement to reimburse the costs of land acquisition, public improvements, demolition and relocation, site preparation, and administration. Remaining increment funds will be used for EDA or City administration (up to 10 percent) and for the costs of public improvement activities outside the District.

## Subsection 1-21. Excess Increments

Excess increments, as defined in *M.S., Section 469.176, Subd. 2*, shall be used only to do one or more of the following:

1. Prepay any outstanding bonds;
2. Discharge the pledge of tax increment for any outstanding bonds;
3. Pay into an escrow account dedicated to the payment of any outstanding bonds; or
4. Return the excess to the County Auditor for redistribution to the respective taxing jurisdictions in proportion to their local tax rates.

The EDA or City must spend or return the excess increments under paragraph © within nine months after the end of the year. In addition, the EDA or City may, subject to the limitations set forth herein, choose to modify the TIF Plan in order to finance additional public costs in the Opus Redevelopment Project or the District.

## Subsection 1-22. Requirements for Agreements with the Developer

The EDA or City will review any proposal for private development to determine its conformance with the Redevelopment Plan and with applicable municipal ordinances and codes. To facilitate this effort, the following documents may be requested for review and approval: site plan, construction, mechanical, and electrical system drawings, landscaping plan, grading and storm drainage plan, signage system plan, and any other drawings or narrative deemed necessary by the EDA or City to demonstrate the conformance of the development with City plans and ordinances. The EDA or City may also use the Agreements to address other issues related to the development.

Pursuant to *M.S., Section 469.176, Subd. 5*, no more than 10 percent, by acreage, of the property to be acquired in the project area as set forth in the TIF Plan shall at any time be owned by the EDA or City as a result of acquisition with the proceeds of bonds issued pursuant to *M.S., Section 469.178* to which tax increments from property acquired is pledged, unless prior to acquisition in excess of 10 percent of the acreage, the EDA or City concluded an agreement for the development of the property acquired and which provides recourse for the EDA or City should the development not be completed.

### Subsection 1-23. Assessment Agreements

Pursuant to *M.S., Section 469.177, Subd. 8*, the EDA or City may enter into a written assessment agreement in recordable form with the developer of property within the District which establishes a minimum market value of the land and completed improvements for the duration of the District. The assessment agreement shall be presented to the County Assessor who shall review the plans and specifications for the improvements to be constructed, review the market value previously assigned to the land upon which the improvements are to be constructed and, so long as the minimum market value contained in the assessment agreement appears, in the judgment of the assessor, to be a reasonable estimate, the County Assessor shall also certify the minimum market value agreement.

### Subsection 1-24. Administration of the District

Administration of the District will be handled by the Community Development Director.

### Subsection 1-25. Annual Disclosure Requirements

Pursuant to *M.S., Section 469.175, Subds. 5, 6, and 6b* the EDA or City must undertake financial reporting for all tax increment financing districts to the Office of the State Auditor, County Board and County Auditor on or before August 1 of each year. *M.S., Section 469.175, Subd. 5* also provides that an annual statement shall be published in a newspaper of general circulation in the City on or before August 15.

If the City fails to make a disclosure or submit a report containing the information required by *M.S., Section 469.175 Subd. 5 and Subd. 6,* the Office of the State Auditor will direct the County Auditor to withhold the distribution of tax increment from the District.

### Subsection 1-26. Reasonable Expectations

As required by the TIF Act, in establishing the District, the determination has been made that the anticipated development would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future. In making said determination, reliance has been placed upon written representation made by the developer to such effects and upon EDA and City staff awareness of the feasibility of developing the project site(s) within the District.

### Subsection 1-27. Other Limitations on the Use of Tax Increment

1. General Limitations. All revenue derived from tax increment shall be used in accordance with the TIF Plan. The revenues shall be used to finance, or otherwise pay the cost of redevelopment of the Opus Redevelopment Project pursuant to *M.S., Sections 469.090 to 469.1082*. Tax increments may not be used to circumvent existing levy limit law. No tax increment may be used for the acquisition, construction, renovation, operation, or maintenance of a building to be used primarily and regularly for conducting the business of a municipality, county, school district, or any other local unit of government or the state or federal government. This provision does not prohibit the use of revenues derived from tax increments

for the construction or renovation of a parking structure.

2. Housing District Exceptions to Restriction on Pooling; Five Year Limit. Pursuant to *M.S., Section 469.1763, Subd. 2,* at least 80% of revenues derived from tax increments paid by properties in the District must be expended on Public Costs incurred within said district, and up to 20% of said tax increments may be spent on public costs incurred outside of the District but within the Opus Redevelopment Project; provided that in the case of a housing district, a housing project, as defined in *M.S., Section 469.174, Subd. 11,* is deemed to be an activity in the District, even if the expenditure occurred after five years.

## Subsection 1-28. Summary

The Minnetonka Economic Development Authority is establishing the District to provide an impetus for residential development and provide safe and decent life cycle housing in the City. The TIF Plan for the District was prepared by Ehlers & Associates, Inc., 3060 Centre Pointe Drive, Roseville, Minnesota 55113-1105, telephone (651) 697-8500.

# Appendix A

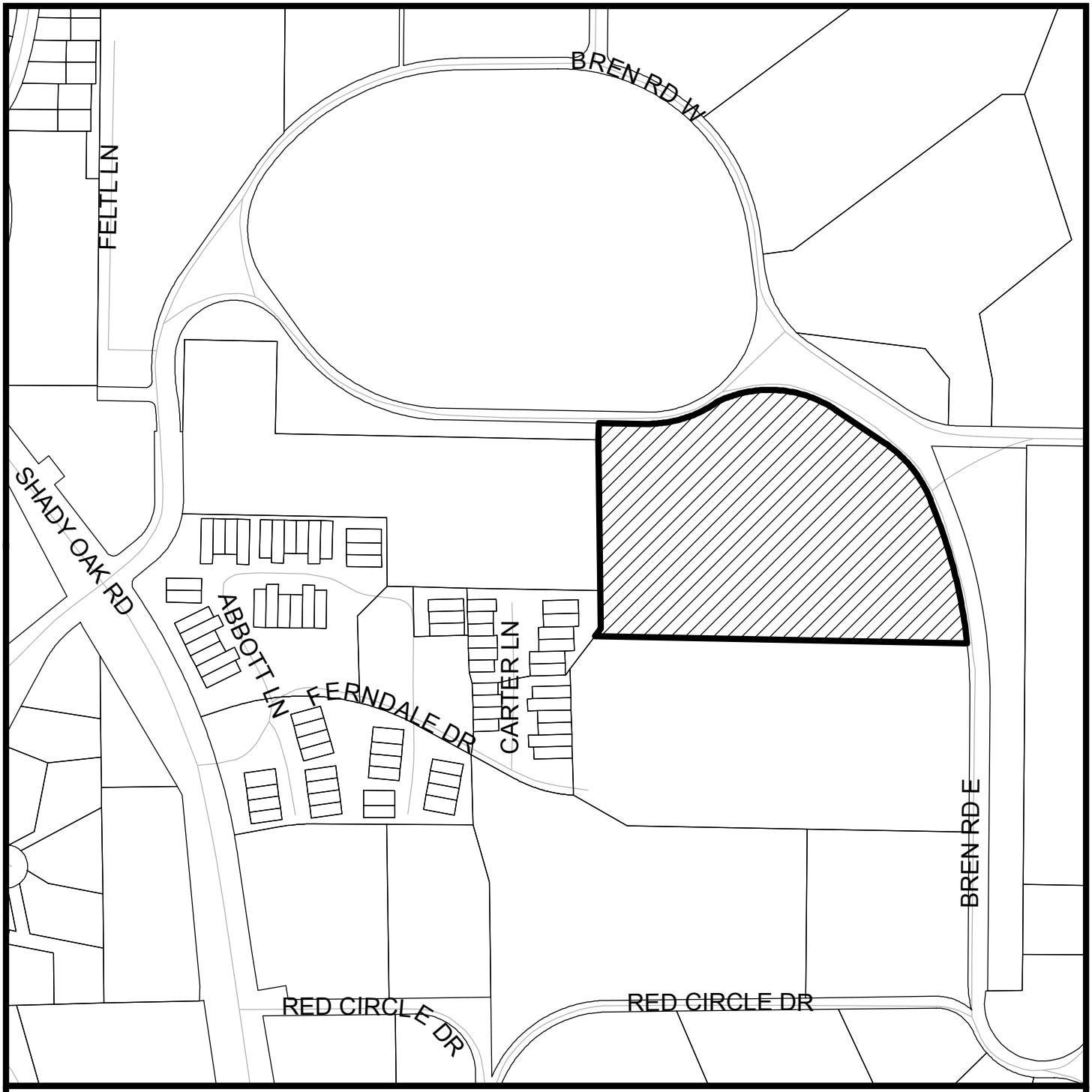
## Project Description

Dominium intends to construct approximately 482 apartments in two separate projects. The existing parcel will be split into two parcels for the purposes of the development. One parcel will host approximately 262 age-restricted apartments. The second parcel will host approximately 220 general occupancy apartments. At least 40% of the apartments will be reserved for households with incomes at or below 60% of the area median income. Both buildings will include one level of underground parking.

The EDA intends to issue two PAYGO TIF Notes, one for each building to offset qualified costs related to the redevelopment of the site.

# Appendix B

## Map of the Opus Redevelopment Project and the District




# Dominium Housing TIF District

CITY OF MINNETONKA

Dominium Housing TIF District

Opus Redevelopment Project Area

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# Appendix C

## Description of Property to be Included in the District

The District encompasses all property and adjacent rights-of-way and abutting roadways identified by the parcel listed below.

| Parcel Numbers | Address | Owner |
|---|---|---|
| 36-117-22-31-0015* | 11001 Bren Rd E | Digi International Inc |

*The City anticipates splitting the existing parcel into two separate parcels during the land use review process. Each parcel will have its own unique parcel number. The anticipated legal description for the age restricted apartment development is Lot 1, Block 1, DOMINIUM 2ND ADDITION, Hennepin County, Minnesota. The anticipated legal description for the general occupancy apartment development is Lot 2, Block 1, DOMINIUM 2ND ADDITION, Hennepin County, Minnesota. The final plat was not available when this TIF Plan was prepared.

# Appendix D

## Estimated Cash Flow for the District

# Dominium Housing

## City of Minnetonka

**482 Affordable Apartments**

## ASSUMPTIONS AND RATES

| | | |
|---|---|---|
| **DistrictType:** | **Housing** | |
| **District Name/Number:** | | |
| **County District #:** | | |
| **First Year Construction or Inflation on Value** | **2018** | |
| **Existing District - Specify No. Years Remaining** | | |
| Inflation Rate - Every Year: | **3.00%** | |
| Interest Rate: | **4.00%** | |
| Present Value Date: | **1-Feb-20** | |
| First Period Ending | 1-Aug-20 | |
| Tax Year District was Certified: | **Pay 2019** | |
| Cashflow Assumes First Tax Increment For Development: | 2020 | |
| Years of Tax Increment | 26 | |
| Assumes Last Year of Tax Increment | 2045 | |
| Fiscal Disparities Election [Outside (A), Inside (B), or NA] | **Inside(B)** | |
| Incremental or Total Fiscal Disparities | **Incremental** | |
| Fiscal Disparities Contribution Ratio | 36.5530% | Pay 2018 |
| Fiscal Disparities Metro-Wide Tax Rate | 145.0950% | Pay 2018 |
| Maximum/Frozen Local Tax Rate: | 117.985% | Pay 2018 |
| Current Local Tax Rate: (Use lesser of Current or Max.) | 117.985% | Pay 2018 |
| State-wide Tax Rate (Comm./Ind. only used for total taxes) | 43.8650% | Pay 2018 |
| Market Value Tax Rate (Used for total taxes) | 0.16587% | Pay 2018 |

**Tax Rates**

| | | |
|---|---|---|
| Exempt Class Rate (Exempt) | | 0.00% |
| Commercial Industrial Preferred Class Rate (C/I Pref.) | | |
| First | $150,000 | 1.50% |
| Over | $150,000 | 2.00% |
| Commercial Industrial Class Rate (C/I) | | 2.00% |
| Rental Housing Class Rate (Rental) | | 1.25% |
| Affordable Rental Housing Class Rate (Aff. Rental) | | |
| First | $121,000 | 0.75% |
| Over | $121,000 | 0.25% |
| Non-Homestead Residential (Non-H Res. 1 Unit) | | |
| First | $500,000 | 1.00% |
| Over | $500,000 | 1.25% |
| Homestead Residential Class Rate (Hmstd. Res.) | | |
| First | $500,000 | 1.00% |
| Over | $500,000 | 1.25% |
| Agricultural Non-Homestead | | 1.00% |

## BASE VALUE INFORMATION (Original Tax Capacity)

| Map ID | PID | Owner | Address | Land Market Value | Building Market Value | Total Market Value | Percentage Of Value Used for District | Original Market Value | Tax Year Original Market Value | Property Tax Class | Current Original Tax Capacity | Class After Conversion | After Conversion Orig. Tax Cap. | Area/ Phase |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 3611722310015 | Digi Internationa | 11001 Bren Road | 2,455,000 | 4,891,000 | 7,346,000 | 100% | 7,346,000 | Pay 2019 | C/I Pref. | 146,170 | Aff. Rental | 55,095 | 1 |
| | | | | 2,455,000 | 4,891,000 | 7,346,000 | | **7,346,000** | | | **146,170** | | **55,095** | |

**Note:**

**1. Base values are pay 2019 from Hennepin County website on 7-10-18. School District #270; Watershed District #1.**

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# Dominium Housing

## City of Minnetonka

**482 Affordable Apartments**

**PROJECT INFORMATION (Project Tax Capacity)**

| Area/Phase | New Use | Estimated Market Value Per Sq. Ft./Unit | Taxable Market Value Per Sq. Ft./Unit | Total Sq. Ft./Units | Total Taxable Market Value | Property Tax Class | Project Tax Capacity | Project Tax Capacity/Unit | Percentage Completed 2018 | Percentage Completed 2019 | Percentage Completed 2020 | Percentage Completed 2021 | First Year Full Taxes Payable |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| A | Aff - Workforce | 180,000 | 180,000 | 220 | 39,600,000 | Aff. Rental | 232,100 | 1,055 | 25% | 100% | 100% | 100% | 2021 |
| B | Aff - Senior | 180,000 | 180,000 | 262 | 47,160,000 | Aff. Rental | 276,410 | 1,055 | 15% | 75% | 100% | 100% | 2022 |
| **TOTAL** | | | | | **86,760,000** | | **508,510** | | | | | | |
| **Subtotal Residential** | | | | **482** | **86,760,000** | | **508,510** | | | | | | |
| **Subtotal Commercial/Ind.** | | | | **0** | **0** | | **0** | | | | | | |

**Note:**

**Estimated market value based on data provided by City Assessor on 3-21-18**

**TAX CALCULATIONS**

| New Use | Total Tax Capacity | Fiscal Disparities Tax Capacity | Local Tax Capacity | Local Property Taxes | Fiscal Disparities Taxes | State-wide Property Taxes | Market Value Taxes | Total Taxes | Taxes Per Sq. Ft./Unit |
|---|---|---|---|---|---|---|---|---|---|
| **Aff - Workforce** | **232,100** | **0** | **232,100** | **273,843** | **0** | **0** | **65,685** | **339,528** | **1,543.31** |
| **Aff - Senior** | **276,410** | **0** | **276,410** | **326,122** | **0** | **0** | **78,224** | **404,347** | **1,543.31** |
| **TOTAL** | **508,510** | **0** | **508,510** | **599,966** | **0** | **0** | **143,909** | **743,874** | |

**Note:**

1. **Taxes and tax increment will vary significantly from year to year depending upon values, rates, state law, fiscal disparities and other factors which cannot be predicted.**

**WHAT IS EXCLUDED FROM TIF?**

| | |
|---|---|
| **Total Property Taxes** | **743,874** |
| **less State-wide Taxes** | **0** |
| **less Fiscal Disp. Adj.** | **0** |
| **less Market Value Taxes** | **(143,909)** |
| **less Base Value Taxes** | **(65,004)** |
| **Annual Gross TIF** | **534,962** |

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# Dominium Housing
# City of Minnetonka
# 482 Affordable Apartments

## TAX INCREMENT CASH FLOW

| % of OTC | Project Tax Capacity | Original Tax Capacity | Fiscal Disparities Incremental | Captured Tax Capacity | Local Tax Rate | Annual Gross Tax Increment | Semi-Annual Gross Tax Increment | State Auditor 0.36% | Admin. at 10% | Semi-Annual Net Tax Increment | Semi-Annual Present Value | PERIOD ENDING Yrs. | Tax Year | Payment Date |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 100% | 99,487 | (55,095) | - | 44,392 | 117.985% | 52,375 | 26,188 | (94) | (2,609) | 23,484 | 23,024 | 0.5 | 2020 | 08/01/20 |
| | | | | | | | 26,188 | (94) | (2,609) | 23,484 | 45,596 | 1 | 2020 | 02/01/21 |
| 100% | 439,408 | (55,095) | - | 384,313 | 117.985% | 453,431 | 226,716 | (816) | (22,590) | 203,309 | 237,179 | 1.5 | 2021 | 08/01/21 |
| | | | | | | | 226,716 | (816) | (22,590) | 203,309 | 425,005 | 2 | 2021 | 02/01/22 |
| 100% | 515,473 | (55,095) | - | 460,378 | 117.985% | 543,177 | 271,588 | (978) | (27,061) | 243,550 | 645,596 | 2.5 | 2022 | 08/01/22 |
| | | | | | | | 271,588 | (978) | (27,061) | 243,550 | 861,861 | 3 | 2022 | 02/01/23 |
| 100% | 530,937 | (55,095) | - | 475,842 | 117.985% | 561,422 | 280,711 | (1,011) | (27,970) | 251,731 | 1,081,007 | 3.5 | 2023 | 08/01/23 |
| | | | | | | | 280,711 | (1,011) | (27,970) | 251,731 | 1,295,857 | 4 | 2023 | 02/01/24 |
| 100% | 546,865 | (55,095) | - | 491,770 | 117.985% | 580,215 | 290,108 | (1,044) | (28,906) | 260,157 | 1,513,545 | 4.5 | 2024 | 08/01/24 |
| | | | | | | | 290,108 | (1,044) | (28,906) | 260,157 | 1,726,964 | 5 | 2024 | 02/01/25 |
| 100% | 563,271 | (55,095) | - | 508,176 | 117.985% | 599,572 | 299,786 | (1,079) | (29,871) | 268,836 | 1,943,179 | 5.5 | 2025 | 08/01/25 |
| | | | | | | | 299,786 | (1,079) | (29,871) | 268,836 | 2,155,154 | 6 | 2025 | 02/01/26 |
| 100% | 580,169 | (55,095) | - | 525,074 | 117.985% | 619,509 | 309,755 | (1,115) | (30,864) | 277,775 | 2,369,884 | 6.5 | 2026 | 08/01/26 |
| | | | | | | | 309,755 | (1,115) | (30,864) | 277,775 | 2,580,403 | 7 | 2026 | 02/01/27 |
| 100% | 597,574 | (55,095) | - | 542,479 | 117.985% | 640,044 | 320,022 | (1,152) | (31,887) | 286,983 | 2,793,635 | 7.5 | 2027 | 08/01/27 |
| | | | | | | | 320,022 | (1,152) | (31,887) | 286,983 | 3,002,687 | 8 | 2027 | 02/01/28 |
| 100% | 615,502 | (55,095) | - | 560,407 | 117.985% | 661,196 | 330,598 | (1,190) | (32,941) | 296,467 | 3,214,413 | 8.5 | 2028 | 08/01/28 |
| | | | | | | | 330,598 | (1,190) | (32,941) | 296,467 | 3,421,987 | 9 | 2028 | 02/01/29 |
| 100% | 633,967 | (55,095) | - | 578,872 | 117.985% | 682,982 | 341,491 | (1,229) | (34,026) | 306,235 | 3,632,196 | 9.5 | 2029 | 08/01/29 |
| | | | | | | | 341,491 | (1,229) | (34,026) | 306,235 | 3,838,284 | 10 | 2029 | 02/01/30 |
| 100% | 652,986 | (55,095) | - | 597,891 | 117.985% | 705,421 | 352,711 | (1,270) | (35,144) | 316,297 | 4,046,969 | 10.5 | 2030 | 08/01/30 |
| | | | | | | | 352,711 | (1,270) | (35,144) | 316,297 | 4,251,562 | 11 | 2030 | 02/01/31 |
| 100% | 672,575 | (55,095) | - | 617,480 | 117.985% | 728,534 | 364,267 | (1,311) | (36,296) | 326,660 | 4,458,716 | 11.5 | 2031 | 08/01/31 |
| | | | | | | | 364,267 | (1,311) | (36,296) | 326,660 | 4,661,807 | 12 | 2031 | 02/01/32 |
| 100% | 692,753 | (55,095) | - | 637,658 | 117.985% | 752,340 | 376,170 | (1,354) | (37,482) | 337,334 | 4,867,423 | 12.5 | 2032 | 08/01/32 |
| | | | | | | | 376,170 | (1,354) | (37,482) | 337,334 | 5,069,007 | 13 | 2032 | 02/01/33 |
| 100% | 713,535 | (55,095) | - | 658,440 | 117.985% | 776,861 | 388,430 | (1,398) | (38,703) | 348,329 | 5,273,080 | 13.5 | 2033 | 08/01/33 |
| | | | | | | | 388,430 | (1,398) | (38,703) | 348,329 | 5,473,151 | 14 | 2033 | 02/01/34 |
| 100% | 734,941 | (55,095) | - | 679,846 | 117.985% | 802,117 | 401,058 | (1,444) | (39,961) | 359,653 | 5,675,676 | 14.5 | 2034 | 08/01/34 |
| | | | | | | | 401,058 | (1,444) | (39,961) | 359,653 | 5,874,230 | 15 | 2034 | 02/01/35 |
| 100% | 756,989 | (55,095) | - | 701,894 | 117.985% | 828,130 | 414,065 | (1,491) | (41,257) | 371,317 | 6,075,204 | 15.5 | 2035 | 08/01/35 |
| | | | | | | | 414,065 | (1,491) | (41,257) | 371,317 | 6,272,237 | 16 | 2035 | 02/01/36 |
| 100% | 779,699 | (55,095) | - | 724,604 | 117.985% | 854,924 | 427,462 | (1,539) | (42,592) | 383,331 | 6,471,657 | 16.5 | 2036 | 08/01/36 |
| | | | | | | | 427,462 | (1,539) | (42,592) | 383,331 | 6,667,166 | 17 | 2036 | 02/01/37 |
| 100% | 803,090 | (55,095) | - | 747,995 | 117.985% | 882,522 | 441,261 | (1,589) | (43,967) | 395,705 | 6,865,030 | 17.5 | 2037 | 08/01/37 |
| | | | | | | | 441,261 | (1,589) | (43,967) | 395,705 | 7,059,014 | 18 | 2037 | 02/01/38 |
| 100% | 827,183 | (55,095) | - | 772,088 | 117.985% | 910,948 | 455,474 | (1,640) | (45,383) | 408,451 | 7,255,319 | 18.5 | 2038 | 08/01/38 |
| | | | | | | | 455,474 | (1,640) | (45,383) | 408,451 | 7,447,776 | 19 | 2038 | 02/01/39 |
| 100% | 851,998 | (55,095) | - | 796,903 | 117.985% | 940,226 | 470,113 | (1,692) | (46,842) | 421,579 | 7,642,524 | 19.5 | 2039 | 08/01/39 |
| | | | | | | | 470,113 | (1,692) | (46,842) | 421,579 | 7,833,453 | 20 | 2039 | 02/01/40 |
| 100% | 877,558 | (55,095) | - | 822,463 | 117.985% | 970,383 | 485,192 | (1,747) | (48,344) | 435,100 | 8,026,642 | 20.5 | 2040 | 08/01/40 |
| | | | | | | | 485,192 | (1,747) | (48,344) | 435,100 | 8,216,043 | 21 | 2040 | 02/01/41 |
| 100% | 903,885 | (55,095) | - | 848,790 | 117.985% | 1,001,445 | 500,722 | (1,803) | (49,892) | 449,028 | 8,407,674 | 21.5 | 2041 | 08/01/41 |
| | | | | | | | 500,722 | (1,803) | (49,892) | 449,028 | 8,595,547 | 22 | 2041 | 02/01/42 |
| 100% | 931,002 | (55,095) | - | 875,907 | 117.985% | 1,033,438 | 516,719 | (1,860) | (51,486) | 463,373 | 8,785,622 | 22.5 | 2042 | 08/01/42 |
| | | | | | | | 516,719 | (1,860) | (51,486) | 463,373 | 8,971,969 | 23 | 2042 | 02/01/43 |
| 100% | 958,932 | (55,095) | - | 903,837 | 117.985% | 1,066,392 | 533,196 | (1,920) | (53,128) | 478,149 | 9,160,488 | 23.5 | 2043 | 08/01/43 |
| | | | | | | | 533,196 | (1,920) | (53,128) | 478,149 | 9,345,310 | 24 | 2043 | 02/01/44 |
| 100% | 987,700 | (55,095) | - | 932,605 | 117.985% | 1,100,334 | 550,167 | (1,981) | (54,819) | 493,368 | 9,532,276 | 24.5 | 2044 | 08/01/44 |
| | | | | | | | 550,167 | (1,981) | (54,819) | 493,368 | 9,715,576 | 25 | 2044 | 02/01/45 |
| 100% | 1,017,331 | (55,095) | - | 962,236 | 117.985% | 1,135,294 | 567,647 | (2,044) | (56,560) | 509,043 | 9,900,991 | 25.5 | 2045 | 08/01/45 |
| | | | | | | | 567,647 | (2,044) | (56,560) | 509,043 | 10,082,771 | 26 | 2045 | 02/01/46 |
| | **Total** | | | | | | **19,883,233** | **(71,580)** | **(1,981,165)** | **17,830,488** | | | | |
| | | **Present Value From** | **02/01/2020** | **Present Value Rate** | **4.00%** | | **11,243,556** | **(40,477)** | **(1,120,308)** | **10,082,771** | | | | |

Appendix E

Housing Qualifications for the District

| INCOME RESTRICTIONS - ADJUSTED FOR FAMILY SIZE (HOUSING DISTRICT) - HENNEPIN COUNTY HENNEPIN COUNTY MEDIAN INCOME: $94,300 | | |
|---|---|---|
| No. of Persons | 50% of Median Income | 60% of Median Income |
| 1-person | $33,050 | $39,660 |
| 2-person | $37,750 | $45,300 |
| 3-person | $42,450 | $50,940 |
| 4-person | $47,150 | $56,580 |

Source: Department of Housing and Urban Development and Minnesota Housing Finance Agency

The two options for income limits on a standard housing district are 20% of the units at 50% of median income or 40% of the units at 60% of median income. There are no rent restrictions for a housing district.

***PLEASE NOTE: THESE NUMBERS ARE ADJUSTED ANNUALLY. ALL INCOME FIGURES REPORTED ON THIS PAGE ARE FOR 2018

## Appendix F

## Findings for the District

The reasons and facts supporting the findings for the adoption of the Tax Increment Financing Plan for Dominium Housing Tax Increment Financing District, as required pursuant to Minnesota Statutes, Section 469.175, Subdivision 3 are as follows:

1. *Finding that Dominium Housing Tax Increment Financing District is a housing district as defined in M.S., Section 469.174, Subd. 11.*

   Dominium Housing TIF District consists of one parcel to be split into two parcels for the purposes of the development. The development includes 262 units of age-restricted apartments and 220 units of general occupancy workforce apartments. All or a portion of the units will receive tax increment assistance and will meet income restrictions described in *M.S. 469.1761.* All of the units receiving assistance will have incomes at or below 60 percent of statewide median income.

2. *Finding that the proposed development, in the opinion of the City Council, would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future.*

   *The proposed development, in the opinion of the City, would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future:* This finding is supported by the fact that the development proposed in this plan is a housing district that meets the City's objectives for development and redevelopment. The cost of land acquisition, site and public improvements, and construction makes this housing development infeasible without City assistance. The cost of land acquisition and construction are approximately the same for affordable workforce and affordable age-restricted housing developments as they are for market rate projects. However, with decreased rental income from affordable units, there is insufficient cash flow to provide a sufficient rate of return, pay operating expenses, and service the debt. This leaves a gap in the funding for the project and makes this housing development feasible only through assistance, in part, from tax increment financing. The developer evidenced this need by providing a letter and a detailed pro forma as justification that the project would not have gone forward without tax increment assistance.

   *The increased market value of the site that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in market value estimated to result from the proposed development after subtracting the present value of the projected tax increments for the maximum duration of the TIF District permitted by the TIF Plan:* This finding is justified on the grounds that the costs of acquisition, building demolition, site improvements, utility improvements and construction of affordable housing add to the total redevelopment cost. Historically, the costs of site and public improvements as well as reduced rents required for affordable workforce and affordable age-restricted housing in the City have made such development infeasible without tax increment assistance. The City reasonably determines that no other development of similar scope is anticipated on this site without substantially similar assistance being provided to the development.

3. *Finding that the TIF Plan for Dominium Housing Tax Increment Financing District conforms to the general plan for the development or redevelopment of the municipality as a whole.*

   The Planning Commission reviewed the TIF Plan on May 24, 2018, and found that the TIF Plan conforms to the general development plan of the City.

4. *Finding that the TIF Plan for Dominium Housing Tax Increment Financing District will afford*

*maximum opportunity, consistent with the sound needs of the City as a whole, for the development or redevelopment of Opus Redevelopment Project by private enterprise.*

Through the implementation of the TIF Plan, the EDA or City will provide an impetus for residential development, which is desirable or necessary for increased population and an increased need for life-cycle housing within the City.