



**Agenda
Minnetonka City Council
Regular Meeting
Monday, February 22, 2021
6:30 p.m.
WebEx**

1. Call to Order
2. Pledge of Allegiance
3. Roll Call: Schack-Carter-Calvert-Schaeppi-Coakley-Kirk-Wiersum
4. Approval of Agenda
5. Approval of Minutes: None
6. Special Matters:
 - A. 2021 Empty Bowl Virtual Event Proclamation
Recommendation: Read the proclamation
 - B. Boards and Commissions interviews – Senior Advisory Board
Recommendation: Interview the candidates
7. Reports from City Manager & Council Members
8. Citizens Wishing to Discuss Matters Not on the Agenda
9. Bids and Purchases: None
10. Consent Agenda - Items Requiring a Majority Vote:
 - A. Resolution for the Williston Road Lift Station Forcemain Rehabilitation Project
Recommendation: Adopt the resolution (4 votes)
11. Consent Agenda - Items Requiring Five Votes: None

Due to the COVID-19 health pandemic, the city council's regular meeting place is not available. Pursuant to Minn. Stat. § 13D.021, city council members will participate in the meeting remotely via WebEx. Members of the public who desire to monitor the meeting remotely or to give input or testimony during the meeting can find instructions at <https://www.minnetonkamn.gov/government/city-council-mayor/city-council-meetings>.

12. Introduction of Ordinances:

- A. Ordinance implementing ranked choice voting

Recommendation: Introduce the ordinance (4 votes)

- B. Items concerning 5959 Shady Oak Road

- 1) Rezoning from Office Business District (B-1) to Planned Unit Development;
- 2) Master Development Plan
- 3) Site and building plan review;
- 4) Preliminary and final plat;
- 5) Vacation of easements

Recommendation: Introduce the ordinance and refer it to the planning commission (4 votes)

13. Public Hearings:

- A. On-sale intoxicating liquor license for Duke's on 7, LLC., located at 15600 State Highway 7

Recommendation: Open the public hearing and continue to March 22, 2021 (4 votes)

14. Other Business:

- A. Items related to a multi-family residential development by Dominion, at 11001 Bren Road East

Recommendation: Hold the public hearing and adopt the resolution (4 votes)

- B. Resolution approving participation in the Just Deeds coalition

Recommendation: Approve the resolution (4 votes)

- C. Eagle to Bryant Lake Regional Trail Master Plan Route recommendations and Master Plan production

Recommendation: Provide comment and feedback

- D. Concept plan review for Wooddale Builders at 16509 McGinty Road West

Recommendation: Discuss concept plan with the applicant (No formal action is required)

15. Appointments and Reappointments:

- A. Appointments to the Minnetonka Sustainability Commission

Recommendation: Approve the recommended appointments (4 votes)

16. Adjournment



City of Minnetonka Proclamation

2021 Empty Bowl Virtual event
March 2—9, 2021

- WHEREAS In 2020, Minnetonka's local ICA Food Shelf distributed food for more than 1 million meals; and ResourceWest assisted more than 4,200 people; and
- WHEREAS Empty Bowls, an international grassroots projects to raise money for local food shelves, has raised more than \$1 million in the 22 years of Empty Bowls events in our community.
- WHEREAS The 23rd annual Empty Bowls will be going VIRTUAL this year, Tuesday, March 2—9 with the goal of raising funds for ICA Food Shelf and ResourceWest. Visit hopkin-emptybowls.org to bid on the online auction full of locally created artwork and specialty food items. Stop by ICA Food Shelf during Empty Bowls week to choose a handmade bowl, a certificate for a bowl of soup from a local restaurant and a loaf of bread from Breadsmith. Showcase your bowl as a reminder of all the empty bowls in the community and the world.

NOW, THEREFORE, BE IT RESOLVED, that the Minnetonka City Council declares March 2-9, 2021 to be Empty Bowls Week in the city of Minnetonka, and urges residents to participate in the Empty Bowls event by sponsoring, making a donation, making a bowl or volunteering.

Brad Wiersum, Mayor

Feb. 22, 2021

**City Council Agenda Item #6B
Meeting of Feb. 22, 2021**

Brief Description Boards and Commissions Interviews – Senior Advisory Board

Recommendation Interview the candidates

Background

At the Jan. 4, 2021 city council meeting, staff presented a number of recommendations and discussion points for the council to consider regarding the annual boards and commissions appointment process. Due to the high volume of applications for this year, particularly for the new Sustainability Commission, interviews have been taking place over a series of meetings at the beginning of the new year.

The first stage of interviews took place on Jan. 11, 2021 for the Planning Commission and Park Board vacancies. The council then held the second stage of interviews, taking place on Feb. 1, 2021 for the Sustainability Commission openings. The council is now on the second of three designated dates for the Senior Advisory Board interviews. The first series of Senior Advisory Board interviews were held at the Feb. 8, 2021 meeting. The remaining interviews for this board will take place at the Mar. 8, 2021 regular meeting. The council will be using a ranking system to rank the top applicants for each board or commission with openings, with the mayor reviewing the final list of applicants to ensure diversity.

The following openings exist on the Senior Advisory Board:

- Up to 5 regular appointments

Expanded recruitment

The city developed and implemented a strategic communications and marketing plan to recruit boards and commissions applicants, with emphasis on facilitating an inclusive, community-wide appointment process and filling a new commission (sustainability). The openings were advertised in the Minnetonka Memo, on the city's website and several times via mass emails, text messages and social media posts. Staff distributed recruiting posters to apartment buildings, businesses and city facilities, and directly marketed the openings to school districts and high school organizations, faith communities, city volunteers, recent citizen's and police academy participants and the media. A promotions toolkit was provided to council to assist with promotion. A chart is attached to outline the promotional efforts in greater detail.

Application data

The city received 129 applications in the application period with a large amount of applications for the new Sustainability Commission. The breakdown below shows the application numbers for each board and commission. The numbers in the breakdown will not total 129, as applicants may have applied to more than one board or commission. Eligible applications will be retained for one year in the event of any mid-year vacancies.

- *EDAC: 5 applications
- Park Board: 27 applications

- Planning Commission: 28 applications
- Senior Advisory Board: 13 applications
- Sustainability Commission: 100 applications

Diversity

Staff sent an anonymous demographics survey to all current boards and commission members, excluding the Charter Commission as council does not appoint those members. Twenty-nine of the thirty-three members responded to the survey. The three questions asked on the anonymous survey were the same demographics questions asked on the revised application. Breakdown of responses are listed below.

1. Are you a veteran or active service?
 - Yes: 2 responses
 - No: 27 responses
2. What is your race/ethnicity?
 - Approximately 10% of respondents identified as non-white or BIPOC
3. What is your primary spoken language?
 - English: 29 responses

In the new applicant pool, 12% of the applicants identified as non-white or BIPOC (Black, Indigenous, people of color).

Interviews

Because of the number of applicants for this board and the number of open positions, staff recommended that all Senior Advisory Board applicants who have not been appointed to another board or commission, be interviewed. The candidates have been scheduled by alphabetic order of their first names. To ensure equitable access, all candidates will be calling into the virtual study session with audio only (no video). Interviews will last approximately ten minutes each. Each applicant will be asked to give a brief (about three minutes) presentation of his/her background. Then the applicant will be asked to respond to questions from the council. The applicants may also ask the council any questions they may have at the end of the interview.

Name	Ward
*Erik Larson	3
*Heidi Weinberg	2
*Jim C Tiftji	4
*Lisa R Lee	4

* = confirmed interview attendance at the time packet was distributed

Submitted through:

Brad Wiersum, Mayor
Geraldyn Barone, City Manager
Mike Funk, Assistant City Manager

Originated by:

McKaia Ryberg, Assistant to the City Manager

Boards and Commissions Outreach

Time Frame	Contact Method	Groups Reached	Information Provided
Early November	Minnetonka Memo	City-Wide (approx.. 21,000)	Notification about newly established SC
Late November	Email	Local Newspapers <ul style="list-style-type: none"> - Sun Sailor - Lake Minnetonka Magazine 	Notification about new SC and open positions
Early December	Website	Webpage Visitors	SC webpage created
	Minnetonka Memo	City-Wide (approx.. 21,000)	Promotion of open B/C positions
	Social Media*	Social Media Followers (approx. 32,000)	Promotion of open B/C positions (Dec. 1, 8)
	Mass Email/Text	Select Groups (7,403 total subscribers)	Promotion of open SC positions
	Email	Additional Groups <ul style="list-style-type: none"> - Citizens Academy - Natural Resources Volunteer Group - Faith Based Community 	Promotion of open B/C positions
	Email	Apartment Managers (54)	PDF Flyer promoting open B/C positions
	Email	Area Environmental Groups <ul style="list-style-type: none"> - Minnetonka Climate Initiative - Great Plains Institute - Alliance for Sustainability - Minnetonka Energy Action Team - Sierra Club - Midwest Energy News - Minnesota Environmental Partnership 	Notification about new SC and open positions (with electronic flyer)
Email	Area Schools and Club Advisors: <ul style="list-style-type: none"> - Hopkins HS Clubs (13) - Minnetonka HS Clubs (11) - Wayzata HS Clubs (10) - District 287 - Eagle Ridge Academy - Lions Gate Academy - Minnetonka Christian Academy 	Notification about new SC and open young adult positions (with electronic flyer)	

Mid December	Social Media*	Social Media Followers (approx. 32,000) and Hopkins, Minnetonka, Wayzata High Schools tagged	Post promoting open young adult positions on SC (Dec. 17)
	Email	School district communications staff	Requested promotions – particularly regarding young adult SC positions – be shared with parents and students
	Email	All Science and Social Studies Teachers at Hopkins, Minnetonka and Wayzata High Schools (150 teachers emailed)	Notification about new SC and open young adult positions (with electronic flyer)
	Email	Apartment Managers (54)	<p>Follow up to previous email sent in Early December. 13 building managers confirmed that they would share this information with their residents:</p> <ul style="list-style-type: none"> - Altitude - Applewood Pointe - Beacon Hill Terrace - Brier Creek - Cherrywood Pointe - Minnetonka Heights - Minnetonka Hills - Oaks Glen Lake - The Glenn - The Orchards of Minnetonka - The Ridge - The Rize at Opus - Waterstone Place. <p>(Attached are photos of flyers posted in buildings).</p>
	Social Media*	Social Media Followers (approx. 32,000)	Post promoting open planning commission position (Dec. 21)
	Mass Email/Text	Select groups (6,245 total subscribers)	Message promoting open planning commission position (Dec. 21)

Late December	Social Media*	Social Media Followers (approx.. 32,000)	Promotion of open B/C positions (Dec. 28)
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*Social Media includes Facebook, Instagram, Twitter and Nextdoor

Originator: Drew Ingvalson, Planner

Management Updates

Beacon Hill

MAKE A DIFFERENCE IN OUR COMMUNITY



Apply to serve on a city board or commission

Do you want to make a positive impact in our community and get involved in local government? Apply to serve on a City of Minnetonka board or commission, including the new sustainability commission!

We're seeking Minnetonka residents to fill the following openings:

- **Sustainability commission** **NEW**
 - o Five adult members
 - o Two young adult members under 25 years old, one of which must attend Minnetonka, Hopkins or Wayzata High School
- **Park Board**
- **Senior Advisory Board**

Learn more and apply by Jan. 1, 2021

Visit minnetonkamn.gov/boards-commissions to learn more and apply online by Jan. 1, 2021. The online application is equipped with Google translate to accommodate a variety of languages.

Questions? Call 952-988-8211 or email mryberg@minnetonkamn.gov.



- It is never recommended to leave valuables in your vehicle (especially a purse or wallet); but if there is no other option, place items out of sight, preferably in a trunk, before arriving at your destination.
- Remove garage door openers from view inside your vehicle.
- Prevent identity theft - Never carry your social security number in your purse/wallet; and, minimize the number of credit cards and other valuables you carry.
- Secure a list of credit cards and contact numbers so that in the case of theft, you can quickly cancel the accounts.
- Immediately call 911 to report suspicious activity, such as someone peering into vehicle windows.

Jeff Sebenaler

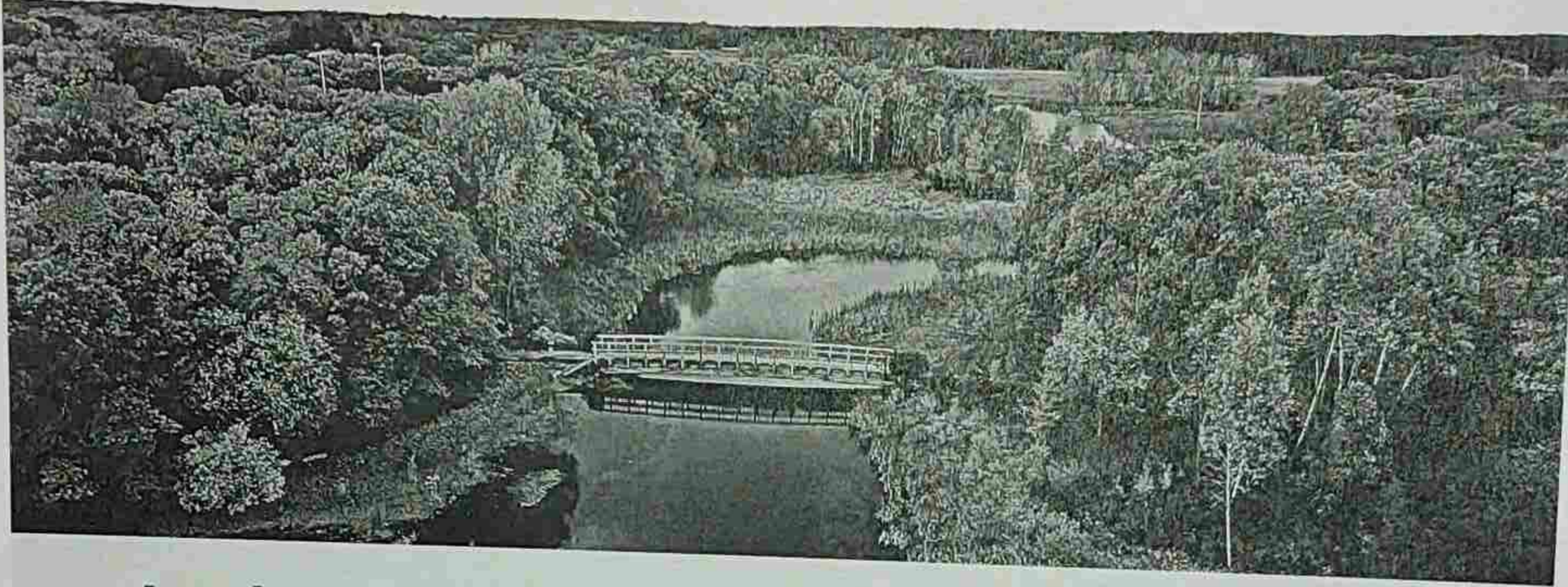
Jeffrey J. Sebenaler
Chief of Police
March 24, 2016



Brier Creek

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For questions
contact the Bri
Thank you,
Brier Creek Mar

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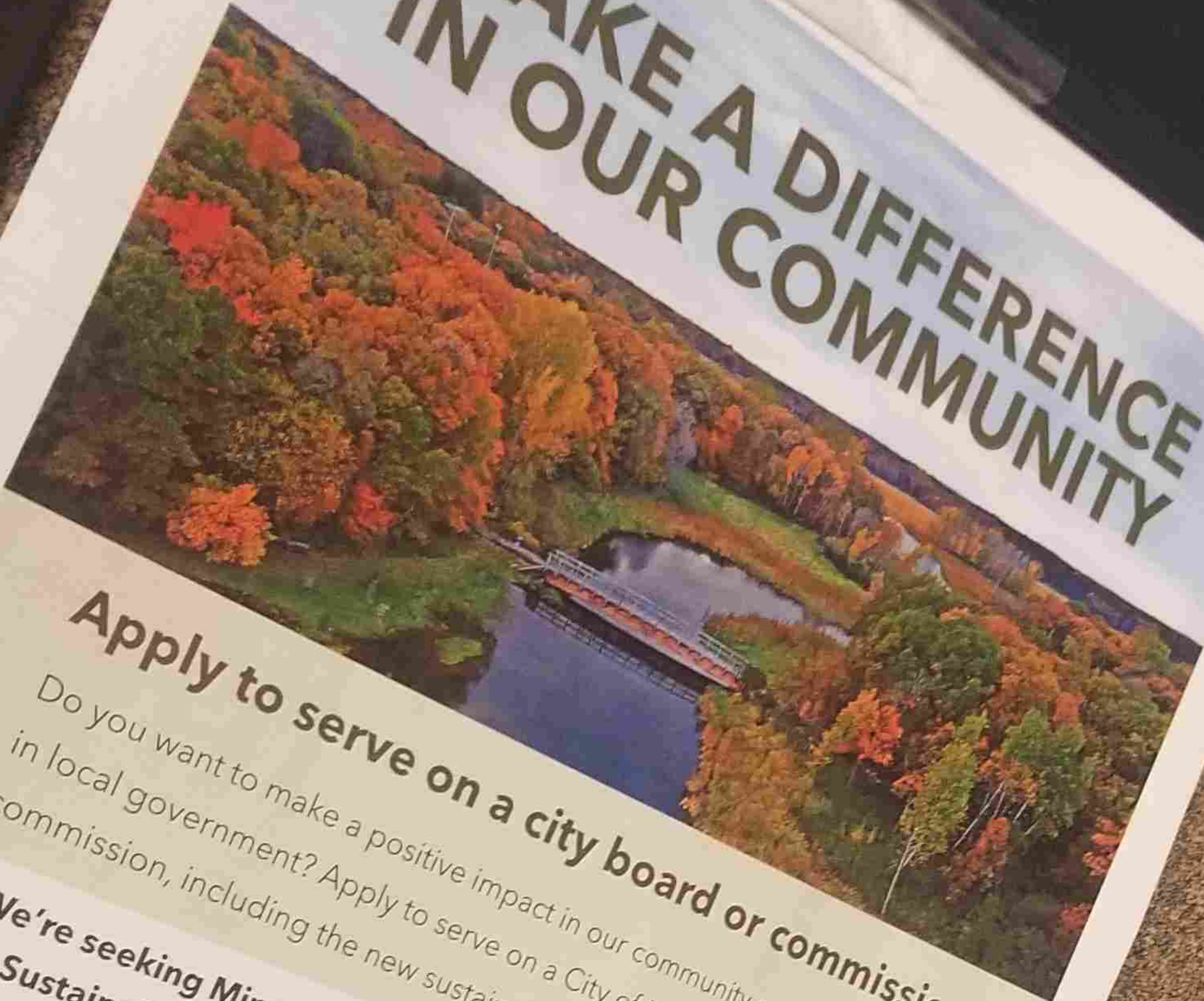
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The Glenn



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this months focus>>>

- Garbage Chutes
- Pet Waste Removal
- Sprinkler & Fire Inspection
- Community Garbage Pick-up

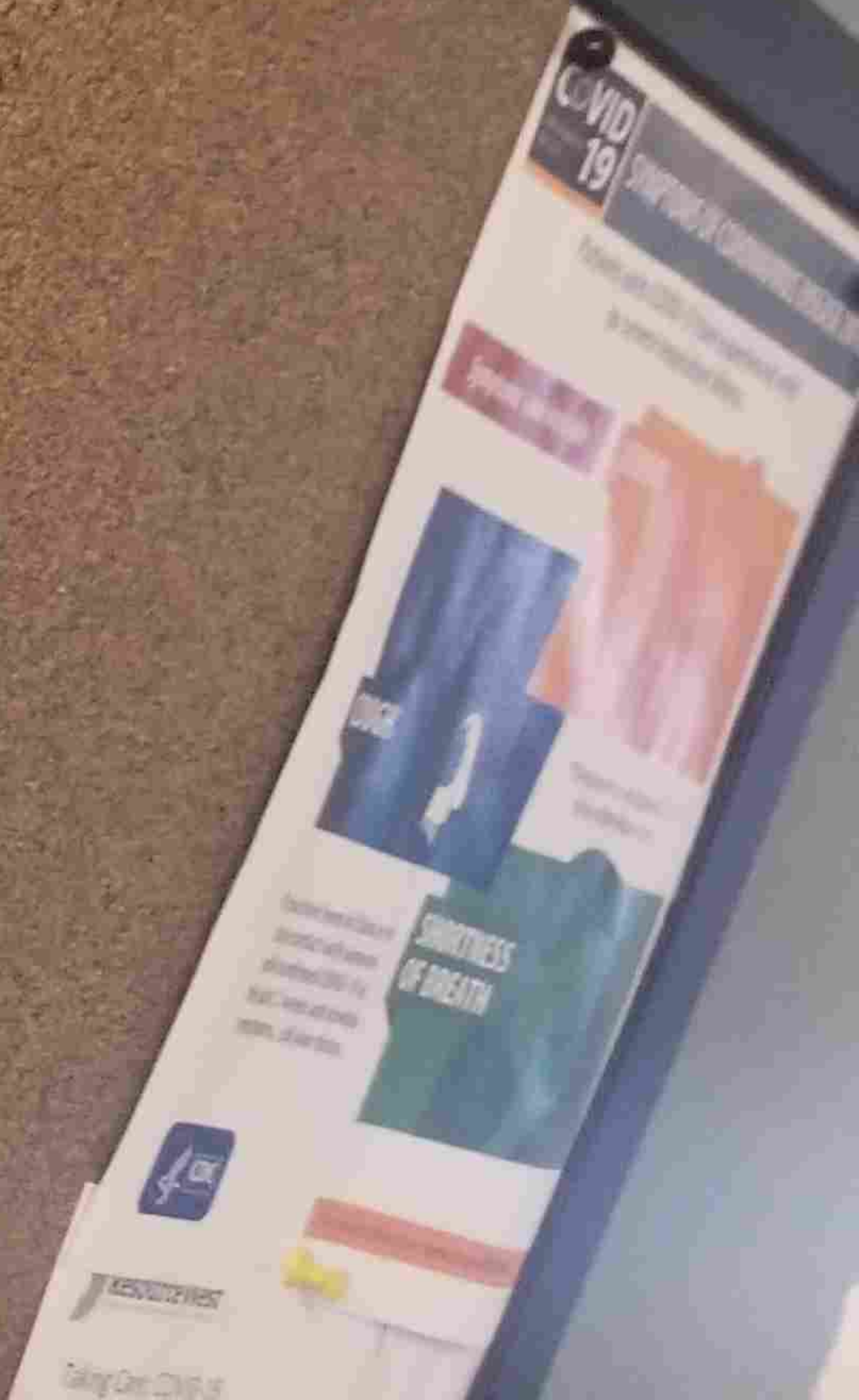


Office Hours:

Monday: 10-5pm
 Tuesday: Closed
 Wednesday: 10-5pm
 Thursday: 10-5pm
 Friday: Closed
 Saturday: Closed
 Sunday: Closed

Please schedule all appointments ahead of time. Walk-ins will likely be denied.

The Ridge Apartments – A great place to call home!



City Council Agenda Item #10A
Meeting of Feb. 22, 2021

Brief Description: Resolution for the Williston Road Lift Station Forcemain Rehabilitation Project

Recommended Action: Adopt the resolution

Introduction

The Williston Lift Station is located west of the intersection of Williston Road and Minnetonka Drive. It is the second largest of the city's 36 sanitary sewer lift stations, serving the northwest and central portions of the city. A major component of the lift station is the primary 24 inch forcemain pipe, from the lift station east to Guillian's Field Park, which was constructed in 1973. The proposed project includes rehabilitating this primary 24 inch forcemain.

Background

In July of 2013 and January of 2014, two sections of the sanitary sewer forcemains (pressure sewers) running from the Williston Road and Main Lift Stations ruptured. Emergency repairs were made to restore service; however, further evaluation of the system revealed significant deterioration of the remaining pipe.

The city began to systematically rehabilitate the Main and Williston Lift Station systems in 2016, including the complete rehabilitation of both lift stations, lining of the existing forcemains, installation of a secondary forcemain for Williston Lift Station and replacement of the forcemain junction box. Adding the new 12 inch secondary forcemain pipe in 2020 provided redundancy to the Williston Lift Station and allows for the rehabilitation of the primary 24 inch forcemain pipe, which requires taking it out of service temporarily. The primary and secondary forcemains run in parallel alignment from the Williston Lift Station, east along Minnetonka Drive to Baker Road, enter the Minnetonka Boulevard right-of-way and continue east to the new Junction Box in Gulliam's Field Park.

The rehabilitation of the primary 24 inch forcemain will complete the final piece of the systematic rehabilitation of both systems.

Proposed Improvements

Installing variable frequency drive (VFDs) controlled pumps as part of the Williston Lift Station Rehabilitation, approved by council during the Dec. 7, 2020 meeting, allows the existing pipe size to be reduced and still maintain adequate capacity, improving the operational efficiency of the system. It further reduces the long term energy use and reduces the amount of materials required for construction. Staff reviewed several pipe rehabilitation options and identified slip lining, which pulls a permanent liner into the existing pipe, as the preferred rehabilitation method due to cost, schedule, traffic impacts and life expectancy.

Installation of the new forcemain will require the excavation of a number of lining pits along the existing alignment, primarily on Minnetonka Drive from Williston Road to Baker Road and Minnetonka Boulevard from Baker Road to Guillian's Field Park. Full closures of Minnetonka Drive will be coordinated with the immediate installation activities. A single lane of traffic in both

directions will be maintained along Minnetonka Boulevard throughout the construction. The roadway disruptions will be repaired with a number of areas receiving a new roadway surface in 2022.

Estimated Project Costs and Funding

The total estimated construction cost, including engineering, administration and contingency, is \$3,800,000. The budgeted amount for the project is shown below and is included in the 2021 – 2025 Capital Improvements Program (CIP). Fund balances currently can support the estimated project costs.

	Budget Amount	Proposed Funding	Expense
Construction Costs			\$3,200,000
Contingencies			\$320,000
Engineering, Administration, and Indirect Costs			\$280,000
Utility Fund	\$3,800,000	\$3,800,000	
Total Budget	\$3,800,000	\$3,800,000	\$3,800,000

Schedule

If the recommended actions are approved by council, staff is currently planning to open bids in March with intentions of council consideration to award the contract in April. Construction is expected to begin in May and be completed by September of 2021.

Recommendation

Adopt the attached resolution accepting plans and specifications and authorizing the advertisement for bids for the Williston Road Lift Station Forcemain Rehabilitation Project No. 21908.

Submitted through:

Geralyn Barone, City Manager
 Darin Nelson, Finance Director
 Will Manchester, PE, Director of Public Works

Originated by:

Mike Kuno, PE, Utility Operations Engineer

Resolution No. 2021-XXX

**Resolution accepting plans and specifications and authorizing the advertisement for bids
for the Williston Road Lift Station Forcemain Rehabilitation Project, Project No. 21908**

Be It Resolved by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

- 1.01. The plans and specifications have been prepared by or under the direction of the public works director, who is a Licensed Professional Engineer in the State of Minnesota, for the Williston Road Lift Station Forcemain Rehabilitation Project, Project No. 21908.
- 1.02. The plans and specifications for the construction of the aforementioned project have been presented to the city council for approval.

Section 2. Council Action.

- 2.01. The plans and specifications, copies of which are on file with public works, are hereby accepted upon the recommendation of the public works director.
- 2.02. The city clerk shall prepare and cause to be inserted in the official newspaper and in Finance & Commerce an advertisement for bids for the making of such improvements under such approved plans and specifications. The advertisement shall specify the work to be done, shall state that bids will be opened and read aloud at the Minnetonka Public Works, that all bids must be made online at the QuestCDN bidding site, and that no bids will be considered unless accompanied by bid security in the amount of five (5) percent of the amount of the bid, which security must be submitted as required by the contract documents.

Adopted by the City Council of the City of Minnetonka, Minnesota, on Feb. 22, 2021.

Brad Wiersum, Mayor

Attest:

Becky Kosman, City Clerk

Action on This Resolution:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

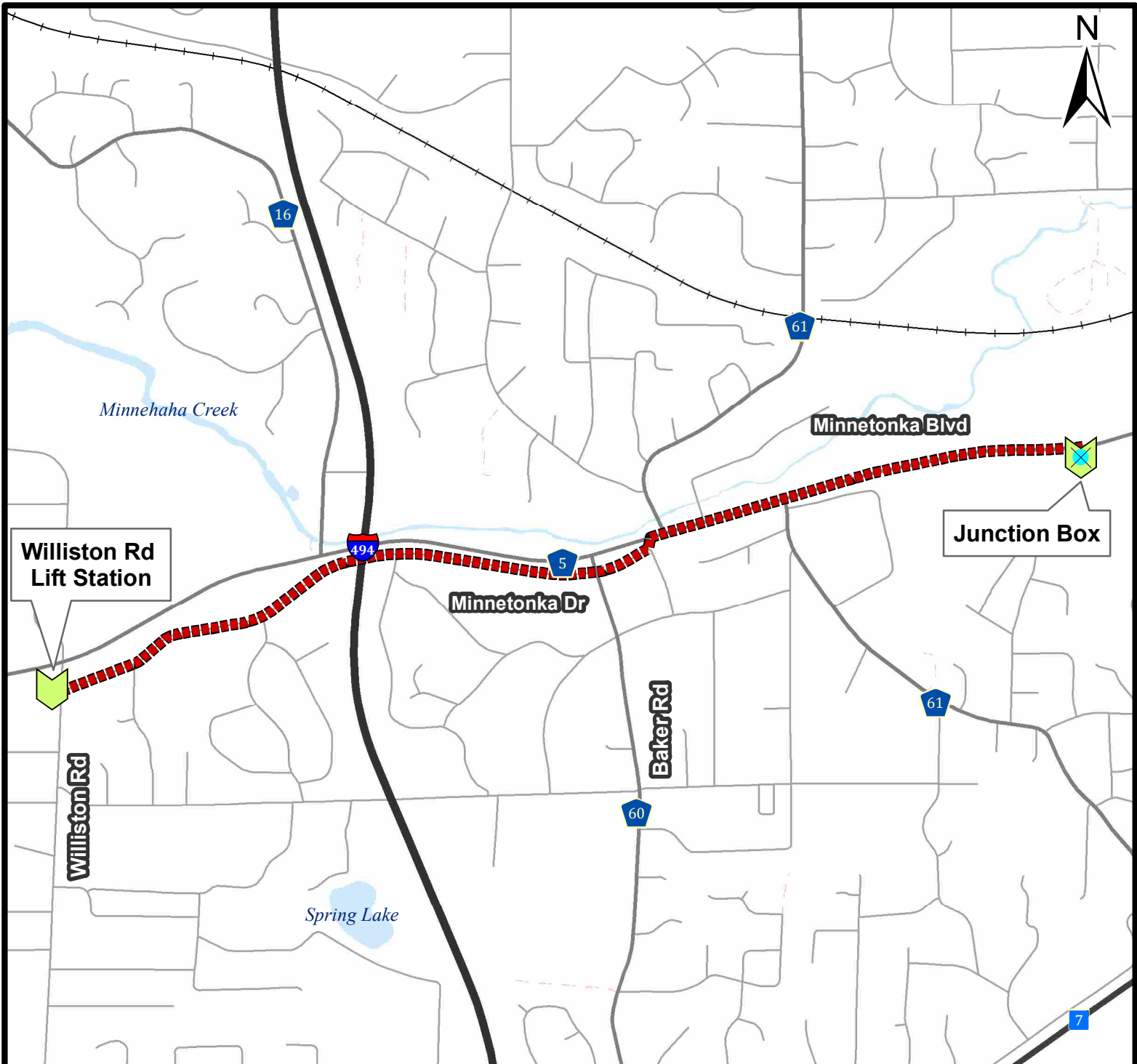
Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the City Council of the City of Minnetonka, Minnesota, at a duly authorized meeting held on Feb. 22, 2021.

Becky Koosman, City Clerk



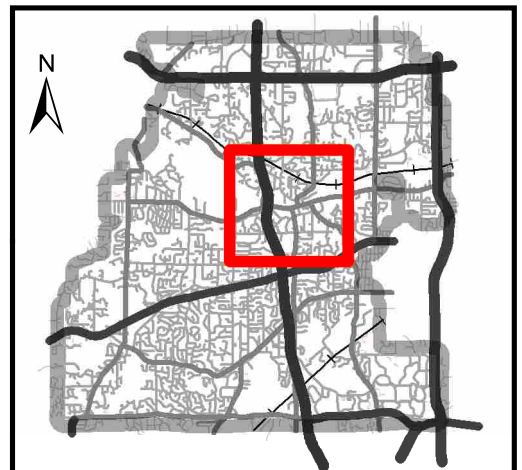
Williston Road Lift Station Forceman Lining Rehabilitation Project

■■■■■ Forceman Alignment

📍 Point of Interest



CITY OF
MINNETONKA



This map is for illustrative purposes only.

City Council Agenda Item #12A
Meeting of Feb. 22, 2021

Brief Description: Ordinance implementing ranked choice voting

Recommended Action: Introduce the ordinance

Background

At the Nov. 3, 2020 special municipal election, Minnetonka voters approved an amendment to the city charter, adopting ranked choice voting for municipal elections. The charter amendment requires that the city council “provide by ordinance the ballot format and the rules for counting the votes and breaking a tie.”

The city attorney has prepared an ordinance for the council’s consideration. The ordinance is substantially similar to ordinances in Minneapolis and St. Louis Park – the only Hennepin County cities that have implemented ranked choice voting at this time.

The ordinance contains the following key mechanisms for implementing ranked choice voting in Minnetonka:

- Number of rankings. The ballot must allow voters to rank three candidates for each municipal office in order of preference and, as required by state law, must allow the voter to add write-in candidates. Ranking three voters is consistent with the Minneapolis ordinance and also consistent with the council discussion at the Jan. 25, 2021 regular council meeting.
- Single ballot, when possible. Municipal elections should occur on the same ballot as other non-ranked choice voting elections that may occur at the same election (e.g., school district elections), but may be placed on a separate ballot when a single ballot is not possible (e.g., when there is not room, which might occur for a special municipal election held in concurrence with a presidential and state general election). The city will be required to pay the cost of a separate ballot, if one is needed.
- Write-in candidates. Write-in candidates must file a written declaration with the city clerk at least seven days before the election in order to have votes counted as votes in their favor.
- First round of tabulating votes. The first round of tabulating votes is based upon the number of first-ranked votes for each candidate. The election machines in the precincts perform that round of voting. If any candidate, other than a write-in candidate, has a majority of all votes cast, that candidate is declared the winner. Otherwise, vote tabulation proceeds to the second round.
- Second round of tabulating votes; batch elimination. In the second round of voting, all candidates for whom it is mathematically impossible to be elected, as well as all undeclared write-in candidates, are defeated. The votes for defeated candidates are transferred to each ballot’s next-ranked continuing candidate. A “continuing candidate” is

one that has not yet been defeated. After allocation of those votes, if there is still no candidate with a majority of the remaining unexhausted ballots, tabulation proceeds to a next round. (Once all of a voter's ranked choices have been defeated, the ballot is "exhausted," Because the voter has not designated a subsequent preferential candidate, there is no candidate to whom the ballot can be allocated. Therefore, the majority winner is determined based on the ballots that are not exhausted.) The process of defeating all candidates who could not possibly win is referred to as "batch elimination," and it reduces the amount of time necessary to determine final election results, without affecting the ultimate election result.

- Subsequent rounds. The same process is used for subsequent rounds, until there is either a tie between the last two continuing candidates or until one candidate has obtained a majority of all remaining unexhausted ballots.
- Breaking ties. When ties occur – whether it is a tie that determines which candidate continues to the next round of tabulation or a tie between two final candidates – the city clerk notifies the candidates who are tied and the tie is resolved by lot (e.g., coin toss). At least two election judges must witness the resolution of the tie, and the affected candidates and media must be allowed to attend, at their option. The candidate chosen by lot is defeated. In other words, breaking a tie determines a loser, not a winner. Both Minneapolis and St. Louis Park follow that rule. In St. Paul, breaking a tie determines a winner. The council could opt to follow the St. Paul rule.
- Recounts. A candidate who is defeated in the final round of tabulation may request a recount, at city expense, if the candidate lost by a margin specified by state law for mandatory recounts. Any other losing candidate may request a discretionary recount, but the candidate must pay the expense of the recount.
- Post-election review. After the election, the city clerk must conduct a test of the voting system and tabulation of results for one office, using a sample of ballots from two different precincts. The test is conducted by hand-counting the ballots for the selected precinct and office and comparing them to the votes compiled by the electronic voting system. Additional review must be conducted if there is a variance greater than the percentage specified for a mandatory recount. The city clerk must report the results of the post-election review to the county auditor and make them public.
- Campaign finance reports. The ordinance also amends the city's campaign finance ordinance, which currently requires campaign finance reports to be filed 10 calendar days before a primary or special primary election. The proposed ordinance deletes that requirement, because the charter amendment eliminated the use of primary elections, making the provision obsolete. If the council wants to include an alternate date for filing finance reports, the council may want to select a date sometime between 50 and 80 days prior to the election. Requiring candidates to file reports more than 80 days before the general election does not make sense, because the last day of the filing period for municipal candidates is 84 days before the election, and candidates have the ability to withdraw two days after the filing period closes. In the 50 days prior to the general election, the city staff is occupied with absentee voting.

- Administrative rules and procedures. The ordinance allows the city clerk to establish written procedures to implement the ordinance's tie-breaking requirements and requires the clerk to establish administrative rules for the ballot format and administrative procedures for the tabulation process. Those rules and procedures will ensure consistency and fairness in the election administration process.

Based upon the discussion at the Jan. 25, 2021 council meeting, the ordinance does not require the city clerk to provide information materials to candidates or voters by a specified deadline. City staff will use a robust education and outreach plan to ensure that candidates and voters have a variety of methods and opportunities to learn about ranked choice voting. Also based on the council discussion at the Jan. 25, 2021 council meeting, the ordinance does not allow a candidate to withdraw from vote tabulation during the middle of the tabulation process.

Recommendation

Introduce the ordinance

Submitted through:

Geralyn Barone, City Manager
Mike Funk, Director of Administrative Services

Originated by:

Corrine Heine, City Attorney
Moranda Dammann, Administrative Services Manager

Ordinance No. 2021-

An Ordinance implementing ranked choice voting as required by city charter; adding a new City Code Section 107 governing the conduct of city elections; amending section 110.010 relating to campaign financial reports

The City of Minnetonka Ordains:

Section 1. Chapter 1 of the Minnetonka City Code is amended to include a new section 107 entitled Section 107 – Conduct of Municipal Elections, to read as follows:

Section 107.005. Applicability.

This section 107 applies to municipal elections for the offices of mayor, council member at-large and ward council member. All provisions of the city charter and state law pertaining to elections also apply, to the extent they are not inconsistent with this section.

Section 107.010. Definitions.

For the purpose of this section 107, certain terms and phrases are defined as follows:

1. "Batch elimination" means a simultaneous defeat of multiple continuing candidates for whom it is mathematically impossible to be elected.
2. "Chief election official" means the city clerk .
3. "Continuing candidate" means a candidate who has been neither elected nor defeated.
4. "Declared write-in candidate" means one or more candidates who have filed a written request with the chief election official to have write-in votes for the candidate counted, provided such request is filed no later than seven days before the general or special election.
5. "Exhausted ballot" means a ballot that cannot be advanced under section 107.030 of this chapter.
6. "Highest continuing ranking" means the ranking on a voter's ballot with the lowest numerical value for a continuing candidate.
7. "Mathematically eliminated" means either:
 - a. the candidate could never win because the candidate's current vote total plus all votes that could possibly be transferred to the candidate in future rounds (from candidates with fewer votes, tied candidates, and from undeclared

The ~~stricken~~ language is deleted; the underlined language is inserted.

write-in candidates) would not be enough to equal or surpass the candidate with the next higher current vote total; or

- b. the candidate has a lower current vote total than a candidate described by (a).
8. "Mathematically impossible to be elected" means mathematically eliminated by the next higher current vote total comparison.
9. "Maximum possible threshold" means the number of votes sufficient for a candidate to be elected under a first ranked choice tabulation. In any given election, the maximum possible threshold equals the total ballots cast that include votes, undervotes, skipped rankings, and overvotes for the office, divided by the sum of one (1) plus the number of offices to be filled, then adding one (1). This is represented by the following equation:
$$\text{Maximum Possible Threshold} = ((\text{Total ballots cast that include votes, undervotes, skipped rankings, and overvotes for the office}) / (\text{Seats to be elected} + 1)) + 1.$$
10. "Overvote" means a voter has ranked more than one candidate at the same ranking.
11. "Partially defective ballot" means a ballot that is defective to the extent that the election judges are unable to determine the voter's intent with respect to the office being counted.
12. "Ranked-choice voting" means an election method in which voters rank candidates for an office in order of their preference and ballots are counted in rounds where votes are distributed to candidates according to the preferences marked on each ballot until:
 - a. one candidate meets the threshold as described in section 170.030 of this chapter, or
 - b. two candidates remain and the candidate with the greater number of votes is declared to be elected.
13. "Ranked-choice voting tabulation center" means the location selected by the chief election official for the tabulation of votes.
14. "Ranking" means the number assigned by a voter to a candidate to express the voter's preference for that candidate. Ranking number one (1) is the highest ranking. Ranking preference is designated in ascending numerical order, so that a ranking of lower numerical value indicates a greater preference for a candidate than a ranking of a higher numerical value.

15. "Repeat candidate ranking" occurs when a voter ranks the same candidate at multiple rankings for the office being counted.
16. "Round" means an instance of the sequences of voting tabulation steps established in section 170.030 of this chapter
17. "Skipped ranking" means when a voter has left a ranking blank and ranks a candidate at a subsequent ranking.
18. "Sum of all ranked-choice votes" means the sum of all votes for a candidate at every ranking for an office, including all repeat candidate rankings.
19. "Threshold" means the number of votes sufficient for a candidate to be elected. In any given election, the threshold equals the total votes counted in the first round, after removing partially defective ballots, divided by the sum of one (1) plus the number of offices to be filled, then adding one (1). This is represented by the following equation:
$$\text{Threshold} = ((\text{Total votes cast})/(\text{Seats to be elected} + 1)) + 1.$$
20. "Transferable vote" means a vote for a candidate who has been defeated.
21. "Totally defective ballot" means a ballot that is defective to the extent that the election judges are unable to determine the voter's intent for any office on the ballot.
22. "Undeclared write-in candidate" means a write-in candidate who is not a declared write-in candidate.
23. "Undervote" means an instance when a voter does not rank any candidates for an office.

Section 107.015. Ballots.

1. Ballot format.
 - a. When there are three or more candidates for a single office, a ballot must allow a voter to rank three candidates for each office in order of preference and must allow the voter to add write-in candidates.
 - b. A ballot must include instructions to voters that clearly indicate how to mark the ballot so as to be read by the election judges conducting the count, or if voting equipment is to be used, so as to be read by the voting equipment used to tabulate results.

- c. A ballot must include instructions to voters that clearly indicate how to rank candidates in order of the voter's preference.
 - d. A ballot must indicate the number of seats to be elected for each office.
2. Mixed-election method ballots. If elections are held in which ranked-choice voting is used in addition to other methods of voting, the ranked-choice voting and non-ranked-choice voting elections must be on the same ballot if possible, with ranked-choice voting and non-ranked-choice voting portions clearly separated on the ballot. If placement of all offices to be elected cannot be placed on a single ballot, a separate ballot may be used for those offices to be elected using ranked-choice voting. The city may deviate from the standard ballot order of offices to allow the separation of ranked-choice voting and non-ranked-choice voting elections.
3. Ballot format rules. The chief election official shall establish administrative rules for ballot format after a voting mechanism has been selected. All rules shall be adopted in accordance with this section.

Section 107.020. Ranked-choice Voting Tabulation Center.

The chief election official shall designate at least one location to serve as the ranked-choice voting tabulation center. Tabulation of votes must be conducted as described in this section 107.030 of this chapter.

Section 107.025. Write-in Votes.

A candidate for municipal office who wants write-in votes for the candidate to be counted as votes in the candidate's favor must file a written request with the chief election official no later than seven days before the general or special election. The request must be submitted on a form prepared by the city and available at the office of the city clerk and at the city website at least 30 days before a general or special election.

Section 107.030. Tabulation of Votes; In General.

1. Precinct tabulation. When the hours for voting have ended and all voting has concluded, the election judges in each precinct shall record and post the number of votes at each ranking on the ballot. The election judges must then securely transfer all election night materials and ballots from the precinct to the location designated by the chief election official. Upon receipt, the election night materials and ballots shall be secured.
2. Notice of recess in count. At any time following receipt of materials, the chief election official may declare a recess. Notice of such recess shall be posted on the city bulletin board and website, which notice must include the date, time and location at which the process of recording and tabulating votes will resume and the reason for

the recess.

3. Recording , the votes. At a time set by the chief election official, the judges of the election shall convene at a ranked-choice voting tabulation center to record the names and number of votes received by each declared write-in candidate. The number of votes received by undeclared write-in candidates will be recorded as a group, by office.

Section 107.035. Tabulation of Votes.

1. Applicability. This section governs the manner in which votes shall be tabulated. The method of tabulating ranked-choice votes as described in this section must be known as the “single-seat transferable vote” method of tabulation.
2. First ranked choice tabulation. A first ranked choice tabulation shall be done under this clause before a tabulation as described in section 107.035(3). A first ranked choice tabulation will consist of a first round only. Under the first ranked choice tabulation, the vote total will be sum of number one (1) ranked votes. The maximum possible threshold must be determined. If the vote total for a candidate, other than an undeclared or a declared write-in candidate, is equal to or greater than the maximum possible threshold, that candidate is declared elected and the tabulation is complete. If the vote total for no candidate, other than an undeclared or a declared write-in candidate, is equal to or greater than the maximum possible threshold, a tabulation as described in section 107.035(3) shall be conducted.
3. Tabulation of rounds.
 - a. Tabulation of votes at the ranked-choice voting tabulation center must proceed in rounds for each office to be counted. The threshold must be calculated. The sum of all ranked-choice votes for every candidate must be calculated. Each round must proceed sequentially as follows:
 - i. The number of votes cast for each candidate, as indicated by the highest continuing ranking on each ballot, must be counted. If a candidate, other than an undeclared write-in candidate, has a vote total that is equal to or greater than the threshold, that candidate is declared elected and the tabulation is complete. If no candidate, other than an undeclared write-in candidate, has a vote total that is equal to or greater than the threshold, a new round begins and the tabulation must continue.
 - ii. At the beginning of the second round only, all undeclared write-in candidates and all candidates for whom it is mathematically impossible to be elected must be defeated simultaneously. For rounds subsequent to the second round, all candidates for whom it is

mathematically impossible to be elected must be defeated simultaneously. Votes for the defeated candidates must be transferred to each ballot's next-ranked continuing candidate, except votes for candidates defeated in the final round are not transferred if, by their defeat, the number of continuing candidates is reduced to one. If no candidate can be defeated under this clause, the tabulation must continue as described in clause (iii). Otherwise, the tabulation must continue as described in clause (iv).

- iii. The candidate with the fewest votes is defeated. Votes for the defeated candidate must be transferred to each ballot's next-ranked continuing candidate, except votes for candidates defeated in the final round are not transferred if, by their defeat, the number of continuing candidates is reduced to one. Ties between candidates with the fewest votes must be resolved by lot by the chief election official. The candidate chosen by lot must be defeated. The result of the tie resolution must be recorded and reused in the event of a recount.
 - iv. The procedures in clauses (i) through (iii) must be repeated until one candidate reaches the threshold, or until only one continuing candidate remains. If only one continuing candidate remains, that continuing candidate must be elected. In the case of a tie between two or more continuing candidates, the tie must be resolved by lot by the chief election official. The result of the tie resolution must be recorded and reused in the event of a recount. A tied candidate chosen by lot must be defeated. When only one continuing candidate remains after a tie has been resolved by lot by the chief official, that continuing candidate must be elected and the votes of the tied candidate chosen by lot will be retained.
- b. When a skipped ranking, overvote, or repeat candidate ranking is encountered on a ballot, that ballot shall count towards the highest continuing ranking that is not a skipped ranking, an overvote, or repeat candidate ranking. If any ballot cannot be advanced because no further continuing candidates are ranked on that ballot, or because the only votes for further continuing candidates ranked on that ballot are either overvotes or repeat candidate rankings, the ballot shall not count towards any candidate in that round or in subsequent rounds for the office being counted.

Section 107.040. Ties Resolved by Lot.

1. Who resolves a tie by lot. The chief election official must resolve a tie by lot.
2. Notice to candidates with tied votes. The chief election official must notify all candidates with tied votes that the tie will be resolved by lot. This notice must be sent

- at least one hour prior to resolving the tie by lot. The notice must be sent through a medium that would generally be capable of reaching a person within the one-hour period, such as face-to-face, a fax, an email, an instant message, a text, a video chat, a telephone call, or a voicemail. The chief election official may consider the preference of each candidate for the medium through which the notice would be provided. The chief election official is not required to confirm that the notice is received by a candidate before resolving a tie by lot. A tie may be resolved by lot even though some or all of the candidates who have tied votes are not present.
3. Witnesses. The resolving of the tie by lot must be witnessed by two election judges who are members of different major political parties.
 4. Recording. The resolving of a tie by lot may be recorded through any audio and visual recording technology.
 5. Media. The chief election official may allow the media to view the resolution of a tie by lot.
 6. Procedures. The chief election official may establish written procedures for implementing this section.

Section 107.045. Reporting Results.

1. Precinct summary statement. Each precinct must print a precinct summary statement, which must minimally include the number of votes in the first ranking for each candidate.
2. Ranked-choice voting tabulation center summary statement. The ranked-choice voting tabulation center must print a summary statement, which must include the following information:
 - a. Total votes cast
 - b. Number of undervotes
 - c. Number of totally defective and spoiled ballots
 - d. Threshold calculation
 - e. Total first choice rankings for all candidates
 - f. Round-by-round tabulation results, including simultaneous batch eliminations and defeated candidate transfers, and exhausted ballots at each round.
3. Election abstract. The election abstract must include the information required in the

ranked-choice voting tabulation center summary statement, with the addition of:

- a. The number of registered voters by precinct
- b. The number of Election Day voter registrations
- c. The number of absentee voters, and
- d. Any other information required by the city charter or state law.

Section 107.050. Recounts.

1. Required recounts. A candidate defeated in the final round of tabulation may request a recount of the votes cast for the nomination or election to that office if the difference between the final round vote total for that candidate and for a winning candidate is less than the percentage as provided by Minnesota Statutes section 204C.36.
 - a. Candidates must file a written request for the recount with the chief election official. All requests must be filed during the time for notice of contest of election for which a recount is sought.
 - b. Upon receipt of a request made pursuant to this section, the city shall recount the votes for a municipal office at the expense of the city.
2. Discretionary candidate recounts. Candidates defeated in the final round of tabulation when the vote difference is greater than the difference required by section 107.050(1), and candidates defeated in an earlier round of counting, may request a recount in the manner provided in this section at the candidate's own expense.
 - a. The votes shall be recounted as provided in this section if the requesting candidate files with the city clerk a bond, cash, or surety in an amount set by the city for payment of the recount expenses.
3. Notice of contest. Time for notice of contest of election to a municipal office which is recounted pursuant to this section shall begin to run upon certification of the results by the governing body of the municipality.
4. Scope of recount. A recount conducted as provided in this section is limited in scope to the determination of the number of votes validly cast for the office to be recounted. Only the ballots cast in the election and summary statements certified by the election judges may be considered in the recount process.

Section 107.055. Counting Procedures.

The chief election official shall establish administrative procedures for the tabulation of votes in accordance with rules for counting the votes contained in this section 107.030 and 107.035.

Section 107.060. Electronic Voting Systems.

All provisions of state law pertaining to electronic voting equipment systems apply, to the extent they are not inconsistent with this section 107. Any voting equipment system used to conduct an election under this section must be authorized by the county auditor pursuant to Minnesota Statutes section 206.58.

Section 107.065. Testing of Voting System.

The chief election official shall have the voting system tested to verify that the system will correctly mark ballots using all methods supported by the system, and count the votes cast for all candidates and on all questions per state law. In addition to all requirements under state law, the equipment must be tested to ensure that each ranking for each candidate is recorded properly, and must be tested to ensure the accuracy of software used to perform vote transfers and produce results.

Section 107.070. Post-election Review of Voting System and Tabulation of Results.

1. Selection of test date; notice. At canvass, the chief election official must select by lot the office and precincts to be reviewed and set the date, time, and place for the post-election review. Post-election review is not required for a hand count election.
2. Scope and conduct of test. The post-election review must be conducted, in public, of a sample of ballots cast for one ranked-choice voting election for municipal office.
3. Test. At canvass, the chief election official shall select, by lot, a total of two precincts for the office selected to be reviewed. Using the actual ballots cast in the two precincts selected, the judges of the election shall conduct a hand count of ballots cast for the office selected to be reviewed. Using procedures called for in section 107.055 of this chapter and accompanying rules, the judges shall count and record the ballots cast.
4. Standard of acceptable performance by voting system. A comparison of the results compiled by the voting system with the results compiled by the election judges performing the hand count must show that the results of the electronic voting system differed from the hand count of the sample tested by no more than the applicable percentage for a mandatory recount under Minnesota Statutes section 204C.36, subdivision 1. Valid votes that have been marked by the voter outside the vote targets or using a manual marking device that cannot be read by the voting system

- must not be included in making the determination whether the voting system has met the standard of acceptable performance.
5. Additional review if needed. Additional review(s) may be required as follows:
 - a. Additional precinct review. If a test under section 107.070(3) reveals a difference greater than the applicable percentage for a mandatory recount, as provided by Minnesota Statutes section 204C.36, subdivision 1, in at least one precinct of an office, the chief election official must immediately publicly select by lot two additional precincts of the same office for review. The additional precinct review must be completed within two days after the precincts are selected and the results immediately reported to the county auditor.
 - b. Additional office review. If the additional precinct review also indicates a difference in the vote totals that is greater than the applicable percentage threshold, as provided by state law, in at least one precinct of an office, the chief election official must conduct a review of the ballots from all the remaining precincts in the office being reviewed. This review must be completed no later than two weeks after the canvass.
 6. Report of results. Upon completion of the post-election review, the chief election official must immediately report the results to the county auditor and make those results public.
 7. Update of vote totals. If the post-election review under this section results in a change in the number of votes counted for any candidate, the revised vote totals must be incorporated in the official result from those precincts.
 8. Effect on voting systems. If a voting system is found to have failed to record votes accurately and in the manner provided by this section 107, the voting system may not be used at another election until it has been approved for use by the county auditor, pursuant to Minnesota Statutes, section 206.58. In addition, the county auditor may order the city to conduct a hand recount of all ballots cast in the election.

Section 2. Section 110.010, subdivision 2, clause c of the Minnetonka City Code, relating to the time for filing campaign financial reports by committees and candidates, is amended to read as follows:

- c. In addition, in a year when the candidate's name or a ballot question appears on the ballot, the candidate or committee must file a report as follows:
 - (1) ~~ten calendar days before the primary or special primary;~~
 - (2) ten calendar days before the general election or special election; and

(~~23~~) thirty calendar days after a general or special election.

Section 3. This ordinance is effective 30 days after publication.

Adopted by the city council of the City of Minnetonka, Minnesota, on

Brad Wiersum, Mayor

Attest:

Becky Koosman, City Clerk

Action on this Ordinance:

Date of introduction:

Date of adoption:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Ordinance adopted.

Date of publication:

I certify that the foregoing is a true and correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota, at a meeting held on

Becky Koosman, City Clerk

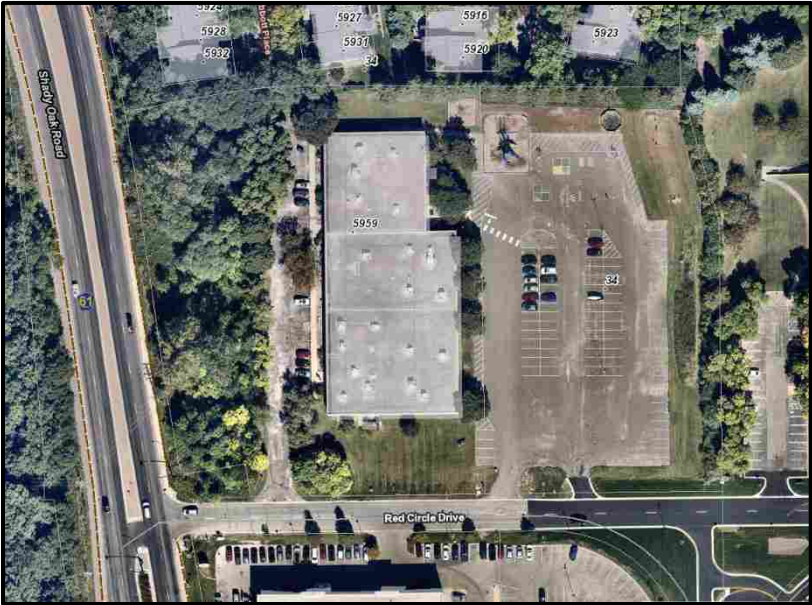
**City Council Agenda Item #12B
Meeting of Feb. 22, 2021**

- Brief Description** Items concerning 5959 Shady Oak Road
- 1) Rezoning from Office Business District (B-1) to Planned Unit Development;
 - 2) Master Development Plan
 - 3) Site and building plan review;
 - 4) Preliminary and final plat;
 - 5) Vacation of easements
- Action Requested** Introduce the ordinance and refer it to the planning commission

Background

The two properties comprising 5959 Shady Oak Road contain a one-story building, associated surface parking, and playground area on the 5.11-acre site. The current occupant, the International Spanish Language Academy, began school operations in 2011. The buildings and parking lots are surrounded by green space, typical of the OPUS business park.

Doran Development is proposing to demolish the existing improvements and construct a six-story, 356 unit apartment building. As proposed, 10 percent of the units will be affordable housing – five percent at 50 percent of the area median income and five percent at 60 percent of the area median income (which meets the city’s housing policy). The proposal includes a two-level, under-building parking garage with 497 stalls, a second-level amenity deck, and other amenities.



Concept Plan Review

In Oct. 2020, Doran initiated a concept plan review with neighbors, the planning commission, and the city council. Two concept plans have been reviewed.

Original Concept Plan

- 375-unit, six-story (west side entry)



Revised Concept Plan

- 350-unit, six-story (south side entry)



- **Neighborhood Meeting (Original Concept).** An onsite neighborhood meeting was held on Oct. 13, 2020. The meeting was attended by a representative of the applicant group, city staff, and 15 area property owners. Those in attendance noted the following:
 1. Security and privacy. The area residents suggested a fence along the north property line to provide additional security and separation between the existing townhomes and the new apartment building.
 2. Traffic. Area residents expressed concerns related to existing traffic patterns in the area and felt that additional housing units might increase ingress and egress issues.
 3. Trail location. Area residents requested that the trail along the north property line be relocated to the south side of the site.
 4. Lighting and balcony locations. Area residents requested consideration be made to the lighting and balcony locations on the north side of the building.
 5. Noise. Area residents shared their concerns related to noise both during and post-construction.
 6. Grocery store. Area residents and the developer discussed the desire for a grocery store on the site at length. The developer offered insight into the discussions he has had with grocers and reasons why they are not interested in the site.
- **Planning Commission Concept Plan Review (Original Concept):** The planning commission reviewed the concept plan on Oct. 22, 2020. One representative from ISLA appeared to address the commission and generally expressed support for the proposal. The commissioners generally:
 1. Requested additional information regarding trail connections, sun-shade studies, and more overall detail on the concept plans.

2. Commented that the land use was appropriate and generally favored the option for three-bedroom units.
 3. Commented that the site plan was reasonable and appreciated the efforts of the developer to preserve the existing trees, but asked the developer to consider reducing the height of the building on the north side from six stories to three or four stories.
- **Economic Development Advisory Commission Review:** The economic development advisory commission reviewed the concept plan on Oct. 29, 2020. The commissioners generally commented that they'd like to see a stronger commitment towards meeting the city's affordable housing policy goals. The affordable housing policy requires that the developer provide 10 percent of the units at 60 percent AMI, with a minimum of five percent of the units at 50 percent AMI for projects requesting a zoning change or comprehensive guide plan amendment without city assistance. Doran previously proposed 10 percent of the units at 80 percent AMI. The proposed affordability (5% of the units at 50% AMI and 5% of the units at 60% AMI) now meets the city policy.
 - **City Council Concept plan (Original Concept).** The city council reviewed the concept plan on Nov. 9, 2020. The council generally supported the residential use of the property but did request additional consideration for retail on site. The council also commented on the overall mass of the building and potential impacts on adjacent properties, especially the townhomes to the north.
 - **City Council Concept Plan (Revised Concept).** The city council reviewed a revised Concept Plan on Dec. 21, 2020. The concept provided an increased building setback from the north property line, a revised layout, and reoriented south entrance. The council generally commented that the revised plan was an improvement on the original concept.

Formal Application

Responding to feedback received during the two concept plan reviews, Doran has now submitted formal applications for the development of the combined site. As proposed, the existing building would be removed, and a six-story, 356-unit apartment building would be constructed. The building would contain a mix of studio, alcove, one-, two- and three-bedroom units as noted below. As proposed, 10 percent of the units will be affordable housing – five percent at 50 percent of the area median income and five percent at 60 percent of the area median income. The building would include indoor parking for 497 vehicles and a surface parking lot accommodating seven additional vehicles.

Bedroom Type	UNITS
Studio	30
Alcove	44
1 Bedroom	212
2 Bedroom +Den	55
3 Bedroom	15
TOTAL UNITS	356

The proposal requires:

- 1) **Rezoning.** The applicant's proposal requires rezoning from Office Business District (B-1) to Planned Unit Development.
- 2) **Master development plan.** Planned Unit Development zoning requires the approval of a master development plan. (For more information about master development plans, see the "Supporting Information" section of this report.)
- 3) **Site and building plan review.** Site and building plan review is required for the construction of multi-family residential buildings.
- 4) **Preliminary and final plats.** The development site is comprised of three separate parcels. Preliminary and final plats are required to combine the parcels and establish new easements.
- 5) **Vacation of easements.** Existing easement along the shared property lines must be vacated.

Issue Identification

The purpose of introducing an ordinance is to allow the city council to review a new application before sending it to the planning commission for a recommendation. Introducing an ordinance does not constitute approval. Based on a preliminary review of the proposal, staff has identified the following topics for further analysis and discussion:

- **Utilities and Easements.** The development site is encumbered by a number of easements. An easement along Shady Oak Road captures public roadway as well as private property drainage. Increased drainage volume will be reviewed. Sanitary sewer utilities and easements need to be investigated and verified for ownership and use.
- **Roadway Improvements.** The Opus AUAR Scenario #2 contemplates additional lane/intersection improvements on Red Circle Drive and Shady Oak Road. Further study of improvement implications will be needed. Similarly, the city's plan for Tax Increment and payment for improvements will be presented to the city council in March.
- **Site Access.** Proposed driveway locations will be studied in relation to existing and potential roadway improvements.

- **Building Setbacks.** Additional building setbacks from Red Circle Drive should be considered if there is a need for additional right-of-way.
- **Stormwater Management.** Review of the stormwater management plan to meet requirements for the site and conveyance of public drainage will be reviewed. The stormwater infiltration basin is located in a wooded portion of the site. Considerations for pond size and impacts to tree removal will be reviewed.
- **Trail system.** The proposed trails will be reviewed to ensure they meet the goals of the Opus Area Placemaking and Urban Design guidelines. Also, design considerations for grades will be reviewed.
- **Affordability.** The city has been reviewing affordability in Opus as a part of holistically providing the proper affordability mix for the area but also complying with the city's housing policy. Staff continues to work with city consultants on solutions to providing the proper mix of new affordable housing in this and other potential Opus residential developments.

Notifications

During the review of the Minnetonka Station proposal, the city council expressed interest in a broader notification process for Opus. To address this, staff has prepared: (1) a mailing area by quadrant and (2) a generalized mailing to area residents and businesses, directing them to the applicable project page. Mailings for the Doran project would be sent to the SW Quadrant.



OPUS AREA REDEVELOPMENT PROJECTS

Several redevelopment projects have recently been proposed in the OPUS area. These projects include:

- Bred Road Development at 10701 Bren Road East
- Doran Apartments at 5959 Shady Oak Road
- Minnetonka Station at 10400, 10500, and 10550 Bren Road East
- Shady Oak Office Center at 10901 Red Circle Drive

To find information about these projects or to subscribe to email and text updates please visit minnetonkamn.gov/services/construction-projects.

OPUS MAILING AREAS



Staff Recommendation

Staff recommends the council do the following related to the Doran project at 5959 Shady Oak Road:

- 1) Introduce the ordinance rezoning from Office Business District (B-1) to Planned Unit Development and adopting a master development plan and refer it to the planning commission.
- 2) Approve or modify the notification area.

Submitted through:

Geralyn Barone, City Manager
Julie Wischnack, AICP, Community Development Director

Originated by:

Loren Gordon, AICP, City Planner

Supporting Information

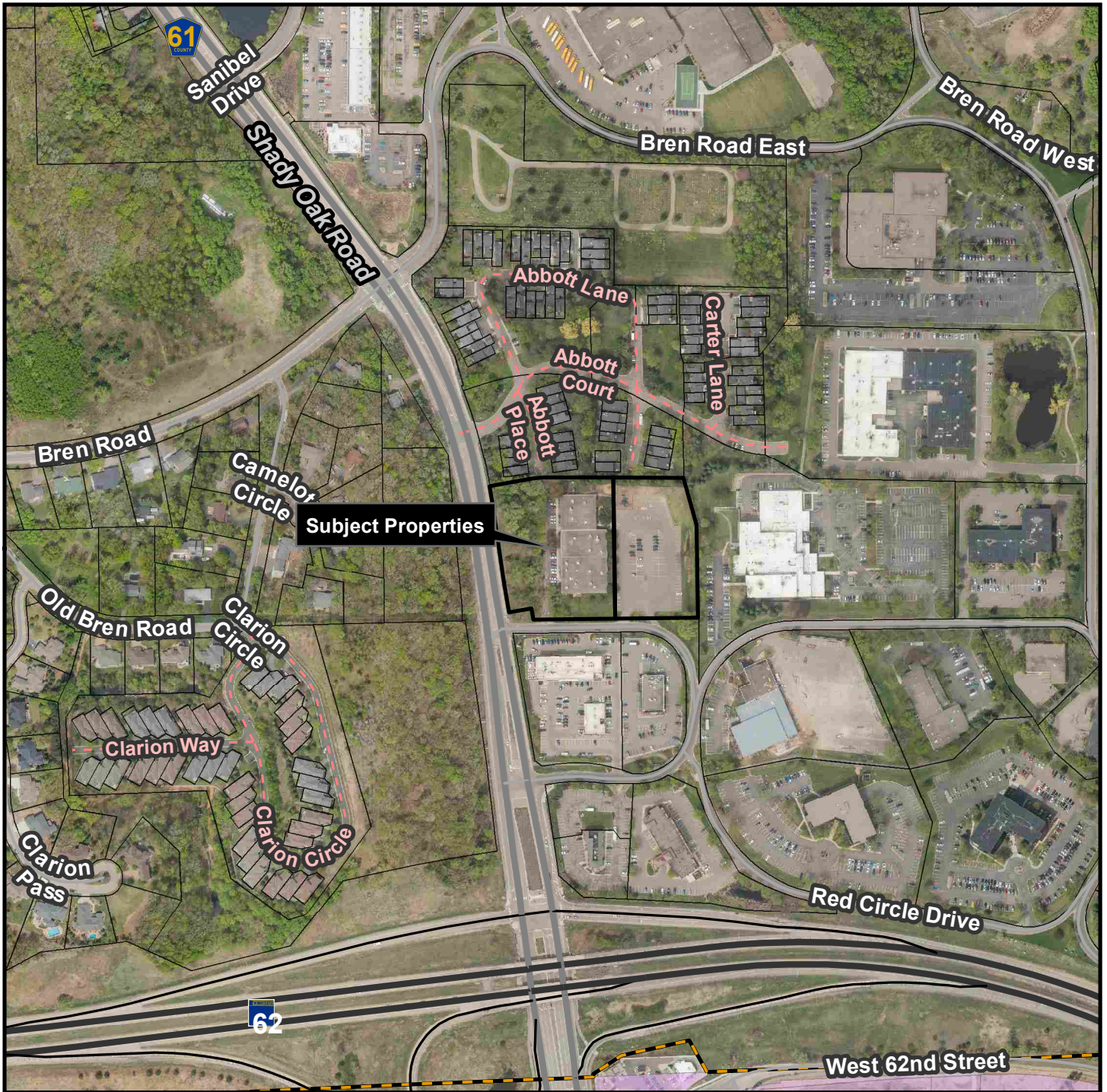
MDP v. SBP

A master development plan (MDP) is a general description or illustration of development. It is usually comprised of a series of plans that generally show proposed land uses, building location and mass, and public and private site improvements. MDPs are reviewed for the development of planned unit development (PUD) or PID sites. When approved, an MDP establishes the city's general expectation for future development of the site.

Site and building plans specifically illustrate the location of trees and water resources, streets, utilities, stormwater improvements, buildings, and parking areas; proposed site grading, tree removal, and landscaping; building elevations and signs. When approved, these plans outline the city's specific requirements/conditions for construction on a site.

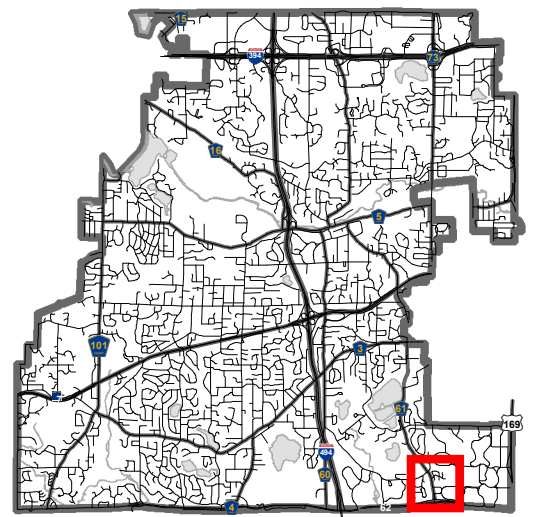
MDP

MDPs are approved through the adoption of an ordinance. Similar to the zoning ordinance governing development on a traditionally-zoned property, an adopted MDP ordinance governs future development of a PUD or PID site.



Location Map

Project: Doran Project
Address: 5959 Shady Oak Rd





5959 Shady Oak Road

Development Application Minnetonka, MN

PICTURE

Project Narrative January 15, 2021

Developer: Doran RE Partners, LLC

Prepared by: Doran Development, LLC, Developer
Doran Architects, LLC, Architect
Sambatek, Surveyor
Kimley Horn, Civil Engineer and Landscape Architect
Braun Intertec, Geotechnical Consultant

1. REQUESTED ACTIONS

Doran is requesting the following actions:

- Rezoning to a PUD
- Master Development Plan
- Site and Building Plan Review
- Preliminary and Final Plat
- Vacation of Easements

The development applications will adhere to the following proposed entitlements schedule:

Introductory Meeting with City Staff	Completed 9/11/20
Neighborhood Meeting	Completed 10/13/20
Concept Plan Review – Planning Commission	Completed 10/22/20
Minnetonka EDAC	Completed 10/20/20
Concept Plan Review – City Council	Completed 11/9/20

Additional Meeting with City Staff	Completed 11/24/20
Additional Concept Plan Review – City Council	Completed 12/21/20
Development Application Submittal	Completed 1/15/21
City Council – Ordinance Introduction	2/22/21
Planning Commission – Public Hearing	3/4/21
City Council – Final Decision	3/22/21

2. PROJECT LOCATION

This project is located on the northeast corner of Shady Oak Road and Red Circle Drive. The property currently consists of two separate lots totaling 5.11 acres.

3. VISION AND SUMMARY OF THE PROPOSED PROJECT

Doran is proposing a new, high-quality, Class A luxury apartment project. This project is precisely what the City of Minnetonka is seeking in its draft of the 2040 Comprehensive Plan for the Opus Station Transitional Station Area Plan. This project will bring life and vitality to the area enhancing walkability, utilizing transit connections, providing a new housing option for existing residents, attracting the next generation of residents to the City, and supporting the nearby commercial uses that exist in the neighborhood today. The project will meet the City of Minnetonka’s Affordable Housing Policy integrating affordable housing with market-rate apartments.

The redevelopment will include razing the existing functionally obsolete industrial building on the site and constructing a 356 -unit apartment project with five percent of the units affordable at 50% of the area median income levels and five percent of the units affordable at 60% of the area median income levels. The project will consist of a concrete podium parking garage with approximately 504 parking stalls on two levels-- one level of underground and one level at grade. The parking garage will contain all of the resident and guest parking for the project, with the exception of approximately seven surface parking spaces along the circle drive near the main entrance for short-term guest and delivery parking. Above level one of the building will be wood framed construction for the apartments and an open, elevated amenity deck and garden with several outdoor amenities. Amenities throughout the project will include:

- Business center;
- Flex work space;
- Clubroom and game room;
- Two entertainment suites;
- Exercise facility;
- Group exercise room;
- Outdoor pool;
- Outdoor spa;
- Grilling stations;
- Outdoor fire pits;
- Dog run;
- Pet spa;

- Heated underground parking;
- Bocce ball, putting green, outdoor seating, and/or other outdoor activity areas;
- Community garden; and
- Enhanced stormwater features with pollinator garden plantings.

The building will contain a mix of alcove, 1 , 1 plus den, 2 and 3 bedroom apartments with active gathering spaces for residents and guests located on the first and second levels of the building.

4. ARCHITECTURAL DESIGN

The architectural style of the project is influenced by the more traditional look of the nearby residential townhome and condo projects. This traditional architectural detailing with a bold modern approach to materials creates an aesthetic that is unique in Minnetonka. The accentuated cornice and bracket articulation are inspired by 19th century luxury hotel architecture. Traditional stone window surrounds against the black, ebonite, ironspot brick make this traditional form “pop” in a new modern way.

The building is sited with the entry adjacent to Red Circle drive. The canopy clearly identifies the building entry point. The entry area proposes lower, varying height building elements to reduce the mass of the building and bring it down to a more comfortable human scale. These lower elements contain amenity spaces and the architecture helps distinguish these spaces from the residential units. Stone mixed with warm wood accents highlight the entrance This circle drive area proposes public art to provide more interest. Amenity functions are planned along Red Circle drive. This will help provide interest and activate the street and pedestrian path.

The first floor of the building utilizes a dark, earth toned face brick which creates a distinct base to the building. This brick is carried vertically in select areas to tie the residential portions of the building to the masonry base. The contrasting field colors of white fiber cement siding help to create interest and break up the façade. Large balconies, terraces that walk out to the amenity deck, and walk-out townhomes create an active presence and create a sense of community.

. . Sustainable planning and design features of the building include:

- The project will be enrolled in Xcel’s Energy and Centerpoint Energy’s design assistance program for energy efficiency.
- Installation of electric car charging stations,
- Installation of occupancy sensor lighting controls in select building locations,
- Enrollment of the project in a community solar garden program,
- Installation of individual programmable thermostats, high quality, energy-efficient windows, energy star (or comparable energy-efficient) appliances, full building insulation including all interior walls.
- Increasing the energy efficiency to exceed the code by 20%

5. RESPONSIVENESS TO NEIGHBORHOOD AND CITY FEEDBACK

This project has been significantly revised since it was originally proposed. We have received and thoughtfully responded to feedback from the neighborhood as well as City Staff, Planning Commissioners and City Councilmembers in this revised design.

This revised plan reduces the total units from 375 to 354 apartments units. We have also reduced the massing of the building by creating undulation and openings within the façade and reducing the height of the building on the north facade from 78 feet to 66 feet in height. In response to the concerns of the neighbors to the north the setback from the north property line was also increased from 51 feet to most of the building being over 131 feet from the property line and 153 feet to the townhomes. There is a small section of the building that is set back 87 feet from the property line and 123 feet from the nearest townhome. Also, at the request of the neighboring townhomes a privacy fence was added to the north property line. To be in conformance with the Opus Area Placemaking and Design Implementation Guide we have added construction of the multi modal trail from Shady Oak Rd. to the easterly property line to our plan, providing for eventual connection of the trail to the new light rail transit station. To address some of the concerns of the neighbors to the north we have added landscaping between the trail and the privacy fence.

6. LANDSCAPING

The proposed landscaping improvements for the project will enhance both the project site and the neighborhood by adding distinct features to the property—pollinator plantings in the stormwater pond area that will support community garden plots on the north side of the building, community lawn activity areas with access to the new trail, and natural plantings to enhance the building aesthetic along the south building entrance area. The detailed landscaping plan achieves the following goals:

- Preserve the stormwater pond and enhance its functionality;
- Support the area ecosystem by adding pollinator plants and space for community gardening on the project site;
- Add a privacy fence and plantings on the north side of the property to eliminate any impact of view for the property owners to the north;
- Utilize dynamic landscaping and public art to create an impactful, welcoming presence along Red Circle Drive;
- Create a welcoming presence along the trail by adding outdoor lawn activity and garden areas and direct trail access; and
- Reinforce a pedestrian-friendly environment with sidewalks along Red Circle drive and the multimodal trail to the north of the project.

7. UTILITIES

Public

- Sanitary Sewer: A new 8-inch sanitary sewer service is proposed from to the existing manhole.
- Watermain: A new 8-inch combined watermain service is proposed from the line running along the municipal watermain along the westerly property line.

Private

The private utilities for the proposed development are:

Electricity	Xcel energy
Natural Gas	CenterPoint Energy
Telephone/Internet	Centurylink Communications

Cable TV/Internet Comcast

All private utilities are located adjacent to the subject site.

8. PARK DEDICATION

The City of Minnetonka's Subdivision ordinance requires that when land is subdivided or platted as proposed in this application, a reasonable portion of land is to be used for uses such as public parks, playgrounds, trails or open space. In addition to payment of the required park dedication fees, this project will create these additional improvements:

- Over 2 acres of new heavily-landscaped open space and buffer from adjacent residential uses,
- Preservation and enhancement of the stormwater pond and existing trees and along the north and west property line,
- Enhanced pedestrian connections along Red Circle Drive and multi-modal trail from Shady Oak Rd. to the light rail transit center.

Client
DORAN DEVELOPMENT

7803 Glenroy Road, Suite 200
Bloomington, MN 55439

Project
International Spanish Language Academy

Location
MINNETONKA, MN

5959 Shady Oak Road
Minnetonka, MN 55343

Certification

Summary

Designed: Drawn: SRS
Approved: MS Book / Page: 1284/76
Phase: ALTA Initial Issue: 11/17/2020

Revision History

No. Date By Submittal / Revision

Sheet Title
ALTA/NSPS Land Title Survey

Sheet No. Revision

1/1

Project No. 22390

"TABLE A" NOTES

- The surveyor has depicted the property corner monuments, or the witness to the corner that were found during the field work, and set property corner monuments, or witnesses to the corner, at the locations where there did not appear to be any evidence of an existing monument.
- The property address is shown on the graphical portion of the survey.
- The subject property lies within Flood Plain Zone X - "Area of Minimal Flood Hazard", as depicted by scaled map location and graphic plotting according to FEMA, FIRM Map No. 27053C0343F dated 11/04/2016.
- The gross land area of the subject property is 5.111 Acres or 222,615.7 Square Feet.
- The zoning information has not been provided by the client.
- The building and exterior dimensions of the outside wall at ground level are shown on the survey, which may or may not be the foundation wall.
- The square footage of the building is 33,382 square feet, measured at ground level.
- Visible substantial features observed in the process of conducting the fieldwork are shown hereon.
- The parking areas and striping on the subject property are shown. There are 3 striped handicap parking stalls, and there are 103 striped regular parking stalls for a total of 106 striped parking stalls.
- A Gopher State One Call (GSOC) request was placed on 11/05/20 for utility locates on this site and assigned GSOC Ticket No. 203102955. The surveyor makes no guarantees that the underground utilities shown hereon comprise all such utilities in the area, either in service or abandoned. Utility suppliers often do not respond to these requests in the field but may provide maps, plans, and drawings in lieu of physical location. Utility information shown hereon is a compilation of the provided map information and those visible utilities and marked utilities which were located during the survey field work. The surveyor further does not warrant that the underground utilities shown hereon are in the exact location as indicated, although they are located as accurately as possible from the available information. The surveyor has not physically located the underground utilities. Pursuant to MS 216.0 contact Gopher State One Call at (651-454-0002) prior to any excavation.
- The names of adjoining land owners according to the current county tax records are shown on the survey.
- There is no evidence of recent earth moving work, building construction or building additions observed in the process of conducting the fieldwork.
- No changes in street right of ways are proposed per City of Minnetonka website. There is no observable evidence of recent street or sidewalk construction or repair.
- No delineated wetlands observed.

SUBJECT PROPERTY

Description from title commitment:

Parcel A:
That part of the North 1/2 of the Southwest 1/4 of Section 36, Township 117, Range 22, described as follows: Beginning at a point in the South line of said North 1/2 of the Southwest 1/4 distant 656.67 feet East of the Westerly corner thereof; thence at a right angle North, 404.1 feet; thence Westerly deflecting to the left 89°, a distance of 166.6 feet; thence Westerly 94.89 feet along a tangential curve to the left having a radius of 494.27 feet and a central angle of 117°; thence Westerly, tangent to the last described curve, 95.04 feet to the New Easterly line of County Road No. 61; thence Southerly 386.09 feet along the New Easterly line of said road to its intersection with the South line of said North 1/2 of the Southwest 1/4; thence East along the South line of said North 1/2 of the Southwest 1/4, 306.66 feet to the point of beginning, according to the United States Government Survey thereof and situate in Hennepin County, Minnesota.
Abstract Property

Parcel B:
Outlot I, The Townhouses of Shady Oak, according to the recorded plat thereof, and situate in Hennepin County, Minnesota.
(Torrens property Certificate of Title No. 1394610)

The following notes correspond to the reference numbers listed in Schedule B, Section 2 of the title commitment.

- Easement for drainage purposes in favor of the County of Hennepin as contained in Warranty Deed dated April 17, 1970, and recorded July 20, 1970 as Document No. 3837655 (Abstract) and in Quit Claim Deed dated May 1, 1970, recorded July 20, 1970 as Document No. 3837656 (Abstract). **Affects the surveyed property. Easement is shown on the survey.**
- Easement for watermain purposes in favor of the City of Minnetonka as contained in Quit Claim Deed dated March 20, 1972, recorded May 2, 1972 as Document No. 3943993 (Abstract). **Affects the surveyed property. Easement is shown on the survey.**
- Easement for watermain purposes in favor of the City of Minnetonka as contained in Quit Claim Deed dated March 17, 1972, recorded May 2, 1972 as Document No. 3943994 (Abstract). **Affects the surveyed property. Easement is shown on the survey.**
- Subject to Hennepin County State Aid Highway No. 61, Plat 17 dated September 28, 1972, recorded October 18, 1972 as Document No. 3977486 (Abstract). **Affects the surveyed property. The easterly line of said Plat 17 defines the westerly boundary of the subject property.**
- Terms, conditions, covenants and rights of the Nine Mile Creek Watershed District as contained in Declaration dated May 26, 2011, recorded May 27, 2011 as Document No. A9658425 (Abstract). **Easement affects the surveyed property and is blanket in nature.**
- Terms and conditions of Resolution No. 2010-139 by the City of Minnetonka granting a Conditional Use Permit recorded January 18, 2011 as Document No. A962462 (Abstract) and filed January 18, 2011 as Document No. 14824902 (Torrens). **Document affects the surveyed property and is blanket in nature.**
- Terms, conditions and easements in favor of the City of Minnetonka as contained in Stormwater Pond Easement Agreement dated December 18, 2017, recorded May 7, 2018 as Document No. A10551433 (Abstract) and filed May 9, 2018 as Document No. T05529408 (Torrens). **Affects the surveyed property. Easements are shown on the survey.**
- Declaration dated April 25, 2018, recorded May 7, 2018 as Document No. A10551464 (Abstract) and filed May 10, 2018 as Document No. T05529710 (Torrens). **Affects the surveyed property. Stormwater infiltration basins are shown on the survey.**
- Terms, conditions and easements in favor of the City of Minnetonka as contained in Temporary Construction Easement dated January 30, 2020, filed February 24, 2020 as Document No. T05688317 (Torrens). **Affects the surveyed property. Easement is shown on the survey. Surveyor is not aware of the date the temporary easement will expire but it appears that the construction project has been completed.**

SURVEY NOTES

- This survey was prepared utilizing the First American Title Insurance Company Title Commitment No. NCS-1031731-MPLS, bearing an effective date of 09/04/2020.
- The bearing system is based on the Hennepin County coordinate system, NAD83 (1986 Adjust) with an assumed bearing of N89°17'58"E for the south line of the North Half of the Southwest Quarter of Section 36, Township 117, Range 22. The originating monuments utilized to establish the horizontal position of this survey were the Northwest Quarter corner and the Southwest corner of said section.
- The vertical datum is based on NAVD88 The originating bench marks are 2773 G and HEART, both referenced from the MinDOT Geodetic Database.

BENCHMARK #1
2773 G. Elev.=936.88
BENCHMARK #2
HEART. Elev.=962.10

CERTIFICATION

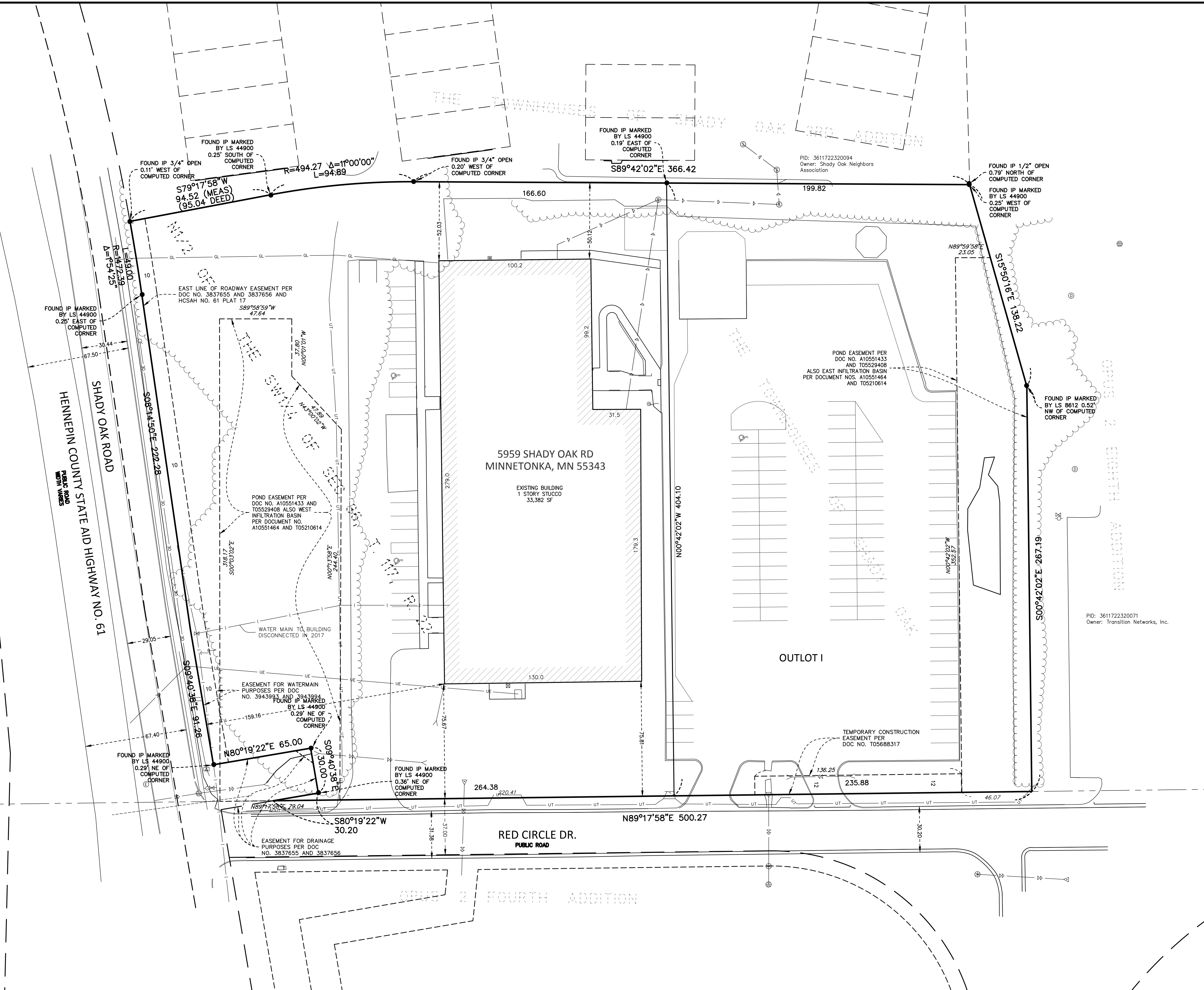
To Doran Development and First American Title Insurance Company:

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 2, 3, 4, 6(a), 7(a), 7(b)(1), 8, 9, 11, 13, 16, 17 and 18 of Table A thereof. The field work was completed on 11/6/2020.

Dated this 17th day of November, 2020.

Sambatek, Inc.

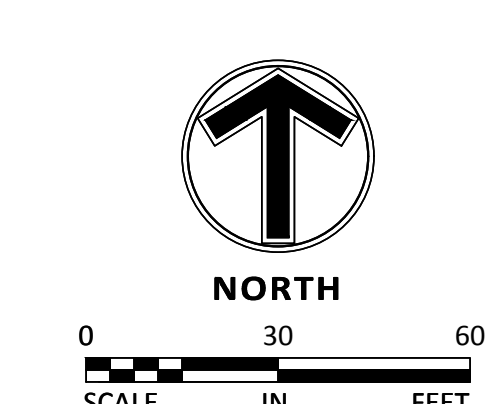
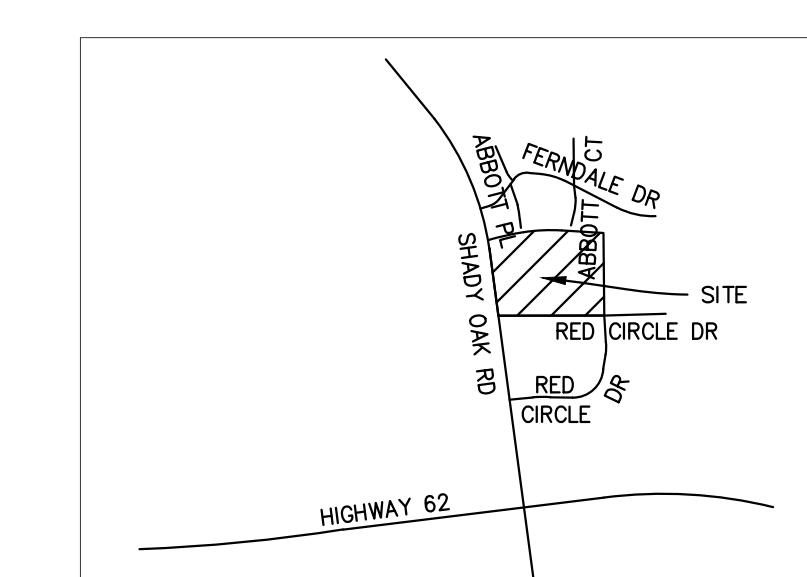
Mark R. Sato, LS
Minnesota License No. 43933
msato@sambatek.com



LEGEND

● FOUND MONUMENT	--- BOUNDARY LINE	--- EASEMENT LINE
○ FOUND CAST IRON MONUMENT	--- RIGHT-OF-WAY LINE	--- SETBACK LINE
○ FOUND RIGHT-OF-WAY MONUMENT	--- UNDERLYING / ADJACENT LOT	--- RESTRICTED ACCESS
○ SET MONUMENT MARKED LS 21729	--- TIE LINE	--- TREE LINE
⊗ GATE VALVE / HYDRANT	--- SECTION LINE	--- CONCRETE CURB
○ SANITARY MANHOLE	--- DEED DISTANCE (100.00)	--- BUILDING LINE
○ CLEAN OUT	--- WATERMAIN	--- BUILDING CANOPY
○ STORM MANHOLE	--- SANITARY SEWER	--- BITUMINOUS SURFACE
○ STORM CATCH BASIN	--- STORM SEWER	--- CONCRETE SURFACE
△ FLARED END SECTION	--- UNDERGROUND ELECTRIC	○ DECIDUOUS TREE
△ TRANSFORMER	--- UNDERGROUND TELEPHONE	○ CONIFEROUS TREE
★ LIGHT	--- UNDERGROUND GAS	○ SPOT ELEVATION
▽ GUY ANCHOR	--- OVERHEAD ELECTRICAL WIRE	○ CONTOUR
○ UTILITY POLE	--- CHAIN LINK FENCE	○ SOIL BORING
○ GUARD POST	--- WOOD FENCE	○ REGULAR PARKING STALL COUNT
○ SIGN	--- WIRE FENCE	○ TRAFFIC MARKERS
○ GAS METER	--- WET LAND	
○ GAS MANHOLE	--- RETAINING WALL	
○ ELECTRIC MANHOLE	--- BLOCK RETAINING WALL	
○ ELECTRIC METER	--- STONE RETAINING WALL	
○ TELEPHONE PEDESTAL	--- POND / WATER LINE	
○ CABLE TV BOX	--- FEMA FLOOD ZONE LINE	
○ COMMUNICATIONS MANHOLE		

VICINITY MAP



5959 SHADY OAK ROAD REDEVELOPMENT MINNETONKA, MN

LAND USE PLANS: January 15th, 2021

Design Narrative

Doran is proposing a new, high-quality, Class A luxury apartment project. This project is precisely what the City of Minnetonka is seeking in its draft of the 2040 Comprehensive Plan for the Opus Station Transitional Station Area Plan. This project will bring life and vitality to the area enhancing walkability, utilizing transit connections, providing a new housing option for existing residents, attracting the next generation of residents to the City, and supporting the nearby commercial uses that exist in the neighborhood today. The project will meet the City of Minnetonka's Affordable Housing Policy integrating affordable housing with market-rate apartments.

The redevelopment will include razing the existing functionally obsolete industrial building on the site and constructing a 356 -unit apartment project with five percent of the units affordable at 50% of the area median income levels and five percent of the units affordable at 60% of the area median income levels. The project will consist of a concrete podium parking garage with approximately 504 parking stalls on two levels-- one level of underground and one level at grade. The parking garage will contain all of the resident and guest parking for the project, with the exception of approximately seven surface parking spaces along the circle drive near the main entrance for short-term guest and delivery parking. Above level one of the building will be wood framed construction for the apartments and an open, elevated amenity deck and garden with several outdoor amenities. Amenities throughout the project will include the following: Business center; Flex work space; Clubroom and game room; Two entertainment suites; Exercise facility; Group exercise room; Outdoor pool; Outdoor spa; Grilling stations; Outdoor fire pits; Dog run; Pet spa; Heated underground parking; Bocce ball, putting green, outdoor seating, and/or other outdoor activity areas; Community garden; and Enhanced stormwater features with pollinator garden plantings.

The building will contain a mix of alcove, 1, 1 plus den, 2 and 3 bedroom apartments with active gathering spaces for residents and guests located on the first and second levels of the building.

Project Team

Owner:
Shady Oak Partners, LLC
7803 Glenroy Road
Suite 200
Bloomington, MN 55349
952-288-2089

Architect:
Doran Architects, LLC
7803 Glenroy Road
Suite 200
Bloomington, MN 55349
PH: 952-288-2078

Structural:
BKBM Engineers
6120 Earle Brown Drive,
Suite 700
Minneapolis, MN 55430
PH: 763-843-0423

Attorney:
Doran Companies
7803 Glenroy Road
Suite 200
Bloomington, MN 55349
PH: 952-288-2000

Developer:
Doran RE Partners, LLC
7803 Glenroy Road
Suite 200
Bloomington, MN 55349
PH: 952-288-2084

Contractor:
Doran Companies
7803 Glenroy Road
Suite 200
Bloomington, MN 55349
PH: 952-641-9473

Surveyor / Landscape / Civil:
Kimley Horn and Assoc., Inc
767 Eustis Street
Suite 100
Saint Paul, MN 55114
PH: 651-645-4197

Site Map



Sheet Index

SHEET NUMBER	SHEET NAME
T 1.0	COVER SHEET
A 1.1	SITE PLAN
A 1.2	SHADOW STUDIES
A 2.1	LEVEL P2 FLOOR PLAN
A 2.2	LEVEL 1/P1 FLOOR PLAN
A 2.3	LEVEL 2 FLOOR PLAN
A 2.4	LEVEL 3, 4, 5, & 6 PLAN
A 3.1	EXTERIOR ELEVATIONS
A 3.2	EXTERIOR ELEVATIONS
A 3.3	EXTERIOR RENDERING
A 3.4	EXTERIOR RENDERING

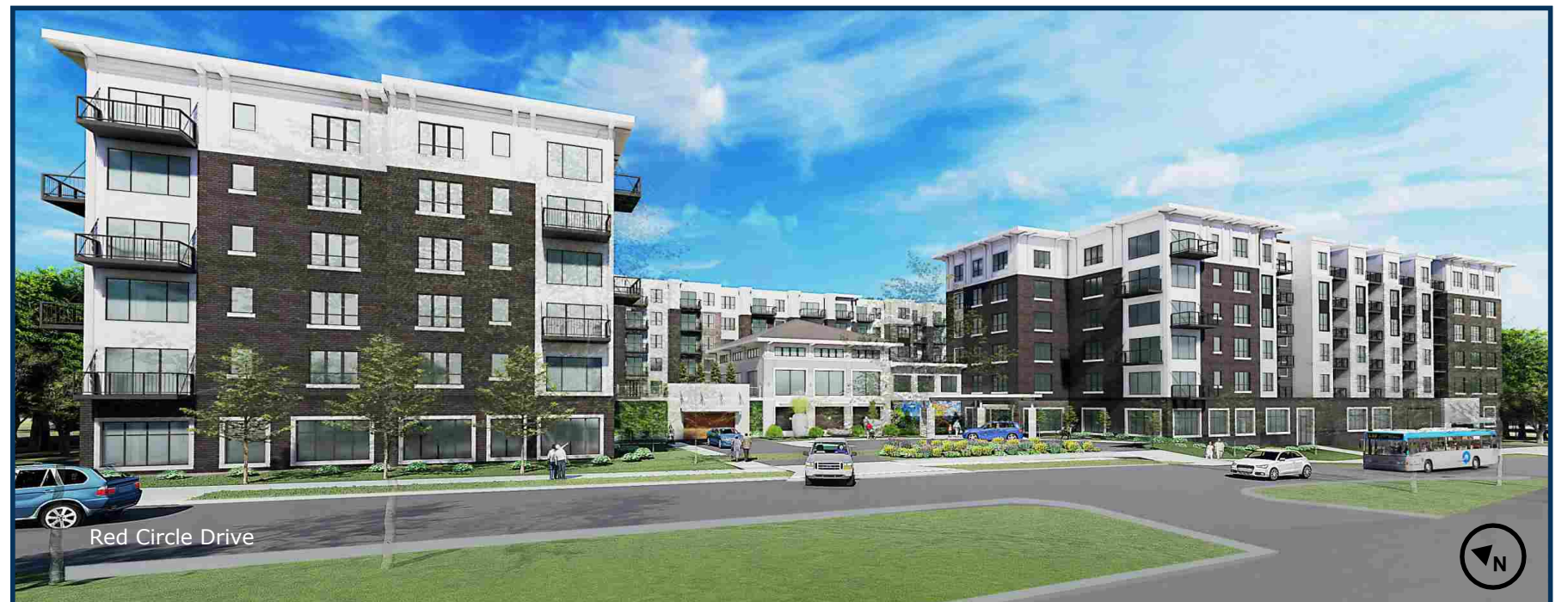
Unit Type	Beds	
	#	%
STUDIO	30	8%
ALCOVE	44	12%
1 Bedroom	212	60%
2 Bedroom	55	15%
3 Bedroom	15	4%
Total Units	356	

Building Gross Floor Areas	Residence Levels						Totals	Effic.
	Level 1	Level 2	Level 3	Level 4	Level 5	Level 6		
Units	8,416	55,101	58,259	58,259	58,259	58,259	296,553	83%
Amenities	9,533	6,252	-	-	-	-	15,785	4%
Commons	2,390	9,281	8,641	8,641	8,641	8,641	46,235	13%
Total	20,339	70,634	66,900	66,900	66,900	66,900	358,573	100%

Parking Level Gross Floor Areas		Parking Stall Counts	
Level P2	97,409	Level P2	284
Level P1	74,658	Level P1	213
Total	172,067	On Grade	7
		Total Parking Stalls	504

Parking Level Gross Floor Areas		Stalls Per Unit
Level P2	97,409	
Level P1	74,658	
Total	172,067	1.42

Unit, Bed, & Parking Counts; FAR, and Stalls Per Unit







WEST ELEVATION SCALE: 1" = 30'

EXTERIOR MATERIAL LEDGEND	
①	BRICK - EBONITE IRON SPOT
③	CAST STONE - WHITE
④	FIBER CEMENT LAP SIDING - ARTIC WHITE
⑤	FIBER CEMENT LAP SIDING - IRON GRAY
⑥	FIBER CEMENT PANEL - ARTIC WHITE
⑦	FIBER CEMENT PANEL - BLACK
⑧	FIBER CEMENT TRIM - ARTIC WHITE
⑨	FIBER CEMENT TRIM - BLACK
⑩	WINDOW - BLACK FRAME
⑪	SLIDING DOOR - BLACK FRAME
⑫	ALUMINUM STORE FRONT - BLACK FRAME
⑬	ALUMINUM BALCONY - BLACK
⑭	GARAGE DOOR - WOOD TONE
⑮	ACM CANOPY EDGE OR BRACKET - WHITE
⑯	MECHANICAL LOUVER - MATCH ADJ. COLOR
⑰	PUBLIC ART SCULPTURE AND MURAL
⑱	STANDING SEAM METAL ROOF - IRONGRAY



SOUTH ELEVATION SCALE: 1" = 30'

9 AM

12 PM

3 PM

6 PM

MAR / SEPT 21ST



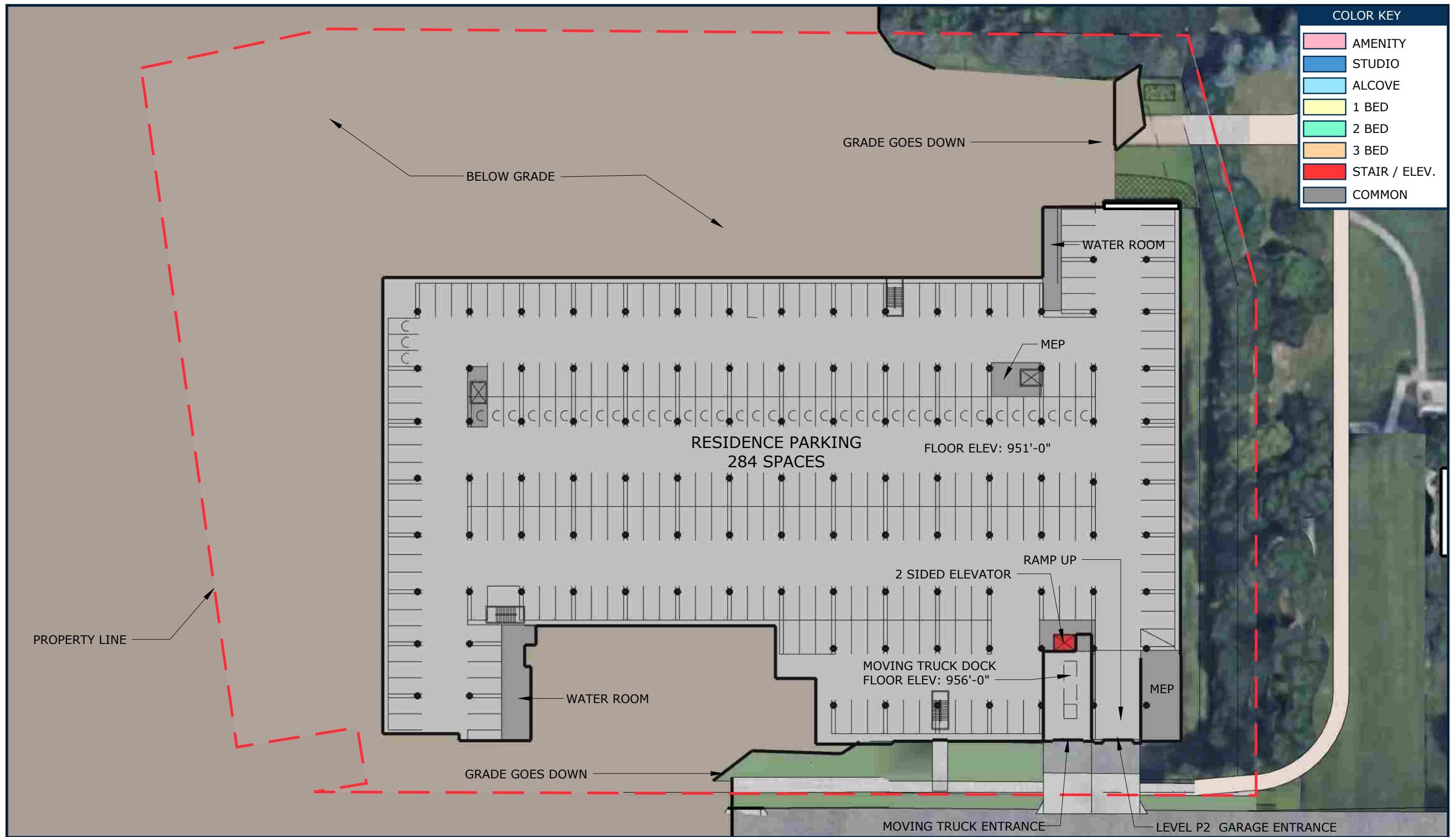
JUNE 21ST



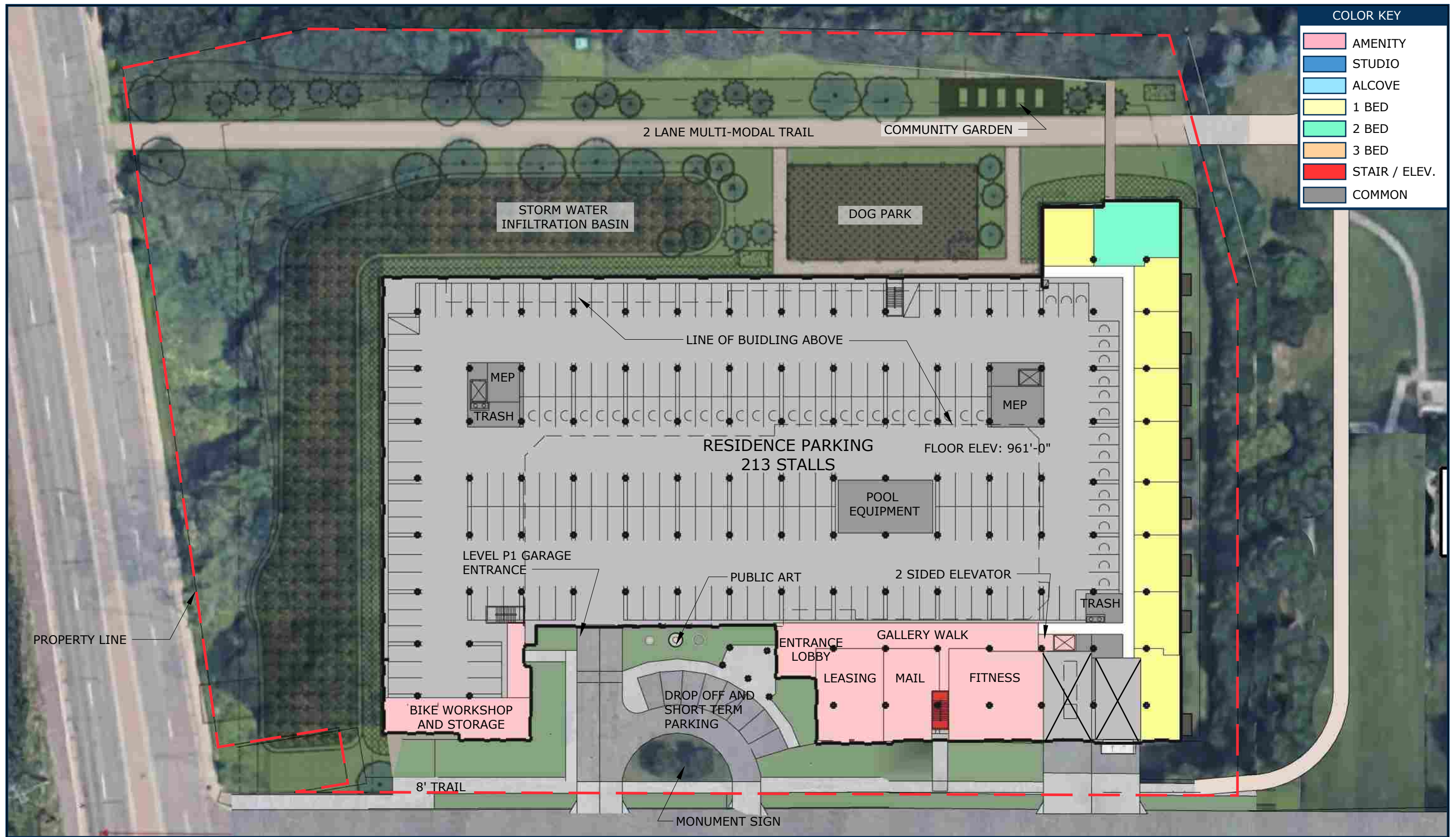
DEC 21ST



SCALE: 1" = 300'

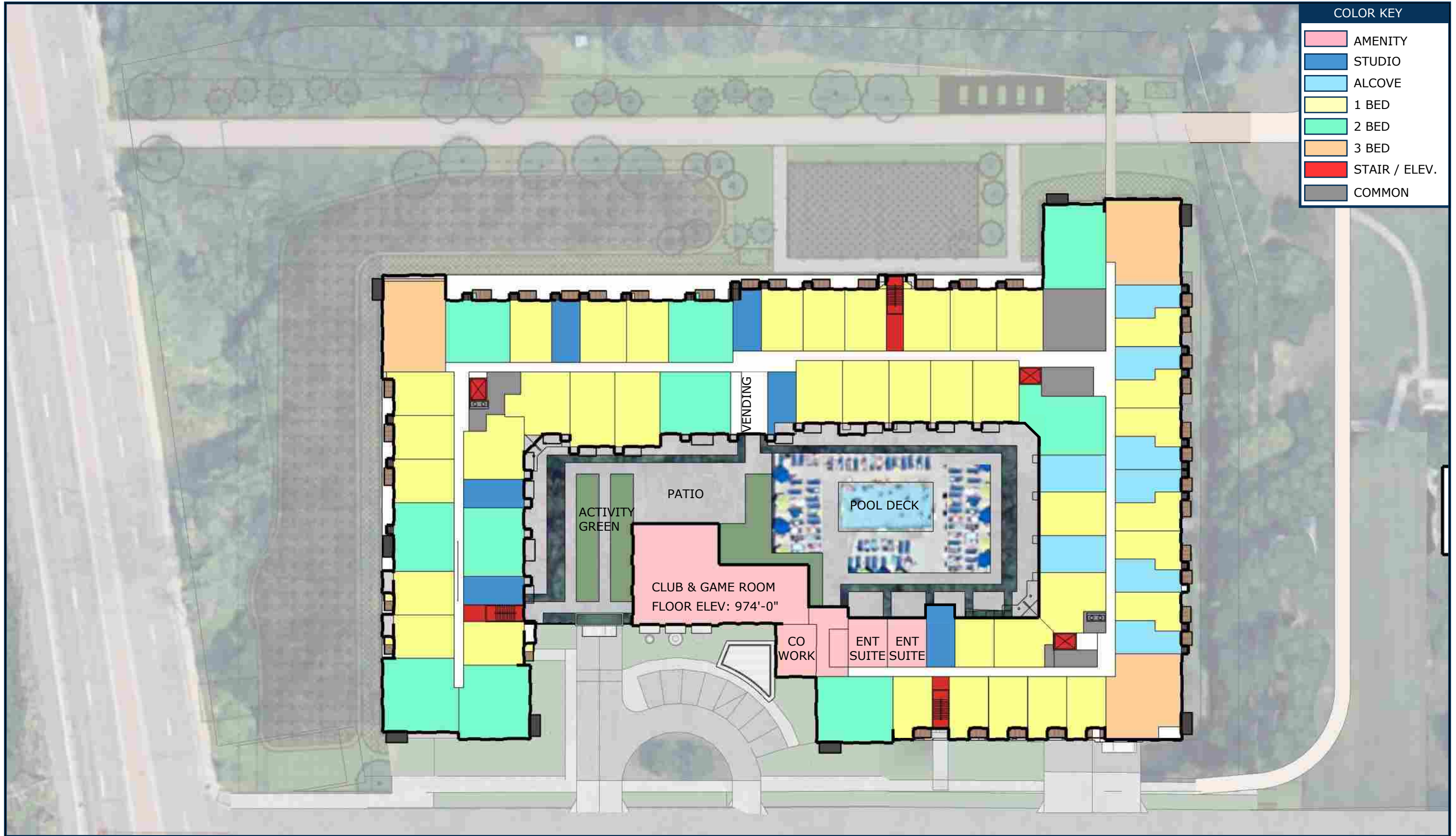


SCALE: 1" = 50'

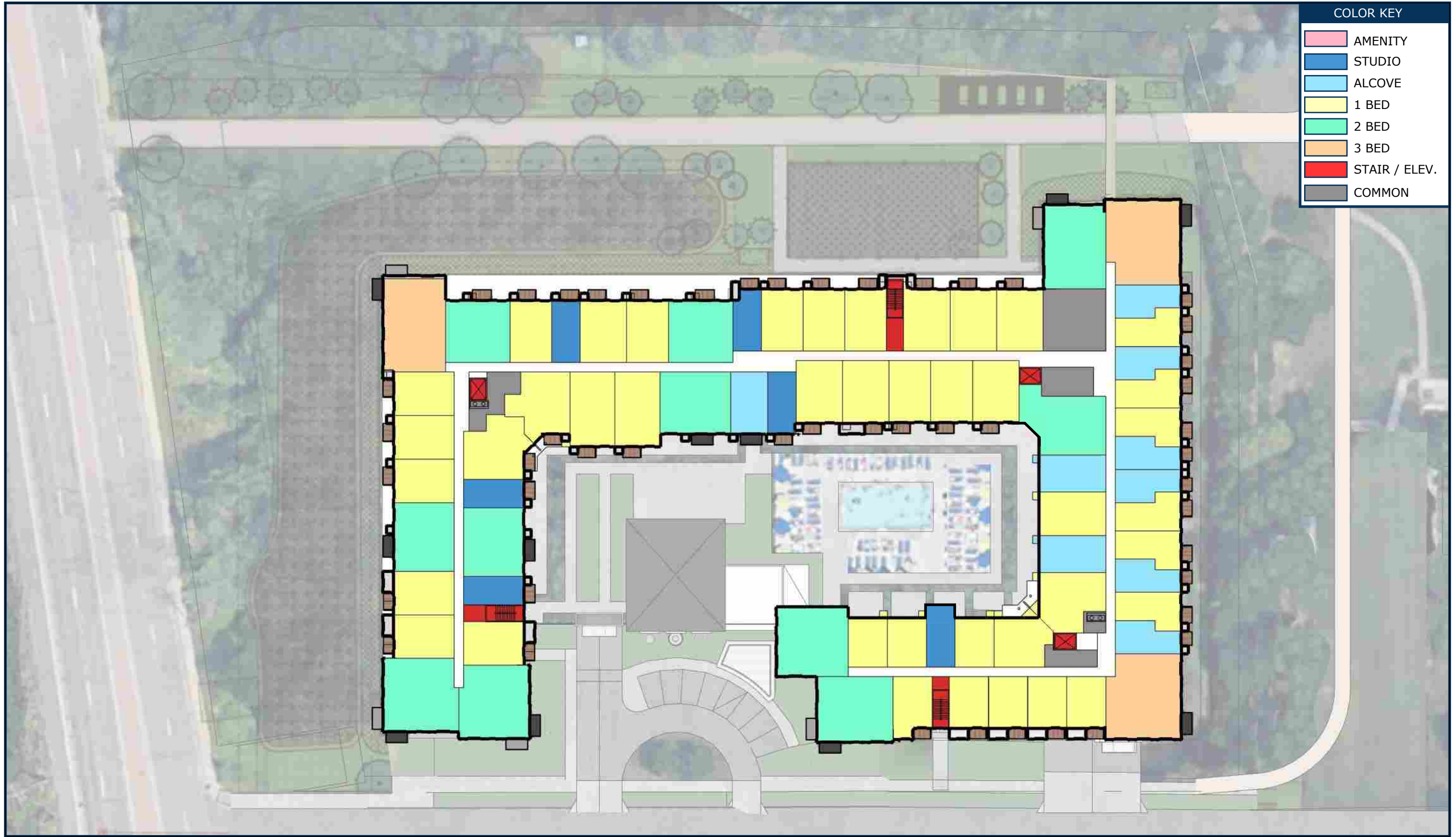


COLOR KEY	
[Pink Box]	AMENITY
[Blue Box]	STUDIO
[Light Blue Box]	ALCOVE
[Yellow Box]	1 BED
[Cyan Box]	2 BED
[Orange Box]	3 BED
[Red Box]	STAIR / ELEV.
[Grey Box]	COMMON


 SCALE: 1" = 50'



SCALE: 1" = 50'

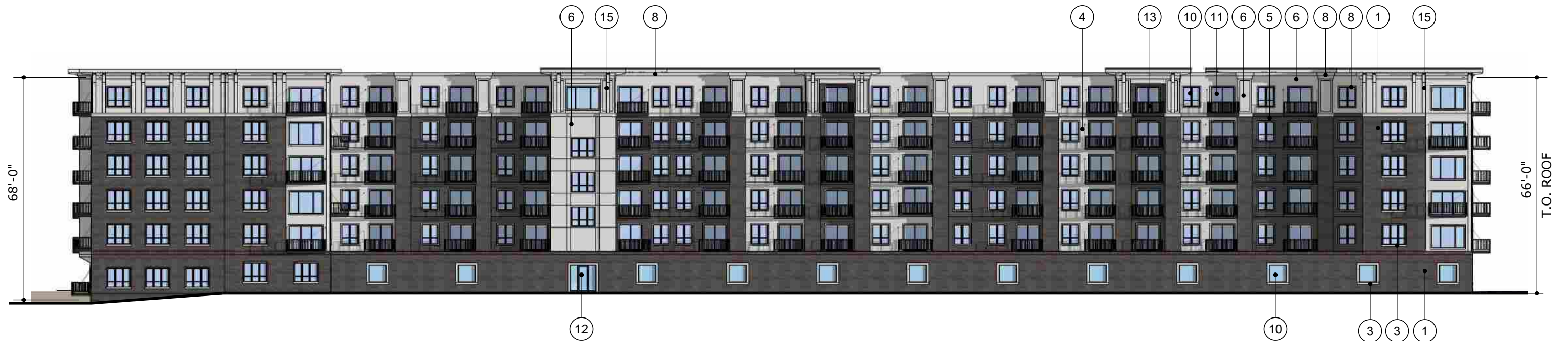


SCALE: 1" = 50'

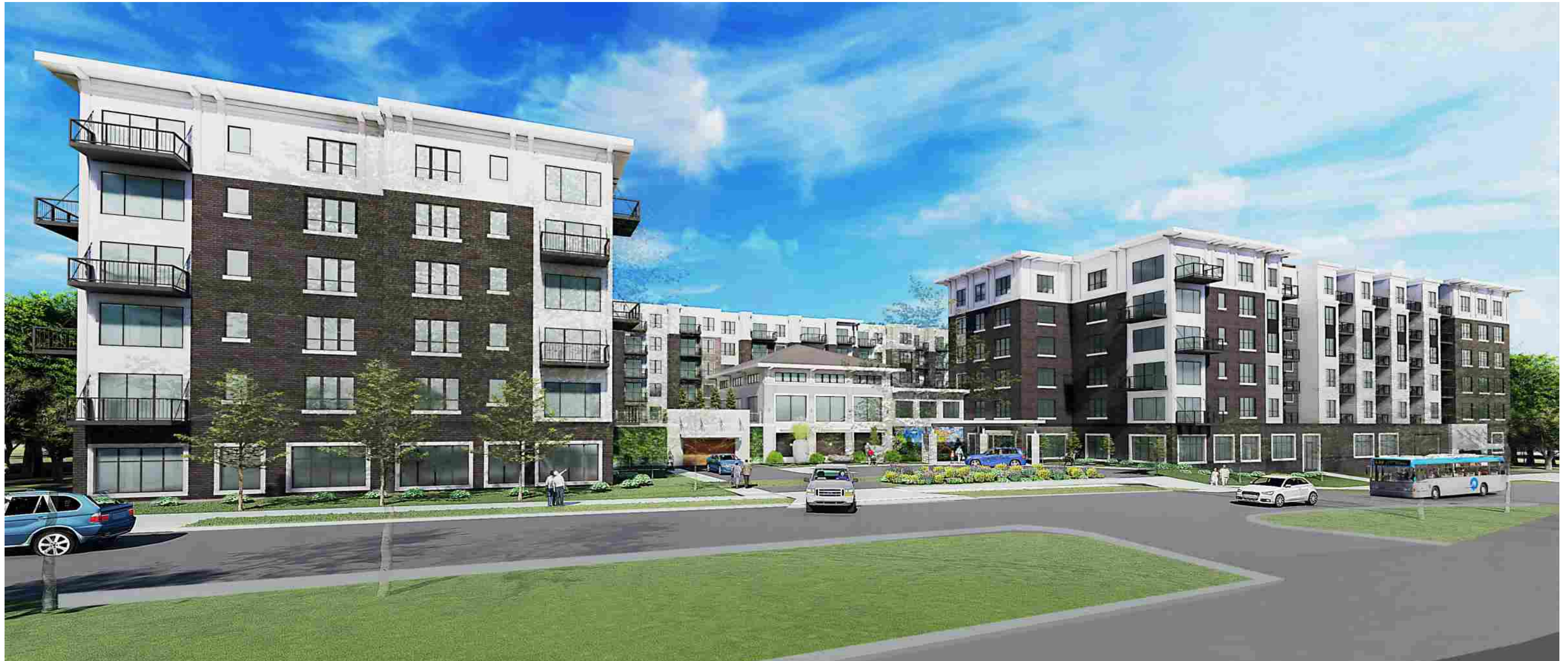


EAST ELEVATION **SCALE: 1" = 30'**

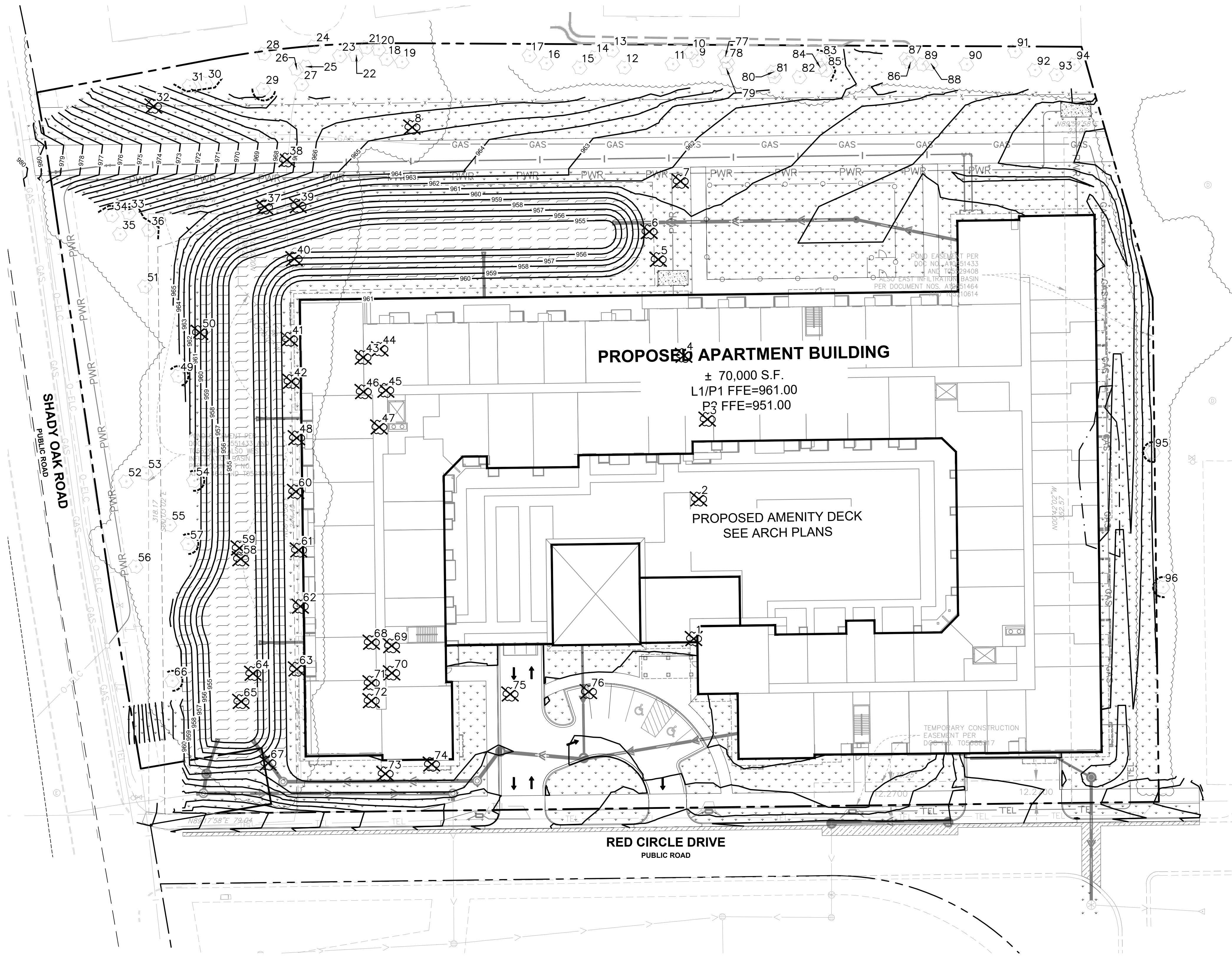
EXTERIOR MATERIAL LEDGEND	
①	BRICK - EBONITE IRON SPOT
③	CAST STONE - WHITE
④	FIBER CEMENT LAP SIDING - ARTIC WHITE
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⑯	MECHANICAL LOUVER - MATCH ADJ. COLOR
⑰	PUBLIC ART SCULPTURE AND MURAL
⑱	STANDING SEAM METAL ROOF - IRONGRAY



NORTH ELEVATION **SCALE: 1" = 30'**



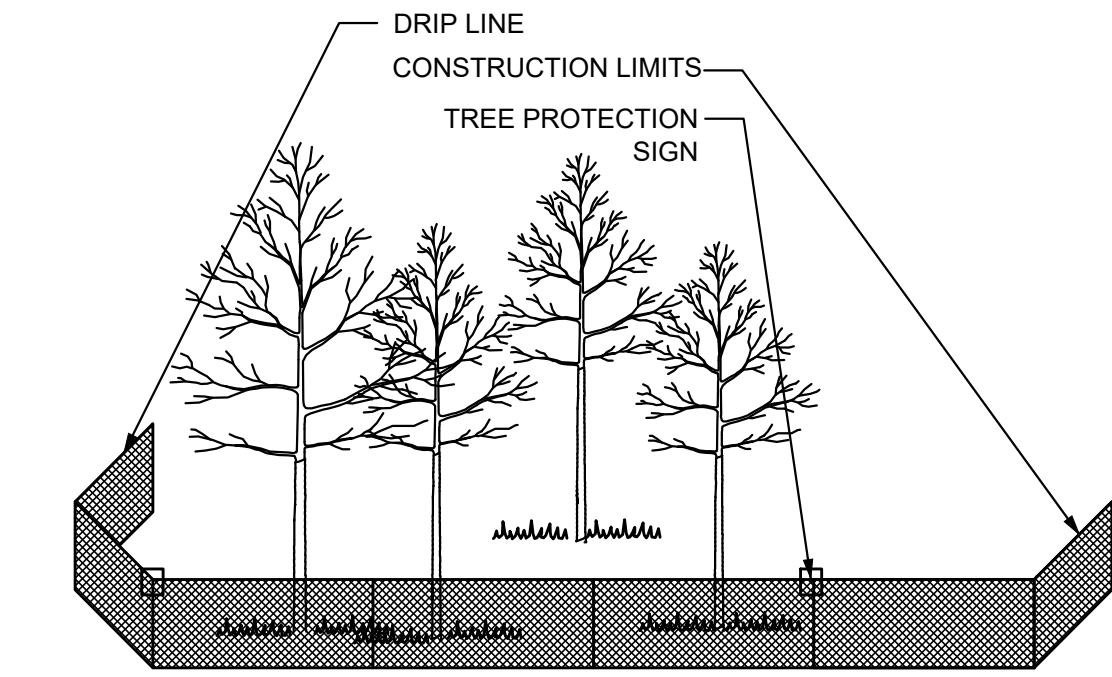
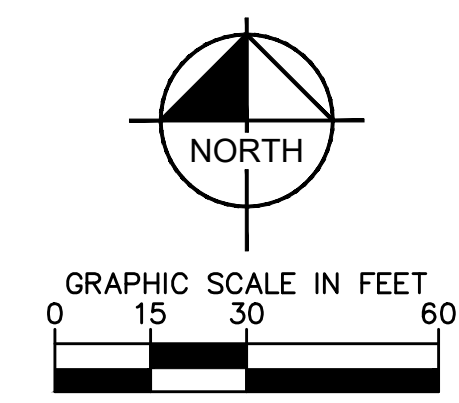




LEGEND

	PROPERTY LINE
	TREE TO BE REMOVED
	TREE TO REMAIN
	EXISTING VEGETATION EDGE
	LIMITS OF CONSTRUCTION
	TREE PROTECTION FENCE

- TREE PROTECTION NOTES**
1. PRUNING WILL BE DONE BY PROFESSIONALS DURING APPROPRIATE PRUNING SEASON.
 2. NO STORAGE OF MATERIALS, OPERATION OF MACHINERY, OR DEVELOPMENT OF ANY SORT WILL OCCUR WITHIN THE FENCE-LINE WITHOUT APPROVAL IN WRITING FROM CITY.
 3. SITE GRADING TO BE DONE ONLY AFTER PROTECTIVE MEASURES HAVE BEEN TAKEN, CITY HAS APPROVED FENCING LOCATIONS, AND ALL CONTRACTORS HAVE BEEN BRIEFED ON TREE PRESERVATION TECHNIQUES.
 4. EXISTING TREES TO REMAIN OR REMOVED TO BE CLEARLY IDENTIFIED, WITHIN DISTURBANCE LIMITS AND 10' OUTSIDE OF THE DISTURBANCE LIMITS.
 5. TREE PRESERVATION TO BE APPROVED BY OWNER AND PER LOCAL GOVERNMENTAL AUTHORITY.



FURNISH AND INSTALL TEMPORARY FENCE AT THE TREE'S DRIPLINE OR CONSTRUCTION LIMITS AS SPECIFIED, PRIOR TO ANY CONSTRUCTION. WHEN POSSIBLE PLACE FENCE 25 FEET BEYOND THE DRIP LINE. PLACE PROTECTION SIGNS ALONG FENCE AT 20' INTERVALS.

1 TEMPORARY TREE PROTECTION FENCE PLACEMENT
SCALE: N.T.S. C201

PRELIMINARY - NOT FOR CONSTRUCTION

5959 SHADY OAK RD APARTMENTS
PREPARED FOR
DORAN COMPANIES
MINNETONKA MN

TREE INVENTORY AND PRESERVATION PLAN

KHA PROJECT	160665015
DATE	1/15/2021
SCALE	AS SHOWN
DESIGNED BY	BAW
DRAWN BY	BAW
CHECKED BY	MGC

THIS DRAWING IS AN INSTRUMENT OF SERVICE. IT IS THE PROPERTY OF KIMLEY-HORN AND ASSOCIATES, INC. AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREIN. ANY REUSE OR MODIFICATION OF THIS DRAWING WITHOUT THE WRITTEN CONSENT OF KIMLEY-HORN AND ASSOCIATES, INC. IS STRICTLY PROHIBITED.

MITCHELL G. COOKAS, P.L.A.
DATE: 1/15/2021 LIC. NO. 5652

Kimley-Horn
2021 KIMLEY-HORN AND ASSOCIATES, INC.
787 EUSTIS STREET, SUITE 100, ST. PAUL, MN 55114
PHONE: 651-454-1197
WWW.KIMLEY-HORN.COM

CITY SITE PLAN REVIEW	REVISIONS	DATE	BY
	No.	1/15/2021	BPC

SHEET NUMBER
C201

Point Table						
TAG NO.	TREE TYPE	TREE SIZE	TREE CONDITION	NOTES	TREE DETERMINATION	TREE STATUS
1	Pine, red	18	Average	30 ft	High Priority	Remove
2	Pine, red	19	Average	30 ft	High Priority	Remove
3	Pine, red	17	Average	30 ft	High Priority	Remove
4	Pine, red	19	Average	30 ft	High Priority	Remove
5	Pine, red	26	Good	35 ft	High Priority	Remove
6	Pine, red	17	Average	35 ft	High Priority	Remove
7	Pine, red	20	Good	40 ft	High Priority	Remove
8	Maple, norway	44	Poor	potential hazard sig cracks		Remove
9	Spruce, white	9	Average	55 ft	High Priority	Remain
10	Spruce, white	10	Average	55 ft	High Priority	Remain
11	Spruce, white	11	Average	55 ft	High Priority	Remain
12	Spruce, white	9	Average	55 ft	High Priority	Remain
13	Spruce, white	14	Average	55 ft	High Priority	Remain
14	Spruce, white	12	Average	55 ft	High Priority	Remain
15	Spruce, white	14	Average	55 ft	High Priority	Remain
16	Spruce, white	14	Average	55 ft	High Priority	Remain
17	Spruce, white	9	Average	50 ft	High Priority	Remain
18	Locust, black	13	Average		High Priority	Remain
19	Locust, black	23	Average	2x	High Priority	Remain
20	Locust, black	12	Average		High Priority	Remain
21	Locust, black	16	Average		High Priority	Remain
22	Locust, black	15	Average		High Priority	Remain
23	Locust, black	16	Poor	2x, half dead	High Priority	Remain
24	Locust, black	17	Average		High Priority	Remain
25	Locust, black	12	Average		High Priority	Remain
26	Locust, black	10	Average		High Priority	Remain
27	Locust, black	11	Average		High Priority	Remain
28	Cedar, red	12	Average	35 ft	High Priority	Remain
29	Siberian, elm	48	Average			Remain
30	Siberian, elm	10	Average			Remain
31	Locust, black	11	Average			Remain
32	Siberian, elm	14	Average			Remove
33	Cottonwood, eastern	36	Average			Remain
34	Cottonwood, eastern	8	Average			Remain
35	Cottonwood, eastern	55	Average			Remain
36	Siberian, elm	14	Average			Remain
37	Siberian, elm	13	Average			Remove
38	Ash, green	28	Average			Remove
39	Ash, green	20	Average			Remove
40	Ash, green	21	Good			Remove
41	Basswood, american	24	Good		High Priority	Remove
42	Basswood, american	23	Average		High Priority	Remove
43	Crabapple	16	Average	3x		Remove
44	Crabapple	12	Poor	half dead, decay		Remove
45	Crabapple	16	Average	2x		Remove
46	Crabapple	14	Average	3x		Remove
47	Crabapple	15	Average	3x		Remove
48	Basswood, american	21	Poor	mostly dead, decay	High Priority	Remove


Point Table						
TAG NO.	TREE TYPE	TREE SIZE	TREE CONDITION	NOTES	TREE DETERMINATION	TREE STATUS
49	Siberian, elm	24	Average			Remain
50	Siberian, elm	16	Average			Remove
51	Siberian, elm	23	Average			Remain
52	Cedar, red	6	Good	20 ft	High Priority	Remain
53	Cedar, red	6	Good	20 ft	High Priority	Remain
54	Cedar, red	7	Average	20 ft 2x	High Priority	Remain
55	Siberian, elm	15	Good			Remain
56	Cottonwood, eastern	35	Good			Remain
57	Siberian, elm	9	Good			Remain
58	Cottonwood, eastern	70	Average			Remove
59	Willow, black	32	Average	3x		Remove
60	Ash, green	12	Good			Remove
61	Ash, green	12	Good			Remove
62	Ash, green	12	Poor	EAB		Remove
63	Ash, green	14	Average			Remove
64	Boxelder	12	Good			Remove
65	Boxelder	20	Average	2x		Remove
66	Ash, green	15	Good			Remain
67	Cherry, black	9	Good		Significant	Remove
68	Crabapple	15	Average	2x		Remove
69	Crabapple	19	Average	3x		Remove
70	Crabapple	15	Poor	decay, 2x		Remove
71	Crabapple	14	Average	4x		Remove
72	Crabapple	22	Average	4x		Remove
73	Ash, green	9	Good			Remove
74	Ash, green	16	Good			Remove
75	Crabapple	8	Average			Remove
76	Crabapple	15	Average			Remove
77	Spruce, white	15	Average	55 ft	High Priority	Remain
78	Spruce, white	11	Average	55 ft	High Priority	Remain
79	Spruce, white	11	Average	55 ft	High Priority	Remain
80	Spruce, white	11	Average	55 ft	High Priority	Remain
81	Spruce, white	13	Average	55 ft	High Priority	Remain
82	Spruce, white	9	Average	55 ft	High Priority	Remain
83	Spruce, white	10	Average	55 ft	High Priority	Remain
84	Spruce, white	12	Average	55 ft	High Priority	Remain
85	Spruce, white	11	Average	55 ft	High Priority	Remain
86	Spruce, white	10	Average	55 ft	High Priority	Remain
87	Spruce, white	12	Average	55 ft	High Priority	Remain
88	Spruce, white	12	Average	55 ft	High Priority	Remain
89	Spruce, white	8	Average	45 ft	High Priority	Remain
90	Spruce, white	15	Average	55 ft	High Priority	Remain
91	Locust, honey	19	Good		High Priority	Remain
92	Spruce, white	19	Average	55 ft	High Priority	Remain
93	Spruce, white	9	Average	50 ft	High Priority	Remain
94	Spruce, white	9	Average	50 ft	High Priority	Remain
95	Boxelder	11	Average			Remain
96	Siberian, elm	8	Average			Remain

PRELIMINARY - NOT FOR CONSTRUCTION

5959 SHADY OAK RD APARTMENTS
 PREPARED FOR
 DORAN COMPANIES
 MINNETONKA, MN

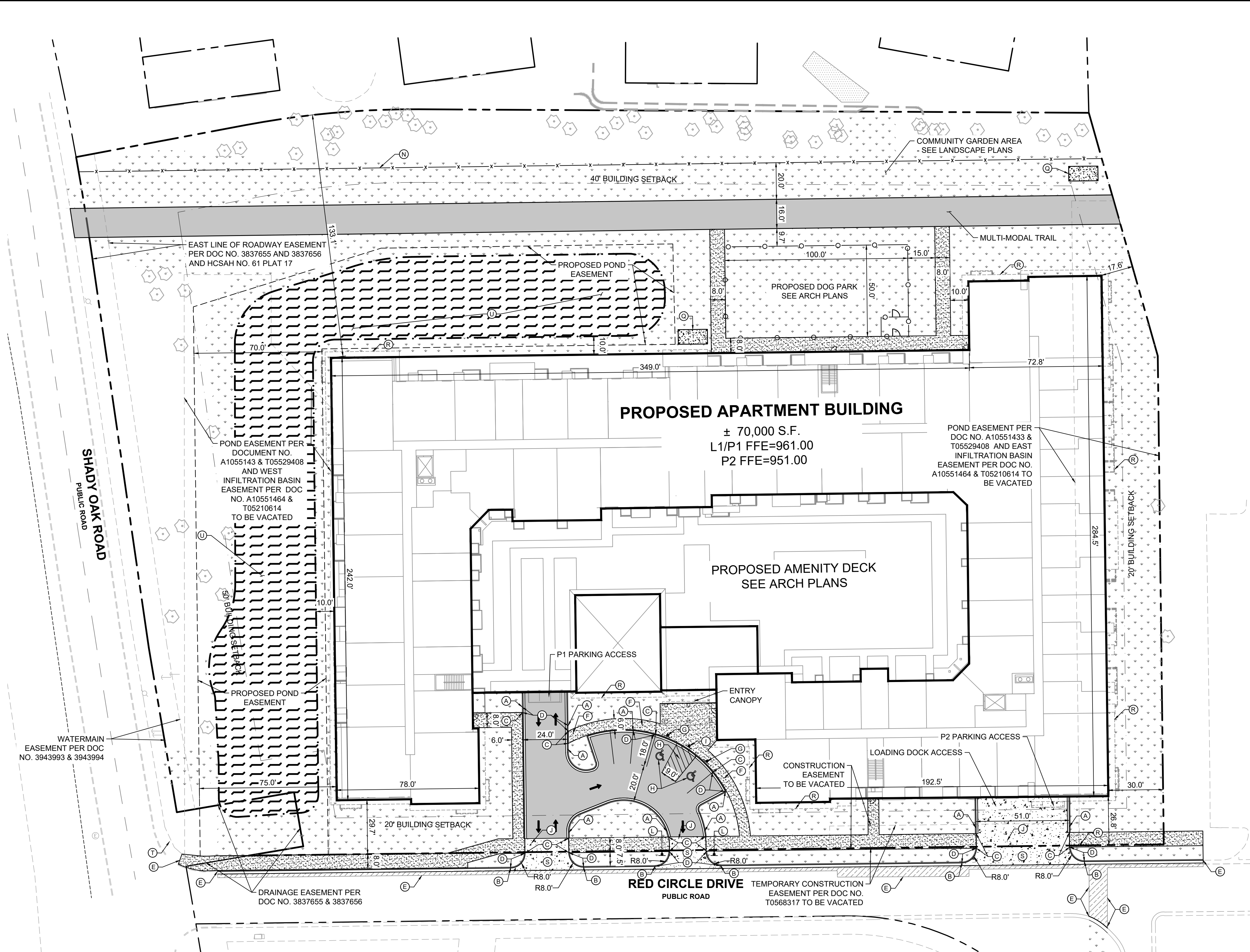
TREE INVENTORY AND PRESERVATION SCHEDULE

KHA PROJECT 160665015
 DATE 1/15/2021
 SCALE AS SHOWN
 DESIGNED BY BAW
 DRAWN BY BAW
 CHECKED BY MGC

I HEREBY CERTIFY THAT THIS IS AN SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA

 MITCHELL G. COOKAS, P.E.
 MINN. LIC. NO. 5652
 DATE: 1/15/2021

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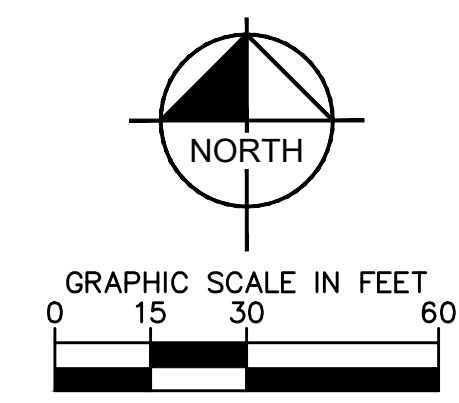
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1	CITY SITE PLAN REVIEW	1/15/2021	BPC



KEYNOTE LEGEND

- (A) B612 CURB & GUTTER (TYP.)
- (B) B618 CURB & GUTTER (TYP.)
- (C) FLUSH CURB
- (D) TRANSITION CURB - FULL HEIGHT TO FLUSH
- (E) MATCH EXISTING EDGE OF PAVEMENT/ CURB & GUTTER
- (F) ACCESSIBLE CURB RAMP
- (G) ACCESSIBLE PARKING SIGN
- (H) ACCESSIBLE PARKING/ACCESS AISLE MARKINGS
- (I) "ACCESS AISLE - NO PARKING" SIGN
- (J) PEDESTRIAN CROSSWALK

- (K) "NO PARKING - FIRE LANE" SIGN
- (L) "DO NOT ENTER" SIGN
- (M) MONUMENT SIGN - SEE ARCH PLANS
- (N) PRIVACY FENCE - SEE ARCH PLANS
- (O) STOOPS/STAIRS/RISERS - SEE ARCH PLANS
- (P) LIGHT POLE
- (Q) PROPOSED TRANSFORMER
- (R) ROOF LINE/SHADE STRUCTURE ABOVE GRADE - SEE ARCH PLANS
- (S) COMMERCIAL DRIVEWAY APRON
- (T) EXISTING FIRE HYDRANT TO REMAIN
- (U) SURFACE POND



LEGEND

- PROPERTY LINE
- - - - - PROPOSED FENCE
- - - - - SETBACK LINE
- ==== PROPOSED CURB AND GUTTER
- /// PROPOSED HEAVY DUTY ASPHALT
- PROPOSED STANDARD DUTY ASPHALT
- PROPOSED CONCRETE PAVEMENT
- ▨ PROPOSED STORMWATER MANAGEMENT AREA
- ▩ PROPOSED CONCRETE SIDEWALK
- PROPOSED LANDSCAPE AREA - SEE LANDSCAPE PLANS

PROPERTY SUMMARY	
5959 SHADY OAK RD APARTMENTS	
TOTAL PROPERTY AREA	222,614 SF (5.11 AC)
PROPOSED IMPERVIOUS AREA	113,256 SF (2.64 AC)
PROPOSED PERVIOUS AREA	109,358 SF (2.47 AC)
ZONING SUMMARY	
EXISTING ZONING	B1 - OFFICE BUSINESS DISTRICT
PROPOSED ZONING	PUD
BUILDING SETBACKS	NORTH (R2) = 40' EAST (PUD) = 20' SOUTH (PUD) = 20' WEST (R1) = 50'

BUILDING DATA SUMMARY	
AREAS	
PROPOSED PROPERTY	222,614 SF (5.11 AC)
BUILDING FOOTPRINT AREA	±97,101 SF (43.6% OF TOTAL PROPERTY AREA)
PARKING	
PROPOSED PARKING	7 SPACES (AT GRADE) 513 SPACES (INTERNAL)
ADA STALLS REQ'D / PROVIDED	2 STALLS / 1 STALLS (AT GRADE) 11 STALLS / 11 STALLS (INTERNAL)

SITE PLAN NOTES

1. ALL WORK AND MATERIALS SHALL COMPLY WITH ALL CITY/COUNTY REGULATIONS AND CODES AND O.S.H.A. STANDARDS.
2. CONTRACTOR SHALL REFER TO THE ARCHITECTURAL PLANS FOR EXACT LOCATIONS AND DIMENSIONS OF VESTIBULES, SLOPE PAVING, SIDEWALKS, EXIT PORCHES, TRUCK DOCKS, PRECISE BUILDING DIMENSIONS AND EXACT BUILDING UTILITY ENTRANCE LOCATIONS.
3. ALL INNER CURBED RADII ARE TO BE <3> AND OUTER CURBED RADII ARE TO BE <10> UNLESS OTHERWISE NOTED. STRIPED RADII ARE TO BE 5'.
4. ALL DIMENSIONS AND RADII ARE TO THE FACE OF CURB UNLESS OTHERWISE NOTED.
5. EXISTING STRUCTURES WITHIN CONSTRUCTION LIMITS ARE TO BE ABANDONED, REMOVED OR RELOCATED AS NECESSARY. ALL COST SHALL BE INCLUDED IN BASE BID.
6. CONTRACTOR SHALL BE RESPONSIBLE FOR ALL RELOCATIONS, (UNLESS OTHERWISE NOTED ON PLANS) INCLUDING BUT NOT LIMITED TO, ALL UTILITIES, STORM DRAINAGE, SIGNS, TRAFFIC SIGNALS & POLES, ETC. AS REQUIRED. ALL WORK SHALL BE IN ACCORDANCE WITH GOVERNING AUTHORITIES REQUIREMENTS AND PROJECT SITE WORK SPECIFICATIONS AND SHALL BE APPROVED BY SUCH. ALL COST SHALL BE INCLUDED IN BASE BID.
7. SITE BOUNDARY, TOPOGRAPHY, UTILITY AND ROAD INFORMATION TAKEN FROM A SURVEY BY SAMBATEK, DATED 11/17/2020.
KIMLEY-HORN ASSUMES NO LIABILITY FOR ANY ERRORS, INACCURACIES, OR OMISSIONS CONTAINED THEREIN.
8. TOTAL LAND AREA IS 5.11 ACRES.
9. PYLON / MONUMENT SIGNS SHALL BE CONSTRUCTED BY OTHERS. SIGNS ARE SHOWN FOR GRAPHICAL & INFORMATIONAL PURPOSES ONLY. CONTRACTOR TO VERIFY SIZE, LOCATION AND ANY REQUIRED PERMITS NECESSARY FOR THE CONSTRUCTION OF THE PYLON / MONUMENT SIGN.
10. CONTRACTOR SHALL REFERENCE ARCH / MEP PLANS FOR SITE LIGHTING AND ELECTRICAL PLAN.
11. NO PROPOSED LANDSCAPING SUCH AS TREES OR SHRUBS, ABOVE AND UNDERGROUND STRUCTURES, OR OTHER OBSTRUCTIONS SHALL BE LOCATED WITHIN EXISTING OR PROPOSED UTILITY EASEMENTS AND RIGHTS OF WAY UNLESS SPECIFICALLY NOTED ON PLANS OTHERWISE.
12. REFERENCE ARCHITECTURAL PLANS FOR DUMPSTER ENCLOSURE DETAILS.
13. REFER TO FINAL PLAT OR ALTA SURVEY FOR EXACT LOT AND PROPERTY BOUNDARY DIMENSIONS.
14. ALL AREAS ARE ROUNDED TO THE NEAREST SQUARE FOOT.
15. ALL DIMENSIONS ARE ROUNDED TO THE NEAREST TENTH FOOT.
16. ALL PARKING STALLS TO BE <9> IN WIDTH AND <18> IN LENGTH UNLESS OTHERWISE INDICATED.

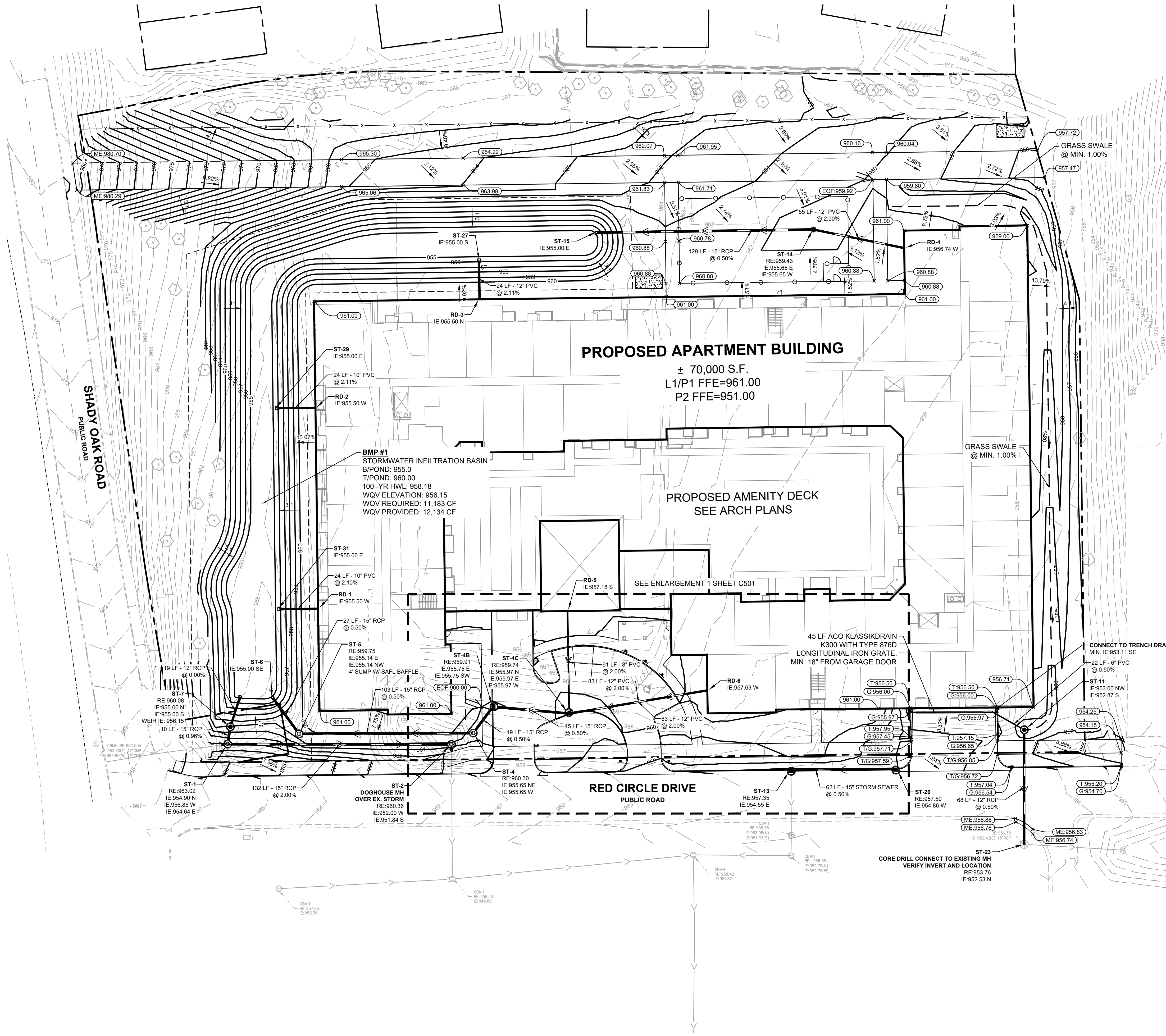
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5959 SHADY OAK RD APARTMENTS
 PREPARED FOR **DORAN COMPANIES**
 MINNETONKA, MN
 SHEET NUMBER **C400**

KHA PROJECT	160665015
DATE	1/15/2021
SCALE	AS SHOWN
DESIGNED BY	BPG
DRAWN BY	BPG
CHECKED BY	WDM

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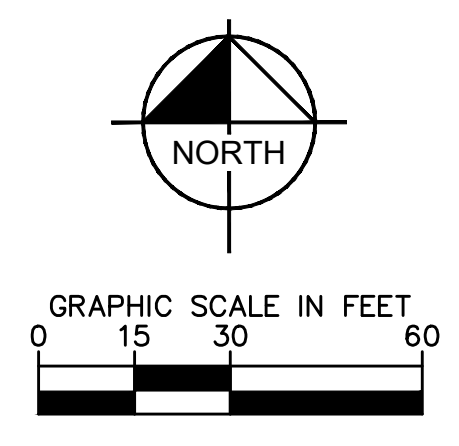
No.	REVISIONS	DATE	BY
1	CITY SITE PLAN REVIEW	1/15/2021	BPG

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LEGEND	
	PROPERTY LINE
	EXISTING CONTOUR
	PROPOSED CONTOUR
	PROPOSED STORM MANHOLE (SOLID CASTING)
	PROPOSED STORM MANHOLE (ROUND INLET CASTING)
	PROPOSED STORM MANHOLE/ CATCH BASIN (CURB INLET CASTING)
	PROPOSED STORM SEWER CLEANOUT
	PROPOSED FLARED END SECTION
	PROPOSED RIPRAP
	PROPOSED STORM SEWER
	PROPOSED SPOT ELEVATION
	PROPOSED HIGH POINT ELEVATION
	PROPOSED LOW POINT ELEVATION
	PROPOSED GUTTER ELEVATION
	PROPOSED TOP OF CURB ELEVATION
	PROPOSED FLUSH PAVEMENT ELEVATION
	MATCH EXISTING ELEVATION
	PROPOSED EMERGENCY OVERFLOW
	PROPOSED DRAINAGE DIRECTION
	PROPOSED ADA SLOPE

- ### GRADING PLAN NOTES
- ALL WORK SHALL BE PERFORMED IN ACCORDANCE WITH THE CITY OF MINNETONKA, SPECIFICATIONS AND BUILDING PERMIT REQUIREMENTS.
 - CONTRACTOR TO CALL GOPHER STATE CALL ONE @ <1-800-252-1166> AT LEAST TWO WORKING DAYS PRIOR TO EXCAVATION/CONSTRUCTION FOR UTILITY LOCATIONS.
 - STORM SEWER PIPE SHALL BE AS FOLLOWS:
RCP PER ASTM C-76
HDPE: 0" - 10" PER AASHTO M-252
HDPE: 12" OR GREATER PER ASTM F-2306
PVC SCH. 40 PER ASTM D-1785
STORM SEWER FITTINGS SHALL BE AS FOLLOWS:
RCP PER ASTM C-76, JOINTS PER ASTM C-361, C-990, AND C-443
PVC PER ASTM D-2865, JOINTS PER ASTM D-3212
 - CONTRACTOR TO FIELD VERIFY THE LOCATIONS AND ELEVATIONS OF EXISTING UTILITIES AND TOPOGRAPHIC FEATURES PRIOR TO THE START OF SITE GRADING. THE CONTRACTOR SHALL IMMEDIATELY NOTIFY THE PROJECT ENGINEER OF ANY DISCREPANCIES OR VARIATIONS.
 - SUBGRADE EXCAVATION SHALL BE BACKFILLED IMMEDIATELY AFTER EXCAVATION TO HELP OFFSET ANY STABILITY PROBLEMS DUE TO WATER SEEPAGE OR STEEP SLOPES. WHEN PLACING NEW SURFACE MATERIAL ADJACENT TO EXISTING PAVEMENT, THE EXCAVATION SHALL BE BACKFILLED PROMPTLY TO AVOID UNDERMINING OF EXISTING PAVEMENT.
 - CONTRACTOR SHALL BE RESPONSIBLE FOR ALL HORIZONTAL AND VERTICAL CONTROL.
 - CONTRACTOR SHALL EXCAVATE DRAINAGE TRENCHES TO FOLLOW PROPOSED STORM SEWER ALIGNMENTS.
 - GRADES SHOWN ARE FINISHED GRADES. CONTRACTOR SHALL ROUGH GRADE TO SUBGRADE ELEVATION AND LEAVE STREET READY FOR SUBBASE.
 - ALL EXCESS MATERIAL, BITUMINOUS SURFACING, CONCRETE ITEMS, ANY ABANDONED UTILITY ITEMS, AND OTHER UNSTABLE MATERIALS SHALL BECOME THE PROPERTY OF THE CONTRACTOR AND SHALL BE DISPOSED OF OFF THE CONSTRUCTION SITE.
 - REFER TO THE UTILITY PLAN FOR SANITARY SEWER MAIN, WATER MAIN SERVICE LAYOUT AND ELEVATIONS AND CASTING / STRUCTURE NOTATION.
 - CONTRACTOR IS RESPONSIBLE FOR CONSTRUCTION OF PAVEMENTS AND CURB AND GUTTER WITH SMOOTH UNIFORM SLOPES TO PROVIDE POSITIVE DRAINAGE.
 - INSTALL A MINIMUM OF "4" CLASS 5+ AGGREGATE BASE UNDER CURB AND GUTTER AND CONCRETE SIDEWALKS.
 - UPON COMPLETION OF EXCAVATION AND FILLING, CONTRACTOR SHALL RESTORE ALL STREETS AND DISTURBED AREAS ON SITE. ALL DISTURBED AREAS SHALL BE RE-VEGETATED WITH A MINIMUM OF "4" OF TOPSOIL.
 - ALL SPOT ELEVATIONS/CONTOURS ARE TO GUTTER / FLOW LINE UNLESS OTHERWISE NOTED.
 - GRADING FOR ALL SIDEWALKS AND ACCESSIBLE ROUTES INCLUDING CROSSING DRIVEWAYS SHALL CONFORM TO CURRENT ADA STATE/NATIONAL STANDARDS. IN NO CASE SHALL ACCESSIBLE RAMP SLOPES EXCEED 1% VERTICAL TO 12 HORIZONTAL. IN NO CASE SHALL SIDEWALK CROSS SLOPES EXCEED 2%. IN NO CASE SHALL LONGITUDINAL SIDEWALK SLOPES EXCEED 5%. IN NO CASE SHALL ACCESSIBLE PARKING STALLS OR AISLES EXCEED 2% (1.5% TARGET) IN ALL DIRECTIONS. SIDEWALK ACCESS TO EXTERNAL BUILDING DOORS AND GATES SHALL BE ADA COMPLIANT. CONTRACTOR SHALL NOTIFY ENGINEER IMMEDIATELY IF ADA CRITERIA CANNOT BE MET IN ANY LOCATION PRIOR TO PAVING. NO CONTRACTOR CHANGE ORDERS WILL BE ACCEPTED FOR A.D.A COMPLIANCE ISSUES.
 - MAINTAIN A MINIMUM OF 0.5% GUTTER SLOPE TOWARDS LOW POINTS.
 - CONTRACTOR TO PROVIDE 3" INSULATION BY 5" WIDE CENTERED ON STORM PIPE IF LESS THAN 4" OF COVER IN PAVEMENT AREAS AND LESS THAN 3" OF COVER IN LANDSCAPE AREAS.
 - ROOF DRAIN INVERT CONNECTIONS AT THE BUILDING SHALL BE AT ELEVATION 958.00 OR LOWER UNLESS NOTED OTHERWISE. REFERENCE MEP PLANS FOR ROOF DRAIN CONNECTION.
 - ALL STORM SEWER CONNECTIONS SHALL BE GASKETED AND WATER TIGHT INCLUDING MANHOLE CONNECTIONS.
 - ALL STORM SEWER PIPE SHALL BE AIR TESTED IN ACCORDANCE WITH THE CURRENT PLUMBING CODE.
 - MAINTAIN A MINIMUM OF 1.25% SLOPE IN BITUMINOUS PAVEMENT AREAS, 0.5% SLOPE IN CONCRETE PAVEMENT AREAS.
 - CONTRACTOR SHALL REVIEW PAVEMENT GRADIENT AND CONSTRUCT "INFALL CURB" WHERE PAVEMENT DRAINS TOWARD GUTTER, AND "OUTFALL" CURB WHERE PAVEMENT DRAINS AWAY FROM GUTTER.



PRELIMINARY - NOT FOR CONSTRUCTION

5959 SHADY OAK RD APARTMENTS

PREPARED FOR DORAN COMPANIES

MINNETONKA

GRADING AND DRAINAGE PLAN

SHEET NUMBER **C500**

MINNETONKA

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KHA PROJECT: 160665015

DATE: 1/15/2021

SCALE: AS SHOWN

DESIGNED BY: BPG

DRAWN BY: BPG

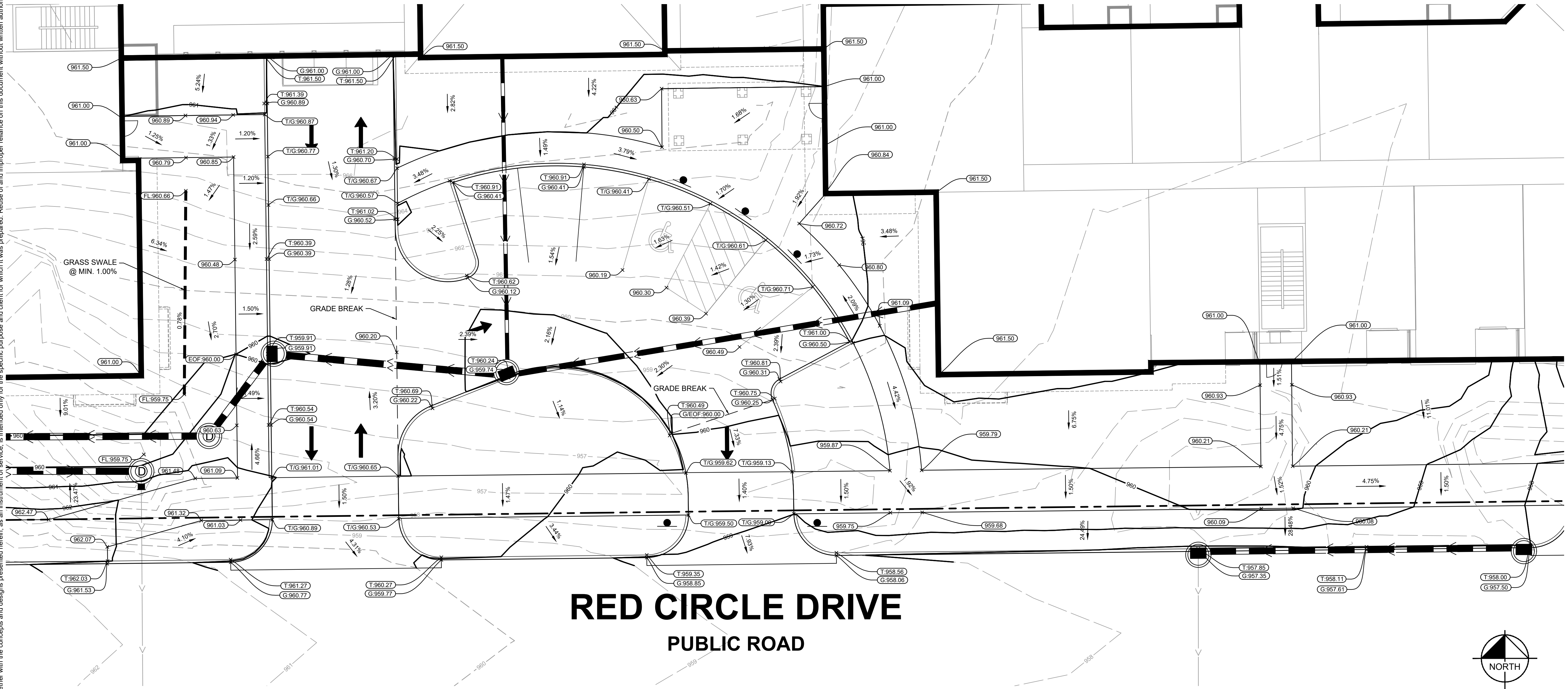
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DATE: 1/15/2021

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WILLIAM D. MATZEK PE

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LEGEND	
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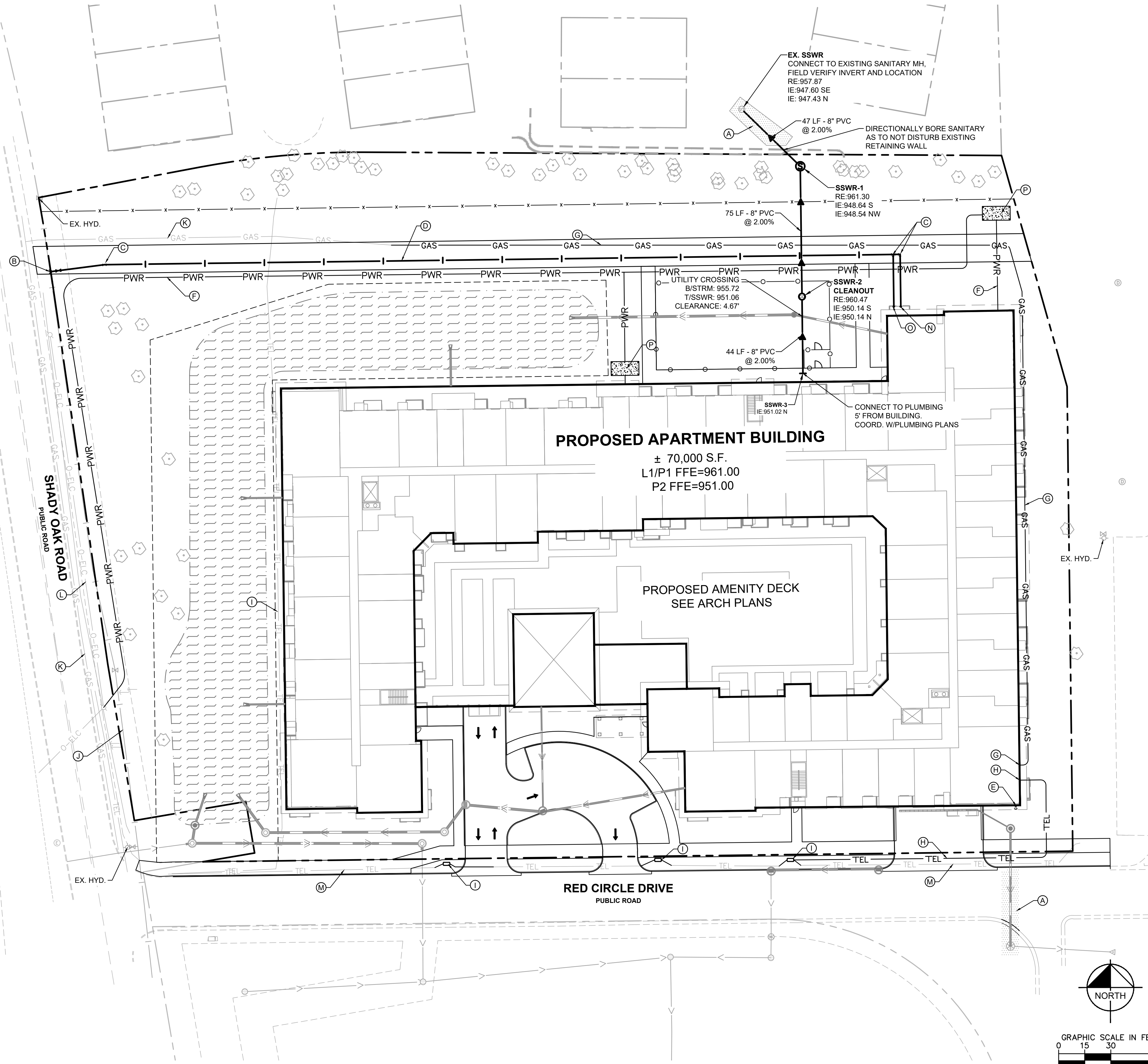
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PREPARED FOR
DORAN COMPANIES
MINNETONKA MN

ENLARGED GRADING AND DRAINAGE PLAN

KHA PROJECT 16065015	DATE 1/15/2021	SCALE AS SHOWN	DESIGNED BY BPG	DRAWN BY BPG	CHECKED BY WDM	
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					1/15/2021	BPG

1 GRADING ENLARGEMENT - FRONT ENTRY DRIVE
1" = 10'



LEGEND		
EXISTING	PROPOSED	
		GATE VALVE
		HYDRANT
		REDUCER
		TEE
		SANITARY SEWER MANHOLE
		SANITARY CLEANOUT
		WATERMAIN
		SANITARY SEWER
		STORM SEWER
		UNDERGROUND ELECTRIC
		TELEPHONE
		GAS MAIN

UTILITY PLAN NOTES

- ALL FILL MATERIAL IS TO BE IN PLACE, AND COMPACTED BEFORE INSTALLATION OF PROPOSED UTILITIES.
- SANITARY SEWER PIPE SHALL BE AS FOLLOWS:
8" PVC SDR35 PER ASTM D-3034, FOR PIPES LESS THAN 12' DEEP
8" PVC SDR26 PER ASTM D-3034, FOR PIPES MORE THAN 12' DEEP
6" PVC SCHEDULE 40 PER ASTM D-1785
- WATER LINES SHALL BE AS FOLLOWS:
6" AND LARGER, PVC C-900 PER ASTM D 2241
4" AND LARGER DUCTILE IRON PIPE PER AWWA C150
SMALLER THAN 3" PIPING SHALL BE COPPER TUBE TYPE "K" PER ANSI 816.22 OR PVC, 200 P.S.I., PER ASTM D1784 AND D2241.
- MINIMUM TRENCH WIDTH SHALL BE 2 FEET.
- ALL WATER JOINTS ARE TO BE MECHANICAL JOINTS WITH RESTRAINTS SUCH AS THRUST BLOCKING, WITH STAINLESS STEEL OR COBALT BLUE BOLTS, OR AS INDICATED IN THE CITY SPECIFICATIONS AND PROJECT DOCUMENTS.
- ALL UTILITIES SHOULD BE KEPT TEN (10') APART (PARALLEL) OR WHEN CROSSING 18" VERTICAL CLEARANCE (OUTSIDE EDGE OF PIPE TO OUTSIDE EDGE OF PIPE OR STRUCTURE).
- CONTRACTOR SHALL MAINTAIN A MINIMUM OF 7'-5" COVER ON ALL WATERLINES.
- IN THE EVENT OF A VERTICAL CONFLICT BETWEEN WATER LINES, SANITARY LINES, STORM LINES AND GAS LINES, OR ANY OBSTRUCTION (EXISTING AND PROPOSED), THE SANITARY LINE SHALL BE SCH. 40 OR C900 WITH MECHANICAL JOINTS AT LEAST 10 FEET ON EITHER SIDE OF THE CENTER LINE OF THE CROSSING. THE WATER LINE SHALL HAVE MECHANICAL JOINTS WITH APPROPRIATE FASTENERS AS REQUIRED TO PROVIDE A MINIMUM OF 18" VERTICAL SEPARATION, MEETING REQUIREMENTS OF ANSI A21.10 OR ANSI 21.11 (AWWA C-151) (CLASS 50).
- LINES UNDERGROUND SHALL BE INSTALLED, INSPECTED AND APPROVED BEFORE BACKFILLING.
- TOPS OF MANHOLES SHALL BE RAISED AS NECESSARY TO BE FLUSH WITH PROPOSED PAVEMENT ELEVATIONS, AND TO BE ONE FOOT ABOVE FINISHED GROUND ELEVATIONS, IN GREEN AREAS, WITH WATERTIGHT LIDS.
- ALL CONCRETE FOR ENCASEMENTS SHALL HAVE A MINIMUM 28 DAY COMPRESSION STRENGTH AT 3000 P.S.I.
- EXISTING UTILITIES SHALL BE VERIFIED IN FIELD PRIOR TO INSTALLATION OF ANY NEW LINES.
- REFER TO INTERIOR PLUMBING DRAWINGS FOR TIE-IN OF ALL UTILITIES.
- CONTRACTOR IS RESPONSIBLE FOR COMPLYING TO THE SPECIFICATIONS OF THE CITY OF MINNETONKA AND/OR STATE OF MN WITH REGARDS TO MATERIALS AND INSTALLATION OF THE WATER AND SEWER LINES.
- THE CONTRACTOR IS SPECIFICALLY CAUTIONED THAT THE LOCATION AND/OR ELEVATION OF EXISTING UTILITIES AS SHOWN ON THESE PLANS IS BASED ON RECORDS OF THE VARIOUS UTILITY COMPANIES, AND WHERE POSSIBLE, MEASUREMENTS TAKEN IN THE FIELD. THE INFORMATION IS NOT TO BE RELIED ON AS BEING EXACT OR COMPLETE. THE CONTRACTOR MUST CALL THE APPROPRIATE UTILITY COMPANIES AT LEAST 72 HOURS BEFORE ANY EXCAVATION TO REQUEST EXACT FIELD LOCATION OF UTILITIES. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO RELOCATE ALL EXISTING UTILITIES WHICH CONFLICT WITH THE PROPOSED IMPROVEMENTS SHOWN ON THE PLANS.
- CONTRACTOR IS RESPONSIBLE FOR ALL NECESSARY INSPECTIONS AND/OR CERTIFICATIONS REQUIRED BY CODES AND/OR UTILITY SERVICE COMPANIES.
- CONTRACTOR SHALL COORDINATE WITH ALL UTILITY COMPANIES FOR INSTALLATION REQUIREMENTS AND SPECIFICATIONS.
- CONTRACTOR SHALL REFERENCE ARCH / MEP PLANS FOR SITE LIGHTING AND ELECTRICAL PLAN.
- BACKFLOW DEVICES (DDCV AND PRZ ASSEMBLIES) AND METERS ARE LOCATED IN THE INTERIOR OF THE BUILDING. REF. ARCH / MEP PLANS.
- ALL ONSITE WATERMANS AND SANITARY SEWERS SHALL BE PRIVATELY OWNED AND MAINTAINED.
- ALL WATERMAIN STUBOUTS SHALL BE MECHANICALLY RESTRAINED WITH REACTION BLOCKING.

KEYNOTE LEGEND

- (A) PROPOSED UTILITY SERVICE EXCAVATIONS, MATCH EXISTING PAVEMENT CURB AND GUTTER SECTION PER CITY OF MINNETONKA STANDARDS
- (B) WETTAP CONNECT TO EXISTING 12" WATERMAIN WITH 12"x8" TAPPING SLEEVE AND 8" GATE VALVE
- (C) TEE/BEND
- (D) 8" COMBINED WATER SERVICE
- (E) FDC
- (F) PROPOSED POWER SERVICE, COORDINATE FINAL CONNECTION POINT AND ROUTING W/ UTILITY
- (G) PROPOSED GAS SERVICE, COORDINATE FINAL CONNECTION POINT AND ROUTING W/ UTILITY
- (H) PROPOSED COMMUNICATION SERVICE, COORDINATE FINAL CONNECTION POINT AND ROUTING W/ UTILITY
- (I) RELOCATE EXISTING COMMUNICATION VAULT/PEDESTAL/SERVICE LINE OUT OF PROPOSED DRIVE AISLES AND BUILDING FOUNDATIONS
- (J) EXISTING 10" WATERMAIN
- (K) EXISTING GAS MAIN/SERVICE
- (L) EXISTING ELECTRICAL
- (M) EXISTING COMMUNICATIONS SERVICE
- (N) 8" FIRE WATER SERVICE
- (O) 6" DOMESTIC WATER SERVICE
- (P) PROPOSED TRANSFORMER

PRELIMINARY - NOT FOR CONSTRUCTION

5959 SHADY OAK RD APARTMENTS
PREPARED FOR
DORAN COMPANIES
MINNETONKA, MN

UTILITY PLAN

KHA PROJECT	160665015
DATE	1/15/2021
SCALE	AS SHOWN
DESIGNED BY	BPG
DRAWN BY	BPG
CHECKED BY	WDM

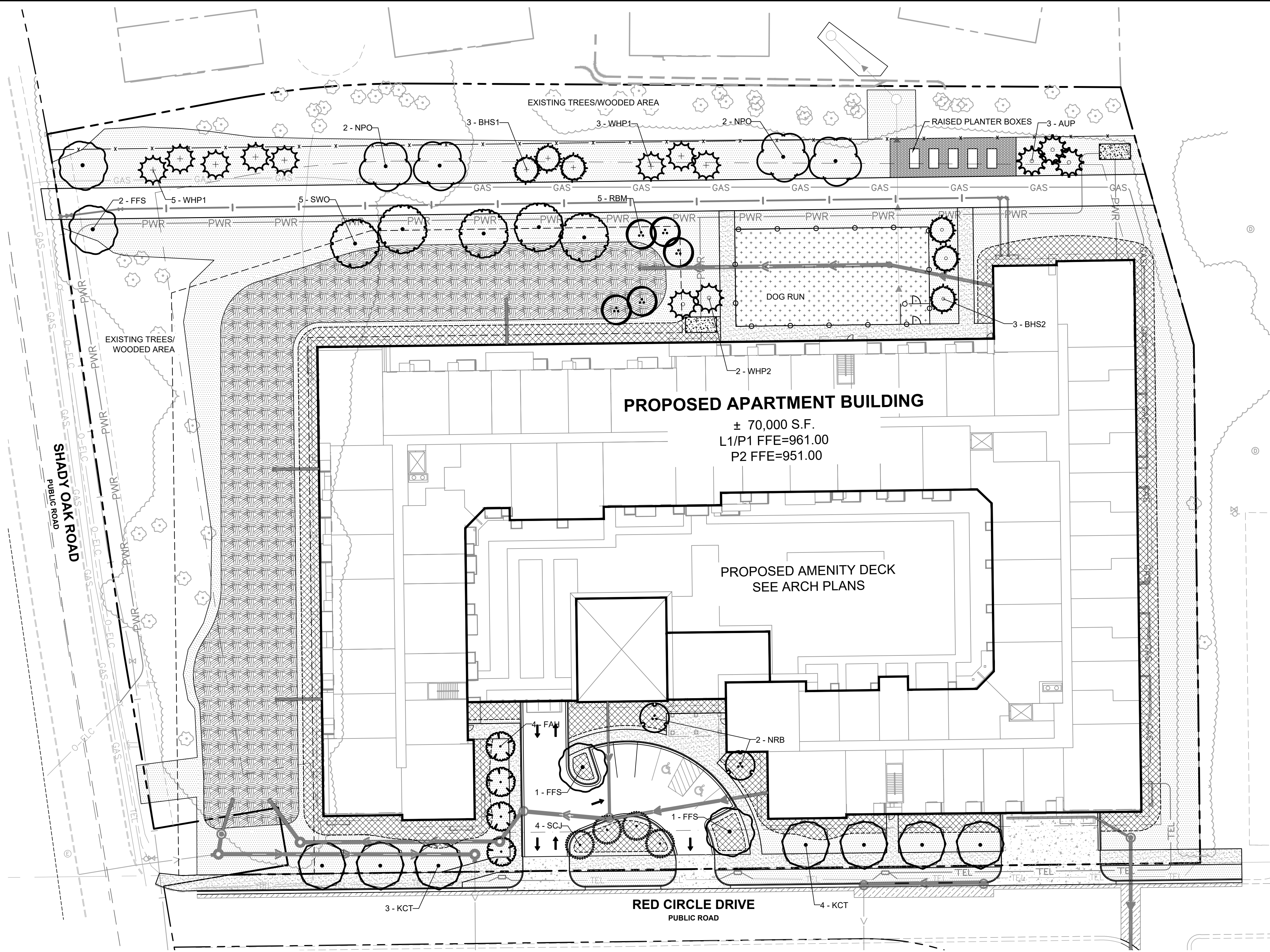
THIS PROJECT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.
William D. Matzek
WILLIAM D. MATZEK PE
MINN. LIC. NO. 45790
DATE: 1/15/2021

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CITY SITE PLAN REVIEW	REVISIONS	DATE	BY
		1/15/2021	BPG

SHEET NUMBER
C600

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LANDSCAPE LEGEND

- EXISTING TREE (TYP.)
- LANDSCAPE EDGER (TYP.)
- SHRUB/PERENNIAL BED (TYP.)
- SOD (TYP.)
- RAIN GARDEN (TYP.)
NOTE: RAIN GARDEN TO CONTAIN POLLINATOR PLANTS
- CRUSHED GRANITE (TYP.)
- ARTIFICIAL TURF (TYP.)
- DOG RUN FENCE
- SITE FENCE

PLANT SCHEDULE

COMMON NAME	COMMON NAME
CONIFEROUS SHRUBS	COMMON NAME
JUNIPERUS SABINA 'BUFFALO'	BUFFALO JUNIPER
THUJA OCCIDENTALIS 'BAILJOHN' TM	TECHNITO ARBORVITAE
TAXUS X MEDIA 'TAUNTON'	TAUNTON YEW
DECIDUOUS SHRUBS	COMMON NAME
CORNUS SERICEA 'ALLEMAN'S COMPACT'	DWARF RED TWIG DOGWOOD
ILEX VERTICILLATA 'AFTERGLOW'	AFTERGLOW WINTERBERRY
VIBURNUM TRILOBUM 'BAILEY COMPACT'	BAILEY'S COMPACT AMERICAN VIBURNUM
DIERVILLA LONICERA	DWARF BUSH HONEYSUCKLE
SPIRAEA JAPONICA 'TRACY' TM	DOUBLE PLAY BIG BANG JAPANESE SPIRAEA
RHUS AROMATICA 'GRO-LOW'	GRO-LOW FRAGRANT SUMAC
ARONIA MELANOCARPA 'MORTON' TM	IROQUIS BEAUTY BLACK CHOKEBERRY
ILEX VERTICILLATA 'JIM DANDY'	JIM DANDY WINTERBERRY
PHYSOCARPUS OPULIFOLIUS 'DONNA MAY' TM	LITTLE DEVIL NINEBARK
HYDRANGEA PANICULATA 'JANE'	LITTLE LIME HYDRANGEA
HYDRANGEA PANICULATA 'LITTLE QUICK FIRE'	LITTLE QUICK FIRE HYDRANGEA
CORNUS SERICEA 'ISANTI'	ISANTI RED TWIG DOGWOOD
SORBARIA SORBIFOLIA 'SEM'	SEM FALSESPIREA
SPIRAEA BETULIFOLIA 'TOR'	TOR BIRCHLEAF SPIREA
GRASSES	COMMON NAME
SCHIZACHYRIUM SCOPARIUM 'BLUE HEAVEN'	BLUE HEAVEN LITTLE BLUESTEM
CALAMAGROSTIS X ACUTIFLORA 'KARL FOERSTER'	KARL FOERSTER FEATHER REED GRASS
MISCANTHUS SINENSIS 'PURPURASCENS'	MISCANTHUS FLAME GRASS
SPOROBOLUS HETEROLEPIS	PRAIRIE DROPSEED
PERENNIALS	COMMON NAME
HOSTA X 'BLUE ANGEL'	BLUE ANGEL HOSTA
COREOPSIS VERTICILLATA 'MOONBEAM'	THREADLEAF COREOPSIS
HEUCHERA X 'FOREVER PURPLE'	FOREVER PURPLE HEUCHERA
HOSTA X 'GUACAMOLE'	GUACAMOLE HOSTA
ALCHEMILLA SERICATA 'GOLD STRIKE'	GOLD STRIKE LADY'S MANTLE
RUDBECKIA X 'LITTLE GOLD STAR'	LITTLE GOLD STAR BLACK-EYED SUSAN
SALVIA X SYLVESTRIS 'MAY NIGHT'	MAY NIGHT SAGE
ALLIUM X 'MILLENIUM'	MILLENIUM ORNAMENTAL ONION
ACHILLEA MILLEFOLIUM 'MOONSHINE'	MOONSHINE YARROW
HEMEROCALLIS X 'ROSY RETURNS'	ROSY RETURNS DAYLILY
ECHINACEA PURPUREA 'RUBY STAR'	RUBY STAR PURPLE CONEFLOWER
ARALIA CORDATA 'SUN KING'	SUN KING ARALIA
ASTILBE CHINENSIS 'VISIONS'	VISIONS ASTILBE
NEPETA X FAASSENII 'WALKERS LOW'	WALKERS LOW CATMINT

LANDSCAPE SUMMARY

MINIMUM LANDSCAPE VALUE REQUIRED: \$580,000 = (\$58,000,000 * 0.01)
 LANDSCAPE VALUE PROVIDED: \$670,000

*NOTE: THIS COST ESTIMATE INCLUDES SHRUB/PERENNIALS FOR PLANT BEDS AND RAIN GARDEN, TREES, STEEL EDGER, DOUBLE-SHREDDED HARDWOOD MULCH, PRIVACY FENCE, DECORATIVE PAVING, CRUSHED GRANITE, IRRIGATION SYSTEM, ARTIFICIAL TURF, POOL/SPA, BOCCIE COURTS, AND PUBLIC ART FEATURE.

TREE MITIGATION DATA

HIGH PRIORITY DECIDUOUS TREE REMOVAL: 68 CALIPER INCHES
 HIGH PRIORITY CONIFEROUS TREE REMOVAL: 136 FOOT HEIGHT
 SIGNIFICANT TREE REMOVAL: (1) EACH

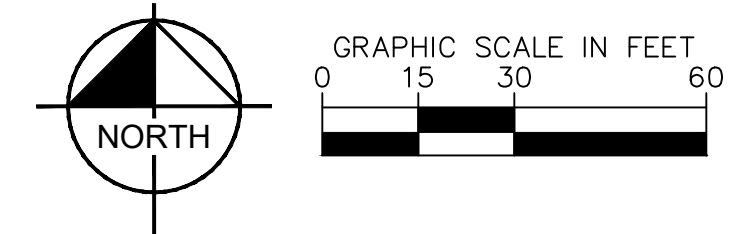
HIGH PRIORITY TREE DECIDUOUS MITIGATION REQUIRED: 68 CAL. IN.
 HIGH PRIORITY TREE DECIDUOUS MITIGATION PROVIDED: 93 CAL. IN.

HIGH PRIORITY TREE CONIFEROUS MITIGATION REQUIRED: 136 FT. HT.
 HIGH PRIORITY TREE CONIFEROUS MITIGATION PROVIDED: 136 FT. HT.

SIGNIFICANT TREE MITIGATION REQUIRED: (1) 2" CAL. TREE
 SIGNIFICANT TREE MITIGATION PROVIDED: (1) 2.5" CAL. TREE

PLANT SCHEDULE

CANOPY TREES	QTY	BOTANICAL NAME	COMMON NAME	CONT	CAL	SIZE
FFS	4	ACER SACCHARUM 'BAILSTA' TM	FALL FIESTA SUGAR MAPLE	B & B	2.5" CAL.	
KCT	7	GYMNOCLADUS DIOICA 'ESPRESSO'	KENTUCKY COFFEETREE	B & B	3" CAL.	
NPO	4	QUERCUS ELLIPSOIDALIS	NORTHERN PINE OAK	B & B	2.5" CAL.	
RBM	5	BETULA NIGRA	RIVER BIRCH MULTI-TRUNK	B & B	2.5" CAL.	
SWO	5	QUERCUS BICOLOR	SWAMP WHITE OAK	B & B	3" CAL.	
CONIFEROUS TREES	QTY	BOTANICAL NAME	COMMON NAME	CONT	CAL	SIZE
AUP	3	PINUS NIGRA	AUSTRIAN PINE	B & B	6' HT.	
BHS1	3	PICEA GLAUCA 'DENSATA'	BLACK HILLS SPRUCE	B & B	8' HT.	
BHS2	3	PICEA GLAUCA 'DENSATA'	BLACK HILLS SPRUCE	B & B	6' HT.	
WHP1	8	PINUS STROBUS	WHITE PINE	B & B	8' HT.	
WHP2	2	PINUS STROBUS	WHITE PINE	B & B	6' HT.	
ORNAMENTAL TREES	QTY	BOTANICAL NAME	COMMON NAME	CONT	CAL	SIZE
FAH	4	CARPINUS CAROLINIANA 'J.N. UPRIGHT' TM	FIRESPIRE AMERICAN HORNBEAM	B & B	2.25" CAL.	
NRB	2	CERCIS CANADENSIS	NORTHERN REDBUD MULTI-TRUNK	B & B	2.25" CAL.	
SCJ	4	SYRINGA RETICULATA 'ELLIOT'	SNOW CAP JAPANESE TREE LILAC	B & B	2.25" CAL.	



PRELIMINARY - NOT FOR CONSTRUCTION

5959 SHADY OAK RD APARTMENTS
 PREPARED FOR
DORAN COMPANIES
 MINNETONKA, MN

SHEET NUMBER
L100

Kimley»Horn
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KHA PROJECT: 160665015
 DATE: 1/15/2021
 SCALE: AS SHOWN
 DESIGNED BY: GMC
 DRAWN BY: PWB
 CHECKED BY: MGC

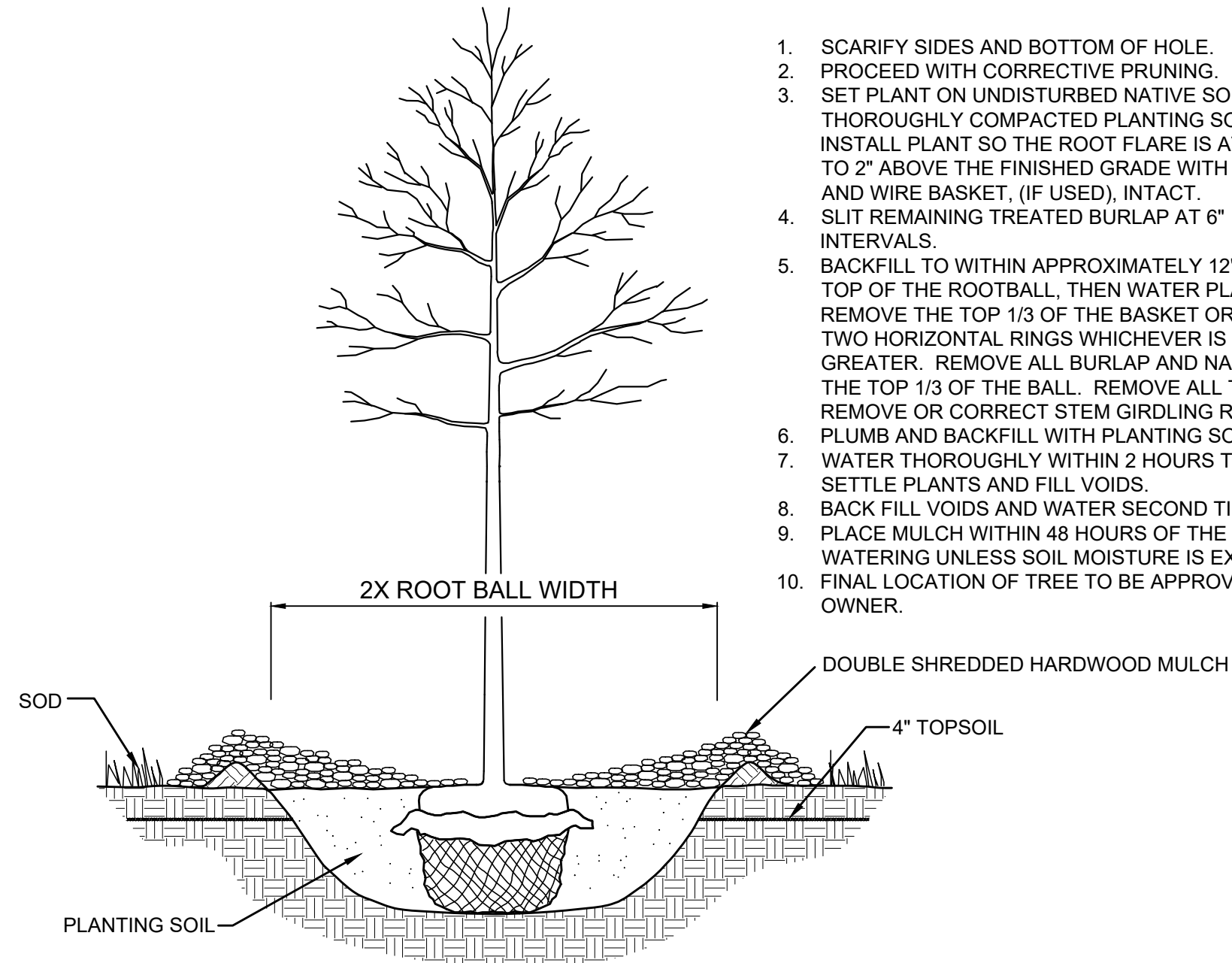
DESIGNED BY: Mitchell G. Cookas, P.L.A.
 MICHHELL G. COOKAS, P.L.A.
 MN LIC. NO. 56522
 DATE: 1/15/2021

LANDSCAPE PLAN

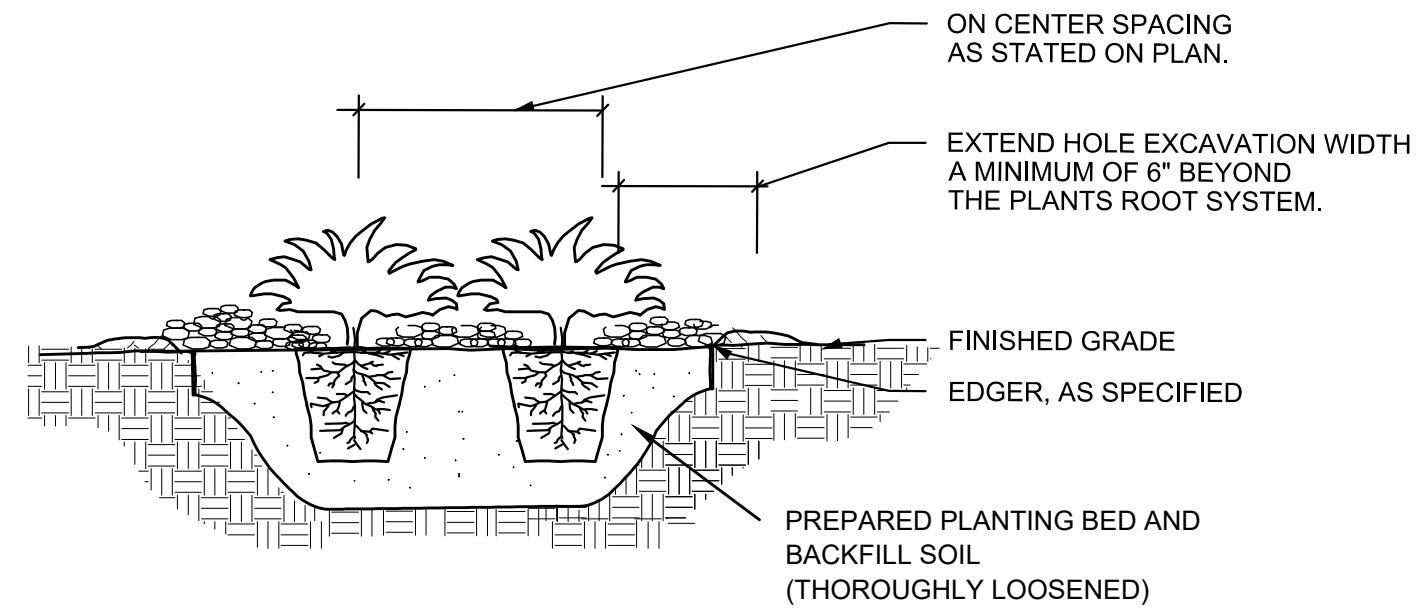
NO.	REVISIONS	DATE	BY
1	CITY SITE PLAN REVIEW	1/15/2021	BPC

NOTES:

1. SCARIFY SIDES AND BOTTOM OF HOLE.
2. PROCEED WITH CORRECTIVE PRUNING.
3. SET PLANT ON UNDISTURBED NATIVE SOIL OR THOROUGHLY COMPACTED PLANTING SOIL. INSTALL PLANT SO THE ROOT FLARE IS AT OR UP TO 2" ABOVE THE FINISHED GRADE WITH BURLAP AND WIRE BASKET, (IF USED), INTACT.
4. SLIT REMAINING TREATED BURLAP AT 6" INTERVALS.
5. BACKFILL TO WITHIN APPROXIMATELY 12" OF THE TOP OF THE ROOTBALL, THEN WATER PLANT. REMOVE THE TOP 1/3 OF THE BASKET OR THE TOP TWO HORIZONTAL RINGS WHICHEVER IS GREATER. REMOVE ALL BURLAP AND NAILS FROM THE TOP 1/3 OF THE BALL. REMOVE ALL TWINE. REMOVE OR CORRECT STEM GIRDLING ROOTS.
6. PLUMB AND BACKFILL WITH PLANTING SOIL.
7. WATER THOROUGHLY WITHIN 2 HOURS TO SETTLE PLANTS AND FILL VOIDS.
8. BACK FILL VOIDS AND WATER SECOND TIME.
9. PLACE MULCH WITHIN 48 HOURS OF THE SECOND WATERING UNLESS SOIL MOISTURE IS EXCESSIVE.
10. FINAL LOCATION OF TREE TO BE APPROVED BY OWNER.



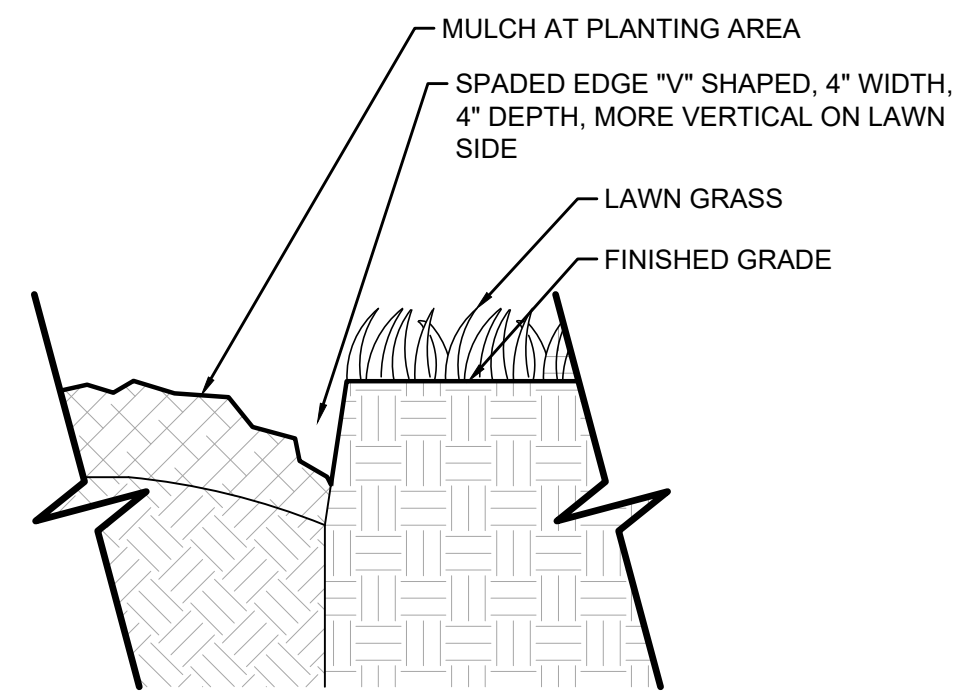
1 TREE PLANTING DETAIL
SCALE: N.T.S. L101



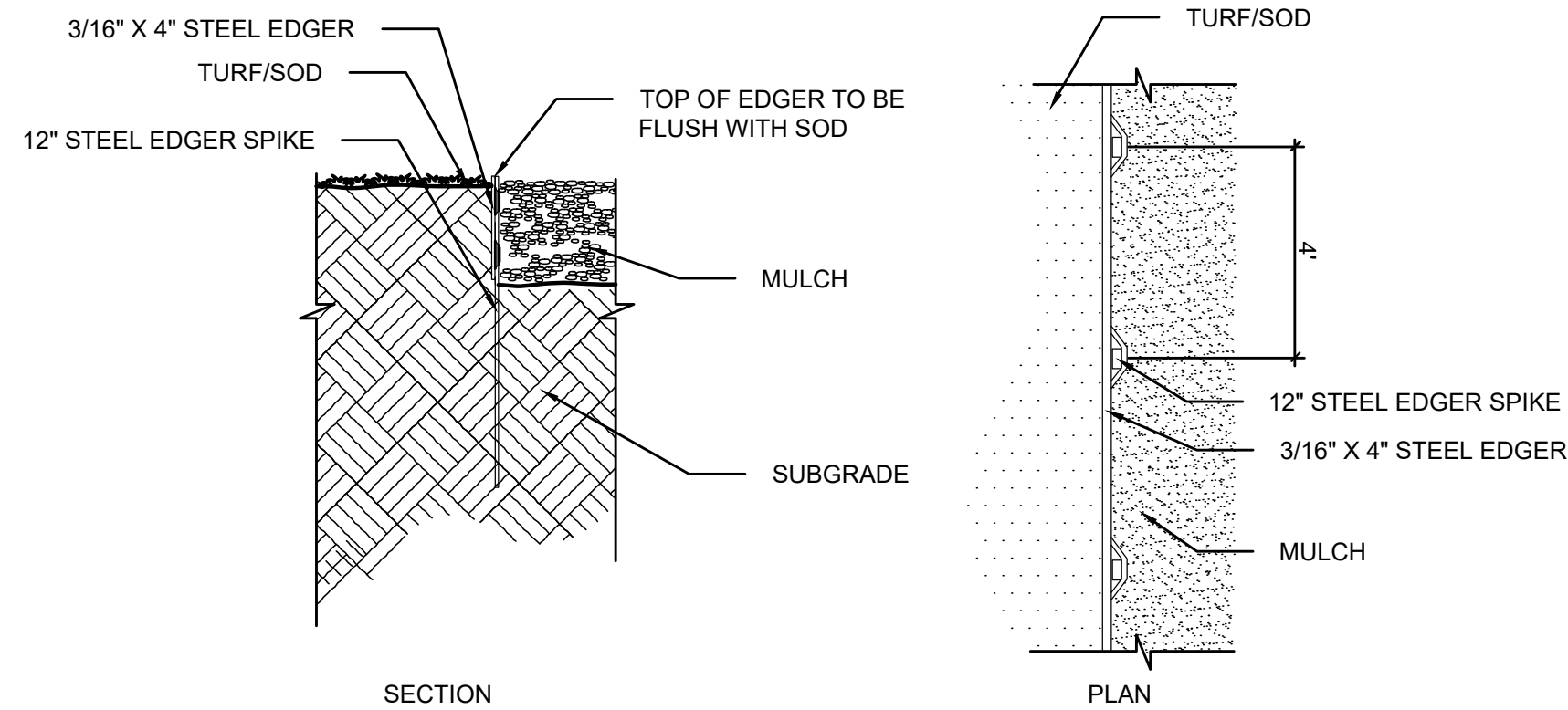
NOTES:

1. SCARIFY SIDES AND BOTTOM OF HOLE.
2. PROCEED WITH CORRECTIVE PRUNING OF TOP AND ROOT.
3. REMOVE CONTAINER AND SCORE OUTSIDE OF SOIL MASS TO REDIRECT AND PREVENT CIRCLING FIBROUS ROOTS. REMOVE OR CORRECT STEM GIRDLING ROOTS.
4. PLUMB AND BACKFILL WITH PLANTING SOIL.
5. WATER THOROUGHLY WITHIN 2 HOURS TO SETTLE PLANTS AND FILL VOIDS.
6. BACK FILL VOIDS AND WATER SECOND TIME.
7. PLACE MULCH WITHIN 48 HOURS OF THE SECOND WATERING UNLESS SOIL MOISTURE IS EXCESSIVE.
8. MIX IN 3-4" OF ORGANIC COMPOST.

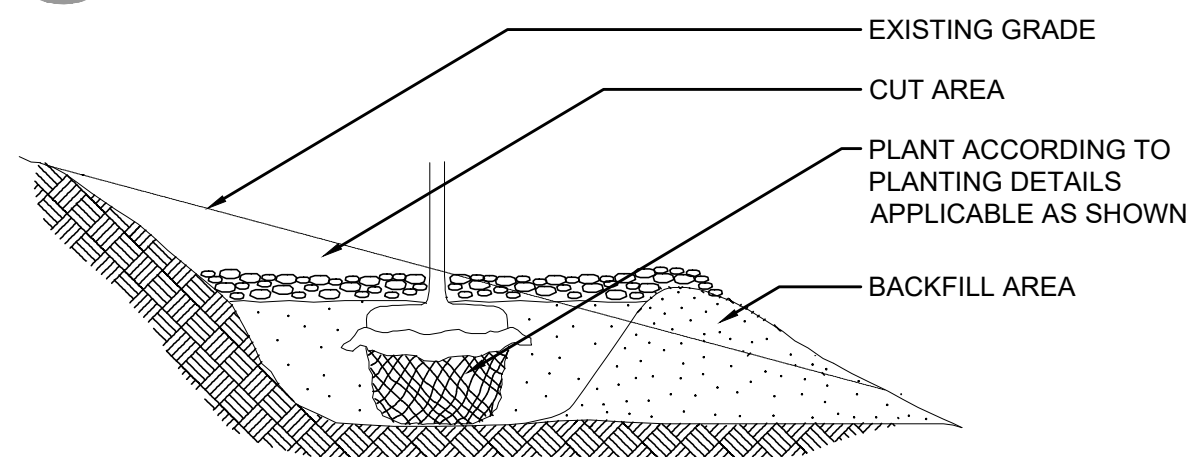
2 SHRUB / PERENNIAL PLANTING DETAIL
SCALE: N.T.S. L101



3 SPADED EDGE DETAIL
SCALE: 1-1/2\"/>



4 STEEL EDGER DETAIL
SCALE: N.T.S. L101



NOTE:

1. EXTENDED EXCAVATION AND BACKFILL SOIL TO A POINT DOWNSLOPE EQUAL TO OR LOWER IN ELEVATION THAN THE BOTTOM OF THE HOLE DIRECTLY BENEATH THE PLANT TO INSURE ADEQUATE DRAINAGE IN HEAVY SOILS. GRANULAR SOIL MUST BE ADDED AS BACKFILL IN AREAS OF POOR DRAINAGE.

5 STEEP SLOPE PLANTING
SCALE: N.T.S. L101

LANDSCAPE NOTES

1. CONTRACTOR SHALL CONTACT COMMON GROUND ALLIANCE AT 811 OR CALL811.COM TO VERIFY LOCATIONS OF ALL UNDERGROUND UTILITIES PRIOR TO INSTALLATION OF ANY PLANTS OR LANDSCAPE MATERIAL.
2. ACTUAL LOCATION OF PLANT MATERIAL IS SUBJECT TO FIELD AND SITE CONDITIONS.
3. NO PLANTING WILL BE INSTALLED UNTIL ALL GRADING AND CONSTRUCTION HAS BEEN COMPLETED IN THE IMMEDIATE AREA.
4. ALL SUBSTITUTIONS MUST BE APPROVED BY THE LANDSCAPE ARCHITECT PRIOR TO SUBMISSION OF ANY BID AND/OR QUOTE BY THE LANDSCAPE CONTRACTOR.
5. CONTRACTOR SHALL PROVIDE TWO YEAR GUARANTEE OF ALL PLANT MATERIALS. THE GUARANTEE BEGINS ON THE DATE OF THE LANDSCAPE ARCHITECT'S OR OWNERS WRITTEN ACCEPTANCE OF THE INITIAL PLANTING. REPLACEMENT PLANT MATERIAL SHALL HAVE A ONE YEAR GUARANTEE COMMENCING UPON PLANTING.
6. ALL PLANTS TO BE SPECIMEN GRADE, MINNESOTA-GROWN AND/OR HARDY. SPECIMEN GRADE SHALL ADHERE TO, BUT IS NOT LIMITED BY, THE FOLLOWING STANDARDS: ALL PLANTS SHALL BE FREE FROM DISEASE, PESTS, WOUNDS, SCARS, ETC. ALL PLANTS SHALL BE FREE FROM NOTICEABLE GAPS, HOLES, OR DEFORMITIES. ALL PLANTS SHALL BE FREE FROM BROKEN OR DEAD BRANCHES. ALL PLANTS SHALL HAVE HEAVY, HEALTHY BRANCHING AND LEAFING. CONIFEROUS TREES SHALL HAVE AN ESTABLISHED MAIN LEADER AND A HEIGHT TO WIDTH RATIO OF NO LESS THAN 5:3.
7. PLANTS TO MEET AMERICAN STANDARD FOR NURSERY STOCK (ANSI Z60.1-2014 OR MOST CURRENT VERSION) REQUIREMENTS FOR SIZE AND TYPE SPECIFIED.
8. PLANTS TO BE INSTALLED AS PER MMLA & ANSI STANDARD PLANTING PRACTICES.
9. PLANTS SHALL BE IMMEDIATELY PLANTED UPON ARRIVAL AT SITE. PROPERLY HEEL-IN MATERIALS IF NECESSARY; TEMPORARY ONLY.
10. PRIOR TO PLANTING, FIELD VERIFY THAT THE ROOT COLLAR/ROOT FLAIR IS LOCATED AT THE TOP OF THE BALLED & BURLAP TREE. IF THIS IS NOT THE CASE, SOIL SHALL BE REMOVED DOWN TO THE ROOT COLLAR/ROOT FLAIR. WHEN THE BALLED & BURLAP TREE IS PLANTED, THE ROOT COLLAR/ROOT FLAIR SHALL BE EVEN OR SLIGHTLY ABOVE FINISHED GRADE.
11. OPEN TOP OF BURLAP ON BB MATERIALS; REMOVE POT ON POTTED PLANTS; SPLIT AND BREAK APART PEAT POTS.
12. PRUNE PLANTS AS NECESSARY - PER STANDARD NURSERY PRACTICE AND TO CORRECT POOR BRANCHING OF EXISTING AND PROPOSED TREES.
13. WRAP ALL SMOOTH-BARKED TREES - FASTEN TOP AND BOTTOM. REMOVE BY APRIL 1ST.
14. STAKING OF TREES AS REQUIRED; REPOSITION, PLUMB AND STAKE IF NOT PLUMB AFTER ONE YEAR.
15. THE NEED FOR SOIL AMENDMENTS SHALL BE DETERMINED UPON SITE SOIL CONDITIONS PRIOR TO PLANTING. LANDSCAPE CONTRACTOR SHALL NOTIFY LANDSCAPE ARCHITECT FOR THE NEED OF ANY SOIL AMENDMENTS.
16. BACKFILL PLANTING SOIL AND TOPSOIL TO ADHERE TO MND/DOT STANDARD SPECIFICATION 3877 (SELECT TOPSOIL BORROW) AND TO BE EXISTING TOP SOIL FROM SITE OR IMPORTED TOPSOIL FREE OF ROOTS, ROCKS LARGER THAN ONE INCH, SUBSOIL DEBRIS, AND LARGE WEEDS UNLESS SPECIFIED OTHERWISE. AT GRADE: MINIMUM 4" DEPTH TOPSOIL FOR ALL LAWN GRASS AREAS, MINIMUM 12" DEPTH PLANTING SOIL FOR SHRUBS, PERENNIALS AND ANNUALS, MINIMUM 24" DEPTH PLANTING SOILS FOR TREES, ON STRUCTURE: MINIMUM 24" DEPTH PLANTING SOIL FOR SHRUBS AND PERENNIALS, MINIMUM 36" DEPTH PLANTING SOILS FOR TREES.
17. MULCH TO BE AT ALL TREE, SHRUB, PERENNIAL, AND MAINTENANCE AREAS. TREE AND SHRUB PLANTING BEDS SHALL HAVE 4" DEPTH OF DOUBLE SHREDDED HARDWOOD MULCH. DOUBLE SHREDDED HARDWOOD DYED BROWN MULCH TO BE USED AROUND ALL PLANTS WITHIN TURF AREAS. MULCH TO BE FREE OF DELETERIOUS MATERIAL.
18. EDGING TO BE COMMERCIAL GRADE STEEL EDGING. EDGING SHALL BE PLACED WITH SMOOTH CURVES AND STAKED WITH METAL SPIKES NO GREATER THAN 4 FOOT ON CENTER WITH BASE OF TOP BEAD AT GRADE. FOR MOWERS TO CUT ABOVE WITHOUT DAMAGE. UTILIZE CURBS AND SIDEWALKS FOR EDGING WHERE POSSIBLE. INDIVIDUAL TREE, SHRUB, OR RAIN-GARDEN BEDS TO BE SPADED EDGE, UNLESS NOTED OTHERWISE. EDGING TO MATCH EXISTING CONDITIONS (WHERE APPLICABLE).
19. ALL DISTURBED AREAS TO BE SODDED, UNLESS OTHERWISE NOTED. SOD TO BE STANDARD MINNESOTA GROWN AND HARDY BLUEGRASS MIX, FREE OF LAWN WEEDS. ALL TOPSOIL AREAS TO BE RAKED TO REMOVE DEBRIS AND ENSURE DRAINAGE. SLOPES OF 3:1 OR GREATER SHALL BE STAKED. IF NOT INDICATED ON LANDSCAPE PLAN, SEE EROSION CONTROL PLAN.
20. PROVIDE IRRIGATION TO ALL PLANTED, PET AREAS AND SOD AREAS ON SITE. IRRIGATION SYSTEM TO BE DESIGN/BUILD BY LANDSCAPE CONTRACTOR. LANDSCAPE CONTRACTOR TO PROVIDE IRRIGATION PLAN AND SHOP DRAWINGS TO LANDSCAPE ARCHITECT FOR APPROVAL PRIOR TO INSTALLATION OF IRRIGATION SYSTEM. CONTRACTOR TO PROVIDE OPERATION MANUALS, AS-BUILT PLANS, AND NORMAL PROGRAMMING. SYSTEM SHALL BE WINTERIZED AND HAVE SPRING STARTUP DURING FIRST YEAR OF OPERATION. SYSTEM SHALL HAVE TWO-YEAR WARRANTY ON ALL PARTS AND LABOR. ALL INFORMATION ABOUT INSTALLATION AND SCHEDULING CAN BE OBTAINED FROM THE GENERAL CONTRACTOR.
21. CONTRACTOR SHALL PROVIDE NECESSARY WATERING OF PLANT MATERIALS UNTIL THE PLANT IS FULLY ESTABLISHED OR IRRIGATION SYSTEM IS OPERATIONAL.
22. REPAIR, REPLACE, OR PROVIDE SOD AS REQUIRED FOR ANY ROADWAY BOULEVARD AREAS ADJACENT TO THE SITE DISTURBED DURING CONSTRUCTION.
23. REPAIR ALL DAMAGE TO PROPERTY FROM PLANTING OPERATIONS AT NO COST TO OWNER.
24. APPLY PRE-EMERGENT HERBICIDE PREEN (OR APPROVED EQUAL) IN ANNUAL, PERENNIAL, AND SHRUB BEDS FOLLOWED BY SHREDDED HARDWOOD MULCH.
25. CONTRACTOR TO CONFIRM WATER AND POWER SUPPLY LOCATIONS AND DETAILS WITH GENERAL CONTRACTOR FOR IRRIGATION SYSTEM.
26. CONTRACTOR SHALL MAINTAIN ALL PLANTS AND TURF PER THE MANUFACTURERS' INSTRUCTIONS THROUGHOUT THE GUARANTEE PERIOD.
27. OWNER OR CONTRACTOR TO BROADCAST PRE-EMERGENT HERBICIDE (PREEN OR APPROVED EQUAL) TWO TIMES PER YEAR ACROSS ALL PLANTING BEDS AND SHALL INSTALL NEW MULCH AS NEEDED FOR PERPETUITY.
28. SEE ELECTRICAL PLANS FOR SITE LIGHTING.
29. COORDINATE WAYFINDING SIGNAGE WITH ARCHITECT AND OWNER.
30. SEE ARCH. AND MEP PLANS FOR AMENITY DECK DETAILS.
31. OWNER TO CONFIRM ROCK/MULCH TYPE FOR ALL PLANTERS AND PLANTING BEDS.
32. OWNER/ARCHITECT TO CONFIRM ARTIFICIAL TURF MATERIALS AND DETAILS.
33. OWNER/ARCHITECT TO CONFIRM FENCING MATERIALS.
34. OWNER/ARCHITECT TO CONFIRM SITE FURNISHINGS, SUCH AS BIKE RACKS, BENCHES, AND TRASH/RECYCLING RECEPTACLES.

PRELIMINARY - NOT FOR CONSTRUCTION

5959 SHADY OAK RD APARTMENTS
 PREPARED FOR
 DORAN COMPANIES
 MINNETONKA MN

LANDSCAPE DETAILS

THIS PROJECT HAS THIS PLAN SPECIFICATION OR REPORTS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.

Michelle L. Colan
 MITCHELL L. COLAN, P.E.
 DATE: 1/15/2021 LIC. NO. 5652

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 767 EUSTIS STREET, SUITE 100, ST. PAUL, MN 55114
 PHONE: 651-454-1197
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NO.	REVISIONS	DATE	BY
1	CITY SITE PLAN REVIEW	1/15/2021	BPC

SHEET NUMBER
L101

Maxwell would prefer a smaller structure, but the land use is appropriate, traffic and parking conditions are adequate and the conditional use permit standards would be met, so she supports the proposal. She encourages the owners to work with the neighbors to address as many concerns as possible.

Powers thought the building would be too big and increase traffic on Lake Street Extension. He did not support approval of the proposal. He would rather have two facilities that would cause more tree removal because it would create a more intimate setting for the residents living there. He would prefer two, six-person care facilities rather than one large one. He wants the facility well integrated into the neighborhood. He loves what the owners of the facility are doing, but he felt it would create an unsafe condition for the neighbors.

Chair Sewall would prefer a slightly-less intense building and reduced number of residents to help minimize the disruption for the neighbors and improve safety. Additional vegetative plantings and the driveway location could be worked through by staff. He is not going to support the proposal.

Hanson moved, second by Luke, to recommend that the city council approve a conditional use permit for a licensed, residential-care facility at 12701 Lake Street Extension.

Waterman, Hanson, Henry, Luke, and Maxwell voted yes. Powers and Sewall voted no. Motion carried.

9. Other Business

A. Concept plan for Doran at 5959 Shady Oak Road.

Chair Sewall introduced the proposal and called for the staff report.

Cauley reported. Staff is requesting commissioners provide feedback on the key topics identified by staff and any other land-use related items that the commission deems appropriate. This discussion is intended to assist the applicant in the preparation of more detailed development plans.

Thomas apologized that resident Derek Deidrick of 4213 Miriam Road was not called upon to speak at the public hearing regarding the previous item for a residential-care facility at 12701 Lake Street Extension. Mr. Deidrick's written comments were provided in the staff report and will be included in information the city council reviews.

Tony Kuechle, representing the applicant, stated that:

- The comprehensive staff report and letter from the neighbors adequately addresses both the development and concerns from the neighborhood.

- The proposal would have 375 units. Ten percent of the units would be affordable with 80 percent area median income (AMI).
- The concept plan shows 15,000 square feet of amenity space.
- The concept plan's priorities were to preserve the ponding and forest between Shady Oak and the building and keep the existing tree buffer on the north side between the proposed building and the townhomes.
- In response to neighbors' concerns, the amenity deck on the south side was removed to shield views and reduce noise and the trail was rerouted away from Shady Oak Road to the south and would still connect on the north side of the property line and continue to the SWLRT station.
- Neighbors requested a privacy fence and landscaping which could be done.
- Exterior lights would not be allowed on balconies. Eliminating balconies on the north side is being considered.
- He has been unable to find a grocer interested in the site.
- He would appreciate feedback as it relates to the site plan.

Henry stated that he would like more information on trails crossing Shady Oak Road.

In response to Henry's questions, Mr. Kuechle stated that there would be no shading of the adjacent neighbors. The tree line would shade the townhomes more than the building would.

Mr. Kuechle explained that prior to Covid, the apartment vacancy rate was at 3.2 percent which means 9,000 new units could be added before the market reaches equilibrium with no new growth. Two thirds of the jobs in the metro area are on the west side of the twin cities.

Henry asked why the entrance was moved to the east side. Mr. Kuechle explained the site's traffic pattern and accesses to at-grade parking and a lower-level parking garage. The green area would be used for recreational activities. There would be a separate area for dogs.

Chair Sewall invited anyone from the public to provide comments.

Maria Cisneros, president of the ISLA Affiliated Building Company, 5959 Shady Oak Road, which currently owns the property stated that:

- She supports the proposal.
- There is a lot of interest in the site.
- The existing building is an old industrial building. The school is not able to make the improvements to the site that it needs to continue.
- The owner chose Doran to be the buyer because Doran would be a good developer and has been very thoughtful, responsible, and honest to work

with. Doran has already been working with neighbors on the concept plan and have a firm reputation for delivering their proposed projects.

- She appreciates the city's support.
- She supports approval of Doran's proposal.

No one else was waiting to speak.

Luke noted that the Opus area has a lot of new apartment units being proposed. She loves the affordable units. She would like to see the units dispersed throughout the city. She likes Doran. The building is not as impressive as some of Doran's other buildings. She would like to see more detail.

Powers felt it would be an appropriate land use. He was disappointed in the uninspired building rendering. He wants Opus to be more of a part of Minnetonka. He would appreciate more details. He wished Doran good luck with the proposal.

Hanson agreed with Powers and Luke. He would like more detail on the buildings. He liked that there would be units with three bedrooms. That is not very common. The affordability housing component could be a little more. The land use would fit. He encouraged staff to consider other uses for the Opus area to complement the apartments.

Waterman concurred with commissioners. It would be an appropriate land use. The EDAC and city council will review the affordable component of the proposal. He would like a small retail or coffee shop in the area. He requested more detail be added to the buildings before the city council reviews the concept plan. He appreciated the applicant working with the neighbors and addressing their concerns. He liked that the existing woods and tree line would be saved.

Henry suggested privately-owned condominiums be considered to add some diversity in the housing supply. Something like a coffee shop could go a long way. He noted that the competition has raised the bar for apartments in Opus.

Maxwell likes that the building would be set on the east side of the lot so it would not increase the amount of impervious surface already on the site and the proposal would preserve the pond and existing trees.

Chair Sewall asked staff how close the Opus area is to becoming saturated with apartment units. Gordon provided a couple reports that show expected projections. Another report will be reviewed in January.

Chair Sewall liked bringing the number of stories down from six to three or four on the north side of the building. He would rather have greenery used for screening than a fence. The land use would be appropriate. A restaurant or small grocery store and green space between Opus and Shady Oak Road would benefit the area. He was worried 20

years from now that large pockets of intense, dense buildings of the same type would not age well.

10. Adjournment

Luke moved, second by Henry, to adjourn the meeting at 12 a.m. Motion carried unanimously.

By: Lois T. Mason
Lois T. Mason
Planning Secretary

While she appreciated the proposed affordable housing, she was uncomfortable with the fact a carrot was being dangled out in front of the city. She hoped that staff can work with the developer in order to bring this project to fruition.

Schaeppi thanked the applicant for the time and energy that was put into the project plans. He stated he was excited about the changes that were coming to the Opus area. He indicated this project looks very dialed in. He explained he supported the proposed building height but encouraged the developer to consider a green roof.

Calvert noted she was not averse to building height. She indicated she would rather see this building go up than out, especially if this means accomplishing some of the city's goals.

Wiersum commented the developer's renderings were outstanding, particularly to the south. He indicated these renderings were more exciting than what was previously proposed for this site. He stated his only concern was the affordability aspect of the project. He anticipated hard decisions would have to be made in the future and he hoped that the proposed amenities and sustainability measures would remain in the project. He suggested the amenities be prioritized and that tradeoffs be considered. He encouraged the developer to be creative and innovative when approaching the sustainability measures. He recommended the north side of this building be reconsidered in order to add interest. He stated what was happening in Opus was exciting.

Mr. Krych thanked the council for their feedback.

Discussed concept plan with the applicant. No formal action required.

D. Concept plan for Doran Development at Shady Oak Road at 5959 Shady Oak Road

City Planner Loren Gordon and Community Development Director Wischnack gave the staff report.

Due to a technical difficulty, Mayor Wiersum was kicked out of the meeting. City Manager Geralyn Barone reported she had messaged the mayor and explained he would need to sign back into the meeting.

Tony Kuechle, Doran Development, provided the council with a presentation on the proposed development. He stated he really liked this site for housing. He noted it had great walkability and mobility options, while also being close to the LRT line. He reported the site was previously considered for a commercial use, in particular a grocery store. He explained he has had a number of conversations with grocer vendors and this site had access issues. He stated these access issues were also a concern when trying to bring in another retail

type use. He described how the proposed building was oriented and noted a lower density was being pursued along with high sustainability goals. He reported the development would have 10% of the units being affordable at 80% AMI. He explained this would be done without seeking assistance from the city. He discussed on the neighborhood meeting that was held and indicated the neighbors had requested a privacy fence. He stated the townhomes on the east side had been eliminated. He commented on the housing market in Minnetonka and reported there was still a strong need for apartment units.

John Ferrier, President of Doran Architecture, discussed the details within the proposed development. He reported 375 units were being proposed and there would be a mix of market and affordable units that were alcove, one, two and three bedroom units. He stated the site would have 22 surface parking spaces and 556 internal parking spaces on two levels. He described the location of the two access points off Red Circle Drive. The bold architectural elements were described in further detail, along with the proposed amenities.

City Manager Geralyn Barone stated the council would have to make a motion to extend the city council meeting beyond 12:00 a.m. Wiersum requested the council make a motion to extend the meeting to 12:30 a.m.

Schack moved, Calvert seconded a motion to extend the city council meeting to 12:30 a.m. All voted "yes." Motion carried.

Calvert stated she was happy to hear the developer was willing to meet the city's affordable housing policy. She appreciated the amenities, public art and sustainability features within this development. She explained she would like to see more architectural interest given the size and scale of this building. While she understood the developer was trying to break up the mass of the building, she reported she has mixed feelings about the color palette.

Schack commented she was very pleased with the developer's responsiveness to the neighbors' concerns. She explained she wasn't completely sold on the building exterior, but she appreciated the overall design. She stated she also appreciated the green roof, solar garden and all of the proposed amenities.

Kirk asked what the angled and dashed lines were depicting within the shadow study. Mr. Kuechle reported this was showing the shadows that would be cast by the building and trees.

Kirk stated the city wants their buildings to be higher, but in building higher shadows will impact adjacent properties, which was a concern for him. He explained he appreciated the change in architectural colors, but recommended more contrast be considered, versus the proposed monotone. He commented he was disappointed that a retail hub could not be created in this area because he saw vitality and value in having little bars or restaurants in this area.

Schaeppi thanked the developer for his thorough presentation. He appreciated how the building massing was split up on the north side. He recommended the long horizontal edge of the building be broken up.

Calvert stated she supported the comments made by Councilmember Kirk. She agreed that more amenities, such as bars and restaurants should be considered within Opus, especially close to Shady Oak Road.

Wiersum commented he understood Doran built high quality products. He explained a very large building was being proposed, which would require a great deal of creativity. He discussed the building renderings and stated they appeared to belong in Florida or southern California. He did not believe the proposed renderings belonged in Minnetonka. He encouraged the developer to reconsider the building renderings with more color and dimension in order to break up the building. He discussed the walkability within Opus and stated he too wanted to see services located within the development.

Mr. Kuechle thanked the council for their feedback.

Discussed the concept plan with the applicant. No formal action required.

E. Resolution electing to continue participating in the Metropolitan Council Livable Community Act

Community Development Director Wischnack gave the staff report.

Calvert stated she appreciated the detailed staff report.

Calvert moved, Kirk seconded a motion to adopt Resolution 2020-096. All voted "yes." Motion carried.

15. Appointments and Reappointments: None

16. Adjournment

Calvert moved, Schack seconded a motion to adjourn the meeting at 12:19 a.m. All voted "yes." Motion carried.

planning commission to ask more questions regarding the number of towers the city would have with 5G.

Calvert concurred with Wiersum and his thoughts on local control. She stated it may be helpful for staff to provide further information from the class action lawsuits on local control.

Kirk moved, Calvert seconded a motion to introduce the ordinance and refer it to the planning commission. All voted "yes." (Carter was excused from this vote.) Motion carried.

Wiersum recessed the city council meeting.

Wiersum reconvened the city council meeting.

13. Public Hearings:

A. On-sale wine and on-sale 3.2 percent malt beverage liquor licenses for Ametrine Inc., dba People's Organic Coffee and Wine Cafe, 12934 Minnetonka Boulevard

City Manager Geralyn Barone gave the staff report.

Wiersum continued the public hearing from November 23, 2020.

With there being no comments, Wiersum closed the public hearing.

Schack moved, Calvert seconded a motion to continue the public hearing from November 23, 2020 and grant the licenses. All voted "yes." (Carter was excused from this vote.) Motion carried.

14. Other Business:

A. Revised concept plan for Doran at 5959 Shady Oak Road

City Planner Loren Gordon gave the staff report.

Tony Kuechle, Doran representative, thanked staff for the thorough report. He explained he had taken comments from the council and staff into consideration with the new concept plan. He reported he would like feedback on the new plan prior to make a formal request to the city. He noted all affordable housing goals from the city were being met within the revised concept plan. He commented further on the project details and requested feedback from the council.

Kirk stated the building elevation was now five feet lower on the north side. Mr. Kuechle reported this was the case noting the entire building would come in under 70 feet.

Kirk indicated he did not support the addition of retail with the proposed housing.

Schack commented she appreciated the shift back from the townhomes. She suggested the aesthetics be made more interesting and that the retail portion be eliminated from the project. She reported mixed use was hard space to fill.

Calvert thanked the applicant for creating a great project that would be 20% over the energy efficiency code requirements. She also liked the shifting of the entrance to the east and believed this made the project more interesting. She explained she would like this project to get closer to the city's affordable housing goals. She recommended that a fence not be built. She encouraged the developer to bring forward a more inspired architectural plan. Mr. Kuechle stated he was working with an architect on new designs. He reported his proposal would meet the city's affordable housing goals.

Schaeppi thanked Mr. Kuechle for making improvements to his site plan. He stated he would love to see this project move forward.

Coakley commented she appreciated brown tones on buildings more than blue. She encouraged the developer to lean back towards this type of design.

Wiersum asked if the pool deck would be elevated from grade or would this courtyard be at street level. Mr. Kuechle reported this would be elevated at grade with parking below.

Wiersum commented the real change was to the layout of the building. He understood the applicant would come back to the city with updated elevations. Mr. Kuechle stated this was the case.

Wiersum believed the new site plan was dramatically improved in terms of the neighbors to the north. He was pleased to see the efforts of the applicant to update the plans. He commented he could support retail with this development if this would be supported by the market. He wished the developer all the best with this new apartment building.

Calvert stated she was excited to see the applicant was proposing a green roof for this project. She agreed that the market should dictate if retail was included in this development, noting she would rather not see empty space.

Continued discussion of the concept plan with the applicant. No formal action required.

OPUS MAILING AREAS



Ordinance No. 2021-

An ordinance approving a rezoning from Office Business District (B-1) to Planned Unit Development and a master development plan for the properties located at 5959 Red Circle Drive.

The City Of Minnetonka Ordains:

Section 1. Background

1.01 The subject properties are located at 5959 Red Circle Drive.

1.02 The properties are legally described as:

Parcel A:

That part of the North 1/2 of the Southwest 1/4 of Section 36, Township 117, Range 22, described as follows: Beginning at a point in the South line of said North 1/2 of the Southwest 1/4 distant 658.67 feet East of the Southwest corner thereof; thence at a right angle North, 404.1 feet; thence Westerly deflecting to the left 89°, a distance of 166.6 feet; thence Westerly 94.89 feet along a tangential curve to the left having a radius of 494.27 feet and a central angle of 11°; thence Westerly, tangent to the last described curve, 95.04 feet to the New Easterly line of County Road No. 61; thence Southerly 386.09 feet along the New Easterly line of said road to its intersection with the South line of said North 1/2 of the Southwest 1/4; thence East along the South line of said North 1/2 of the Southwest 1/4, 306.66 feet to the point of beginning, according to the United States Government Survey thereof and situate in Hennepin County, Minnesota.
Abstract Property

Parcel B:

Outlot I, The Townhouses of Shady Oak, according to the recorded plat thereof, and situate in Hennepin County, Minnesota.
(Torrens property-Certificate of Title No. 1394610)

1.03 Doran Development is requesting rezoning from Office Business District (B-1) to Planned Unit Development and a master development plan for the subject properties. The amendment would allow for the construction of a six-story, 356-

unit apartment building, with 10 percent of the units meeting affordability guidelines.

Section 2. Findings

2.01 The proposal is consistent with the OPUS area's mixed-use designation in the comprehensive guide plan.

2.02 The proposal is consistent with City Council Policy 13.2, Affordable Housing Policy.

2.03 The proposal would not negatively impact the public health, safety, or general welfare.

Section 3.

3.01 Approval is subject to the following conditions:

1. The site must be developed and maintained in substantial conformance with the following plans unless modified by the conditions below:
 - Site Plan, dated Jan. 15, 2021
 - Exterior Elevations, dated Jan. 15, 2021
 - Grading and Drainage Plan, dated Jan. 15, 2021
 - Utility Plan, dated Jan 15, 2021
 - Tree Inventory and Preservation Plan, dated Jan. 15, 2021
 - Landscaping Plan, dated Jan. 15, 2021
2. The development must further comply with all conditions outlined in City Council Resolution No. 2021-XXX, Site and Building Plan approval, adopted by the Minnetonka City Council on _____, 2021.

Section 4. A violation of this ordinance is subject to the penalties and provisions of Chapter XIII of the city code.

Section 5. This ordinance is effective immediately.

Adopted by the City Council of the City of Minnetonka, Minnesota, on _____, 2021.

Brad Wiersum, Mayor

Attest:

Becky Koosman, City Clerk

Action on this ordinance:

Date of introduction: Feb. 22, 2021

Date of adoption:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Ordinance adopted.

Date of publication:

I certify that the foregoing is a correct copy of an ordinance adopted by the city council of the City of Minnetonka, Minnesota at a regular meeting held on _____, 2021.

Becky Koosman, City Clerk

**City Council Agenda Item #13A
Meeting of Feb. 22, 2021**

Brief Description On-sale intoxicating liquor license for Duke's on 7, LLC., located at 15600 State Highway 7

Recommendation Open the public hearing and continue to March 22, 2021

Background

The city has received an application from Duke's on 7, LLC., dba Duke's on 7, for an on-sale intoxicating and on-sale Sunday liquor license, for use at the restaurant at 15600 State Highway 7. The restaurant was the former Christos location. Duke's on 7, LLC purchased the restaurant in Feb. 2021.

Business Ownership

Duke's on 7, LLC., is owned by Luke Derheim and David Benowitz. Along with Steven Benowitz, they are equal partners in their parent company, Craft & Crew Hospitality. Craft & Crew Hospitality owns five other restaurants throughout the Twin Cities, including Stanley's NE Bar Room, Pub 819 in Hopkins, and Howe Daily Kitchen & Bar in S. Minneapolis. Duke's also owns and manages The Block in St. Louis Park, which recently opened in Oct. 2019. Luke will serve as the General Manager of the restaurant. He meets the metro-area residency requirements of the city's liquor ordinance.

Business Operation Description

Duke's on 7 is preparing to open in May 2021. The restaurant will be open daily; Mon. – Thurs. 11:00 a.m. – 11:00 p.m. Fri. 11:00 a.m. – 1:00 a.m. Sat. 9:00 a.m. – 1:00 a.m. Sun. 9:00 a.m. – 11:00 p.m. Duke's on 7 will be a neighborhood, family-friendly restaurant and bar. As with all Craft & Crew restaurants, the business is dog friendly. The restaurant will seat 169 guests inside and 170 on their planned expansion of the existing outdoor patio (the applicant is applying for a conditional use permit).

Approximately 75% of the menu will consist of current favorites from other locations. The remaining 25% will feature unique items to Duke's, identified through neighborhood focus groups designed to ensure the menu reflects the location. Duke's will also offer craft cocktails, wine, and 32 draft beers.

All employees of Duke's on 7 are trained in handling and serving alcohol, utilizing materials from ACS (Alcohol Compliance Services). Employees are trained to card patrons with a valid ID who appear to be under the age of 40. They project their food to alcohol ratio based on their other locations to be 70/30% split leaning towards food.

Application Information

Application information and license fees have been submitted. The police department's investigative report is pending and will be forwarded to the council prior to the continued public hearing on March 22, 2021.

Recommendation

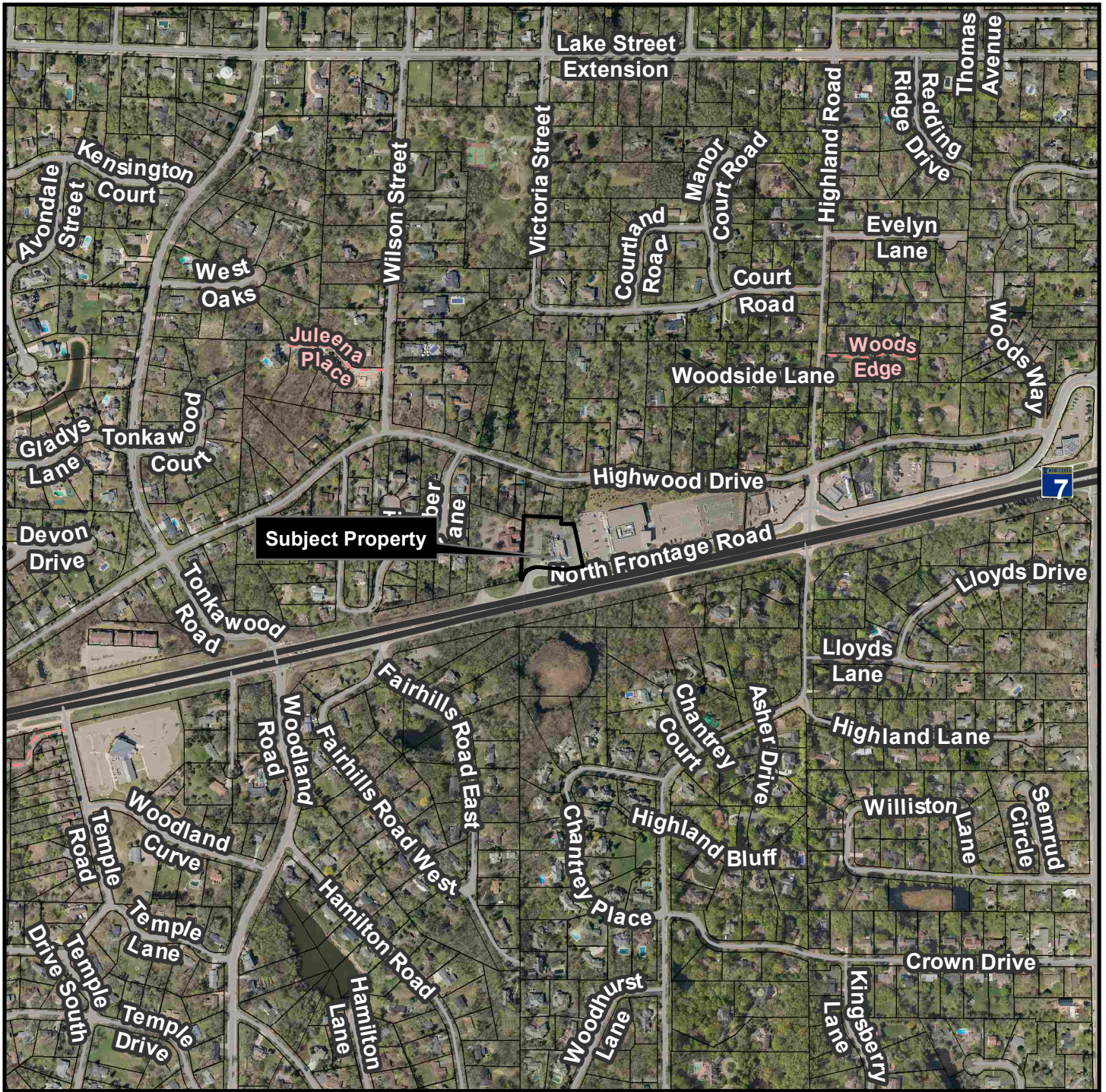
Staff recommends the city council open the public hearing and continue it to March 22, 2021.

Submitted through:

Geralyn Barone, City Manager
Julie Wischnack, AICP, Community Development Director

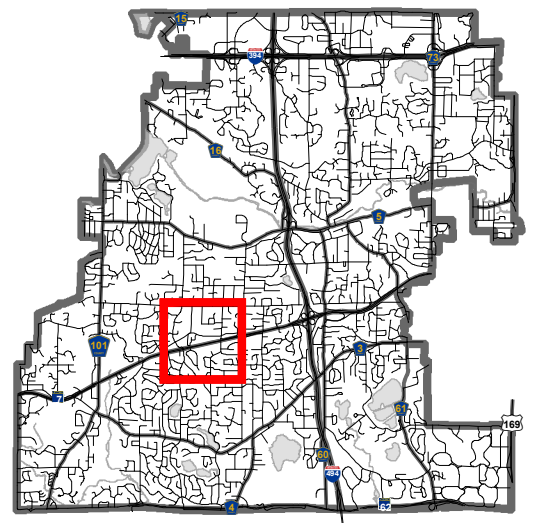
Originated by:

Fiona Golden, Community Development Coordinator



Location Map

Project: Duke's on 7, LLC
Address: 15600 Hwy 7



TO START

BRUSSELS SPROUTS

Grainbelt Nordeast bacon, bleu cheese crumbles, and
balsamic glaze

9

ELLSWORTH, WI CHEESE CURDS

Beer-battered and served with spicy jam

8

PRETZEL STICKS

Served with Bavarian mustard & jalapeño queso

8

BROASTED WINGS - BONE IN or BONELESS

Served with ranch or blue cheese. Tossed in Buffalo /
Cajun Dry Rub / Guava BBQ / Hot Chick / Sweet Thai

Chili

Half **9**

Full **15**

BBQ PORK SLIDERS

tender shredded pork, guava BBQ, and sweet chili
coleslaw on Turano slider buns served With our
homemade pickles

10

NACHOS

Crisp tortilla chips, covered with a melted cheese blend,
guacamole, sour cream, jalapenos, and pico Add chicken

/ 2 or Pork carnitas / 1

12

BUFFALO CAULIFLOWER

Deep fried fresh cauliflower, vegan buffalo sauce,
coconut flour batter, served with vegan dill ranch &
carrots

8

VEGAN NACHOS

Crisp tortilla chips covered with vegan cheese sauce,
guacamole, black beans, jalapenos, and pico Add Korean
BBQ beef / 3 or vegan chorizo /

12

FRENCH FRY BASKET

A Large Basket of French Fries

6

SWEET POTATO FRY BASKET

Large Basket of Sweet Potato Fries

6

TATER TOT BASKET

Large Basket of Tater Tots

6

ONION RINGS

Tower of house-made onion rings served with seasoned
sour cream

9

GREENS & SOUP

Crispy or Seared BUFFALO CHICKEN SALAD

Buffalo tossed chicken, romaine and mixed greens, celery, tomatoes, and red onions tossed with ranch and topped with blue cheese crumbles (GFO)

13

HONEY PECAN CHICKEN SALAD

Crispy fried chicken, honey pecan drizzle, "superfood greens", grapes, strawberries, apples, boiled eggs, tossed with green-goddess dressing

14

CAESAR SALAD

Traditional recipe with parmesan, garlic croutons, and homemade creamy Caesar dressing

Small **7**

Large **10**

PROTEIN ADD-ONS

Buffalo Cauliflower 3

Tofu 4

Chicken 4

Steak 6

Shrimp 6

HOUSE-MADE DRESSINGS

Ranch - Bleu Cheese - Balsamic Vin - Thousand Island
(V) - Dill Ranch (V) - Honey-lime - Green goddess

CUP of LOADED CHILI

6

BOWL of LOADED CHILI

8

CUP of SOUP OF THE DAY

4

BOWL of SOUP OF THE DAY

5.50

BOWLS

sub cauliflower rice /1 sub Miracle Noodle (15 calories,
no carbs) /3

TRADITIONAL AHI POKE

Sushi grade ahi tuna* marinated in a lemongrass soy-
ginger glaze, avocado, bell peppers, cucumber, red
cabbage, and edamame on coconut rice (GF)

14

VOLCANO STYLE: add jalapeños and Sriracha aioli 15

PHUKET

Creamy green curry with kale, carrots, bell peppers,
brussels sprouts, cilantro, basil, and peanuts served over
our coconut rice (GF, VO)

12

KOREAN BBQ YUM YUM BOWL

Marinated steak, kimchee, sunny side up egg egg,
coconut rice and yum yum sauce (GF)

15

BLOCK RAMEN

Ramen noodles, boiled egg, cilantro, edamame, Wild mushrooms, miso broth & daikon vegetable mix. Choice Of Chicken or pork

14

RED BEANS & RICE

Louisiana style red beans and rice, fried chicken, red-eye gravy and green onions

13

ADD PROTEINS

Buffalo Cauliflower **3**

Tofu / Chicken **4**

Steak / Shrimp **6**

Egg **1**

Vegan Korean bbq **4**

BROASTED CHICKEN

Served Original or Hot Chic Crispy, juicy and freshly cooked to order. Please allow up to 25 minutes, it's worth the wait!

2 PIECE CHICKEN

Served with sweet chili coleslaw and mashed potatoes & gravy

Leg & Wing **11**

Leg & Thigh **12**

Breast & Leg **13**

Breast & Thigh **14**

THE WHOLE DAMN BIRD

8 pieces of crispy deliciousness served with large sides
of sweet chili slaw, mashed potatoes & gravy, and honey
cornbread

26

1/2 BIRD

Sweet chili slaw, mashed potatoes & gravy, house
pickles

16

A LA CARTE

Mac & Cheese **5**

Mashed Potatoes & Gravy **3**

Sweet Chili Coleslaw **3**

Honey Cornbread **2**

SANDWICHES

Served with fries, chips, or sweet chili coleslaw.--

Upgrade:--Parmesan rosemary truffle fries, sweet potato
fries, soup/chili, tater tots, onion rings, mashed potatoes

& gravy, or side salad / 2 -- Buffalo cauliflower,

Northeast Brussels sprouts, broccoli, or mac & cheese / 3

-- Cheese curds / 6 -- Substitute a gluten-free bun / 1

BROASTED CHICKEN SANDWICH

Our juicy broasted chicken breast topped with sweet chili
slaw and house pickles. Served original or Hot Chic

12

BRISKET GRILLED CHEESE

Slow roasted brisket, sautéed onions, guava BBQ,
cheddar and provolone on sourdough

14

GRILLED MAC N CHEESE SANDWICH

Cheesy cavatappi pasta, fresh jalapeno & braised pork belly on a parmesan crusted sourdough

13

TURKEY CLUB

Turkey, pepper bacon, smashed avocado, lettuce, tomato and garlic aioli on 9-Grain bread.

13

WALLEYE SANDWICH

Northeast battered walleye, sweet chili slaw, house-made pickles, and tartar sauce on a whole wheat hoagie

15

BUFFALO CAULIFLOWER PO BOY

Breaded and served with vegan dill ranch, green onions on a vegan hoagie roll (V)

12

PHEOBE (Vegan)

Fresh beets, Chao Vegan Cheese, sauerkraut, and vegan 1000 on toasted vegan marble rye

12

BURGERS - SERVED "PINK*" OR "NO PINK"

Served with fries, chips, or sweet chili coleslaw.--

Upgrade:--Parmesan rosemary truffle fries, sweet potato

fries, soup/chili, tater tots, onion rings, mashed potatoes
& gravy, or side salad / 2 -- Buffalo cauliflower,
Northeast Brussels sprouts, broccoli, or mac & cheese / 3
-- Cheese curds / 6 -- Substitute a gluten-free bun / 1

ROYALE WITH CHEESE

Two patties, American cheese, red onion, house pickles,
and mayo TRIPLE ROYALE / 14.5 (GFO)

13

SMOKED BACON BURGER

Smoked bacon and brisket blend. bacon-tomato jam
provolone cheese and topped with more crispy bacon

15

HANGOVER

Bacon, cheddar cheese, and a fried egg (GFO)

14

TURKEY BURGER

House seasoned ground turkey, smashed avocado,
lettuce, tomatoes, and chipotle aioli (GFO)

13

BEYOND BURGER

Beyond patty, shredded lettuce, avocado, Chao Vegan
Cheese, tomato, red onion, vegan 1000 island on a vegan
bun (GFO, V)

16

CHEESEBURGER

Beef Patty, Choice of Cheese, Bun.

13

MAINS

BRISKET MAC & CHEESE

Smoked bacon, fresh jalapenos, crispy onions and BBQ
sauce

13

VEGAN MAC & CHEESE

Choice of tofu or vegan Chorizo, roasted bell peppers,
basil, and vegan cheese sauce

14

BEEF STROGANOFF

Braised short rib, wild mushrooms, caramelized onions,
pappardelle pasta, creamy stroganoff sauce and sour
cream

15

SHORT RIBS

Braised USDA choice beef, roasted tomatoes, wild
mushrooms, and pan au jus. Served With mashed
potatoes and fried spinach

16

WALLEYE DINNER

Northeast battered walleye served With fries, sweet chili
slaw, and house-made tartar sauce

16

LUNCH + DINNER MENU

BRUNCH & BISCUITS BREAKFAST BAR

BLOCK-TAILS

WINE

DOG MENU

SHAKES & DESSERTS

BEER MENU

CRAFT & CREW SIGNATURE COCKTAILS

CRAFT & CREW OLD FASHIONED

Our signature Old Fashioned made with Makers Mark, brown sugar syrup and Bittercube Cherry Bark Vanilla Bitters with an orange peel and Filthy Cherry. Stirred and served on the rock.

13

MAKER'S MANHATTAN

Maker's 46, Maker's Mark, Yzaguirre Vermouth, Bittercube Cherry Bark Vanilla Bitters and Filthy Cherry. Stirred and served on the rock

13

MAPLE OLD FASHIONED

Our very own Maker's Mark Private Select, house-made maple simple syrup garnished with lemon, a Filthy cherry & house candied bacon

15

PRIVATE PROPERTY

Maker's Mark Craft & Crew Private Select, honey simple syrup, fresh lemon juice, allspice dram, and charred rosemary.

Shaken and served up

16

SLUSHIES

LAVENDAR LEMONADE

Vodka, Lavender, Housemade Lemonade

8

SLUSHIE OF THE MOMENT

Ask your server for details

8

BLOCKTAILS

GINNY FROM THE BLOCK

Prairie Gin, Luxardo, and Violette Liqueur mixed with fresh
lemon juice and the rocks that we got!

12

RYE ME A RIVER

Sazerac Rye, Tattersall absinthe, demerara, Scrappy New
Orleans bitters

12

I LOVE IT WHEN YOU CALL ME HOT TODDY

Panther Honey Whiskey, Scrappy black lemon bitters, honey
simple syrup, hot water and cinnamon

10

BLAME IT ON THE APEROL

A winter Aperol spritz made with Jim Beam, rosemary-infused
Aperol, champagne, and cranberry, served on the rocks.

11

MN BULLDOG

Prairie Vodka, Frieda coffee liqueur, coke and cream.

10

RASPBERRY BERET

Spiced Rum, Chambord mixed with a strawberry, fresh lime
juice, and cinnamon simple syrup.

12

BLURRED WINES

Brandy, red or white wine, simple syrup, fruit, and club soda

10

THE MARGARITA

Dobel Silver Tequila, Tattersall Orange Crema, house-made
sweet and sour, served on the rocks with black salt

12

HOT BLOCK MARGARITA

Jalapeno infused Dobel Silver Tequila, Tattersall, Orange
Crema, house-made sweet and sour, served on the rocks with
black salt

12

SMOKE SHOW MARGARITA

Fidencio Clasico Mezcal, Tattersall Orange Crema, house-made sweet & sour, served on the rocks with black salt

13

PURPLE PALOMA

Dobel Silver Tequila, Tattersall Grapefruit Crema, house-made sweet & sour, served on the rocks with black salt

12

ALL-INCLUSIVE RESORT

Red Bull Tropical Cocktail - Dobel Silver Tequilla, Orange Juice, Lime Juice, and Red Bull Tropical. Served with a Lime Wedge.

10



"Yappy Hour" 3p - 6p during regular Happy Hour. Fresh water is always complimentary!

ALL PUPS WILL RECEIVE A COMPLIMENTARY PEANUT BUTTER NILLA WOOFER!

TREATS

BY VON HANSON'S

FROZEN SMOKED BEEF MARROW BONE

\$4 Small | \$10 Large

CHEWY SMOKED PIG'S EAR \$5

Disclaimer: these treats have been known to turn otherwise sweet well behaved pups into "protective mode" pups. Please know your dog!!!

A SWEET TREAT

CRAFT & CREW'S HOMEMADE PUPCREAM \$4

Bananas + Peanut butter + Coconut Oil topped with fresh Whipped Cream and a Pup Cookie

BOXER BITES \$3

3 Housemade pup cookies baked with Sweet Potatoes, Peanut Butter, Oats, Blueberries and Love

ENTREES

NALA'S TURKEY MUTTLOAF \$7 (2 slices)

Homemade Turkey Meatloaf loaded with Veggies, Oats and Flax

WOOF WOOF BOWL \$7

Organic Brown Jasmine rice sauteed with Power Greens, topped with a Sunny Side Up Egg and drizzled with Coconut Woof Woof Sauce.

Add more protein Chicken | \$2 Beef | \$3

K-9 CHICKEN \$8

6 oz Grilled Chicken Breast served on a bed of Organic Jasmine Brown Rice, Veggies, and Sweet Potatoes

NE PUP BURGER \$8

1/3 Pound Burger served on a bed of Organic Jasmine Brown Rice, Veggies, and Sweet Potatoes

SALMON CAKES \$10 (2 cakes)



Puuuurfectly seared Salmon Cakes prepared with Salmon, Quinoa, Organic Jasmine Brown Rice, Flax, Spinach, Celery, Apples and Parsley

Feel free to order some to go if you have a sweet meow meow at home :)

** Most ordered dog dish by our human guests for their own consumption



A portion of each dog entree is donated to Pause 4 Paws.

Funds are distributed to rescues for their efforts to provide medical care, spay/neutering, reduction of animal euthanasia and to provide FUREVER homes for dogs and cats here in MN. For more information, please visit <http://www.pause4pawsmn.org/>

**WE NOW OFFER DELIVERY ON OUR FAMOUS DOG MENU!
VISIT BITESQUAD.COM FOR MORE DETAILS!**

In 2019, Craft & Crew added a 4% Health and Wellness surcharge to all checks which allows us to provide health care benefits to all employees. This is not a gratuity.



MINNEAPOLIS



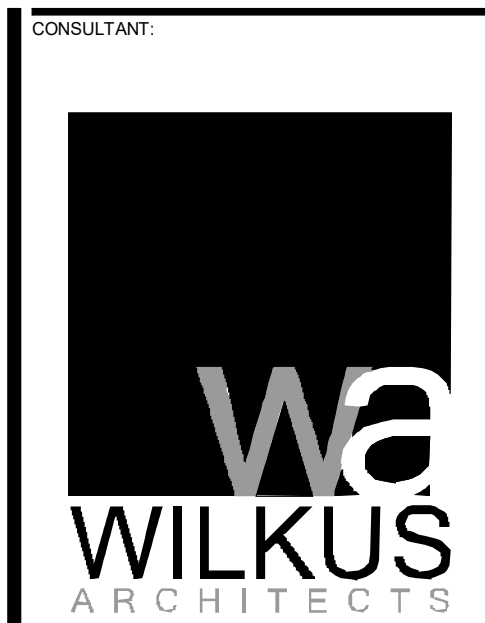
MINNEAPOLIS



HOPKINS



ST. LOUIS PARK



15 Ninth Avenue North, Hopkins, MN 55343
Phone: 952.541.8891 | www.wilkusarch.com

CLIENT:
CRAFT & CREW
HOSPITALITY
Luke Derheim
Craft & Crew Hospitality
15600 MN-7
Minnetonka, MN 55345

PROJECT INFORMATION:
**DUKE'S PKG 2 -
SEASONAL BAR
ADDITION**
15600 MN-7
Minnetonka, MN 55345

SEAL
**NOT FOR
CONSTRUCTION**

PROJECT NO.: 2020-0518
DRAWN BY: KMT
CHECKED BY: MMW

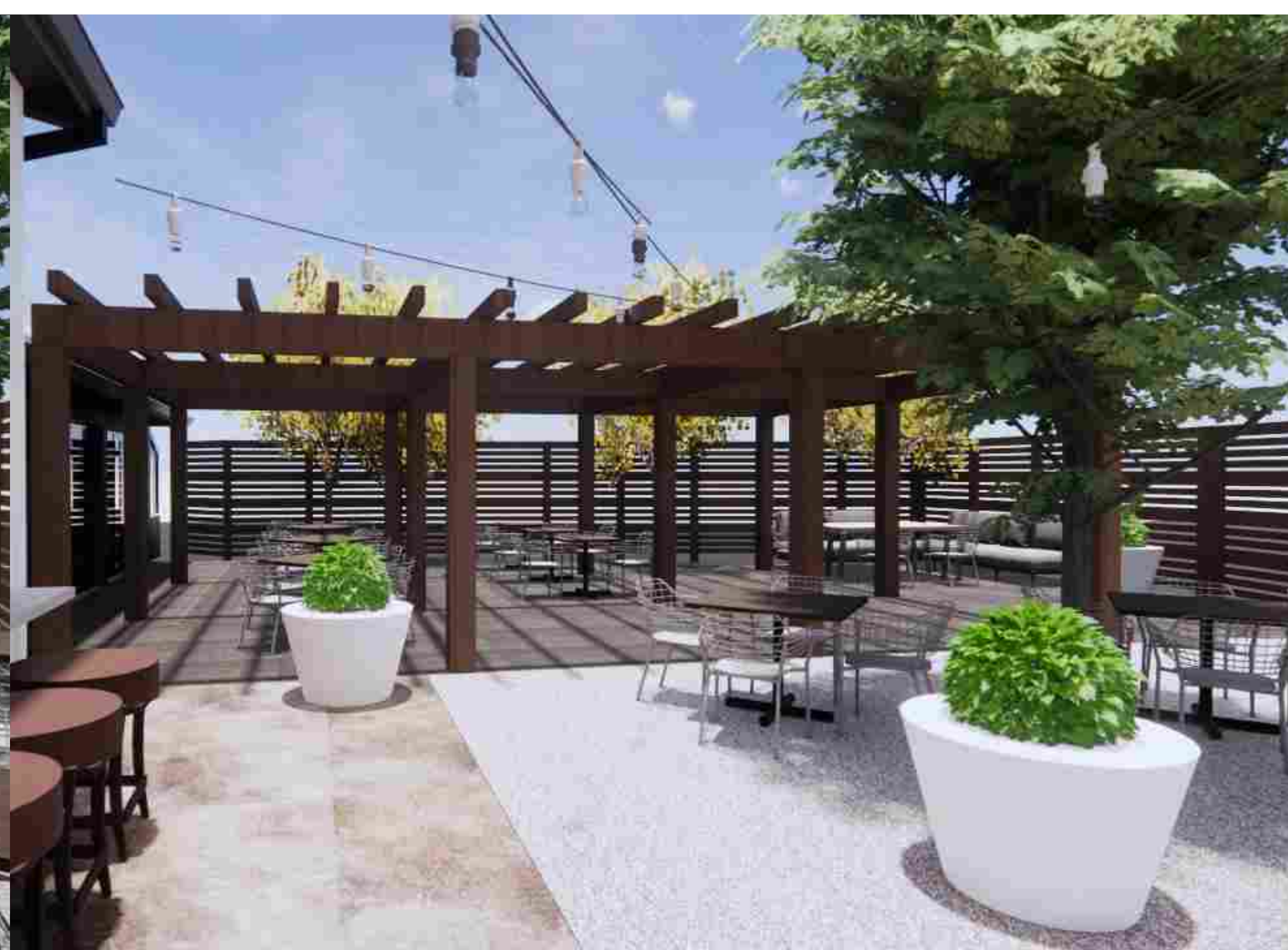
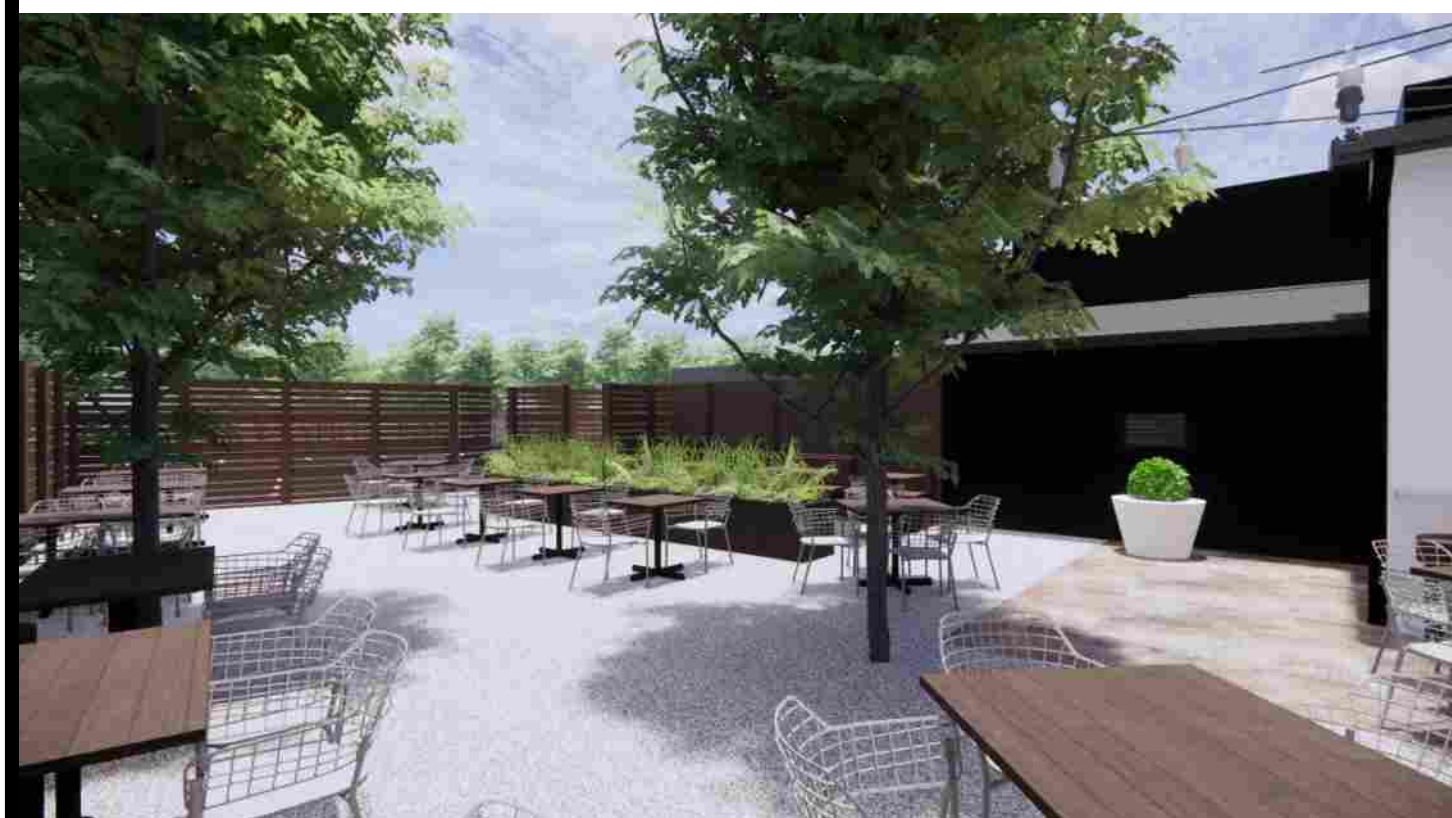
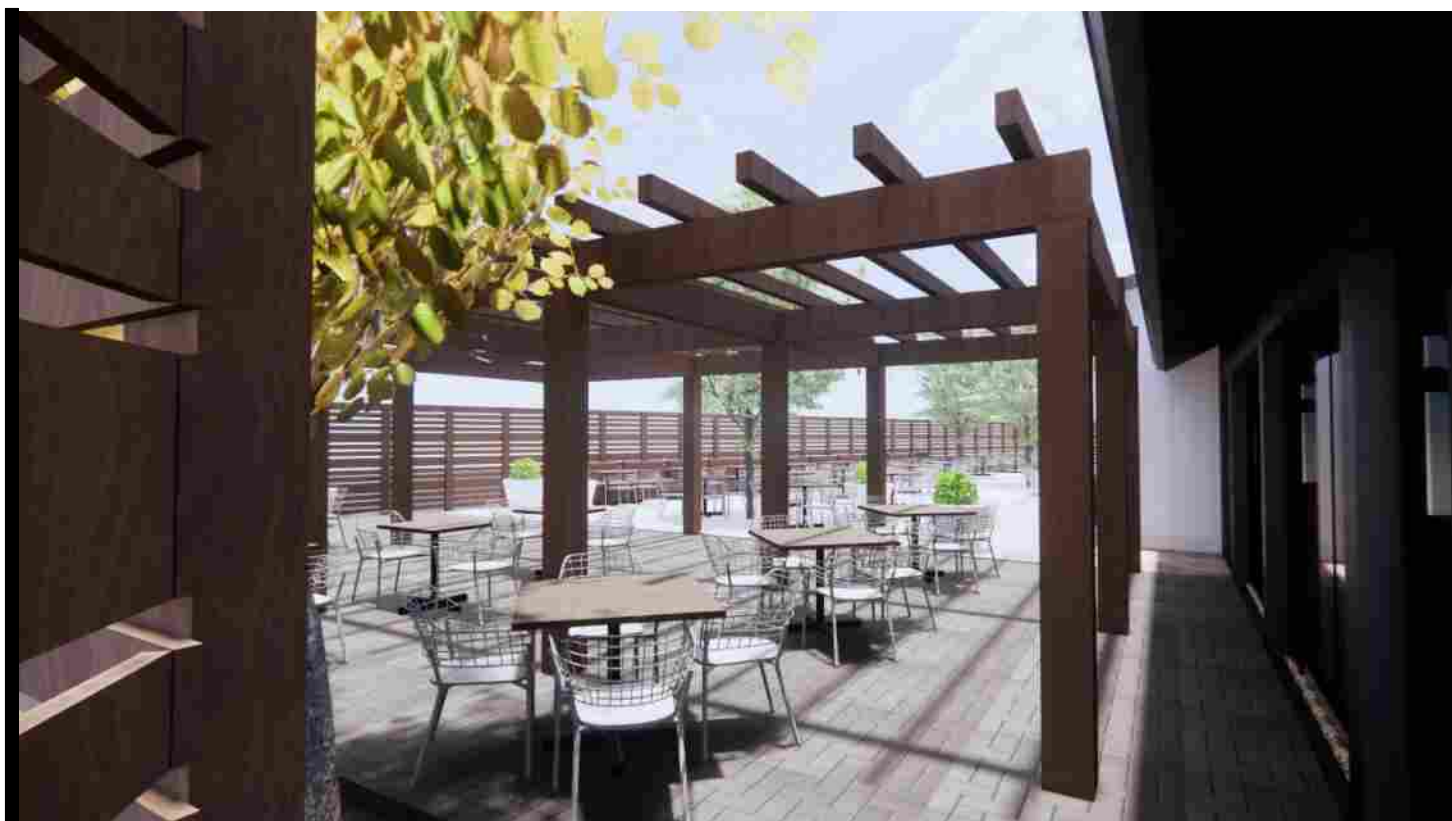
ISSUE: _____ DATE: _____

REVISION: _____ DATE: _____

PROJECT LOCATION:
MINNETONKA, MN

SHEET NUMBER / TITLE:
A-301
RENDERINGS

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15 Ninth Avenue North Hopkins, MN 55343
 Phone: 952.541.8891 www.wilkusarch.com

CLIENT:
CRAFT & CREW
 HOSPITALITY
 Luke Derheim
 Craft & Crew Hospitality
 15600 MN-7
 Minnetonka, MN 55345

PROJECT INFORMATION:

DUKE'S PKG 2 - SEASONAL BAR ADDITION
 15600 MN-7
 Minnetonka, MN 55345

SEAL:
NOT FOR CONSTRUCTION

PROJECT NO.: 2020-0518
 DRAWN BY: KMT
 CHECKED BY: MMW

ISSUE: _____ DATE: _____

REVISION: _____ DATE: _____

▲
 ▲
 ▲

PROJECT LOCATION:
 MINNETONKA, MN

SHEET NUMBER/TITLE:
A-302
 RENDERINGS - PATIO

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City Council Agenda Item #14A
Meeting of Feb. 22, 2021

Brief Description	Items related to a multi-family residential development by Dominion, at 11001 Bren Road East
Recommendation	Hold the public hearing and adopt the resolution

Background

On Aug. 27, 2018, the Minnetonka City Council and Economic Development Authority approved the zoning entitlements and financing items related to the Bren Road Station (senior housing) and Preserve at Shady Oak (workforce housing).

On Sept. 14, 2018, the city issued taxable, and tax-exempt revenue obligations for the benefit of Minnetonka Leased Housing Associates III, an entity of Dominion Apartments. Dominion used the proceeds of the obligations to provide financing for the acquisition, construction, and equipping of a 262-unit senior housing rental development located at 11001 Bren Road East in the city known as Bren Road Station, formerly known as “Legends of Minnetonka.” This action is related to only that portion of the development.

On Feb. 8, 2021, the city council adopted the resolution providing preliminary approval for the issuance of a revenue note for the benefit of Minnetonka Leased Housing Associates III, LLLP. The city must now hold the public hearing on this request at the Feb. 22, 2021, city council meeting.

Financing Request

The developer, Dominion, is seeking additional financing for costs related to the construction of the senior housing redevelopment and requests that the city issue tax-exempt revenue notes in the amount of \$300,000. The bonds will be housing conduit bonds and will not impact the city’s ability to issue bank-qualified bonds this year. Additionally, the borrower will pay the out-of-pocket expenses and an administrative fee to the city to facilitate this request.

Additional technical information regarding this request is included in the attached memo from the city’s EDA counsel, Julie Eddington, of Kennedy & Graven.

Staff Recommendation

Staff recommends that the city council hold the public hearing and adopt the resolution authorizing the issuance of multifamily housing revenue notes for the benefit of Minnetonka Leased Housing Associates III, LLLP; approving a housing program for a senior housing development; and authorizing the execution of documents in connection therewith; and authorize city officials to approve non-substantive changes to the related documents.

Submitted through:

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

Originated by:

Alisha Gray, EDFP, Economic Development and Housing Manager

Attachments:

- Memo from Julie Eddington
- Resolution
- Regulatory Agreement
- Funding Loan Agreement
- Project Loan Agreement

Supplemental Information:

The Dominium project page with previous meeting dates and staff reports can be found [here](#).



Offices in 470 U.S. Bank Plaza
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Minneapolis, MN 55402
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(612) 337-9310 fax
St. Cloud www.kennedy-graven.com
Affirmative Action, Equal Opportunity Employer

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

February 16, 2021

Julie Wischnack, Community Development Director
Alisha Gray, Economic Development and Housing Manager
Darin Nelson, Finance Director
City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, MN 55345-1502

Re: Resolution providing approval for the issuance of revenue notes for the benefit of Minnesota Leased Housing Associates III, LLLP

Dear Julie, Alisha, and Darin

As you know, on September 14, 2018, the City of Minnetonka (the "City") issued the following revenue obligations: (i) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1 (the "Series 2018A-1 Governmental Note"), in the maximum principal amount of \$16,205,000; (ii) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2 (the "Series 2018A-2 Governmental Note," and together with the Series 2018A-1 Governmental Note, the "Series 2018 Tax-Exempt Governmental Notes"), in the maximum principal amount of \$16,205,000; (iii) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1 (the "Series 2018B-1 Governmental Note"), in the maximum principal amount of \$13,189,904; and (iv) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-2 (the "Series 2018B-2 Governmental Note," and together with the Series 2018B-1 Governmental Note, the "Series 2018 Taxable Governmental Notes"), in the maximum principal amount of \$13,189,904. The City made mortgage loans to Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the "Borrower"), using proceeds received from separate loans made to the City by U.S. Bank National Association and BMO Harris Bank N.A. (together, the "Initial Funding Lender"), which were evidenced by the Series 2018 Tax-Exempt Governmental Notes and the Series 2018 Taxable Governmental Notes (together, the "Series 2018 Governmental Notes"). The Borrower used the proceeds of the mortgage loans to finance a portion of the costs of the acquisition, construction, and equipping of a 262-unit senior housing rental development located at 11001 Bren Road East in the City known Bren Road Station, formerly known as Legends of Minnetonka (the "Project").

The Borrower has determined that it will need additional tax-exempt funds to finish constructing the Project and has requested that the City issue one or more additional series of tax-exempt revenue notes (the "Series 2021 Governmental Notes") in an estimated aggregate principal amount not to exceed

\$300,000. The Borrower must finance at least 50% of the basis of the Project with tax-exempt obligations in order to be eligible for tax credits for the Project. The Series 2021 Governmental Notes will be issued under Minnesota Statutes, Chapter 462C, as amended (the "Act"). Enclosed is a resolution to be considered on February 22, 2021, following the public hearing, which provides approval for the issuance of the Series 2021 Governmental Notes, approves the housing program in accordance with the Act, and authorizes the execution of the financing documents.

The City will make a mortgage loan to the Borrower using proceeds received from separate loans made by the Initial Funding Lender to the City, which will be evidenced by the Series 2021 Governmental Notes. The Series 2021 Governmental Notes will be secured on a parity basis with the Series 2018 Governmental Notes solely by the revenues derived from the loan agreement to be executed by the City and the Borrower and from other security provided by the Borrower. If the Series 2021 Governmental Notes are issued, the maximum principal amount of the Series 2018 Taxable Governmental Notes will be decreased by a corresponding principal amount of \$300,000. The financing documents originally executed in connection with the issuance of the Series 2018 Governmental Notes will be amended and restated to include the issuance of the Series 2021 Governmental Notes.

The Series 2021 Governmental Notes will not constitute a general or moral obligation of the City and will not be secured by or payable from any property or assets of the City (other than the interests of the City in the loan agreements) and will not be secured by any taxing power of the City. The Series 2021 Governmental Notes will not be subject to any debt limitation imposed on the City, and the issuance of the Series 2021 Governmental Notes will not have any adverse impact on the credit rating of the City, even in the event that the Borrower encounters financial difficulties with respect to the Project. In addition, the issuance of the Series 2021 Governmental Notes will not affect the ability of the City to issue and designate any general obligation bonds as "qualified tax-exempt obligations" (or "bank-qualified bonds") in calendar year 2021.

The Borrower will agree to pay the out-of-pocket expenses of the City with respect to this transaction as well as the City's administrative fee.

I will attend the City Council meeting on February 22, 2021 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 A. Eddington

Resolution No. 2021-_____

Resolution authorizing the issuance of multifamily housing revenue notes for the benefit of Minnetonka Leased Housing Associates III, LLLP; approving a housing program for a senior housing development; and authorizing the execution of documents in connection therewith

Be it resolved by the City Council (the "Council") of the City of Minnetonka, Minnesota (the "City") as follows:

Section 1. Recitals.

- 1.01. The City is a home rule city duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota.
- 1.02. Pursuant to Minnesota Statutes, Chapter 462C, as amended (the "Act"), the City is authorized to carry out the public purposes described in the Act by providing for the issuance of revenue obligations to provide funds to finance multifamily housing developments located within the City, including senior housing developments.
- 1.03. On September 14, 2018, the City issued the following revenue obligations: (i) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1 (the "Series 2018A-1 Governmental Note"), in the maximum aggregate principal amount of \$16,205,000; (ii) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2 (the "Series 2018A-2 Governmental Note," and together with the Series 2018A-1 Governmental Note, the "Series 2018 Tax-Exempt Governmental Notes"), in the maximum aggregate principal amount of \$16,205,000; (iii) Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1 (the "Series 2018B-1 Governmental Note"), in the maximum aggregate principal amount of \$13,189,904; and (iv) Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-2 (the "Series 2018B-2 Governmental Note," and together with the Series 2018B-1 Governmental Note, the "Series 2018 Taxable Governmental Notes"), in the maximum aggregate principal amount of \$13,189,904.
- 1.04. The City made mortgage loans (the "Series 2018 Project Loan") to Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the "Borrower"), pursuant to the terms of a Project Loan Agreement, dated as of September 1, 2018 (the "Original Project Loan Agreement"), between the City, U.S. Bank National Association, a national banking association, as fiscal agent (the "Fiscal Agent"), and the Borrower, with the proceeds received from separate loans made to the City (the "Series 2018 Funding Loan") pursuant to a Funding Loan Agreement, dated as of September 1, 2018 (the "Original Funding Loan Agreement"), between U.S. Bank National Association, a national banking association, as administrative agent (the "Administrative Agent") for U.S. Bank

National Association, a national banking association (“U.S. Bank”), and BMO Harris Bank N.A., a national banking association (“BMO Harris Bank,” and together with U.S. Bank, the “Funding Lender”), the City, and the Fiscal Agent. The Series 2018 Funding Loan is evidenced by the Series 2018 Tax-Exempt Governmental Notes and the Series 2018 Taxable Governmental Notes (together, the “Series 2018 Governmental Notes”). The Borrower’s repayment obligations with respect to the Series 2018 Project Loan are evidenced by the Borrower’s Multifamily Note (Series A), dated September 14, 2018, and Multifamily Note (Series B), dated September 14, 2018, delivered to the City and endorsed to the Fiscal Agent. The maximum principal amount of the Series 2018 Funding Loan under the Original Funding Loan Agreement is \$58,789,808.

- 1.05. The City loaned the proceeds of the Series 2018 Project Loan to the Borrower to finance a portion of the costs of the acquisition, construction, and equipping of a 262-unit senior housing rental development located at 11001 Bren Road East in the City known as Bren Road Station, formerly known as Legends of Minnetonka (the “Project”).
- 1.06. A portion of the Project was also financed with the proceeds of the City’s Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C (the “Series 2018C Bonds”), issued on September 14, 2018 in the original aggregate principal amount of \$4,090,000. The Series 2018C Bonds were issued pursuant to the Act and a Subordinate Indenture of Trust, dated as of September 1, 2018, between the City and U.S. Bank National Association, a national banking association, in its capacity as trustee (the “Bond Trustee”).
- 1.07. The City, the Borrower, the Fiscal Agent, and the Bond Trustee entered into a Regulatory Agreement, dated September 14, 2018 (the “Original Regulatory Agreement”), to ensure compliance with certain rental and occupancy restrictions imposed by the Act and Section 142(d) of the Internal Revenue Code of 1986, as amended (the “Code”), and to ensure compliance with certain restrictions imposed by the City.
- 1.08. The Borrower has notified the City that the Borrower requires additional tax-exempt funds to finish constructing the Project and has proposed that the City issue one or more series of tax-exempt revenue notes (the “Series 2021 Governmental Notes”) in the aggregate principal amount estimated not to exceed \$300,000 and loan the proceeds thereof to the Borrower. The issuance of the Series 2021 Governmental Notes will require a corresponding reduction in the maximum principal amount that may be drawn on the Series 2018 Taxable Governmental Notes.
- 1.09. On February 8, 2021, the Council adopted a resolution authorizing the submission of an application to the office of Minnesota Management and Budget for an allocation of bonding authority with respect to the Series 2021 Governmental Notes to finance the remaining costs of the Project in accordance with the requirements of Minnesota Statutes, Chapter 474A, as amended, and providing preliminary approval for the sale and issuance of the Series 2021 Governmental Notes for the Project. The City has submitted an application for

allocation of bonding authority in the amount of \$300,000 to Minnesota Management and Budget.

- 1.10. In accordance with the Act, the City has prepared a housing program (the "Housing Program") to authorize the issuance by the City of the Series 2021 Governmental Notes to finance the remaining costs of the Project. The Housing Program was prepared and submitted to Metropolitan Council for its review and comment.
 - 1.11. A notice of public hearing (the "Public Notice") was published in the *Sun Sailor*, the official newspaper of and a newspaper of general circulation in the City, with respect to the required public hearing under Section 147(f) of the Code and Section 462C.04, subdivision 2 of the Act.
 - 1.12. The Public Notice was published at least fifteen (15) days before the regularly scheduled meeting of the Council, and on the date hereof, the Council conducted a public hearing on the Housing Program and the issuance of the Series 2021 Governmental Notes at which a reasonable opportunity was provided for interested individuals to express their views, both orally and in writing.
- Section 2. Housing Program.
- 2.01. The Housing Program, in the form substantially on file with the City, is hereby approved.
- Section 3. The Series 2021 Governmental Notes.
- 3.01. The Borrower has requested that the City issue, sell, and deliver the Series 2021 Governmental Notes in one or more series of tax-exempt obligations in the estimated principal amount not to exceed \$300,000.
 - 3.02. The Series 2021 Governmental Notes will be issued pursuant to an Amended and Restated Funding Loan Agreement (the "Funding Loan Agreement"), between the City, the Fiscal Agent, and the Administrative Agent for the Funding Lender, which amends and restates the Original Funding Loan Agreement. The proceeds derived from the sale of the Series 2021 Governmental Notes (the "Series 2021 Funding Loans") will be loaned by the City to the Borrower (the "Series 2021 Project Loans") pursuant to the terms of an Amended and Restated Project Loan Agreement (the "Project Loan Agreement") between the City, the Fiscal Agent, and the Borrower, which amends and restates the Original Project Loan Agreement.
 - 3.03. Upon the issuance of the Series 2021 Governmental Notes, the maximum principal amount of the Series 2018 Funding Loan corresponding to the Series 2018 Taxable Governmental Notes shall be decreased by \$300,000 to ensure that the maximum principal amount of the Series 2018 Funding Loan and the Series 2021 Funding Loan under the Funding Loan Agreement does not exceed the previously authorized principal amount of \$58,789,808. Consequently, the maximum principal amount that may be drawn on the Series 2018B-1 Governmental Note is \$13,039,904, and the maximum principal

amount that may be drawn on the Series 2018B-2 Governmental Note is \$13,039,904.

- 3.04. The principal of and interest on the Series 2021 Project Loans will be paid from loan repayments to be made by the Borrower under the terms of the Project Loan Agreement, and as security for the repayment of principal of and interest on the Series 2021 Project Loans, the Borrower will execute and deliver to the City one or more mortgage agreements (the "Mortgages") to be assigned by the City to the Fiscal Agent pursuant to one or more assignments of mortgage (the "Mortgage Assignments"). Additionally, the Borrower will issue one or more project notes (the "Series 2021 Project Notes") to the City to be endorsed by the City to the Fiscal Agent as security for the Series 2021 Funding Loans.
- 3.05. The Series 2021 Governmental Notes will be issued pursuant to this resolution and the Act, and the Series 2021 Governmental Notes and the interest thereon (i) shall be payable solely from the revenues pledged therefor under the Funding Loan Agreement and the Project Loan Agreement and additional sources of revenues provided by or on behalf of the Borrower; (ii) shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation; (iii) shall not constitute nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers; (iv) shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the City other than the City's interest in the Funding Loan Agreement and the Project Loan Agreement; and (v) shall not constitute a general or moral obligation of the City.
- 3.06. The loan repayments to be made by the Borrower under the Funding Loan Agreement and the Project Loan Agreement with respect to the Series 2021 Funding Loans will be fixed so as to produce revenue sufficient to pay the principal of, premium, if any, and interest on the Series 2021 Governmental Notes when due. Pursuant to the Funding Loan Agreement, the City will assign its rights to the basic payments and certain other rights under the Project Loan Agreement, the Series 2021 Project Loans, the Series 2021 Project Notes, the Mortgages, and certain moneys and securities held by the Fiscal Agent in the funds and accounts established under the Funding Loan Agreement to the Fiscal Agent.
- 3.07. The City acknowledges, finds, determines, and declares that the issuance of the Series 2021 Governmental Notes is authorized by the Act and is consistent with the purposes of the Act and that the issuance of the Series 2021 Governmental Notes, and the other actions of the City under the Funding Loan Agreement and the Project Loan Agreement and this resolution constitute a public purpose and are in the interests of the City. In authorizing the issuance of the Series 2021 Governmental Notes for the financing of the remaining costs of the Project and the related costs, the City's purpose is and the effect thereof will be to promote the public welfare of the City and its residents by providing multifamily housing developments for seniors of low or moderate income and otherwise furthering the purposes and policies of the Act.
- 3.08. For the purposes set forth above, there is hereby authorized the issuance, sale, and delivery of the Series 2021 Governmental Notes in the estimated aggregate principal amount not to exceed \$300,000.

The Series 2021 Governmental Notes shall bear interest at the rates, shall be designated, shall be numbered, shall be dated, shall mature, shall be in the aggregate principal amount, shall be subject to redemption prior to maturity, shall be in such form, and shall have such other terms, details, and provisions as are prescribed in the form of Series 2021 Governmental Notes now on file with the City, with the amendments referenced herein. The City hereby authorizes the Series 2021 Governmental Notes be issued, in whole or in part, as "tax-exempt obligations," the interest on which is not includable in gross income for federal and State of Minnesota income tax purposes.

All of the provisions of the Series 2021 Governmental Notes, when executed 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 Series 2021 Governmental Notes shall be substantially in the forms on file with the City, which forms are hereby approved, with such necessary and appropriate variations, omissions, and insertions (including changes to the aggregate principal amount of the Series 2021 Governmental Notes, the stated maturities of the Series 2021 Governmental Notes, the interest rates on the Series 2021 Governmental Notes and the terms of redemption of the Series 2021 Governmental Notes) as the Mayor and the City Manager, in their discretion, shall determine. The execution of the Series 2021 Governmental Notes with the manual or facsimile signatures of the Mayor and the City Manager and the delivery of the Series 2021 Governmental Notes by the City shall be conclusive evidence of such determination.

- 3.09. The Series 2021 Governmental Notes shall be special, limited obligations of the City payable solely from the revenues provided by the Borrower pursuant to the Project Loan Agreement, including revenues derived from the Project. The Council hereby authorizes and directs the Mayor and the City Manager to execute the Series 2021 Governmental Notes in accordance with the terms thereof.
- 3.10. The Mayor and the City Manager are hereby authorized and directed to execute and deliver the Funding Loan Agreement and the Project Loan Agreement. All of the provisions of the Funding Loan Agreement and the Project Loan 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 Funding Loan Agreement and the Project Loan Agreement shall be substantially in the forms on file with the City which are hereby approved, with such omissions and insertions as do not materially change the substance thereof, and as the Mayor and the City Manager, in their discretion, shall determine, and the execution thereof by the Mayor and the City Manager shall be conclusive evidence of such determinations.
- 3.11. To ensure compliance with certain rental and occupancy restrictions imposed by the Act and Section 142(d) of the Code, and to ensure compliance with certain restrictions imposed by the City, the Mayor and City Manager are also hereby authorized and directed to execute and deliver an Amended and Restated

Regulatory Agreement (the "Regulatory Agreement") between the City, the Borrower, the Fiscal Agent, and the Bond Trustee, which amends and restates the Original Regulatory Agreement. All of the provisions of the Regulatory 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 Regulatory Agreement shall be substantially in the form on file with the City which is hereby approved, with such omissions and insertions as do not materially change the substance thereof, or as the Mayor and the City Manager, in their discretion, shall determine, and the execution thereof by the Mayor and the City Manager shall be conclusive evidence of such determination.

- 3.12. The Mayor, the City Manager, and the Finance Director of the City are hereby authorized to execute and deliver, on behalf of the City, such other documents and certificates as are necessary or appropriate in connection with the issuance, sale, and delivery of the Series 2021 Governmental Notes, including but not limited to the Mortgage Assignments, the endorsement of the Series 2021 Project Notes to the Fiscal Agent, various certificates of the City, an Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038, an endorsement of the City to the tax certificate of the Borrower, and similar documents, and all other documents and certificates as shall be necessary and appropriate in connection with the issuance, sale, and delivery of the Series 2021 Governmental Notes. The City hereby authorizes Kennedy & Graven, Chartered, as bond counsel ("Bond Counsel"), to prepare, execute, and deliver its approving legal opinion with respect to the Series 2021 Governmental Notes.
- 3.13. The City hereby authorizes the Borrower to provide such security for payment of its obligations under the Funding Loan Agreement and the Project Loan Agreement and for payment of the Series 2021 Governmental Notes, including the Mortgages, one or more guaranties, or any other security agreed upon by the Borrower, Fiscal Agent, the Administrative Agent, and the Funding Lender, and the City hereby approves the execution and delivery of such security.

Section 4. Additional Findings and Certifications.

- 4.01. Except as otherwise provided in this resolution, all rights, powers, and privileges conferred and duties and liabilities imposed upon the City or the Council by the provisions of this resolution or of the aforementioned documents shall be exercised or performed by the City or by such members of the Council, or such officers, board, body or agency thereof as may be required or authorized by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the aforementioned documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member of the Council, or any officer, agent or employee of the City in that person's individual capacity, and neither the Council nor any officer or employee executing the Series 2021 Governmental Notes shall be personally liable on the Series 2021 Governmental Notes or be subject to any personal liability or accountability by reason of the issuance thereof.

No provision, covenant or agreement contained in the aforementioned documents, the Series 2021 Governmental Notes, or in any other document relating to the Series 2021 Governmental Notes, and no obligation therein or herein imposed upon the City or the breach thereof, shall constitute or give rise to a general or moral obligation of the City or any pecuniary liability of the City or any charge upon its general credit or taxing powers. In making the agreements, provisions, covenants, and representations set forth in such documents, the City has not obligated itself to pay or remit any funds or revenues, other than funds and revenues derived from the Funding Loan Agreement and the Project Loan Agreement which are to be applied to the payment of the Series 2021 Governmental Notes, as provided therein.

- 4.02. Except as herein otherwise expressly provided, nothing in this resolution or in the aforementioned documents expressed or implied is intended or shall be construed to confer upon any person or firm or corporation, other than the City, any holder of the Series 2021 Governmental Notes issued under the provisions of this resolution, any right, remedy or claim, legal or equitable, under and by reason of this resolution or any provisions hereof, this resolution, the aforementioned documents, and all of their provisions being intended to be and being for the sole and exclusive benefit of the City, and any holder from time to time of the Series 2021 Governmental Notes issued under the provisions of this resolution.
- 4.03. In case any one or more of the provisions of this resolution, other than the provisions contained in the first sentence of Section 3.09 hereof, or of the aforementioned documents, or of the Series 2021 Governmental Notes issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this resolution, or of the aforementioned documents, or of the Series 2021 Governmental Notes, but this resolution, the aforementioned documents, and the Series 2021 Governmental Notes shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein.
- 4.04. The Series 2021 Governmental Notes, when executed and delivered, shall contain a recital that they are issued pursuant to the Act, and such recital shall be conclusive evidence of the validity of the Series 2021 Governmental Notes and the regularity of the issuance thereof, and that all acts, conditions, and things required by the laws of the State of Minnesota relating to the adoption of this resolution, to the issuance of the Series 2021 Governmental Notes, and to the execution of the aforementioned documents to happen, exist, and be performed precedent to the execution of the aforementioned documents have happened, exist, and have been performed as so required by law.
- 4.05. The officers of the City, Bond Counsel, other attorneys, engineers, and other agents or employees of the City are hereby authorized to do all acts and things required of them by or in connection with this resolution, the aforementioned documents, and the Series 2021 Governmental Notes, for the full, punctual, and complete performance of all the terms, covenants, and agreements contained in the Series 2021 Governmental Notes, the aforementioned documents, and this resolution. If for any reason the Mayor or the City Manager is unable to execute and deliver the documents referred to in this resolution, such documents may be

executed by any member of the Council or any officer of the City delegated the duties of the Mayor or the City Manager with the same force and effect as if such documents were executed and delivered by the Mayor or the City Manager.

- 4.06. The Borrower shall pay the administrative fee of the City for the issuance of conduit debt. The Borrower will also pay, or, upon demand, reimburse the City for payment of, any and all costs incurred by the City in connection with the Project and the issuance of the Series 2021 Governmental Notes, whether or not the Series 2021 Governmental Notes are issued, including any costs for reasonable attorneys' fees.
- 4.07. The repayment obligations of the Borrower with respect to grants and loans previously provided to the City and loaned to the Borrower and Minnesota Leased Housing Associates II, LLLP, including but not limited to a Livable Communities Demonstration Account (LCDA) grant in the total sum of \$2,000,000, \$1,055,000 of which was allocated to the Project, from the Metropolitan Council in connection with the Metropolitan Council's Transit Oriented Development (TOD) Program, will continue to be subordinate to the repayment obligations of the Borrower with respect to the Series 2018 Governmental Notes and the Series 2018C Bonds and will be subordinate to the Borrower's repayment obligations with respect to the Series 2021 Governmental Notes.
- 4.08. This resolution shall be in full force and effect from and after its approval. The approvals contained in the resolution are effective for one year after the date hereof.

Adopted by the City Council of the City of Minnetonka, Minnesota, on Feb. 22, 2021.

Brad Wiersum, Mayor

ATTEST:

Becky Koosman, City Clerk

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 City Council of the City of Minnetonka, Minnesota, at a meeting held on Feb. 22, 2021.

Becky Koosman, City Clerk

**First Draft
February 15, 2021**

**AMENDED AND RESTATED
REGULATORY AGREEMENT**

between

**CITY OF MINNETONKA, MINNESOTA,
as Governmental Lender**

**MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP,
as Borrower**

**U.S. BANK NATIONAL ASSOCIATION,
as Note Fiscal Agent**

and

**U.S. BANK NATIONAL ASSOCIATION,
as Bond Trustee**

Relating to

**Bren Road Station (formerly Legends of Minnetonka)
11001 Bren Road East
Minnetonka, Minnesota**

Dated March 2, 2021

This instrument was drafted by:

Kennedy & Graven, Chartered (JAE)
150 South Fifth Street, Suite 700
Minneapolis, Minnesota 55402-1299
(612) 337-9300

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AMENDED AND RESTATED REGULATORY AGREEMENT

THIS AMENDED AND RESTATED REGULATORY AGREEMENT, dated March 2, 2021 (the “**Regulatory Agreement**”), is made and entered into between the CITY OF MINNETONKA, MINNESOTA, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “**Governmental Lender**”), MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP, a Minnesota limited liability limited partnership, as the owner of the property described in EXHIBIT A hereto (the “**Borrower**”), U.S. BANK NATIONAL ASSOCIATION, a national banking association (the “**Note Fiscal Agent**”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association (the “**Bond Trustee**”).

RECITALS

The Governmental Lender is authorized to issue tax-exempt and taxable obligations to provide financing for multifamily housing developments in accordance with the terms of Minnesota Statutes, Chapter 462C, as amended (the “**Act**”).

The Borrower has proposed to undertake the acquisition, construction, and equipping of a 262-unit senior housing rental development to be located at 11001 Bren Road East, Minnetonka, Minnesota, on the real property described on EXHIBIT A attached hereto known as Bren Road Station, formerly known as Legends of Minnetonka (the “**Project**”).

In order to finance a portion of the costs of the Project, on September 14, 2018, the Governmental Lender issued its (i) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1, in the maximum principal amount of \$16,205,000 (the “**Series 2018A-1 Governmental Note**”); (ii) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2, in the maximum principal amount of \$16,205,000 (the “**Series 2018A-2 Governmental Note**”); (iii) the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1, in the maximum principal amount of \$13,189,904 (the “**Series 2018B-1 Governmental Note**”); and (iv) the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-2, in the maximum principal amount of \$13,189,904 (the “**Series 2018B-2 Governmental Note**,” and collectively with the Series 2018A-1 Governmental Note, the Series 2018A-2 Governmental Note, and the Series 2018B-1 Governmental Note, the “**Series 2018 Governmental Notes**”). The Governmental Lender delivered the Series 2018 Governmental Notes to U.S. Bank National Association, a national banking association, as administrative agent (the “**Administrative Agent**”) for U.S. Bank National Association, a national banking association, and BMO Harris Bank N.A., a national banking association (together, the “**Initial Note Funding Lender**”), pursuant to the terms of a Funding Loan Agreement, dated as of September 1, 2018 (the “**Original Note Funding Loan Agreement**”), between the Governmental Lender, the Administrative Agent, and the Note Fiscal Agent.

The Governmental Lender loaned the proceeds derived from the sale of the Series 2018 Governmental Notes to the Borrower pursuant to the terms of a Project Loan Agreement, dated as of September 1, 2018 (the “**Original Note Project Loan Agreement**”), between the Governmental Lender, the Note Fiscal Agent, and the Borrower, and the Borrower will apply such proceeds to finance a portion of the Project.

In order to finance a portion of the costs of the Project, on September 14, 2018, the Governmental Lender also issued its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C (the “**Bonds**”), in the original aggregate principal amount of \$4,090,000, pursuant to a Subordinate Indenture of Trust, dated as of September 1, 2018, between the Governmental Lender and the Bond Trustee.

The Governmental Lender loaned the proceeds of the Bonds to the Borrower pursuant to a Subordinate Loan Agreement, dated as of September 1, 2018, between the Governmental Lender and the Borrower, and the Borrower will apply such proceeds to finance a portion of the Project.

To assure compliance with certain requirements of the Code (hereinafter defined) and of the Act applicable to the Project, the Governmental Lender, the Borrower, the Note Fiscal Agent, and the Bond Trustee entered into a Regulatory Agreement, dated September 14, 2018 (the “**Original Regulatory Agreement**”), and recorded in the Office of Registrar of Titles of Hennepin County, Minnesota on October 4, 2018 as Document No. T05564936.

In order to provide additional tax-exempt funds to finance the Project, the Governmental Lender has agreed to issue its (i) Multifamily Note with designation as Multifamily Housing Revenue Note (Bren Road Station Project), Series 2021A, in the maximum principal amount of \$150,000 (the “**Series 2021A Governmental Note**”); and (ii) Multifamily Note with designation as Multifamily Housing Revenue Note (Bren Road Station Project), Series 2021B, in the maximum principal amount of \$150,000 (the “**Series 2021B Governmental Note**,” and together with the Series 2021A Governmental Note, the “**Series 2021 Governmental Notes**”). Consequently, the maximum principal amount that may be drawn on the Series 2018B-1 Governmental Note and the Series 2018B-2 Governmental Note will be reduced by \$300,000. The Governmental Lender will the Series 2018 Governmental Notes to the Administrative Agent for the Initial Note Funding Lender pursuant to the terms of an Amended and Restated Funding Loan Agreement, dated as of March 1, 2021 (the “**Note Funding Loan Agreement**”), between the Governmental Lender, the Administrative Agent, and the Note Fiscal Agent. The Note Funding Loan Agreement amends and restates in entirety the Original Note Funding Loan Agreement.

The Governmental Lender will loan the proceeds derived from the sale of the Series Governmental Notes to the Borrower pursuant to the terms of an Amended and Restated Project Loan Agreement, dated as of March 1, 2021 (the “**Note Project Loan Agreement**”), between the Governmental Lender, the Note Fiscal Agent, and the Borrower, and the Borrower will apply such proceeds to finance a portion of the Project. The Note Project Loan Agreement amends and restates in entirety the Original Note Project Loan Agreement.

For good and valuable consideration, the Borrower, the Note Fiscal Agent, the Bond Trustee, and the Governmental Lender have determined to enter into this Regulatory Agreement in order to assure compliance with certain requirements of the Code (hereinafter defined) and of the Act applicable to the Project. This Regulatory Agreement amends and restates in entirety the Original Regulatory Agreement.

NOW, THEREFORE, the Borrower, the Note Fiscal Agent, the Bond Trustee, and the Governmental Lender do hereby impose upon the Project the following covenants, restrictions, charges, and easements, which shall run with the land and shall be binding and a burden upon the Project and all portions thereof, and upon any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein, for the length of time that this Regulatory Agreement shall be in full force and effect:

Section 1. Definitions. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the terms defined above shall have the meanings set forth above and the following terms shall have the respective meanings set forth below for the purposes hereof. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Note Funding Loan Agreement or the Bond Indenture.

“*Act*” means Minnesota Statutes, Chapter 462C, as amended.

“*Adjusted Income*” means the adjusted income of a person (together with the adjusted income of all persons eighteen (18) years or older who intend to reside with such person in one Dwelling Unit), as calculated in the manner prescribed under Section 142(d)(2)(B) of the Code.

“*Administrative Agent*” means U.S. Bank National Association, a national banking association, its successors and assigns, in its capacity as administrative agent for the Initial Funding Lender.

“*BMO Harris Bank*” means BMO Harris Bank N.A., a national banking association, its successors and assigns, in its capacity as a co-Initial Funding Lender.

“*Bond Counsel*” means Kennedy & Graven, Chartered, or any other attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on bonds and other obligations issued by states and political subdivisions thereof, duly admitted to practice law before the highest court of any state of the United States of America.

“*Bond Indenture*” means the Subordinate Indenture of Trust, dated as of September 1, 2018, between the Governmental Lender and the Bond Trustee, as it may be supplemented and amended from time to time.

“*Bond Loan Agreement*” means the Subordinate Loan Agreement, dated as of September 1, 2018, between the Governmental Lender and the Borrower, as it may be amended and supplemented from time to time.

“*Bonds*” means the Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C, issued by the Governmental Lender on the Issue Date of the Bonds, in the original aggregate principal amount of \$4,090,000.

“*Bond Trustee*” means U.S. Bank National Association, a national banking association, its successors and assigns, in its capacity as trustee under the Bond Indenture.

“*Borrower*” means Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, and its lawful successors and assigns to the extent permitted by the Note Project Loan Agreement and the Bond Loan Agreement.

“*Code*” means the Internal Revenue Code of 1986, as amended, and all applicable regulations (whether proposed, temporary or final) under the Code and the statutory predecessor of the Code, and any official rulings and judicial determinations under the foregoing applicable to the Tax-Exempt Obligations.

“*County*” means Hennepin County, Minnesota.

“*Dwelling Units*” means the units of multifamily residential rental housing comprising the Project.

“*Event of Default*” has the meaning specified in Section 13 hereof.

“*Functionally Related and Subordinate*” means and includes facilities for use by tenants, for example, laundry facilities, parking areas, and recreational facilities, provided that the same is of a character and size commensurate with the character and size of the Project.

“*Governmental Lender*” means the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State, and its successors.

“*Governmental Notes*” means, collectively, the Series 2018A-1 Governmental Note, the Series 2018A-2 Governmental Note, the Series 2018B-1 Governmental Note, the Series 2018B-2 Governmental Note, the Series 2021A Governmental Note, and the Series 2021B Governmental Note.

“*Housing Act*” means the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq.

“*Initial Note Funding Lender*” means, together, U.S. Bank and BMO Harris Bank, their successors and assigns, each in its capacity as an initial holder of the Governmental Notes.

“*Issue Date*” means (a) with respect to the Series 2018 Governmental Notes and the Bonds, September 14, 2018, which is the date that the Series 2018 Governmental Notes and the Bonds were issued and delivered to their respective purchasers; and (b) with respect to the Series 2021 Governmental Notes, March 2, 2021, which is the date that the Series 2021 Governmental Notes are issued and delivered to their respective purchasers.

“*Loans*” means the loans provided by the Governmental Lender to the Borrower pursuant to the Note Project Loan Agreement and the Bond Loan Agreement to provide financing for the Project.

“*Low Income Tenants*” means Qualifying Tenants with Adjusted Income which does not exceed sixty percent (60%) of the Median Income for the Area adjusted for household size. In no event will the occupants of a unit be considered to be Low Income Tenants if all of such occupants are students (as defined in Section 152(f)(2) of the Code), unless the unit is occupied:

(i) by an individual who is (A) a student and receiving assistance under Title IV of the Social Security Act, (B) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under Part B or Part E of Title IV of the Social Security Act, or (C) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, State, or local laws; or

(ii) entirely by full-time students if such students are (A) single parents and their children and such parents are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual other than a parent of such children, or (B) married and entitled to file a joint return.

“*Low Income Units*” means the Dwelling Units in the Project designated for occupancy by Low Income Tenants pursuant to Section 4(a) of this Regulatory Agreement.

“*Median Income for the Area*” means the median yearly income for households of an applicable size in the applicable Primary Metropolitan Statistical Area as most recently determined by the Secretary of Housing and Urban Development under Section 8(f)(3) of the Housing Act, or, if such figures are no longer available, the method of calculation is substantially altered, or the programs under Section 8(f) are terminated, the Governmental Lender shall provide the Borrower with another income determination that is reasonably similar to the method used by the Secretary prior to such termination.

“*Note Fiscal Agent*” means U.S. Bank National Association, a national banking association, or any successor or assign, in its capacity as fiscal agent under the Note Funding Loan Agreement.

“*Note Funding Lender*” means the Initial Funding Lender and any subsequent holder of the Governmental Notes.

“*Note Funding Loan Agreement*” means the Amended and Restated Funding Loan Agreement, dated as of March 1, 2021, between the Administrative Agent, the Governmental Lender, and the Note Fiscal Agent. The Note Funding Loan Agreement amends and restates in entirety the Funding Loan Agreement, dated as of September 1, 2018, between the Administrative Agent, the Governmental Lender, and the Note Fiscal Agent.

“*Note Project Loan Agreement*” means the Amended and Restated Project Loan Agreement, dated as of March 1, 2021, between the Governmental Lender, the Note Fiscal Agent, and the Borrower, as amended from time to time. The Note Project Loan Agreement amends and restates in entirety the Project Loan Agreement, dated as of September 1, 2018, between the Governmental Lender, the Note Fiscal Agent, and the Borrower.

“*Project*” has the meaning assigned to such term in the recitals to this Regulatory Agreement.

“*Qualified Project Period*” means the period beginning on the later of the date of issuance of the Governmental Notes and the first day on which ten percent (10%) of the Dwelling Units in the Project are occupied and ending on the latest of:

- (i) the date which is fifteen (15) years after the date on which fifty percent (50%) of the Dwelling Units in the Project are occupied;
- (ii) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding; or
- (iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates.

“*Qualifying Tenants*” means one or more occupants of a unit within the Project, so long as at least one of the occupants of the unit, at the time of initial occupancy of such unit, is fifty-five (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 unit shall be deemed a Qualifying Tenant.

“*Regulatory Agreement*” means this Amended and Restated Regulatory Agreement, dated the Issue Date of the Series 2021 Governmental Notes, between the Governmental Lender, the Borrower, the Note Fiscal Agent, and the Bond Trustee, together with any amendments or supplements hereto. This Regulatory Agreement amends and restates in entirety the Regulatory Agreement, dated the Issue Date of the Series 2018 Governmental Notes and the Bonds, between the Governmental Lender, the Borrower, the Note Fiscal Agent, and the Bond Trustee.

“*Section 474A Penalty*” means the penalty described in Minnesota Statutes, Section 474A.047, subdivision 3, as applied to the Project.

“*Series 2018A-1 Governmental Note*” means the Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1, in the maximum aggregate principal amount of \$16,205,000, dated the Issue Date of the Series 2018 Governmental Notes, executed by the Governmental Lender and authenticated by the Note Fiscal Agent in favor of U.S. Bank, as the same may be amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series 2018A-2 Governmental Note*” means Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2, in the maximum aggregate principal amount of \$16,205,000, dated the Issue Date of the Series 2018 Governmental Notes, executed by the Governmental Lender and authenticated by the Note Fiscal Agent in favor of BMO Harris Bank, as the same may be amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series 2018B-1 Governmental Note*” means the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1, in the maximum aggregate principal amount of \$13,039,904, dated the Issue Date of the Series 2018 Governmental Notes, executed by the Governmental Lender and authenticated by the Note Fiscal Agent in favor of U.S. Bank, as the same may be further amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series 2018B-2 Governmental Note*” means the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-2, in the maximum aggregate principal amount of \$13,039,904, dated the Issue Date of the Series 2018 Governmental Notes, executed by the Governmental Lender and authenticated by the Note Fiscal Agent in favor of BMO Harris Bank, as the same may be amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series 2018 Governmental Notes*” means, together, the Series 2018 Tax-Exempt Governmental Notes and the Series 2018 Taxable Governmental Notes.

“*Series 2018 Taxable Notes*” means, together, the Series 2018B-1 Governmental Note and the Series 2018B-2 Governmental Note.

“*Series 2018 Tax-Exempt Notes*” means, together, the Series 2018A-1 Governmental Note and the Series 2018A-2 Governmental Note.

“*Series 2021A Governmental Note*” means the Multifamily Note with designation as Multifamily Housing Revenue Note (Bren Road Station Project), Series 2021A, in the maximum aggregate principal amount of \$150,000, dated the Issue Date of the Series 2021 Governmental Notes, executed by the Governmental Lender and authenticated by the Note Fiscal Agent in favor of U.S. Bank, as the same may be amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note

executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series 2021B Governmental Note*” means the Multifamily Note with designation as Multifamily Housing Revenue Note (Bren Road Station Project), Series 2021B, in the maximum aggregate principal amount of \$150,000, dated the Issue Date of the Series 2021 Governmental Notes, executed by the Governmental Lender and authenticated by the Note Fiscal Agent in favor of BMO Harris Bank, as the same may be amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series 2021 Governmental Notes*” means, together, the Series 2021A Governmental Note and the Series 2021B Governmental Note.

“*State*” means the State of Minnesota.

“*Tax-Exempt Governmental Notes*” means, together, the Series 2018 Tax-Exempt Governmental Notes and the Series 2021 Governmental Notes.

“*Tax-Exempt Obligations*” means, together, the Tax-Exempt Governmental Notes and the Bonds.

“*Treasury Regulations*” means the regulations promulgated or proposed by the Department of the Treasury pursuant to the Code from time to time or pursuant to any predecessor statute to the Code.

“*U.S. Bank*” means U.S. Bank National Association, a national banking association, its successors and assigns, in its capacity as a co-Initial Funding Lender.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement words of the masculine, feminine or neuter gender shall be construed to include each other gender when appropriate, and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all of the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

Section 2. Representations by the Borrower. The Borrower covenants, represents, and warrants that:

(a) The Borrower is a limited liability limited partnership organized and existing under the laws of the State. The Borrower is in good standing in the State and has duly authorized, by proper action, the execution and delivery of this Regulatory Agreement. The Borrower is duly authorized by the laws of the State to transact business in the State and to perform all of its duties hereunder.

(b) Neither the execution and delivery of this Regulatory Agreement or any other document in connection with the financing of the Project, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the terms and conditions hereof and thereof conflicts with or results in a breach of any of the terms, conditions, or provisions of any agreement or instrument to which the Borrower is now a party or by which it is bound or constitutes a default (with due notice or the passage of time or both) under any of the foregoing or results in the creation or imposition of any prohibited lien, charge, or encumbrance whatsoever upon any of the property or assets of the Borrower under the terms of any instrument or agreement to which the Borrower is now a party or by which it is bound.

(c) The execution, delivery, and performance of this Regulatory Agreement and all other documents to be delivered by the Borrower in connection with the consummation of the transactions contemplated hereby will not conflict with, or constitute a breach of or default under, any indenture, mortgage, deed of trust, lease, commitment, agreement, or other instrument or obligation to which the Borrower is a party or by which the Borrower or any of its property is bound, or under any law, rule, regulation, judgment, order, or decree to which the Borrower is subject or by which the Borrower or any of its property is bound.

(d) There is no action, suit, proceeding, inquiry, or investigation by or before any governmental agency, public board, or body pending or to the best of the Borrower's knowledge, threatened against the Borrower (nor to the best of its knowledge is there any basis therefor), which:

(i) affects or seeks to enjoin, prohibit, or restrain the issuance, sale, or delivery of the Governmental Notes or the Bonds or the use of the proceeds of the Governmental Notes or the Bonds to finance the acquisition or construction of the Project or the execution and delivery of this Regulatory Agreement,

(ii) affects or questions the validity or enforceability of the Governmental Notes, the Bonds, or this Regulatory Agreement,

(iii) questions the tax-exempt status of the Tax-Exempt Obligations (except for any loss of tax-exempt status that results from the application of Section 147(a) of the Code or any successor provisions of the Code and applicable Treasury Regulations or any successor law or regulation), or

(iv) questions the power or authority of the Borrower to own, acquire, construct, equip, or operate the Project or to execute, deliver, or perform the Borrower's obligations under this Regulatory Agreement.

(e) The Project will be located wholly within the boundaries of the City of Minnetonka in the County.

(f) On and after the date on which the Bonds are executed and delivered to the Bond Trustee and the Governmental Notes are executed and delivered to the Note Funding Lender, the Borrower will have title to the Project sufficient to carry out the purposes of this Regulatory Agreement, and such title shall be in and remain in the name of the Borrower except as otherwise permitted by this Regulatory Agreement.

(g) The Project consists and will consist of those facilities described herein, which generally are described as a residential apartment building and related facilities situated on the real property described in EXHIBIT A hereto. The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exemption from federal income taxation of the interest on the Tax-Exempt Obligations. The Borrower will utilize and operate the Project as a multifamily rental housing project so long as the Tax-Exempt Obligations are outstanding, in accordance with all applicable federal, State, and local laws, rules, and regulations applicable to the Project.

(h) The Borrower has obtained, or will obtain on or before the date required therefor, all necessary certificates, approvals, permits, and authorizations with respect to the operation of the Project.

(i) The Borrower acknowledges that if the Borrower or a “substantial user” of the Project financed with the proceeds of the Tax-Exempt Obligations or a “related person,” as those terms are employed in Section 147(a) of the Code, owns the Tax-Exempt Obligations, or any portion thereof, interest on the Tax-Exempt Obligations during such period of ownership will not be excludable from gross income for federal income tax purposes.

(j) The Borrower does not own any buildings or structures which are proximate to the Project other than those buildings or structures which comprise the Project, which are being financed pursuant to a common plan under which the Project is also being financed. An affiliate of the Borrower will own a multifamily residential rental project adjacent to the Project.

(k) The statements made in the various certificates delivered by the Borrower to the Governmental Lender and the Note Fiscal Agent on the date of issuance of the Governmental Notes are true and correct.

(l) The statements made in the various certificates delivered by the Borrower to the Governmental Lender and the Bond Trustee on the date of issuance of the Bonds are true and correct.

Section 3. Qualified Residential Rental Project. The Borrower shall acquire, construct, own, manage, and operate the Project as a “qualified residential rental project,” as such phrase is utilized in Section 142(d) of the Code, on a continuous basis during the Qualified Project Period. To that end, the Borrower hereby represents, warrants, and covenants as follows:

(a) that a qualified residential rental project will be constructed on the property described in EXHIBIT A hereto, and the Borrower shall own, manage and operate the Project as a qualified residential rental project containing Dwelling Units and facilities Functionally Related and Subordinate to such Dwelling Units, in accordance with Section 142(a)(7) and Section 142(d) of the Code and all applicable Treasury Regulations promulgated thereunder, as the same may be amended from time to time;

(b) that all of the Dwelling Units of the Project will be similarly constructed and each Dwelling Unit in the Project will contain complete facilities for living, sleeping, eating, cooking, and sanitation for a single person or a family;

(c) that:

(i) none of the Dwelling Units in the Project shall at any time in the future be utilized on a transient basis;

(ii) that none of the Dwelling Units in the Project shall at any time in the future be leased or rented for a period of less than thirty (30) days; and

(iii) that neither the Project nor any portion thereof shall be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home, or trailer park or trailer court for use on a transient basis, or by a cooperative housing corporation (as defined in Section 216(b)(1) of the Code);

(d) that once available for occupancy:

(i) each Dwelling Unit in the Project must be rented or available for rental on a continuous basis to members of the general public, in compliance with this Regulatory

Agreement, during the Qualified Project Period, except for any Dwelling Unit for a resident manager or maintenance personnel; and

(ii) other than Low Income Tenants as provided herein or as otherwise permitted by law, the Borrower shall not give preference in renting Dwelling Units in the Project to any particular class or group of persons,

(e) that the Project consists of one or more discrete edifices and other man-made construction, each consisting of an independent foundation, outer walls and roof, all of which will be (i) owned by the same person for federal tax purposes, (ii) located on a common tract of land or two or more parcels of land which are contiguous except for being separated only by a road, street, stream, or a similar property and (iii) financed by the Loans or otherwise pursuant to a common plan of financing, and which consists entirely of:

(i) units which are similar in quality and type of construction and amenities; and

(ii) property Functionally Related and Subordinate in purpose and size to the Project, *e.g.*, parking areas, laundries, swimming pools, tennis courts, and other recreational facilities (none of which may be unavailable to any person because such person is a Low Income Tenant) and other facilities which are reasonably required for the Project, *e.g.*, heating and cooling equipment, trash disposal equipment, or units for residential managers or maintenance personnel;

(f) that no portion of the Project shall be used to provide any health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;

(g) that the Project shall not include a Dwelling Unit in a building where all Dwelling Units in such building are not also included in the Project;

(h) that the Borrower shall not convert the Project to condominium or cooperative ownership;

(i) that no Dwelling Unit in the Project shall be occupied by the Borrower (or any person related to the Borrower within the meaning of Section 147(a)(2) of the Code) at any time unless such person resides in a Dwelling Unit in a building or structure which contains at least five (5) Dwelling Units and unless the resident of such Dwelling Unit is a resident manager or other necessary employee (*e.g.*, maintenance and security personnel);

(j) that the Tax-Exempt Obligations will not be “federally guaranteed,” as defined in Section 149(b) of the Code;

(k) that the Project shall at all times be used and operated as a “multifamily housing development,” as defined in the Act; and

(l) that the Borrower shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (*e.g.*, AFDC or SSI), physical disability, national origin, or marital status in the rental, lease, use, or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

Section 4. Low Income Tenants. Pursuant to the requirements of the Act and Section 142(d) of the Code, the Borrower hereby represents, warrants, and covenants as follows:

(a) Upon completion of the Project, not less than forty percent (40%) of the completed units in the Project shall be continuously occupied or held for occupancy by Low Income Tenants. The Borrower will designate the Low Income Units and will make any revisions to such designations as necessary to comply with the applicable provisions of the Code and the Treasury Regulations. As set forth in paragraph (e) below, the Borrower shall advise the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee by delivery of a certificate in writing of the status of the occupancy of the Project with respect to Low Income Tenants on an annual basis for the term of this Regulatory Agreement. An Annual Certification of a Residential Rental Project, Form 8703 (Rev. September 2013), or successor form, shall be prepared annually by the Borrower and filed with the United States Secretary of the Treasury pursuant to Section 142(d)(7) of the Code (currently with the Internal Revenue Service Center, Ogden, Utah 84201), with a copy to be filed by the Borrower with the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee. The percentage of units is measured by number of units, and not square footage of units.

For purposes of satisfying the occupancy requirements set forth above, a unit occupied by a person or family who at the commencement of their occupancy qualified as a Low Income Tenant shall be treated as occupied by a Low Income Tenant until such time as any recertification of such tenant's income in accordance with subsections (c) and (h) below demonstrates that such tenant's income exceeds one hundred forty percent (140%) of the income limitation applicable to Low Income Tenants.

A unit occupied by a Low Income Tenant shall be deemed, upon the termination of such tenant's occupancy, to be continuously occupied by a Low Income Tenant until reoccupied, other than for a temporary period (not to exceed sixty (60) days), at which time the character of the unit shall be redetermined.

(b) The Borrower will notify the Governmental Lender on an annual basis of any vacancy of any Low Income Units.

(c) The Borrower will obtain, complete, and maintain on file income certifications from each Low Income Tenant, obtained immediately prior to the initial occupancy of such tenant in the Project and at least annually thereafter. Such income certifications (based upon their then current income) from each Low Income Tenant shall be provided in the form of income certification set forth in EXHIBIT B hereto or another form approved by Bond Counsel (the "Tenant Income Certification"). The preceding sentence shall not apply for any 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 Borrower will also provide such additional information as may be required by Section 142(d) of the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Treasury Regulations now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service applicable to the Tax-Exempt Obligations. Such Tenant Income Certification shall be obtained prior to initial occupancy. If requested by the Governmental Lender, a copy of such Tenant Income Certification shall be filed with the Governmental Lender prior to occupancy by the tenant whenever possible but in no event more than one month after initial occupancy by the tenant. A copy of each re-certification of income shall be attached to each report filed with the Governmental Lender, the Bond Trustee, and the Note Fiscal Agent pursuant to subsection (a) above. The Borrower shall make a good faith effort to verify that the income reported by an applicant in an income certification is accurate by taking at least one of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period; (2) obtain an income tax return for the most recent tax year; (3) conduct a credit or similar search; (4) obtain an income verification form from the applicant's current employer; (5) obtain an income verification form from the Social Security Administration if the applicant receives assistance from such agency; or (6) if the applicant is

unemployed and has no such tax return, obtain another form of independent verification. If the Low Income Tenant is a Section 8 Certificate Holder, the Borrower shall retain a copy of the certificate or voucher for verification of income in lieu of an income verification.

The Borrower understands that failure to file the Annual Certification of a Residential Rental Project, Form 8703 (Rev. September 2013), or successor form, as required by Section 142(d)(7) of the Code at the times stated therein may subject it to the penalty described in Section 6652(j) of the Code.

(d) The Borrower will maintain complete and accurate records pertaining to the Low Income Units and will permit, upon reasonable prior notice, any duly authorized representative of the Governmental Lender, the Note Funding Lender, the Note Fiscal Agent, the Bond Trustee, the Department of the Treasury, or the Internal Revenue Service to inspect the books and records of the Borrower pertaining to the Project, including those records pertaining to the occupancy of the Low Income Units. This section is not intended to create any additional duties to inspect records.

(e) The Borrower will prepare and submit to the Governmental Lender, the Note Fiscal Agent, the Bond Trustee, and if requested, the Administrative Agent (during the Construction Phase only) and the Note Funding Lender, on or before August 1 of each year during the Qualified Project Period, beginning the first August 1 following commencement of the Qualified Project Period, a Continuing Program Compliance Certificate in the form attached hereto as EXHIBIT C and executed by the Borrower, and, if requested by the Governmental Lender, the Bond Trustee, the Administrative Agent (during the Construction Phase only) or the Note Funding Lender, the Tenant Income Certification described in subsection (c) above. The Note Fiscal Agent and the Bond Trustee may solely rely on the Continuing Program Compliance Certificate as evidence of compliance with this Section 4.

(f) The Borrower, upon becoming aware of an Event of Default, will notify the Governmental Lender, the Administrative Agent (during the Construction Phase only), the Note Funding Lender, the Note Fiscal Agent, and the Bond Trustee, in writing, of the occurrence of any such Event of Default hereunder or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto. Such notice shall be given promptly and in no event longer than ten (10) Business Days after the Borrower receives notice or gains knowledge of the occurrence of any such event. The Borrower further agrees that it will give prompt written notice to the Governmental Lender, the Administrative Agent (during the Construction Phase only), the Note Funding Lender, the Note Fiscal Agent, and the Bond Trustee if insurance proceeds or condemnation awards are received with respect to the Project and are not used to repair or replace the Project, which notice shall state the amount of such proceeds or award.

(i) Except as provided in clause (ii) below, the Borrower shall accept as tenants on the same basis as all other prospective Low Income Tenants who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the Housing Act or its successor and shall not apply selection criteria to Section 8 certificate/voucher holders that are more burdensome than the criteria applied to all other prospective tenants.

(ii) The Borrower agrees to modify the leases for units in the Project as necessary to allow the rental of Low Income Units to Section 8 certificate/voucher holders.

(g) Each lease pertaining to a Low Income Unit shall contain a provision to the effect that the Borrower has relied on the income certification and supporting information supplied by the Low Income Tenant in determining qualification for occupancy of the Low Income Unit and that any material

misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease.

(h) Throughout the Qualified Project Period, the Borrower shall re-certify each Low Income Tenant's income on or before the anniversary of the Low Income Tenant's tenancy by obtaining a completed Income Certification. The preceding sentence shall not apply for any 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. In the event the recertification demonstrates that any such tenant's household income exceeds one hundred forty percent (140%) of the applicable income limit, the Borrower shall hold the next available unit or units of comparable or smaller size in the Project available for rental by new Low Income Tenants.

The Borrower in its sole discretion may notify, in writing, each tenant who is no longer a Low Income Tenant of such fact, and that the rent of such tenant(s) is subject to increase thirty (30) days after receipt of such notice. The Borrower shall be entitled to so increase any such tenant's rent only if Borrower complies with any law applicable thereto and only after the Borrower has rented the next available unit or units in the Project on a one-for-one basis to a Low Income Tenant, or holds units vacant and available for occupancy by Low Income Tenants.

The Borrower agrees to inform all prospective Low Income Tenants of the requirements for recertification of income and of the provisions of the preceding paragraph.

Section 5. Restrictions Imposed by Chapter 474A. Because the Tax-Exempt Obligations are issued by the Governmental Lender as "residential rental project bonds," as defined in Minnesota Statutes, Chapter 474A, as amended ("Chapter 474A"), and have received an allocation of tax-exempt bonding authority pursuant to applicable provisions of Chapter 474A, the restrictions imposed by Chapter 474A apply to the Project as described below.

(a) In addition to any other restrictions on rent or the income of tenants set forth in this Regulatory Agreement, during the Qualified Project Period, the Borrower shall restrict rents on at least twenty percent (20%) of the units in the Project (which shall consist of the same units as meet the requirements of Section 4) to an amount not exceeding the area fair market rents or exception fair market rents, as applicable, for existing housing as established by the federal Department of Housing and Urban Development from time to time, which units shall be occupied, or held for occupancy, by Low Income Tenants.

(b) The annual certifications required to be made by the Borrower hereunder shall conform to the requirements of Section 474A.047, subdivision 3, and the Governmental Lender shall have the authority to impose upon the Borrower any and all penalties described in Section 474A.047, subdivision 3, from time to time, in addition to any remedies otherwise available under this Regulatory Agreement.

(c) The Borrower must satisfy the requirements of Section 474A.047, subdivision 1(a), during the Qualified Project Period. The Borrower must annually certify to the Governmental Lender over the term of this Regulatory Agreement that the rental rates for the rent-restricted units are within the limitations under Section 474A.047, subdivision 1(a). The Governmental Lender may request individual certification of the income of residents of the income-restricted units. The Commissioner of Minnesota Management and Budget may request from the Governmental Lender a copy of the annual certification prepared by the Borrower. The Commissioner of Minnesota Management and Budget may require the Governmental Lender to request individual certification of all residents of the income-restricted units.

Section 6. Covenants Run with the Land. The Borrower hereby declares its express intent that, upon filing this Regulatory Agreement in the appropriate property records of the County, the covenants, restrictions, charges, and easements set forth herein shall be deemed covenants running with the land and shall, except as otherwise provided in, or the Freddie Mac Rider to, this Regulatory Agreement, pass to and be binding upon the Borrower's successors in title including any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein. Except as otherwise provided in, or the Freddie Mac Rider to, this Regulatory Agreement, each and every contract, deed, or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, charges, and easements contained herein; provided, however, that any such contract, deed, or other instrument shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed, or other instrument.

Section 7. Indemnification. The Borrower hereby covenants and agrees that it shall indemnify and hold harmless the Governmental Lender and its officers, agents, and employees (the "**Indemnified Parties**"), the Note Fiscal Agent, the Bond Trustee, the Administrative Agent, the Note Funding Lender, and their respective officers, members, directors, officials, and employees as provided in the Note Project Loan Agreement and the Bond Loan Agreement, respectively. All provisions of the Note Project Loan Agreement and the Bond Loan Agreement relating to indemnification are incorporated by reference herein and are considered provisions of this Regulatory Agreement, as if expressly set out herein.

Section 8. Consideration. The Governmental Lender has issued the Governmental Notes and the Bonds in part to provide funds to make the Loans to finance the acquisition, construction, and equipping of the Project all for the purpose, among others, of inducing the Borrower to acquire, construct, equip, and operate the Project. In consideration of the issuance of the Governmental Notes and the Bonds by the Governmental Lender, the Borrower has entered into this Regulatory Agreement and has agreed to restrict the uses to which the Project can be put on the terms and conditions set forth herein.

Section 9. Reliance. The Governmental Lender and the Borrower hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all persons interested in the legality and validity of the Governmental Notes and the Bonds and in the exemption from federal income taxation of the interest on the Tax-Exempt Obligations. In performing their duties and obligations hereunder, under the Note Funding Loan Agreement, and under the Bond Indenture, the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee, as the case may be, may rely upon statements and certificates of the Borrower and the tenants and upon audits of the books and records of the Borrower pertaining to the Project. In addition, the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee may consult with counsel, and the written opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Governmental Lender, the Note Fiscal Agent, or the Bond Trustee hereunder in good faith and in conformity with such written opinion. A copy of any such opinion shall be furnished by the Governmental Lender, the Note Fiscal Agent, the Administrative Agent (during the Construction Phase only), or the Bond Trustee to the Borrower or Note Funding Lender upon written request. In determining whether any default or lack of compliance by the Borrower exists under this Regulatory Agreement, the Governmental Lender, the Note Fiscal Agent, or the Bond Trustee shall not be required to conduct any investigation into or review of the operations or records of the Borrower and may rely solely on any notice or certificate delivered to the Governmental Lender, the Note Fiscal Agent, or the Bond Trustee by the Borrower with respect to the

occurrence or absence of a default unless it knows, or in the exercise of reasonable care should have known, that the notice or certificate is erroneous or misleading.

Neither the Note Fiscal Agent nor the Bond Trustee shall be under any duty or obligation to make any investigation or inquiry as to any statements or other matters contained or referred to in any documents or any instruments delivered to it in accordance with this Regulatory Agreement, but the Note Fiscal Agent and the Bond Trustee may receive and accept the same as conclusive evidence of the truth and accuracy of such statements.

Section 10. Sale or Transfer of the Project. The Borrower hereby covenants and agrees not to sell, transfer, or otherwise dispose of the Project, or any portion thereof, except as permitted under the terms of the Note Project Loan Agreement. Any attempted sale, transfer, or disposition which would cause or result in the violation of any of the covenants herein, provisions, reservations, restrictions, charges, or easements shall be null and void ab initio and of no force and effect. Nothing herein shall prohibit the transfer, sale or assignment of the interests in the Borrower or any direct or indirect ownership interests in Borrower's partners. In the event of sale, transfer, or disposition of the Project, the Borrower shall provide notice to the Governmental Lender of such event.

Section 11. Term. This Regulatory Agreement and the terms hereof shall become effective upon its execution and delivery and shall remain in full force and effect for a term and period equal to the Qualified Project Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Governmental Notes and the Bonds and termination of the Note Project Loan Agreement and the Bond Loan Agreement and the Loans if the Qualified Project Period has not expired at the time of such retirement and expiration. Notwithstanding anything in this Regulatory Agreement to the contrary:

(a) The Project may be transferred pursuant to a foreclosure, exercise of power of sale, or deed in lieu of foreclosure, or comparable proceedings without the consent of or fee of any kind payable to the Governmental Lender or compliance with the provisions of this Regulatory Agreement. In connection with any such foreclosure, deed in lieu of foreclosure, or other proceedings, this Regulatory Agreement shall be terminated upon completion of the foreclosure and expiration of the applicable redemption period, or recording of a deed in lieu of foreclosure.

(b) The requirements of this Regulatory Agreement shall terminate and be of no further force and effect in the event of involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire or other casualty, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law, or an action of a federal agency after the date of this Regulatory Agreement, which prevents the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee from enforcing such provisions, or condemnation or a similar event, but only if, within a reasonable period, either the Tax-Exempt Obligations are retired or amounts received as a consequence of such event are used to provide a project that meets the requirements hereof (provided that this shall be deemed met if the Tax-Exempt Obligations have been previously retired); provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure, or the delivery of a deed in lieu of foreclosure, or a similar event, the Borrower or any related person (within the meaning of Section 1.103-10(e) of the Treasury Regulations) obtains an ownership interest in the Project for federal income tax purposes. The Borrower hereby agrees that, following any foreclosure, transfer of title by deed in lieu of foreclosure, or similar event, if the Borrower or any such related person as described above obtains an ownership interest in the Project for federal tax purposes during the Qualified Project Period, the limitations imposed by Section 4 hereof shall apply to the Project for the remainder of the Qualified Project Period.

(c) This Regulatory Agreement, or any of the provisions or sections hereof, may be terminated upon agreement by the Governmental Lender, the Borrower, the Administrative Agent (during the Construction Phase only), the Note Funding Lender, and the Bond Trustee upon receipt by the Governmental Lender, the Borrower, the Administrative Agent (during the Construction Phase only), the Note Funding Lender, and the Bond Trustee of an opinion of Bond Counsel to the effect that such termination will not cause interest on the Tax-Exempt Obligations to become included in gross income for federal income tax purposes or cause interest on the Tax-Exempt Obligations to become included in the net taxable income of individuals, trusts, and estates for State income tax purposes.

Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver, and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.

Section 12. Burden and Benefit. The Governmental Lender and the Borrower hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Borrower's legal interest in the Project is rendered less valuable thereby. The Governmental Lender and the Borrower hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by Low Income Tenants, the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes for which the Governmental Notes and the Bonds were issued. Notwithstanding the foregoing, the Low Income Tenants are not intended to be third-party beneficiaries of this Regulatory Agreement and shall have no rights to enforce any provision herein.

Section 13. Enforcement. If the Borrower defaults in the performance or observance of any covenant, agreement, or obligation of the Borrower set forth in this Regulatory Agreement, and if such default remains uncured for a period of sixty (60) days after written notice thereof shall have been given by the Governmental Lender, the Note Fiscal Agent, or the Bond Trustee to the Borrower, then the Governmental Lender or the Note Fiscal Agent, acting upon the direction of the Administrative Agent (during the Construction Phase only) or the Note Funding Lender pursuant to the Note Funding Loan Agreement, or the Governmental Lender or the Bond Trustee, pursuant to the Bond Loan Agreement, may declare an "Event of Default" to have occurred hereunder and, at their respective option, may take any one or more of the following steps:

(a) by mandamus or other suit, action, or proceeding at law or in equity require the Borrower to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Governmental Lender, the Note Fiscal Agent, the Bond Trustee, or the Note Funding Lender hereunder;

(b) have access to and inspect, examine, and make copies of all the books and records of the Borrower pertaining to the Project;

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants, and agreements of the Borrower hereunder;

(d) with the Note Fiscal Agent's consent (acting upon the direction of the Administrative Agent (during the Construction Phase only) or the Note Funding Lender), declare a default under its respective Loan, accelerate the indebtedness evidenced by the respective Loan, and proceed to redeem the Tax-Exempt Notes in accordance with their terms; or

(e) with the Bond Trustee's consent (acting upon the direction of the holders of the Bonds), declare a default under the Loan related to the Bonds, accelerate the indebtedness evidenced by the Loan related to the Bonds, and proceed to redeem the Bonds in accordance with their terms.

Notwithstanding anything to the contrary contained herein, the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee hereby agree that any cure of any default made or tendered by one or more of the Borrower's partners or by the Administrative Agent (during the Construction Phase only) or the Note Funding Lender shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

All fees, costs, and expenses of the Note Fiscal Agent, the Bond Trustee, or the Governmental Lender incurred in taking any action pursuant to this Section 13 shall be the sole responsibility of the Borrower and shall be paid to the Note Fiscal Agent, the Bond Trustee, or the Governmental Lender, as the case may be, on demand.

After the Tax-Exempt Obligations have been discharged, the Governmental Lender may act on its own behalf to declare an "Event of Default" to have occurred and to take any one or more of the steps specified hereinabove to the same extent and with the same effect as if taken by the Note Fiscal Agent at the direction of the holders of the Tax-Exempt Obligations or by the Bond Trustee at the direction of the holders of the Bonds.

Section 14. The Note Fiscal Agent, the Bond Trustee, and the Governmental Lender. The Note Fiscal Agent is entering into this Regulatory Agreement in its capacity as the Note Fiscal Agent under the terms of the Governmental Notes and the Note Funding Loan Agreement. The Bond Trustee is entering into this Regulatory Agreement in its capacity as the Bond Trustee under the terms of the Bonds and the Bond Indenture. The Governmental Lender may, at all times, assume the Borrower's compliance with this Regulatory Agreement unless otherwise notified in writing by the Note Fiscal Agent and the Bond Trustee (but the Note Fiscal Agent and the Bond Trustee shall have no obligation to so notify the Governmental Lender), or unless the Governmental Lender has actual knowledge of noncompliance. The Note Fiscal Agent and the Bond Trustee can rely on the accuracy of any certificates, instruments, opinions, or reports delivered to them by the Borrower. It is expected that the Governmental Notes will be discharged and the Note Funding Loan Agreement will terminate prior to the expiration of the Qualified Project Period. Following the payment in full and the discharge of the Tax-Exempt Obligations and the termination of the Note Funding Loan Agreement and the Bond Indenture: (i) all obligations, rights, and duties of the Note Fiscal Agent and the Bond Trustee, as applicable, under this Regulatory Agreement will terminate and be of no further force and effect; (ii) all actions required by the Note Fiscal Agent and the Bond Trustee, as applicable, will instead be undertaken by the Governmental Lender; (iii) all notices to be delivered to the Note Funding Lender, the Note Fiscal Agent, or the Bond Trustee will instead be delivered to the Governmental Lender; and (iv) the Note Fiscal Agent and the Bond Trustee, as applicable, shall no longer be a party to this Regulatory Agreement and shall be considered released from all obligations hereunder.

Section 15. Amendment. The provisions hereof shall not be amended or revised prior to the stated term hereof except by an instrument in writing duly executed by the Governmental Lender and the Borrower, and consented to by the Note Fiscal Agent and the Bond Trustee as may be required by the Note Project Loan Agreement, the Administrative Agent (during the Construction Phase only), the Note Funding Lender, and the Bond Indenture, and duly recorded. The consent of the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee to any such amendment or revision (whether or not the Tax-Exempt Obligations shall then be outstanding) shall be given only upon receipt of an opinion of Bond Counsel addressed to the Governmental Lender, the Note Fiscal Agent, the Note Funding Lender, and the Bond Trustee that such amendment or revision will not adversely affect the exemption from federal

income taxation of interest on the Tax-Exempt Obligations. The Governmental Lender, the Note Fiscal Agent, and the Bond Trustee shall have no duty to prepare any such consent, amendment, or revision.

Section 16. Right of Access to the Project and Records. The Borrower agrees that during the term of this Regulatory Agreement, the Governmental Lender, the Note Fiscal Agent, the Note Funding Lender, the Bond Trustee, and the duly authorized agents of any of them shall have the right at all reasonable times, and upon reasonable notice of at least twenty-four (24) hours, to enter upon the site of the Project during normal business hours to examine and inspect the Project and to have access to the books and records of the Borrower with respect to the Project, a copy of which shall be maintained at the site of the Project.

Section 17. No Conflict with Other Documents. The Borrower warrants that it has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof.

Section 18. Severability. The invalidity of any clause, part, or provision of this Regulatory Agreement shall not affect the validity of the remaining portions thereof.

Section 19. Notices. All notices to be given pursuant to this Regulatory Agreement shall be in writing and shall be deemed given when sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods or when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing:

To the Governmental Lender: CITY OF MINNETONKA, MINNESOTA
14600 Minnetonka Boulevard
Minnetonka, MN 55345-1502
Attn: Julie Wischnack, Community Development Director
Email: jwischnack@minnetonkamn.gov
Telephone: 952-939-8282

To the Note Fiscal Agent: U.S. BANK NATIONAL ASSOCIATION
Corporate Trust Services
60 Livingston Avenue, Third Floor
EP-MN-WS3C
Saint Paul, MN 55107-2292
Attn: Dan Sheff, Vice President
Email: dan.sheff@usbank.com
Telephone: 651-466-6302

To the Administrative Agent or
the Note Funding Lender (for
the Construction Phase only):

U.S. BANK NATIONAL ASSOCIATION
Community Lending Division
800 Nicollet Mall, Third Floor
BC-MN-H5AD
Minneapolis, MN 55402
Attn: Daniel P. Smith
Email: daniel.smith1@usbank.com
Telephone: 612-303-3689

U.S. BANK NATIONAL ASSOCIATION
Community Lending
1307 Washington Avenue, Suite 300
St. Louis, MO 63103
Attn: Alexander J. Silversmith
Email: alexander.silversmith@usbank.com
Telephone: 314-335-2661

To the Borrower:

MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP
c/o Dominion Development & Acquisition, LLC
2905 Northwest Boulevard, Suite 150
Plymouth, MN 55441-7400
Attn: Ryan Lunderby
Email: rlunderby@dominiuminc.com
Telephone: 763-354-5634

with a copies to:

WINTHROP & WEINSTINE, P.A.
225 South Sixth Street, Suite 3500
Minneapolis, MN 55402-4629
Attn: Scott Jahnke, Esq.
Email: sjahnke@winthrop.com
Telephone: 612-604-6497
(which copy shall not constitute notice to Borrower)

CITIBANK, N.A.
388 Greenwich Street, Eighth Floor
New York, NY 10013
Attn: Mark Sherman
Email: mark.sherman@citi.com

NIXON PEABODY LLP
799 Ninth Street, NW, Suite 500
Washington, DC 20001-4501
Attn: Matthew W. Mullen, Esq.
Email: mmullen@nixonpeabody.com

TCAM
30 Federal Street, Floor 6
Boston, MA 02111
Attn: Jenny Netzer

To the Bond Trustee:

U.S. BANK NATIONAL ASSOCIATION
Corporate Trust Services
60 Livingston Avenue, Third Floor
EP-MN-WS3C
Saint Paul, MN 55107-2292
Attn: Dan Sheff, Vice President
Email: dan.sheff@usbank.com
Telephone: 651-466-6302

Section 20. Governing Law. This Regulatory Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State, except as such laws may be preempted by any federal rules, regulations, and laws.

Section 21. Payment of Fees. Notwithstanding payment of the Loans, the termination of the Note Project Loan Agreement, the termination of the Bond Indenture, and the defeasance or discharge of the Tax-Exempt Obligations, throughout the term of the Qualified Project Period, the Borrower shall continue to pay:

(a) to the Governmental Lender, reimbursement for all reasonable fees and expenses, including, but not limited to, financial advisory and legal fees and expenses necessary for the Governmental Lender's reviewing and, if necessary, enforcing compliance by the Borrower with the terms of this Regulatory Agreement; and

(b) the fees and expenses of any entity or person designated by the Governmental Lender to perform the review of the Borrower's compliance with this Regulatory Agreement; provided that such fees and expenses are not duplicative of any fees and expenses paid under clause (a) above.

Section 22. Limited Liability. All obligations of the Governmental Lender hereunder shall be special, limited obligations of the Governmental Lender, payable solely and only from proceeds of the Governmental Notes and Bonds and amounts derived by the Governmental Lender from the Loans, the Note Project Loan Agreement, and the Bond Loan Agreement.

Section 23. Actions of Governmental Lender. The Governmental Lender shall be entitled to rely conclusively on an opinion of counsel in the exercise or non-exercise of any of the rights or powers vested in the Governmental Lender by virtue of this Regulatory Agreement or any other agreement or instrument executed in connection with the issuance of the Governmental Notes and the Bonds; it being the intent of the parties hereto that the Governmental Lender, and any and all present and future trustees, members, commissioners, officers, employees, attorneys, and agents of the Governmental Lender shall not incur any financial or pecuniary liability for the exercise or non-exercise of any rights or powers vested in the Governmental Lender by this Regulatory Agreement or any other instrument or agreement executed in connection with the issuance of the Governmental Notes; or for the performance or nonperformance of any obligation under, or the failure to assert any right, power, or privilege under this Regulatory Agreement, the Governmental Notes, the Note Project Loan Agreement, the Note Funding Loan Agreement, the Bonds, the Bond Indenture, the Bond Loan Agreement, or any other instrument or agreement executed in connection with the issuance of the Governmental Notes. If the Governmental Lender's consent or approval is required under this Regulatory Agreement, or any other agreement or instrument executed in connection with the issuance of the Governmental Notes or the Bonds, the Governmental Lender shall be entitled to rely conclusively on an opinion of counsel and shall not be responsible for any loss or damage resulting from any action or inaction in reliance upon such opinion.

Section 24. Counterparts. This Regulatory Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Regulatory Agreement, and, in making proof of this Regulatory Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 25. Recording and Filing. Upon obtaining fee title to the Property, the Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto and thereto to be recorded and filed in the real property records of the County, the State, and in such other places as the Governmental Lender may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

Section 26. Third-Party Beneficiary. The parties to this Regulatory Agreement recognize and agree that the terms of this Regulatory Agreement and the enforcement of those terms are essential to the security of the Administrative Agent (during the Construction Phase only) and the Note Funding Lender and are entered into for the benefit of various parties, including the Administrative Agent (during the Construction Phase only) and the Note Funding Lender. The Administrative Agent (during the Construction Phase only) and the Note Funding Lender shall accordingly have contractual rights in this Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Governmental Lender, the Note Fiscal Agent, and/or the Bond Trustee or to cause the Governmental Lender, the Note Fiscal Agent, or the Bond Trustee to enforce, the terms of this Regulatory Agreement. In addition, the Administrative Agent (during the Construction Phase only) and the Note Funding Lender are intended to be and shall be third-party beneficiaries of this Regulatory Agreement.

Section 27. Freddie Mac Rider. The Freddie Mac Rider to Regulatory Agreement (the “**Freddie Mac Rider**”) attached to this Regulatory Agreement forms an integral part of this Regulatory Agreement and the terms thereof are hereby incorporated in this Regulatory Agreement, provided that the Freddie Mac Rider shall not be effective unless and until Conversion (as defined in the Note Funding Loan Agreement) occurs, and shall be terminated automatically and without further action required of any party hereto or Freddie Mac following the Freddie Mac Purchase Date (as defined in the Note Funding Loan Agreement) upon the earlier of (a) the date the Governmental Notes are paid, retired, or otherwise discharged and (b) the date Freddie Mac ceases to be the Note Funding Lender.

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

IN WITNESS WHEREOF, the Governmental Lender, the Borrower, the Note Fiscal Agent, and the Bond Trustee have caused this Amended and Restated Regulatory Agreement to be signed by their respective duly authorized representatives as of the day and year first written above.

CITY OF MINNETONKA, MINNESOTA

By _____
Its Mayor

By _____
Its City Manager

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of February, 2021, by Brad Wiersum, the Mayor of the City of Minnetonka, Minnesota, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota, on behalf of the Governmental Lender.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of February, 2021, by GERALYN Barone, the City Manager of the City of Minnetonka, Minnesota, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota, on behalf of the Governmental Lender.

Notary Public

Execution page of the Borrower to the Amended and Restated Regulatory Agreement, dated the date and year first written above.

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

By: Minnetonka Leased Housing Associates SPE III, LLC, a Delaware limited liability company
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 ____ day of February, 2021, by Ryan J. Lunderby, the Vice President of Minnetonka Leased Housing Associates SPE III, LLC, a Delaware limited liability company, the general partner of Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, on behalf of the Borrower.

Notary Public

Execution page of the Note Fiscal Agent to the Amended and Restated Regulatory Agreement, dated the date and year first written above.

U.S. BANK NATIONAL ASSOCIATION

By _____
Its Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of February, 2021, by _____, the Vice President of U.S. Bank National Association, a national banking association, on behalf of the Note Fiscal Agent.

Notary Public

Execution page of the Bond Trustee to the Amended and Restated Regulatory Agreement, dated the date and year first written above.

U.S. BANK NATIONAL ASSOCIATION

By _____
Its Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of February, 2021, by _____, the Vice President of U.S. Bank National Association, a national banking association, on behalf of the Note Fiscal Agent.

Notary Public

The undersigned, as the Administrative Agent, hereby acknowledges and consents to this Amended and Restated Regulatory Agreement, dated the date and year first written above, on behalf of the Initial Funding Lender.

U.S. BANK NATIONAL ASSOCIATION

By _____

Its _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of February, 2021, by _____, the _____ of U.S. Bank National Association, a national banking association, on behalf of the Administrative Agent.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

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

EXHIBIT B

FORM OF INCOME CERTIFICATION

FORM OF TENANT INCOME CERTIFICATION

TENANT INCOME CERTIFICATION <input type="checkbox"/> Initial Certification <input type="checkbox"/> Recertification <input type="checkbox"/> Other _____	Effective Date: _____ Move-in Date: _____ (MM/DD/YY): _____
--	---

PART I. DEVELOPMENT DATA

Property Name: Bren Road Station (formerly Legends of Minnetonka) Address: 11001 Bren Road East, Minnetonka, Minnesota	County: _____ Unit Number: _____	BIN #: _____ # Bedrooms: _____
---	---	---------------------------------------

PART II. HOUSEHOLD COMPOSITION

HH Br #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/Y Y)	F/T Student (Y or N)	Social Security or Alien Reg. No.
1			HEAD			
2						
3						
4						
5						
6						

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Br #	(A) Employment or Wages	(B) Soc. Security / Pensions	(C) Public Assistance	(D) Other Income
TOTAL	\$	\$	\$	\$
Add totals from (A) through (D) above			TOTAL INCOME (E):	\$

PART IV. INCOME FROM ASSETS

HH Mbr#	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset

TOTALS:			\$	\$
Enter Column (H) Total		Passbook Rate		
if over \$5,000	\$ _____	x 2.00 %	=	(J) Imputed Income
Enter the greater of the total column I, or J: imputed income			TOTAL INCOME FROM	\$
ASSETS (K)				
(L) Total Annual Household Income from all sources [Add (E) + (K)]				\$

HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full-time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

_____	_____	_____	_____
Signature	(Date)	Signature	(Date)
_____	_____	_____	_____
Signature	(Date)	Signature	(Date)

PART V. DETERMINATION OF INCOME ELIGIBILITY

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES From Item (L) on page 1	\$ <input style="width: 100px; height: 20px;" type="text"/>	Household Meets Income Restriction at:	RECERTIFICATION ONLY:
Current Income Limit per Family Size: _____	\$ _____	<input type="checkbox"/> 60% <input type="checkbox"/> 50%	Current Income Limit x 140%
Household Income at Move-in \$ _____		<input type="checkbox"/> 40% <input type="checkbox"/> 30%	\$ _____
		<input type="checkbox"/> ___%	Household income exceeds 140% at recertification:
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			Household Size at Move-in: _____

PART VI. RENT

Tenant Paid Rent	\$	Rent Assistance:	\$
_____		_____	
Utility Allowance	\$	Other non-optional charges:	\$
_____		_____	

GROSS RENT FOR UNIT:
Tenant paid rent plus Utility Allowance and other non-optional charges \$

Unit Meets Rent Restriction at:
 60% 50% 40% 30% __%

Maximum Rent Limit for this unit: \$

PART VII. STUDENT STATUS

ARE ALL OCCUPANTS FULL-TIME STUDENTS?

yes no

If yes, enter student explanation** (also attach documentation)

Enter 1-4

Student explanation:

1. TANF assistance
2. Job training program
3. Single parent/dependent child
4. Married/joint return*

***Exception for married/joint return is the only exception available for units necessary to qualify tax-exempt bonds.**

PART VIII. PROGRAM TYPE

Mark the program(s) listed below (a. through e.) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification

- a. Tax Credit b. HOME c. Tax Exempt d. AHDP e. _____
(Name of Program)

See Part V above.

Income Status

- ≤ 50% AMGI
 ≤ 60% AMGI
 ≤ 80% AMGI
 ≤ 0I **

Income Status

- 50% AMGI
 60% AMGI
 80% AMGI
 0I **

Income Status

- ≤ 50% AMGI
 ≤ 80% AMGI
 ≤ 0I **

Income Status

- _____

 ≤ 0I **

** Upon recertification, household was determined over income (OI) according to eligibility requirements of the program(s) marked above.

SIGNATURE OF OWNER / REPRESENTATIVE

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Regulatory Agreement (if applicable), to live in a unit in this Project.

SIGNATURE OF OWNER / REPRESENTATIVE

DATE

INSTRUCTIONS FOR COMPLETING TENANT INCOME CERTIFICATION

This form is to be completed by the owner or an authorized representative.

Part I – Development Data

Check the appropriate box for Initial Certification (move-in), Recertification (annual recertification), or Other. If Other, designate the purpose of the recertification (i.e., a unit transfer, a change in household composition, or other state-required recertification).

- Move-in Date Enter the date the tenant has or will take occupancy of the unit.
- Effective Date Enter the effective date of the certification. For move-in, this should be the move-in date. For annual recertification, this effective date should be no later than one year from the effective date of the previous (re)certification.
- Property Name Enter the name of the development.
- County Enter the county (or equivalent) in which the building is located.
- BIN # Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609).
- Address Enter the unit number.
- Unit Number Enter the unit number.
- # Bedrooms Enter the number of bedrooms in the unit.

Part II – Household Composition

List all occupants of the unit. State each household member's relationship to the head of the household by using one of the following coded definitions:

- | | | | |
|---|-------------------|---|---------------------|
| H | Head of household | S | Spouse |
| A | Adult co-tenant | O | Other family member |
| C | Child | F | Foster child |
| L | Live-in caretaker | N | None of the above |

Enter the date of birth, student status, and Social Security number or alien registration number for each occupant.

If there are more than seven occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.

Part III – Annual Income

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.

From the third party verification forms obtained from each income source, enter the gross amount anticipated to be received for the 12 months from the effective date of the (re)certification. Complete a separate line for each income-earning member. List the respective household member number from Part II.

- Column (A) Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business.
- Column (B) Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc.
- Column (C) Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, disability, etc.)
- Column (D) Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.
- Row (E) Add the totals from columns (A) through (D) above. Enter this amount.

Part IV – Income from Assets

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the 12 months from the effective date of the certification. List the respective household member number from Part II and complete a separate line for each member.

- Column (F) List the type of asset (i.e., checking account, savings account, etc.)
- Column (G) Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).
- Column (H) Enter the cash value of the respective asset.
- Column (I) Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).
- TOTALS Add the total of Column (H) and Column (I), respectively.

If the total in Column (H) is greater than \$5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 2% and enter the amount in (J), Imputed Income.

- Row (K) Enter the Greater of the total in Column (I) or (J)
- Row (L) Total Annual Household Income from All Sources Add (E) and (K) and enter the total

HOUSEHOLD CERTIFICATION AND SIGNATURES

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than five days prior to the effective date of the certification.

Part V – Determination of Income Eligibility

Total Annual Household Income from all sources	Enter the number from item (L).
Current Income Limit per Family Size	Enter the Current Move-in Income Limit for the household size.
Household income at move-in Household size at move-in	For recertifications only. Enter the household income from the move-in certification. On the adjacent line, enter the number of household members from the move-in certification.
Household Meets Income Restriction	Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.
Current Income Limit x 140%	For recertification only. Multiply the Current Maximum Move-in Income Limit by 140% and enter the total. Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the current income limit, then the available unit rule must be followed.

Part VI – Rent

Tenant Paid Rent	Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).
Rent Assistance	Enter the amount of rent assistance, if any.
Utility Allowance	Enter the utility allowance. If the owner pays all utilities, enter zero.
Other non-optional charges	Enter the amount of non-optional charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.
Gross Rent for Unit	Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.
Maximum Rent Limit for this unit	Enter the maximum allowable gross rent for the unit.
Unit Meets Rent Restriction at ___%	Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.

Part VII – Student Status

If all household members are full-time* students, check “yes.” If at least one household member is not a full-time student, check “no.”

If “yes” is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

** Full time is determined by the school the student attends.*

Part VIII – Program Type

Mark the program(s) for which this unit will be counted toward the property’s occupancy requirements. Under each program marked, indicate the household’s income status as established by this certification/recertification. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

Tax Credit See Part V above.

HOME If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household’s designation.

Tax Exempt If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household’s designation.

AHDP If the property participates in the Affordable Housing Disposition Program (AHDP), and this household’s unit will count towards the set-aside requirements, mark the appropriate box indicating the household’s designation.

Other If the property participates in any other affordable housing program, complete the information as appropriate.

SIGNATURE OF OWNER / REPRESENTATIVE

It is the responsibility of the owner or the owner’s representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well-trained in tax credit compliance.

These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.

EXHIBIT C

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

The undersigned, an authorized representative of Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the "Owner"), hereby certifies, represents, and warrants that:

1. The Owner owns the senior housing development located at 11001 Bren Road East in the City of Minnetonka, Minnesota commonly known as Bren Road Station, formerly known as Legends of Minnetonka (the "Project").

2. The undersigned and the Owner have read and are thoroughly familiar with the provisions of (1) the Amended and Restated Regulatory Agreement, dated March 2, 2021 (the "Regulatory Agreement"), between the Owner, the City of Minnetonka, Minnesota (the "Governmental Lender"), U.S. Bank National Association, a national banking association, in its capacity as fiscal agent (the "Note Fiscal Agent"), and U.S. Bank National Association, a national banking association, in its capacity as trustee (the "Bond Trustee"); (2) the Amended and Restated Project Loan Agreement, dated as of March 1, 2021 (the "Note Project Loan Agreement"), between the Borrower, the Governmental Lender, and the Fiscal Agent with respect to the Governmental Notes; and (3) the Subordinate Loan Agreement, dated as of September 1, 2018 (the "Bond Loan Agreement"), between the Governmental Lender and the Borrower. The Regulatory Agreement was executed, delivered, and recorded against the Project in connection with the issuance of the Governmental Notes and the Bonds. Capitalized terms used herein that are otherwise not defined shall have the meanings provided in the Regulatory Agreement.

3. A review of the activities of the Owner and of the Owner's performance under the Regulatory Agreement during the year ending ____ has been made under the supervision of the undersigned.

4. The Project's Qualified Project Period commenced on _____, 20__ (the date on which 10% of the residential units in the Project were occupied), and will end on the latest of:

(i) _____, 20__ (the date which is 15 years after the date on which 50% of the residential units in the Project were occupied);

(ii) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding, or

(iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates.

5. As of the date of this Certificate, the following percentages of completed residential units in the Project are (i) occupied by Low Income Tenants or (ii) currently vacant and being held available for occupancy by Low Income Tenants and have been so held continuously since the date a Low Income Tenant vacated such unit, as indicated:

Occupied by Low Income Tenants _____ % Units Nos. _____

Continuously held vacant for occupancy by Low _____ % Units Nos. _____
Income Tenants since last occupied by Low
Income Tenants

6. At no time since the date of filing of the last Continuing Program Compliance Certificate (or since the issuance of the Governmental Notes and the Bonds, if this is the first such certificate) have fewer than forty percent (40%) of the completed units in the Project been occupied by, last occupied, or held for occupation by Low Income Tenants.

7. As of the date of this Certificate, at least 40% of the units in the Project are (i) occupied by persons or families with Adjusted Income which does not exceed 60% of the Median Income for the Area adjusted for household size; or (ii) held vacant for occupancy for persons or families with Adjusted Income which does not exceed 60% of the Median Income for the Area adjusted for household size. Project Units occupied or held vacant for persons or families with Adjusted Income which does not exceed 60% of the Median Income for the Area adjusted for household size include Unit numbers _____.

8. At all times since the date of filing of the last Continuing Program Compliance Certificate the rent on at least 20% of the units in the Project has been equal to or less than the applicable area fair market rents or exception fair market rents, as applicable, for existing housing as established by the federal Department of Housing and Urban Development from time to time.

9. To the knowledge of the undersigned, after due inquiry, all units were rented or available for rental on a continuous basis during the immediately preceding year to members of the general public, and the Owner is not now and has not been in default under the terms of the Regulatory Agreement, the Note Project Loan Agreement, or the Bond Loan Agreement and, to the knowledge of the undersigned, no Determination of Taxability has occurred with respect to the Governmental Notes or the Bonds.

10. [**CHOOSE ONE:** None/One or more] of the Tenants in the Project are currently receiving assistance under Section 8 of the United States Housing Act of 1937.

11. The Owner has not transferred any interest in the Project since the date of submission of the Continuing Program Compliance Certificate last submitted to the Governmental Lender, the Note Fiscal Agent, and the Bond Trustee with respect to the Project. **(If the Owner has transferred any interest in the Project, such transfer should be detailed here.)**

Dated: _____, 20____.

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

By: Minnetonka Leased Housing Associates SPE III,
LLC, a Delaware limited liability company
Its: General Partner

By: _____
Name: _____
Its: _____

FREDDIE MAC RIDER

This Freddie Mac Rider (the “**Rider**”) is attached to and forms a part of the Amended and Restated Regulatory Agreement (the “**Regulatory Agreement**”), dated March 2, 2021, between the CITY OF MINNETONKA, MINNESOTA, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “**Governmental Lender**”), MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP, a Minnesota limited liability limited partnership (together with any successor to its rights, duties and obligations hereunder and as owner of the Project identified herein, the “**Borrower**”), U.S. BANK NATIONAL ASSOCIATION, a national banking association (together with any successor in such capacity, the “**Fiscal Agent**”), and U.S. Bank National Association, a national banking association, as Bond Trustee (as defined in the Regulatory Agreement).

1. Definitions. Terms used in this Rider as defined terms shall have the meanings given those terms in the Regulatory Agreement and the Funding Loan Agreement. In addition, the following terms shall have the following meanings:

“Freddie Mac” means the Federal Home Loan Mortgage Corporation, a shareholder owned government sponsored enterprise organized and existing under the laws of the United States.

“Funding Lender” means the holder of the Governmental Notes, initially on the Conversion Date, KeyBank National Association, and on the Freddie Mac Purchase Date, Freddie Mac, and any successors or assigns thereof.

“Funding Loan Agreement” means the Amended and Restated Funding Loan Agreement, dated as of March 1, 2021, between the Governmental Lender, the Administrative Agent set forth therein and the Note Fiscal Agent, as such Funding Loan Agreement may from time to time be amended or supplemented.

“Governmental Notes” means, collectively, the Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1, dated September 14, 2018, the Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2, dated September 14, 2018, the Multifamily Note with designation as Multifamily Housing Revenue Note (Bren Road Station Project), Series 2021A, dated March 2, 2021, and the Multifamily Note with designation as Multifamily Housing Revenue Note (Bren Road Station Project), Series 2021B, dated March 2, 2021 (all of which have been consolidated at Conversion), in the maximum principal amount of \$32,710,000 and delivered by the Governmental Lender pursuant to the Funding Loan Agreement.

“Project Loan” means the loan to the Borrower pursuant to the Project Loan Documents, which Project Loan is to be assigned to the Note Fiscal Agent.

“Project Loan Agreement” means the Amended and Restated Project Loan Agreement dated as March 1, 2021, between the Borrower, the Governmental Lender and the Fiscal Agent, as such Project Loan Agreement may from time to time be amended or supplemented.

“Project Loan Documents” means the Security Instrument, Project Note, the Project Loan Agreement, the Regulatory Agreement, the Continuing Covenant Agreement, any Subordination Agreement(s), and any and all other instruments and other documents, evidencing, securing or otherwise relating to the Project Loan or any portion thereof.

“Project Notes” means the Amended and Restated Project Note, including applicable addenda, to be executed by the Borrower in favor of the Fiscal Agent, as assignee of the Governmental Lender, evidencing the Borrower’s financial obligations under the Project Loan, as the same may be amended, modified, supplemented or restated from time to time.

“Security Instrument” means the Amended and Restated Multifamily Mortgage, Assignment of Rents, Security Agreement and Fixture Financing Statement, together with all riders thereto, by the Borrower granting a first priority mortgage lien and security interest in the Project to the Fiscal Agent, and its successors and assigns, securing the Project Note, to be executed by the Borrower with respect to the Project, as it may be amended, modified, supplemented or restated from time to time.

“Servicer” means KeyBank National Association, or any successor Servicer selected by Freddie Mac.

2. Applicability. The provisions of this Rider shall amend and supplement the provisions of, and in the event of a conflict shall supersede the conflicting provisions of, the Regulatory Agreement.

3. Indemnification. Inasmuch as the covenants, reservations and restrictions of the Regulatory Agreement run with the land, the indemnification obligations of the Borrower contained in the Regulatory Agreement will be deemed applicable to any successor in interest to the Borrower, but, it is acknowledged and agreed, notwithstanding any other provision of the Regulatory Agreement to the contrary, that neither the Funding Lender nor any successor in interest to the Funding Lender will assume or take subject to any liability for the indemnification obligations of the Borrower for acts or omissions of the Borrower prior to any transfer of title to Freddie Mac, whether by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan. The Borrower shall remain liable under the indemnification provisions for its acts and omissions prior to any transfer of title to the Funding Lender. The Funding Lender shall indemnify the Governmental Lender following acquisition of the Project by the Funding Lender, by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan, during, and only during, any ensuing period that the Funding Lender owns and operates the Project, provided that the Funding Lender’s liability shall be strictly limited to acts and omissions of the Funding Lender occurring during the period of ownership and operation of the Project by the Funding Lender. The Funding Lender shall have no indemnification obligations with respect to the Governmental Note or the Project Loan Documents. The Borrower shall remain liable under the Regulatory Agreement for its actions and omissions prior to any transfer of title to the Funding Lender.

4. Sale or Transfer. Restrictions on sale or transfer of the Project or of any interest in the Borrower, Governmental Lender, Fiscal Agent, and/or Bond Trustee consents, transferee agreements, transferee criteria and requirements, opinion requirements, assumption fees, transfer fees, penalties and the like shall not apply to any transfer of title to the Project to the Funding Lender or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan or to any subsequent transfer by the Funding Lender following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan. No transfer of the Project shall operate to release the Borrower from its obligations under the Regulatory Agreement. Nothing contained in the Regulatory Agreement shall affect any provision of the Security Instrument or any of the other Project Loan Documents that requires the Borrower to obtain the consent of the Funding Lender as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Project or of any direct or indirect interest in the Borrower, excluding transfers permitted by the Security Instrument. No covenant obligating the Borrower to obtain an agreement from any transferee to abide by all requirements and restrictions of the Regulatory Agreement shall have any applicability to a transfer to the Funding Lender upon foreclosure, deed-in-lieu of foreclosure or comparable

conversion of the Project Loan by the Funding Lender, or to any subsequent transfer by the Funding Lender following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan.

5. Enforcement. Notwithstanding anything contained in the Regulatory Agreement to the contrary: (i) the occurrence of an event of default under the Regulatory Agreement shall not, under any circumstances whatsoever, be deemed or constitute a default under the Project Loan Documents, except as may be otherwise specified in the Project Loan Documents; and (ii) the occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument. No person other than the Funding Lender shall have the right to (a) declare the principal balance of the Project Note to be immediately due and payable or (b) commence foreclosure or other like action with respect to the Security Instrument. The Governmental Lender and the Fiscal Agent acknowledge and agree that the exercise of any rights and remedies under the Regulatory Agreement is subject to the provisions of the Project Loan Documents.

6. Notice of Violations. Promptly upon determining that a violation of the Regulatory Agreement has occurred, the Governmental Lender or the Fiscal Agent shall, by notice in writing to the Borrower, the Servicer and the Funding Lender, inform the Borrower, the Servicer and the Funding Lender that such violation has occurred, the nature of the violation and that the violation has been cured or has not been cured, but is curable within a reasonable period of time, or is incurable; notwithstanding the occurrence of such violation, neither the Governmental Lender nor the Fiscal Agent shall have, and each of them acknowledge that they shall not have, any right to cause or direct acceleration of the Project Loan, to enforce the Project Note or to foreclose on the Security Instrument.

7. Amendments. The Regulatory Agreement shall not be amended without the prior written consent of the Funding Lender.

8. Fees; Penalties. The Funding Lender shall not be liable for the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by the Borrower or any subsequent owner of the Project prior to the date of acquisition of the Project by the Funding Lender, whether such acquisition is by foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loan.

9. Subordination. The terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3 through 5, are and shall at all times remain subject and subordinate, in all respects, to the liens, rights and interests created under the Project Loan Documents.

10. Third-Party Beneficiary. The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are essential to the security of the Funding Lender and are entered into for the benefit of various parties, including the Funding Lender. The Funding Lender shall accordingly have contractual rights in the Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Governmental Lender and/or the Fiscal Agent, or to cause the Governmental Lender or the Fiscal Agent to enforce, the terms of the Regulatory Agreement. In addition, the Funding Lender is intended to be and shall be a third-party beneficiary of the Regulatory Agreement.

11. Notices. Copies of all notices under the Regulatory Agreement shall be sent to the Servicer at the address set forth below or to such other address as the Servicer may from time to time designate:

KEYBANK NATIONAL ASSOCIATION
11501 Outlook Street, Suite 300
Mailcode: KS-01-11-0501
Overland Park, KS 66211
Attention: Ms. Gina Sullivan
Email: Gina_Sullivan@KeyBank.com

Any notice to be given to Freddie Mac shall be sent to Freddie Mac at the address set forth below or to such other address as Freddie Mac may from time to time designate:

FEDERAL HOME LOAN MORTGAGE CORPORATION
8100 Jones Branch Drive, MS B4P
McLean, Virginia 22102
Attention: Multifamily Operations - Loan Accounting
Email: mfla@freddiemac.com
Telephone: (703) 714-4177

with a copy to:

FEDERAL HOME LOAN MORTGAGE CORPORATION
8200 Jones Branch Drive, MS 210
McLean, Virginia 22102
Attention: Managing Associate General Counsel –
Multifamily Legal Division
Email: joshua_schonfeld@freddiemac.com
Telephone: (703) 903-2000

**First Draft
February 15, 2021**

**AMENDED AND RESTATED
FUNDING LOAN AGREEMENT**

between

**U.S. BANK NATIONAL ASSOCIATION,
as Administrative Agent for the Initial Funding Lender**

**CITY OF MINNETONKA, MINNESOTA,
as Governmental Lender**

and

**U.S. BANK NATIONAL ASSOCIATION,
as Fiscal Agent**

Relating to:

**Bren Road Station (formerly Legends of Minnetonka)
11001 Bren Road East
Minnetonka, Minnesota**

**Maximum Series 2018 Funding Loan Principal Amount: \$58,489,808
Maximum Series 2021 Funding Loan Principal Amount: \$300,000**

Dated as of March 1, 2021

This instrument was drafted by:

Kennedy & Graven, Chartered (JAE)
150 South Fifth Street, Suite 700
Minneapolis, Minnesota 55402-1299
(612) 337-9300

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**AMENDED AND RESTATED
FUNDING LOAN AGREEMENT**

THIS AMENDED AND RESTATED FUNDING LOAN AGREEMENT is made and entered into as of March 1, 2021 (the “**Funding Loan Agreement**”), between U.S. BANK NATIONAL ASSOCIATION, a national banking association (the “**Administrative Agent**”), as administrative agent for the Initial Funding Lender (hereinafter defined), the CITY OF MINNETONKA, MINNESOTA, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “**Governmental Lender**”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association, as fiscal agent (the “**Fiscal Agent**”). Capitalized terms are defined in Section 1.01 of this Funding Loan Agreement.

RECITALS

A. Pursuant to Minnesota Statutes, Chapter 462C, as amended (the “**Act**”), and the Project Loan Agreement, dated as of September 1, 2018 (the “**Original Project Loan Agreement**”), between the Governmental Lender, the Fiscal Agent, and Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the “**Borrower**”), at the Borrower’s request, the Governmental Lender made two mortgage loans to the Borrower corresponding in principal amount to the Series 2018 Tax-Exempt Funding Loan and the Series 2018 Taxable Funding Loan defined and described below (individually, the “**Series 2018 Tax-Exempt Project Loan**” and the “**Series 2018 Taxable Project Loan**,” and collectively, the “**Series 2018 Project Loan**”) to provide for the financing of a 262-unit senior housing rental development located at 11001 Bren Road East, Minnetonka, Minnesota known as Bren Road Station, formerly known as Legends of Minnetonka (the “**Project**”).

B. The Governmental Lender made the Series 2018 Tax-Exempt Project Loan to the Borrower with the proceeds received from the separate tax-exempt loan made to the Governmental Lender pursuant to the Funding Loan Agreement, dated as of September 1, 2018 (the “**Original Funding Loan Agreement**”), between U.S. Bank National Association, a national banking association, as administrative agent for the Initial Funding Lender (the “**Administrative Agent**”), the Governmental Lender, and the Fiscal Agent, in the maximum aggregate principal amount of \$32,410,000 (the “**Series 2018 Tax-Exempt Funding Loan**”). The Series 2018 Tax-Exempt Funding Loan is evidenced by the Governmental Lender’s (i) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1, in the maximum principal amount of \$16,205,000 (the “**Series 2018A-1 Governmental Note**”); and (ii) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2, in the maximum principal amount of \$16,205,000 (the “**Series 2018A-2 Governmental Note**,” and together with the Series 2018A-1 Governmental Note, the “**Series 2018 Tax-Exempt Governmental Note**”). The Governmental Lender made the Series 2018 Taxable Project Loan to the Borrower with the proceeds received from the separate taxable loan made to the Governmental Lender pursuant to the Original Funding Loan Agreement in the maximum aggregate principal amount of \$26,379,808 (the “**Series 2018 Taxable Funding Loan**,” together with the Series 2018 Tax-Exempt Funding Loan, the “**Series 2018 Funding Loan**,” and further together with the Series 2018 Project Loan, the “**Series 2018 Loans**”). The Series 2018 Taxable Funding Loan is evidenced by the Governmental Lender’s (1) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1, in the maximum principal amount of \$13,189,904 (the “**Series 2018B-1 Governmental Note**”); and (2) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-2, in the maximum principal amount of \$13,189,904 (the “**Series 2018B-2 Governmental Note**,” and together with the Series 2018B-1 Governmental Note, the “**Series 2018 Taxable Governmental Note**”). The Series 2018 Tax-Exempt Governmental Note and the Series 2018 Taxable Governmental Note are referred to herein as the

“Series 2018 Governmental Notes.” The Series 2018 Governmental Notes are each dated September 14, 2018. The Governmental Lender delivered the Series 2018 Governmental Notes to the Administrative Agent, which delivered the Series 2018 Governmental Notes to U.S. Bank National Association, a national banking association, and BMO Harris Bank N.A., a national banking association (together, the **“Initial Funding Lender”**).

C. Pursuant to the Act and the Amended and Restated Project Loan Agreement, dated as of March 1, 2021 (the **“Project Loan Agreement”**), which amends and restates the Original Project Loan Agreement in its entirety, the Governmental Lender is also agreeing to make an additional mortgage loan to the Borrower in the maximum aggregate principal amount of \$300,000 (the **“Series 2021 Project Loan”**), for the purpose of providing financing for additional costs of the Project.

D. The Governmental Lender is making the Series 2021 Project Loan to the Borrower with the proceeds received from a separate loan made to the Governmental Lender pursuant to this Funding Loan Agreement, which amends and restates in entirety the Original Funding Loan Agreement, in the maximum aggregate principal amount of \$300,000 (the **“Series 2021 Funding Loan,”** and together with the Series 2021 Project Loan, the **“Series 2021 Loans”**). This Funding Loan Agreement amends and restates the Original Funding Loan Agreement in its entirety. The Series 2021 Funding Loan is evidenced by the Governmental Lender’s (i) Multifamily Note with designation as Multifamily Housing Revenue Note (Bren Road Station Project), Series 2021A, in the maximum principal amount of \$150,000 (the **“Series 2021A Governmental Note”**); and (ii) Multifamily Note with designation as Multifamily Housing Revenue Note (Bren Road Station Project), Series 2021B, in the maximum principal amount of \$150,000 (the **“Series 2021B Governmental Note,”** and together with the Series 2021A Governmental Note, the **“Series 2021 Governmental Notes”**). The Series 2021 Governmental Notes are dated March 2, 2021. The Governmental Lender will deliver the Series 2021 Governmental Notes to the Administrative Agent, which will deliver the Series 2021 Governmental Notes to the Initial Funding Lender.

E. In connection with the Series 2021 Funding Loan and the issuance of the Series 2021 Governmental Notes, the maximum principal amount of the Series 2018 Taxable Funding Loan will be decreased by \$300,000 so that the principal amount of the Series 2018 Funding Loan and the Series 2021 Funding Loan shall not exceed \$58,489,808. As a result, the principal amount of the Series 2018B-1 Governmental Note shall not exceed \$13,039,904, and the principal amount of the Series 2018B-2 Governmental Note shall not exceed \$13,039,904.

F. The Administrative Agent, on behalf of the Initial Funding Lender, pursuant to the terms and subject to the conditions of this Funding Loan Agreement, the Construction Phase Financing Agreement, and the Construction Continuing Covenant Agreement, has agreed to originate and fund the Series 2018 Funding Loan and the Series 2021 Funding Loan (together, the **“Funding Loans”**) to the Governmental Lender on a draw-down basis, which proceeds of the Funding Loans will be used by the Governmental Lender to fund the Series 2018 Project Loan and the Series 2021 Project Loan (together, the **“Project Loans”**) to the Borrower in corresponding installments pursuant to the Project Loan Agreement. The Administrative Agent, on behalf of the Initial Funding Lender, will administer the Series 2018 Loans and the Series 2021 Loans (together, the **“Loans”**) during the Construction Phase in accordance with the Construction Phase Financing Agreement (as it relates to the Series 2018 Tax-Exempt Funding Loan, the Series 2021 Funding Loan, the Series 2018 Tax-Exempt Project Loan, and the Series 2021 Project Loan), the Construction Continuing Covenant Agreement, and the other Financing Documents.

G. The Borrower has agreed to use the proceeds of the Project Loans to finance the acquisition, construction and equipping of the Project and to pay certain closing costs with respect to the Loans.

H. The Borrower's repayment obligations in respect of the Series 2018 Tax-Exempt Project Loan are evidenced by the Multifamily Note (Series A) (the "**Series 2018 Tax-Exempt Project Note**"), and the Borrower's repayment obligations in respect of the Series 2018 Taxable Project Loan are evidenced by the Multifamily Note (Series B) (the "**Series 2018 Taxable Project Note**," and together with the Series 2018 Tax-Exempt Project Note and all riders and modifications thereto, the "**Series 2018 Project Notes**"), each dated September 14, 2018, delivered to the Governmental Lender, which Series 2018 Project Notes were endorsed by the Governmental Lender to the Fiscal Agent as security for the Series 2018 Funding Loan. The Borrower's repayment obligations in respect of the Series 2021 Project Loan will be evidenced by the Multifamily Note (together with all riders and modifications thereto, the "**Series 2021 Project Note**"), dated March 2, 2021, delivered to the Governmental Lender, which Series 2021 Project Notes will be endorsed by the Governmental Lender to the Fiscal Agent as security for the Series 2021 Funding Loan.

I. To secure the Borrower's obligations under the Series 2018 Tax-Exempt Project Note, the Borrower executed and delivered to the Governmental Lender a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series A), dated September 14, 2018 (the "**Original Tax-Exempt Security Instrument**"), with respect to the Project, which Original Tax-Exempt Security Instrument was assigned by the Governmental Lender to the Fiscal Agent as security for the Series 2018 Tax-Exempt Funding Loan. To secure the Borrower's obligations under the Series 2021 Tax-Exempt Project Note, the Borrower and the Governmental Lender will execute a[n] _____ Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated March 2, 2021 (the "**Amended Tax-Exempt Security Instrument**"), which amends the Original Tax-Exempt Security Instrument (as amended, the "**Tax-Exempt Security Instrument**"), with respect to the Project, which Amended Tax-Exempt Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Series 2021 Funding Loan.

J. To secure the Borrower's obligations under the Series 2018 Taxable Project Note, the Borrower executed and delivered to the Governmental Lender a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series B), dated September 14, 2018 (the "**Taxable Security Instrument**," and together with the Tax-Exempt Security Instrument, the "**Security Instrument**"), with respect to the Project, which Taxable Security Instrument was assigned by the Governmental Lender to the Fiscal Agent as security for the Series 2018 Taxable Funding Loan.

K. The Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise ("**Freddie Mac**"), has entered into a commitment (the "**Tax-Exempt Freddie Mac Commitment**") with KeyBank National Association, a national banking association (the "**Freddie Mac Seller/Servicer**"), whereby Freddie Mac has committed, subject to the satisfaction of the Conditions to Conversion set forth in the Construction Phase Financing Agreement on or before the Forward Commitment Maturity Date, to facilitate the financing of the Project in the Permanent Phase by purchasing the Series 2018 Tax-Exempt Funding Loan and the Series 2021 Funding Loan (together, the "**Tax-Exempt Funding Loan**") from the Freddie Mac Seller/Servicer following the Conversion Date. On or before the Conversion Date, it is expected that Freddie Mac will revise the Tax-Exempt Freddie Mac Commitment to increase it by \$300,000 to include the tax-exempt Series 2021 Funding Loan.

L. If the Conditions to Conversion are satisfied on or before the Forward Commitment Maturity Date as provided for in the Tax-Exempt Freddie Mac Commitment and the Construction Phase Financing Agreement, the Series 2018 Tax-Exempt Project Loan and the Series 2021 Project Loan

(together, the “**Tax-Exempt Project Loan**”) will convert from the Construction Phase to the Permanent Phase on the Conversion Date and, on such Conversion Date, the Administrative Agent shall deliver, and the Freddie Mac Seller/Servicer shall purchase, the Tax-Exempt Funding Loan, as evidenced by the Series 2018 Tax-Exempt Governmental Note and the Series 2021 Governmental Notes (together, the “**Tax-Exempt Governmental Notes**”). If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Tax-Exempt Project Loan will not convert from the Construction Phase to the Permanent Phase, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligation with respect to the purchase of the Tax-Exempt Funding Loan and the Initial Funding Lender will remain the owner of the Tax-Exempt Funding Loan as the holder of the Tax-Exempt Governmental Notes.

M. Freddie Mac entered into a separate commitment (the “**Taxable Freddie Mac Commitment**”) with the Freddie Mac Seller/Servicer, whereby Freddie Mac committed, subject to the satisfaction of the Conditions to Conversion set forth in the commitment, to facilitate the financing of the Project in the Permanent Phase by making a conventional supplemental loan to amend and restate the Series 2018 Taxable Funding Loan made under this Funding Loan Agreement. On or before the Conversion Date, it is expected that Freddie Mac will revise the Taxable Freddie Mac Commitment to decrease it by \$300,000.

N. If the Conditions to Conversion associated with the Taxable Freddie Mac Commitment are satisfied on or before the Forward Commitment Maturity Date as provided for in the Taxable Freddie Mac Commitment, the Freddie Mac Seller/Servicer will make a conventional loan to purchase and amend and restate the Series 2018 Taxable Funding Loan and the Series 2018 Taxable Funding Loan will no longer be outstanding under this Funding Loan Agreement. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Series 2018 Taxable Project Loan will remain outstanding, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligation with respect to amending and restating the Series 2018 Taxable Funding Loan and the Initial Funding Lender will remain the owner of the Series 2018 Taxable Funding Loan as the holder of the Series 2018 Taxable Governmental Note.

O. As a Condition to Conversion, the Series 2018 Tax-Exempt Project Note and the Series 2021 Project Note (together, the “**Tax-Exempt Project Notes**”) and the Tax-Exempt Security Instrument are required to be amended and restated and the Borrower is required to enter into a Continuing Covenant Agreement with the Freddie Mac Seller/Servicer (the “**Freddie Mac Continuing Covenant Agreement**”), in each case pursuant to the forms attached to the Construction Phase Financing Agreement. As additional Conditions to Conversion, (i) the Series 2018 Taxable Governmental Note and the Series 2018 Taxable Project Note will be exchanged for a single Amended and Restated Taxable Project Note and the Series 2018 Taxable Governmental Note will no longer be outstanding under this Funding Loan Agreement, and the single Amended and Restated Taxable Project Note will be assigned to the Freddie Mac Seller/Servicer; (ii) the Tax-Exempt Governmental Notes will be consolidated into a single Governmental Note with a single Governmental Note Amortization Schedule; and (iii) the Taxable Security Instrument will be amended and restated and the Borrower will be required to enter into a Multifamily Loan Agreement with the Freddie Mac Seller/Servicer, in each case pursuant to the forms attached to the Taxable Freddie Mac Commitment and the Series 2018 Taxable Funding Loan will no longer be governed by this Funding Loan Agreement. After Conversion, all references herein to “Funding Loan” shall mean the Tax-Exempt Funding Loan, all references herein to the “Project Loans” shall mean the Tax-Exempt Project Loan, and the term “Security Instrument” shall mean the Tax-Exempt Security Instrument, as amended and restated.

P. If the Conditions to Conversion are satisfied and the Tax-Exempt Funding Loan is purchased by the Freddie Mac Seller/Servicer on the Conversion Date as set forth above, the Freddie Mac

Seller/Servicer shall deliver the Tax-Exempt Funding Loan to Freddie Mac for purchase pursuant to the terms of the Tax-Exempt Freddie Mac Commitment and the Guide (such date of purchase by Freddie Mac being referred to as the “**Freddie Mac Purchase Date**”).

Q. Upon the occurrence of the Freddie Mac Purchase Date, the Freddie Mac Seller/Servicer will assign to Freddie Mac all of its rights and interest in the Tax-Exempt Funding Loan, the Tax-Exempt Governmental Notes, this Funding Loan Agreement, the Freddie Mac Continuing Covenant Agreement and the other Financing Documents. KeyBank National Association will act as Servicer for the Loans on behalf of Freddie Mac, as Funding Lender, on and after the Freddie Mac Purchase Date.

R. The Governmental Lender has determined that all things necessary to incur the Funding Loan and to make the Governmental Notes, when executed by the Governmental Lender and authenticated by the Fiscal Agent and issued in accordance with this Funding Loan Agreement, the valid, binding and legal obligation of the Governmental Lender and to constitute this Funding Loan Agreement a valid lien on the properties, interests, revenues and payments herein pledged to the payment of the principal of, premium, if any, and interest on, the Governmental Notes, have been duly taken, and the creation, execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Notes, subject to the terms of this Funding Loan Agreement, have been duly authorized by the Governmental Lender.

S. The Fiscal Agent has the power and authority to enter into this Funding Loan Agreement, including corporate trust powers to accept the trusts hereunder and to accept and assume its other responsibilities hereunder as Fiscal Agent as evidenced by its execution of this Funding Loan Agreement.

T. To provide additional financing for the Project, the Governmental Lender issued its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C (the “**Subordinate Bonds**”), dated September 14, 2018, in the original aggregate principal amount of \$4,090,000, pursuant to a Subordinate Indenture of Trust, dated as of September 1, 2018 (the “**Subordinate Indenture**”), between the Governmental Lender and U.S. Bank National Association, a national banking association, as trustee for the Subordinate Bonds (the “**Trustee**”). The proceeds of the Subordinate Bonds were loaned to the Borrower (the “**Subordinate Loan**”) pursuant to a Subordinate Loan Agreement, dated as of September 1, 2018 (the “**Subordinate Loan Agreement**”), between the Governmental Lender and the Borrower, and the Borrower applied such proceeds to finance a portion of the acquisition, construction, and equipping of the Project and to pay certain closing costs with respect to the Subordinate Loan. The Subordinate Indenture, the Subordinate Loan Agreement, and the Subordinate Bonds and all related documents and any renewals or extensions thereof and all indebtedness owed thereunder, including the Subordinate Loan, shall be and are subordinated, inferior and subject to the Financing Documents, as the Financing Documents may be revised, modified, extended or amended from time to time, and all indebtedness owed thereunder pursuant to a Subordination Agreement, dated September 14, 2018, between the Fiscal Agent and the Trustee and consented to by the Borrower and Dominion Holdings II, LLC, as guarantor.

NOW, THEREFORE, in consideration of the premises and of the origination and funding of the Funding Loans by the Funding Lender, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

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

ARTICLE I

DEFINITIONS

Section 1.01 Definitions. The terms used in this Funding Loan Agreement (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Funding Loan Agreement and of any amendment or supplement hereto shall have the respective meanings specified below. Terms used herein not otherwise defined shall have the respective meanings set forth in the Project Loan Agreement.

“*Act*” means Minnesota Statutes, Chapter 462C, as amended.

“*Actual Project Loan Amount*” has the meaning set forth in the Construction Phase Financing Agreement.

“*Administration Fund*” means the Administration Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Administrative Agent*” means U.S. Bank National Association, a national banking association, as administrative agent for the Initial Funding Lender, its successors and assigns.

“*Advance Request*” means a request by the Borrower to the Administrative Agent that the Administrative Agent disburse proceeds of the Funding Loan to the Fiscal Agent as provided hereunder, which request shall be in the form prescribed by the Construction Continuing Covenant Agreement.

“*Advance Termination Date*” means (a) with respect to the Series 2018 Governmental Notes, the earliest to occur of (i) the date when the sum of the aggregate advances of the Series 2018 Funding Loan made by the Administrative Agent equals the Authorized Amount of the Series 2018 Funding Loan, (ii) the date that is three (3) years after the Delivery Date of the Series 2018 Governmental Notes, (iii) the Conversion Date, (iv) the date of a Determination of Taxability, or (v) the occurrence of an Event of Default hereunder; and (b) with respect to the Series 2021 Governmental Notes, (i) the date when the sum of the aggregate advances of the Series 2021 Funding Loan made by the Administrative Agent equals the Authorized Amount of the Series 2021 Funding Loan, (ii) the date that is three (3) years after the Delivery Date of the Series 2021 Governmental Notes, (iii) the Conversion Date, (iv) the date of a Determination of Taxability, or (v) the occurrence of an Event of Default hereunder.

“*Assignment*” means (a) with respect to Tax-Exempt Governmental Notes, the Assignment of Mortgage, dated the Delivery Date of the Series 2018 Governmental Notes, and the Assignment of Mortgage, dated the Delivery Date of the Series 2021 Governmental Notes, by the Governmental Lender assigning its interest in the Tax-Exempt Security Instrument to the Fiscal Agent; and (b) with respect to Series 2018 Taxable Governmental Notes, the Assignment of Mortgage, dated the Delivery Date of the Series 2018 Governmental Notes, by the Governmental Lender assigning its interest in the Taxable Security Instrument to the Fiscal Agent.

“*Authorized Amount*” means (a) with respect to the Series 2018 Funding Loan, \$58,489,808, the maximum principal amount of the Series 2018 Funding Loan authorized under this Funding Loan Agreement; and (b) with respect to the Series 2021 Funding Loan, \$300,000, the maximum principal amount of the Series 2021 Funding Loan authorized under this Funding Loan Agreement.

“*Authorized Officer*” means (a) when used with respect to the Governmental Lender, the Mayor, City Manager, and the Finance Director and such additional Person or Persons, if any, duly designated by the Governmental Lender in writing to act on its behalf, (b) when used with respect to the Borrower, any general partner of the Borrower and such additional Person or Persons, if any, duly designated by the Borrower in writing to act on its behalf, (c) when used with respect to the Fiscal Agent, any authorized signatory of the Fiscal Agent, or any Person who is authorized in writing to take the action in question on behalf of the Fiscal Agent, (d) when used with respect to the Servicer, any Person or Persons duly designated by the Servicer in writing to act on its behalf, and (e) when used with respect to the Funding Lender Representative, any Person who is authorized in writing to take the action in question on behalf of the Funding Lender Representative.

“*Bankruptcy Code*” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor federal statute.

“*BMO Harris Bank*” means BMO Harris Bank N.A., a national banking association, its successors and assigns, in its capacity as a co-Initial Funding Lender.

“*Bond Counsel*” means (a) on the Delivery Date of the Series 2018 Governmental Notes and the Delivery Date of the Series 2021 Governmental Notes, the law firm or law firms delivering the approving opinion(s) with respect to the Governmental Notes; or (b) any other firm of attorneys selected by the Governmental Lender that is experienced in matters relating to the issuance of obligations by states and their political subdivisions that is listed as municipal bond attorneys in The Bond Buyer’s Municipal Marketplace and is acceptable to the Funding Lender Representative.

“*Borrower*” means Minnetonka Leased Housing Associates III, LLLP, a limited liability limited partnership duly organized and existing under the laws of the State, or any of its permitted successors or assigns, as owner of the Project.

“*Borrower Equity Account*” means the Borrower Equity Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 hereof.

“*Borrower Equity Deposit*” means (a) with respect to the Series 2018 Project Loan, \$0.00, which shall be comprised of sources other than the proceeds of the Series 2018 Project Loan; and (b) with respect to the Series 2021 Project Loan, \$0.00, which shall be comprised of sources other than the proceeds of the Series 2021 Project Loan.

“*Business Day*” means any day other than (a) a Saturday or a Sunday, or (b) a day on which (i) banking institutions in the City of New York or in the city in which the Principal Office of the Fiscal Agent is located are authorized or obligated by law or executive order to be closed or (ii) the New York Stock Exchange is closed.

“*Certificate of the Governmental Lender*” and “*Request of the Governmental Lender*” mean, respectively, a written certificate or request signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender or such other Person as may be designated and authorized to sign for the Governmental Lender. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

“*Code*” means the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated thereunder.

“*Conditions to Conversion*” has the meaning given to that term in the Construction Phase Financing Agreement and the Taxable Freddie Mac Commitment.

“*Construction Continuing Covenant Agreement*” means the Construction Loan Agreement, dated the Delivery Date of the Series 2018 Governmental Notes, as amended by _____, dated the Delivery Date of the Series 2021 Governmental Notes, between the Borrower, the Administrative Agent, and the Initial Funding Lender, as the same may be amended, modified or supplemented from time to time.

“*Construction Loan Documents*” means, collectively, the Construction Continuing Covenant Agreement, the Construction Phase Financing Agreement, and all other documents to be executed and delivered by the Borrower to the Administrative Agent or the Initial Funding Lender in connection with the Project.

“*Construction Phase*” means the construction phase of the Project Loans, which time period shall commence on the Delivery Date of the Series 2018 Governmental Notes and remain in effect to, but not including, the Conversion Date.

“*Construction Phase Financing Agreement*” means the Construction Phase Financing Agreement to be entered into between the Administrative Agent, Freddie Mac, and the Freddie Mac Seller/Service, and acknowledged and agreed to by the Borrower, as the same may be amended, modified or supplemented from time to time.

“*Construction Phase Interest Rate*” has the meaning set forth on Exhibit F; provided during the continuation of any Event of Default hereunder, the Construction Phase Interest Rate shall be the Default Rate.

“*Continuing Covenant Agreement*” means (a) prior to the Conversion Date, the Construction Continuing Covenant Agreement; and (b) from and after the Conversion Date, the Freddie Mac Continuing Covenant Agreement.

“*Conversion*” means conversion of the Project Loans from the Construction Phase to the Permanent Phase on the Conversion Date.

“*Conversion Date*” means (a) the date the Freddie Mac Seller/Service purchases the Tax-Exempt Funding Loan from the Administrative Agent upon the satisfaction of the Conditions to Conversion, as such Conversion Date is specified by the Freddie Mac Seller/Service in the Notice of Conversion, which date shall be at least ten (10) days following the date on which the Notice of Conversion is delivered; and (b) the date the Freddie Mac Seller/Service makes a conventional loan in accordance with the Taxable Freddie Mac Commitment.

“*Cost*,” “*Costs*” or “*Costs of the Project*” means, with respect to the proceeds of the Tax-Exempt Governmental Notes, costs paid with respect to the Project that (a) are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general federal income tax principles and in accordance with Section 1.103-8(a)(1) of the Treasury Regulations; (b) are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code; (c) are paid after the earlier of (i) sixty (60) days prior to the date of a resolution of the Governmental Lender to reimburse costs of the Project with proceeds of the Loans or (ii) the Delivery Date of the Series 2018 Tax-Exempt Governmental Notes or the Series 2021 Governmental Notes; and (d) if the Costs of the Project were previously paid and are to be reimbursed with proceeds of the Loans such costs were (i) Costs of Issuance

of the Governmental Notes, (ii) preliminary capital expenditures (within the meaning of Section 1.150-2(f)(2) of the Treasury Regulations) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition or construction of the Project that do not exceed twenty percent (20%) of the issue price (as defined in Section 1.148-1 of the Treasury Regulations) of the Tax-Exempt Governmental Notes, or (iii) were capital expenditures with respect to the Project that are reimbursed no later than eighteen (18) months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three (3) years after the expenditure is paid); provided however, that if any portion of the Project is being constructed or developed by the Borrower or an affiliate (whether as a developer, a general contractor or a subcontractor), “Cost,” “Costs” or “Costs of the Project” shall include only (1) the actual out-of-pocket costs incurred by the Borrower or such affiliate in developing or constructing the Project (or any portion thereof), (2) any reasonable fees for supervisory services actually rendered by the Borrower or such affiliate (but excluding any profit component) and (3) any overhead expenses incurred by the Borrower or such affiliate which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the acquisition, construction or development of the Project or payments received by such affiliate due to early completion of the Project (or any portion thereof).

“*Cost of Issuance Fund*” means the Cost of Issuance Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Costs of Issuance*” means, as applicable, (a) the fees (excluding ongoing fees), costs and expenses of (i) the Governmental Lender, the Governmental Lender’s counsel and the Governmental Lender’s municipal advisor, (ii) Bond Counsel, (iii) the Fiscal Agent and the Fiscal Agent’s counsel, (iv) the Administrative Agent and the Initial Funding Lender’s counsel, (v) the Freddie Mac Seller/Servicer and the Freddie Mac Seller/Servicer’s counsel, (vi) Freddie Mac and Freddie Mac’s counsel, and (vii) the Borrower’s counsel attributable to the funding of the Loans and the Borrower’s financial advisor, if any; and (b) all other fees, costs and expenses directly associated with the Funding Loan and the Project Loans, including, without limitation, printing costs, costs of reproducing documents, filing and recording fees.

“*Costs of Issuance Deposit*” means (a) with respect to the Series 2018 Governmental Notes, the deposit to be made by the Borrower with the Fiscal Agent on the Delivery Date of the Series 2018 Governmental Notes, which deposit shall equal \$0.00; and (b) with respect to the Series 2021 Governmental Notes, the deposit to be made by the Borrower with the Fiscal Agent on the Delivery Date of the Series 2021 Governmental Notes, which deposit shall equal \$_____.

“*Default Rate*” means (a) during the Construction Phase, the Default Rate as that term is defined in the Construction Continuing Covenant Agreement; and (b) during the Permanent Phase, an interest rate equal to the lower of (i) four percent (4.0%) per annum above the Permanent Phase Interest Rate or (ii) the Maximum Interest Rate.

“*Delivery Date*” means (a) with respect to the Series 2018 Governmental Notes, September 14, 2018, the date of funding of the initial advance of the Series 2018 Funding Loan and the delivery of the Series 2018 Governmental Notes by the Governmental Lender to the Administrative Agent; and (b) with respect to the Series 2021 Governmental Notes, March 2, 2021, the date of funding of the initial advance of the Series 2021 Funding Loan and the delivery of the Series 2021 Governmental Notes by the Governmental Lender to the Administrative Agent.

“*Determination of Taxability*” means, with respect to the Tax-Exempt Governmental Notes, (a) a determination by the Commissioner or any District Director of the Internal Revenue Service; (b) a private

ruling or Technical Advice Memorandum issued by the National Office of the Internal Revenue Service in which Governmental Lender and Borrower were afforded the opportunity to participate; (c) a determination by any court of competent jurisdiction; (d) the enactment of legislation; or (e) receipt by Fiscal Agent or Funding Lender Representative, at the request of Governmental Lender, Borrower, Fiscal Agent or Funding Lender Representative, of an opinion of Bond Counsel, in each case to the effect that the interest on the Tax-Exempt Governmental Notes is includable in gross income for federal income tax purposes of the Funding Lender or any former Funding Lender other than a Funding Lender who is a “substantial user” of the Project or a “related person” (as such terms are defined in Section 147(a) of the Code); provided, however, that no such Determination of Taxability under clause (a) or (c) shall be deemed to have occurred if the Governmental Lender (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (i) a final determination from which no appeal may be taken with respect to such determination; (ii) abandonment of such appeal by the Governmental Lender or the Borrower, as the case may be; or (iii) one year from the date of initial determination.

“*Disbursing Agreement*” means the Master Disbursing Agreement to be entered into between the Borrower, the Administrative Agent, the Trustee, and the Title Company, as the same may be amended, modified or supplemented from time to time.

“*Electronic Notice*” means delivery of notice in a Word format or a Portable Document Format (PDF) by electronic mail to the electronic mail addresses listed in Section 11.04 hereof; provided, that if a sender receives notice that the electronic mail is undeliverable, notice must be sent as otherwise required by Section 11.04 hereof.

“*Event of Default*” or “*event of default*” means any of those events specified in and defined by the applicable provisions of Article VI hereof to constitute an event of default.

“*Extraordinary Services*” means and includes, but not by way of limitation, services, actions and things carried out and all expenses incurred by the Fiscal Agent, in respect of or to prevent default under this Funding Loan Agreement or the Project Loan Documents, including any reasonable attorneys’ or agents’ fees and expenses and other litigation costs that are entitled to reimbursement under the terms of the Project Loan Agreement, and other actions taken and carried out by the Fiscal Agent which are not expressly set forth in this Funding Loan Agreement or the Project Loan Documents.

“*Fair Market Value*” means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm’s length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term “Fair Market Value” means the acquisition price in a bona fide arm’s length transaction (as referenced above) if (a) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code; (b) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code; (c) the investment is a United States Treasury Security–State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt; or (d) any commingled investment fund in which the Governmental Lender and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of investment.

“*Fee Component*” has the meaning set forth in the Project Loan Agreement.

“*Financing Documents*” means, collectively, this Funding Loan Agreement, the Governmental Notes, the Tax Certificate for the Series 2018 Tax-Exempt Governmental Notes, the Tax Certificate for the Series 2021 Tax-Exempt Governmental Notes, the Project Loan Documents, the Construction Loan Documents (during the Construction Phase) and all other documents or instruments evidencing, securing or relating to the Loans.

“*Fiscal Agent*” means U.S. Bank National Association, a national banking association, and its successors hereunder, in its capacity as fiscal agent hereunder.

“*Fiscal Agent’s Extraordinary Fees and Expenses*” means all those fees, expenses and disbursements earned or incurred by the Fiscal Agent as described under Section 7.06 hereof for Extraordinary Services, as set forth in a detailed invoice to the Borrower, the Servicer and the Funding Lender Representative.

“*Fiscal Agent’s Ordinary Fees and Expenses*” means the annual administration fee for the Fiscal Agent’s ordinary fees and expenses in rendering its services under this Funding Loan Agreement during each twelve (12) month period, which fee is equal to (and shall not exceed) \$1,800 and shall be payable annually in advance on the Delivery Date of the Series 2018 Governmental Notes and each anniversary thereof.

“*Forward Commitment Maturity Date*” has the meaning given such term in the Tax-Exempt Freddie Mac Commitment.

“*Freddie Mac*” means the Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise organized and existing under the laws of the United States of America, and its successors and assigns.

“*Freddie Mac Commitments*” means, together, the Tax-Exempt Freddie Mac Commitment and the Taxable Freddie Mac Commitment.

“*Freddie Mac Continuing Covenant Agreement*” means the Continuing Covenant Agreement to be delivered on the Conversion Date in the form attached to the Construction Phase Financing Agreement by and between the Borrower and the Freddie Mac Seller/Servicer, as the same may be amended, modified or supplemented from time to time.

“*Freddie Mac Purchase Date*” means the date on which Freddie Mac purchases the Tax-Exempt Funding Loan from the Freddie Mac Seller/Servicer upon satisfaction of the conditions set forth in the Construction Phase Financing Agreement and the Tax-Exempt Freddie Mac Commitment.

“*Freddie Mac Seller/Servicer*” means KeyBank National Association, a national banking association, as Freddie Mac’s seller/servicer under the Freddie Mac Commitment, or any of its successors or assigns under the Freddie Mac Commitment.

“*Funding Lender*” means any Person who is the holder of the Governmental Notes.

“*Funding Lender Representative*” means the Funding Lender or any Person designated by the Funding Lender to act on behalf of the Funding Lender as provided in Section 11.05 hereof, or an assignee of such Person as provided in Section 11.05 hereof. The initial Funding Lender Representative shall be the Administrative Agent, acting on behalf of the Initial Funding Lender. The Freddie Mac Seller/Servicer shall become the Funding Lender Representative upon the occurrence of the Conversion

Date and Freddie Mac shall become the Funding Lender Representative upon the occurrence of the Freddie Mac Purchase Date.

“*Funding Loan*” or “*Funding Loans*” means, together, the Tax-Exempt Funding Loan and the Series 2018 Taxable Funding Loan. On and after the Conversion Date only the Tax-Exempt Funding Loan shall be outstanding, and all references to “Funding Loan” shall mean the Tax-Exempt Funding Loan.

“*Funding Loan Agreement*” means this Amended and Restated Funding Loan Agreement, dated as of March 1, 2021, between the Administrative Agent on behalf of the Initial Funding Lender, the Governmental Lender, and the Fiscal Agent, as amended, supplemented or restated from time to time. This Funding Loan Agreement amends and restates in entirety the Funding Loan Agreement, dated as of September 1, 2018, between the Administrative Agent on behalf of the Initial Funding Lender, the Governmental Lender, and the Fiscal Agent.

“*Funds*” means the Project Loan Fund and the funds created under Section 4.01 hereof.

“*Government Obligations*” means investments meeting the requirements of clause (a) or (b) of the definition of “Qualified Investments” herein.

“*Governmental Lender*” means the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State.

“*Governmental Lender Fee*” means (a) the financing fee in the amount of one-eighth of one percent (0.125%) of the principal amount of the Series 2018 Governmental Notes to be paid on or before the Delivery Date of the Series 2018 Governmental Notes; and (b) the financing fee in the amount of one-eighth of one percent (0.125%) of the principal amount of the Series 2021 Governmental Notes to be paid on or before the Delivery Date of the Series 2021 Governmental Notes.

“*Governmental Note Amortization Schedule*” means the Governmental Note Amortization Schedule attached as Schedule 1 to each of the Series 2018A-1 Governmental Note, the Series 2018A-2 Governmental Note, the Series 2018B-1 Governmental Note, the Series 2018B-2 Governmental Note, the Series 2021A Governmental Note, and the Series 2021B Governmental Note, as shall be consolidated or eliminated at Conversion subject to the terms of the Construction Phase Financing Agreement.

“*Governmental Note(s)*” means, collectively, the Series 2018 Tax-Exempt Governmental Notes, the Series 2018 Taxable Governmental Notes, and the Series 2021 Governmental Notes. On and after the Conversion Date, the Series 2018 Taxable Governmental Notes shall be exchanged in consideration for the delivery by the Borrower of its Amended and Restated Taxable Project Note to the Freddie Mac Seller/Service as the originator of a supplemental conventional loan and said Series 2018 Taxable Governmental Notes shall no longer be outstanding hereunder. On or after the Conversion Date, “Governmental Note(s)” shall mean the consolidated single Governmental Note representing the Series 2018 Tax-Exempt Governmental Notes and the Series 2021 Governmental Notes in the Construction Phase and all references herein to the Governmental Note after the Conversion Date means only the consolidated Governmental Note as then outstanding.

“*Guide*” means the Freddie Mac Multifamily Seller/Service Guide, as the same may be amended, modified or supplemented from time to time.

“*Initial Debt Service Deposit*” means (a) with respect to the Series 2018 Governmental Notes, \$0.00; and (b) with respect to the Series 2021 Governmental Notes, \$0.00.

“*Initial Funding Lender*” means, together, U.S. Bank and BMO Harris Bank, as initial holders of the Governmental Notes.

“*Interest Payment Date*” means (a) with respect to the Series 2018 Governmental Notes, the first day of each calendar month, commencing October 1, 2018; (b) with respect to the Series 2021 Governmental Notes, the first day of each calendar month, commencing April 1, 2021; (c) the date of any prepayment of the Funding Loans, but only with respect to the portion of the Funding Loans subject to prepayment; and (d) the Maturity Date.

“*Investment Income*” means the earnings and profits derived from the investment of money pursuant to Section 4.08 hereof.

“*Loans*” means, together, the Project Loans and the Funding Loans.

“*Loan Payment Fund*” means the Loan Payment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Loan Prepayment Fund*” means the Loan Prepayment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Maturity Date*” means (a) the maturity date of the Series 2018 Funding Loan set forth in Section 2.01(e) hereof; and (b) the maturity date of the Series 2021 Funding Loan set forth in Section 2.01A(e) hereof.

“*Maximum Interest Rate*” means the rate of interest which results in the maximum amount of interest allowed by applicable law.

“*Moody’s*” means Moody’s Investors Service, Inc., its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

“*Net Proceeds*,” when used with respect to any insurance or condemnation award, means the proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all reasonable expenses incurred in the collection of such insurance proceeds or condemnation award, including reasonable attorneys’ fees.

“*Notes*” means, together, the Project Notes and the Governmental Notes.

“*Notice of Conversion*” means a written notice to be delivered not less than ten (10) days prior to the Conversion Date by the Freddie Mac Seller/Service to the Governmental Lender, the Fiscal Agent, the Borrower, the Administrative Agent and Freddie Mac (a) stating that the Conditions to Conversion have been satisfied on or before the Forward Commitment Maturity Date or, if any Condition to Conversion has not been satisfied on or before the Forward Commitment Maturity Date, stating that such Condition to Conversion has been waived in writing by Freddie Mac (if a waiver is permitted and is granted by Freddie Mac, in its sole and absolute discretion) on or before the Forward Commitment Maturity Date; (b) confirming the Conversion Date; and (c) providing for an updated amortization schedule for the Project Note and the Governmental Note in the event the Borrower makes a Pre-Conversion Loan Equalization Payment at Conversion.

“*Permanent Phase*” means the permanent phase of the Project Loans, which time period shall commence on the Conversion Date and remain in effect through the remaining term of the Project Loans.

“*Permanent Phase Interest Rate*” means, during the Permanent Phase, the fixed interest rate of 4.89% per annum; provided that during the continuance of any Event of Default hereunder, the Permanent Phase Interest Rate shall be the Default Rate, in each case computed on the basis of a three hundred sixty (360) day year consisting of twelve (12) thirty (30) day months.

“*Person*” means an individual, a corporation, a partnership, an association, a joint stock company, a joint venture, a trust, an unincorporated association, a limited liability company or a government or any agency or political subdivision thereof, or any other organization or entity (whether governmental or private).

“*Pledged Security*” shall have the meaning given to that term in Section 2.02 hereof.

“*Pre-Conversion Loan Equalization Payment*” means a prepayment of the Project Loans by the Borrower (and corresponding prepayment of the Funding Loans hereunder) prior to the Forward Commitment Maturity Date in order to equalize the principal amount of the Project Loans and the Funding Loans to the Actual Project Loan Amount.

“*Prepayment Premium*” means any premium payable hereunder in connection with a prepayment of the Funding Loans, which premium shall be in an amount equal to (a) during the Construction Phase, the amount of premium, if any, payable by the Borrower under the Construction Continuing Covenant Agreement; and (b) during the Permanent Phase, the amount of premium payable by the Borrower under the Tax-Exempt Project Notes, in each case in connection with a prepayment of the Project Loans.

“*Principal Office of the Fiscal Agent*” means the office of the Fiscal Agent referenced in Section 11.04(a) hereof, or such other office or offices as the Fiscal Agent may designate in writing from time to time, or the office of any successor Fiscal Agent where it principally conducts its business of serving as Fiscal Agent under indentures pursuant to which municipal or governmental obligations are issued.

“*Project*” means, collectively, the land and the 262-unit senior residential apartment units, and related fixtures, equipment, furnishings and site improvements known as Bren Road Station, formerly known as Legends of Minnetonka, located at 11001 Bren Road East, in Minnetonka, Hennepin County, Minnesota, including the real estate described in the Security Instrument.

“*Project Account*” means the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 hereof.

“*Project Loan*” or “*Project Loans*” means, together, the Tax-Exempt Project Loan and the Series 2018 Taxable Project Loan. On and after the Conversion Date only the Tax-Exempt Project Loan shall be outstanding, and all references herein to “*Project Loan*” shall mean the Tax-Exempt Project Loan.

“*Project Loan Agreement*” means the Amended and Restated Project Loan Agreement, dated as of March 1, 2021, between the Borrower, the Governmental Lender, and the Fiscal Agent, as amended, supplemented or restated from time to time. The Project Loan Agreement amends and restates in entirety the Project Loan Agreement, dated as of September 1, 2018, between the Borrower, the Governmental Lender, and the Fiscal Agent.

“*Project Loan Documents*” means, collectively, the Security Instrument, the Project Notes, the Project Loan Agreement, the Tax Regulatory Agreement, the Assignment, the Continuing Covenant Agreement, and any Subordination Agreement(s) and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Project Loan or any portion thereof.

“*Project Loan Fund*” means the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 hereof.

“*Project Note(s)*” means, collectively, the Tax-Exempt Project Notes and the Series 2018 Taxable Project Note. On and after the Conversion Date only the Tax-Exempt Project Notes shall be outstanding, and all references herein to the “Project Note(s)” shall, after the Conversion Date, mean only the Tax-Exempt Project Note(s) then outstanding.

“*Qualified Investments*” means any of the following if and to the extent permitted by law: (a) direct and general obligations of the United States of America; (b) obligations of any agency or instrumentality of the United States of America the payment of the principal of and interest on which are unconditionally guaranteed by the full faith and credit of the United States of America; (c) senior debt obligations of Freddie Mac; (d) senior debt obligations of Fannie Mae; (e) demand deposits or time deposits with, or certificates of deposit issued by, the Fiscal Agent or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000; provided that the Fiscal Agent or such other institution has been rated at the time of investment at least “VMIG-1”/“A-1+” by Moody’s or S&P which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency; (f) investment agreements with a bank or any insurance company or other financial institution which has a rating assigned by Moody’s or S&P to its outstanding long-term unsecured debt which is the highest rating (as defined below) for long-term unsecured debt obligations assigned by Moody’s or S&P, and which are approved by the Funding Lender Representative; (g) shares or units in any money market mutual fund rated at the time of investment “Aaa”/“AAA” by Moody’s or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security) (including mutual funds of the Fiscal Agent or its affiliates or for which the Fiscal Agent or an affiliate thereof serves as investment advisor or provides other services to such mutual fund receives reasonable compensation therefor) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of (A) direct obligations of the government of the United States of America, or (B) tax-exempt obligations; (h) (i) tax-exempt obligations rated in the highest short term rating category by Moody’s or S&P, or (ii) shares of a tax-exempt municipal money market mutual fund or other collective investment fund registered under the federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, having assets of at least \$100,000,000, and having a rating at the time of investment of “Aaa”/“AAA” by Moody’s or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security), for which at least ninety-five percent (95%) of the income paid to the holders on interest in such money market fund will be excludable from gross income under Section 103 of the Code, including money market funds for which the Fiscal Agent or its affiliates receive a fee for investment advisory or other services to the fund; or (i) any other investments approved in writing by the Funding Lender Representative. For purposes of this definition, the “highest rating” shall mean a rating at the time of investment of at least “VMIG-1”/“A-1+” for obligations with less than one (1) year maturity; at least “Aaa”/“VMIG-1”/“AAA”/“A-1+” for obligations with a maturity of one (1) year or greater but less than three years; and at least “Aaa”/“AAA” for obligations with a maturity of three (3) years or greater. Qualified Investments must be limited to instruments that have a predetermined fixed-dollar amount of principal due at maturity that cannot vary or change and interest, if tied to an

index, shall be tied to a single interest rate index plus a single fixed spread, if any, and move proportionately with such index.

“*Rating Agency*” means Moody’s or S&P, as applicable, or any successor rating service thereof.

“*Rebate Analyst*” means a certified public accountant, financial analyst or bond counsel, or any firm of the foregoing, or financial institution (which may include the Fiscal Agent) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code, selected and retained by the Borrower at the expense of the Borrower, with the prior written consent of the Governmental Lender, to make the rebate computations required under this Funding Loan Agreement and the Project Loan Agreement.

“*Rebate Fund*” means the Rebate Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Rebate Year*” means (a) with respect to the Series 2018 Tax-Exempt Governmental Notes, each one (1) year period that ends at the close of business on the day in the calendar year that is selected by Borrower as indicated in the Tax Certificate for the Series 2018 Tax-Exempt Governmental Notes; and (b) with respect to the Series 2021 Governmental Notes, each one (1) year period that ends at the close of business on the day in the calendar year that is selected by Borrower as indicated in the Tax Certificate for the Series 2021 Governmental Notes. The first and last Rebate Years may be short periods. With respect to the Series 2018 Tax-Exempt Governmental Notes, if no day is selected by Borrower before the earlier of the Maturity Date or the date that is five (5) years after the Delivery Date of the Series 2018 Governmental Notes, each Rebate Year ends on each anniversary of the Delivery Date of the Series 2018 Governmental Notes and on the Maturity Date or date of earlier payment in full of the Series 2018 Tax-Exempt Governmental Notes. With respect to the Series 2021 Governmental Notes, if no day is selected by Borrower before the earlier of the Maturity Date or the date that is five (5) years after the Delivery Date of the Series 2021 Governmental Notes, each Rebate Year ends on each anniversary of the Delivery Date of the Series 2021 Governmental Notes and on the Maturity Date or date of earlier payment in full of the Series 2021 Governmental Notes.

“*Requisition*” means, with respect to the Project Loan Fund, the requisition in the form of *Exhibit E* to this Funding Loan Agreement required to be submitted in connection with disbursements from the Project Account and/or the Borrower Equity Account of the Project Loan Fund, and with respect to the Cost of Issuance Fund, the requisition in the form of *Exhibit D* to this Funding Loan Agreement required to be submitted in connection with disbursements from the Cost of Issuance Fund.

“*Resolution*” means (a) with respect to the Series 2018 Governmental Notes, the resolution adopted by the City Council of the Governmental Lender on August 27, 2018, authorizing the Series 2018 Funding Loan, the Series 2018 Project Loan and the execution and delivery of the Financing Documents to which it is a party; and (b) with respect to the Series 2021 Governmental Notes, the resolution adopted by the City Council of the Governmental Lender on February 22, 2021, authorizing the Series 2021 Funding Loan, the Series 2021 Project Loan, and the execution and delivery of the Financing Documents to which it is a party.

“*Responsible Officer*” means, when used with respect to the Fiscal Agent, any officer within the corporate trust department of the Fiscal Agent, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Fiscal Agent who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s

knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Funding Loan Agreement.

“*Revenue Fund*” means the Revenue Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

“*Revenues*” means (a) all payments made with respect to the Project Loans pursuant to the Project Loan Agreement, the Project Notes or the Security Instrument, including but not limited to all casualty or other insurance benefits and condemnation awards paid in connection therewith and all payments obtained through the exercise of remedies under the Financing Documents; and (b) all money and securities held by the Fiscal Agent in the funds and accounts established pursuant to this Funding Loan Agreement (excluding money or securities designated for deposit into and held in the Cost of Issuance Fund, the Administration Fund, and the Rebate Fund), together with all investment earnings thereon.

“*Security Instrument*” means, together, the Taxable Security Instrument and the Tax-Exempt Security Instrument. On and after the Conversion Date, all references to “*Security Instrument*” shall be to the Tax-Exempt Security Instrument.

“*Series 2018A-1 Governmental Note*” means the Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1, in the maximum aggregate principal amount of \$16,205,000, dated the Delivery Date of the Series 2018 Governmental Notes, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of U.S. Bank, in the form attached hereto as *Exhibit A-1*, as the same may be amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series 2018A-2 Governmental Note*” means Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2, in the maximum aggregate principal amount of \$16,205,000, dated the Delivery Date of the Series 2018 Governmental Notes, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of BMO Harris Bank, in the form attached hereto as *Exhibit A-1*, as the same may be amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series 2018B-1 Governmental Note*” means the Taxable Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1, in the maximum aggregate principal amount of \$13,039,904, dated the Delivery Date of the Series 2018 Governmental Notes, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of U.S. Bank, in the form attached hereto as *Exhibit A-2*, as the same may be further amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series 2018B-2 Governmental Note*” means the Taxable Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-2, in the maximum aggregate principal amount of \$13,039,904, dated the Delivery Date of the Series 2018 Governmental Notes, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of BMO Harris Bank, in the form attached hereto as *Exhibit A-2*, as the same may be amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series 2018 Governmental Notes*” means, together, the Series 2018 Tax-Exempt Governmental Notes and the Series 2018 Taxable Governmental Notes.

“*Series 2018 Taxable Funding Loan*” means the taxable loan in the maximum aggregate principal amount of \$26,079,808 made to the Governmental Lender pursuant to this Funding Loan Agreement by the Administrative Agent.

“*Series 2018 Taxable Governmental Notes*” means, together, the Series 2018B-1 Governmental Note and the Series 2018B-2 Governmental Note.

“*Series 2018 Taxable Project Loan*” means the loan made by the Governmental Lender to the Borrower pursuant to the Project Loan Agreement in the maximum aggregate principal amount of \$26,079,808, as evidenced by the Series 2018 Taxable Project Note.

“*Series 2018 Taxable Project Note*” means the Multifamily Note (Series B), dated the Delivery Date of the Series 2018 Taxable Governmental Notes, from the Borrower, including all riders and addenda thereto, evidencing the Borrower’s obligation to repay the Series 2018 Project Loan, which Series 2018 Taxable Project Note will be delivered to the Governmental Lender and endorsed by the Governmental Lender to the Fiscal Agent as security for the Series 2018 Taxable Funding Loan, as the same may be further amended, restated, supplemented, or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series 2018 Tax-Exempt Funding Loan*” means the tax-exempt loan in the maximum aggregate principal amount of \$32,410,000 made to the Governmental Lender pursuant to this Funding Loan Agreement by the Administrative Agent.

“*Series 2018 Tax-Exempt Governmental Notes*” means, together, the Series 2018A-1 Governmental Note and the Series 2018A-2 Governmental Note.

“*Series 2018 Tax-Exempt Project Loan*” means the loan made by the Governmental Lender to the Borrower pursuant to the Project Loan Agreement in the maximum aggregate principal amount of \$32,410,000, as evidenced by the Series 2018 Tax-Exempt Project Note.

“*Series 2018 Tax-Exempt Project Note*” means the Multifamily Note (Series A), dated the Delivery Date of the Series 2018 Tax-Exempt Governmental Notes, from the Borrower, including all riders and addenda thereto, evidencing the Borrower’s obligation to repay the Series 2018 Tax-Exempt Project Loan, which Series 2018 Tax-Exempt Project Note will be delivered to the Governmental Lender and endorsed by the Governmental Lender to the Fiscal Agent as security for the Series 2018 Tax-Exempt Funding Loan, as the same will be amended and restated into the form attached to the Construction Phase Financing Agreement upon the occurrence of the Conversion Date, as the same may be further amended, restated, supplemented, or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series 2021A Governmental Note*” means the Multifamily Note with designation as Multifamily Housing Revenue Note (Bren Road Station Project), Series 2021A, in the maximum aggregate principal amount of \$150,000, dated the Delivery Date of the Series 2021 Governmental Notes, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of U.S. Bank, in the form attached hereto as **Exhibit G**, as the same may be amended, restated, supplemented, or otherwise modified from

time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series 2021B Governmental Note*” means the Multifamily Note with designation as Multifamily Housing Revenue Note (Bren Road Station Project), Series 2021B, in the maximum aggregate principal amount of \$150,000, dated the Delivery Date of the Series 2021 Governmental Notes, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of BMO Harris Bank, in the form attached hereto as *Exhibit G*, as the same may be amended, restated, supplemented, or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Series 2021 Funding Loan*” means the loan in the maximum aggregate principal amount of \$300,000 made to the Governmental Lender pursuant to this Funding Loan Agreement by the Administrative Agent.

“*Series 2021 Governmental Notes*” means, together, the Series 2021A Governmental Note and the Series 2021B Governmental Note.

“*Series 2021 Project Loan*” means the loan made by the Governmental Lender to the Borrower pursuant to the Project Loan Agreement in the maximum aggregate principal amount of \$300,000, as evidenced by the Series 2021 Project Note.

“*Series 2021 Project Note*” means the Multifamily Note, dated the Delivery Date of the Series 2021 Governmental Notes, from the Borrower, including all riders and addenda thereto, evidencing the Borrower’s obligation to repay the Series 2021 Project Loan, which Series 2021 Project Note will be delivered to the Governmental Lender and endorsed by the Governmental Lender to the Fiscal Agent as security for the Series 2021 Funding Loan, as the same will be amended and restated into the form attached to the Construction Phase Financing Agreement upon the occurrence of the Conversion Date, as the same may be further amended, restated, supplemented, or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented, or otherwise modified from time to time.

“*Servicer*” means any entity appointed by the Funding Lender Representative to service the Loans and any successor in such capacity as appointed by the Funding Lender Representative pursuant to Section 3.02 of the Project Loan Agreement. During the Construction Phase, the Servicer shall be the Administrative Agent. During the Permanent Phase, the Servicer shall be the Freddie Mac Seller/Servicer.

“*S&P*” means S&P Global Ratings, and its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

“*State*” means the State of Minnesota.

“*Subordinate Bonds*” means the Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), issued by the Governmental Lender on the Delivery Date of the Series 2018 Governmental Notes in the original aggregate principal amount of \$4,090,000.

“*Subordinate Indenture*” means the Subordinate Indenture of Trust, dated as of September 1, 2018, between the Governmental Lender and the Trustee, as it may be supplemented and amended from time to time.

“*Subordinate Loan*” means the Governmental Lender’s loan of the proceeds of the Subordinate Bonds to the Borrower pursuant to the Subordinate Loan Agreement.

“*Subordinate Loan Agreement*” means the Subordinate Loan Agreement, dated as of September 1, 2018, between the Governmental Lender and the Borrower, as it may be amended from time to time.

“*Subordinate Loan Documents*” means, collectively, the Subordinate Indenture, the Subordinate Bonds, and all other documents or instruments evidencing, securing, or relating to the Subordinate Bonds.

“*Subordination Agreement*” means any subordination or intercreditor agreement(s) entered into with respect to any subordinate financing related to the Project, as the same may be amended, supplemented or restated.

“*Taxable Freddie Mac Commitment*” means the commitment from Freddie Mac to the Freddie Mac Seller/Service pursuant to which Freddie Mac has agreed to make a conventional loan to amend and restate the Taxable Funding Loan, subject to the terms and conditions set forth therein, as such commitment may be amended, modified or supplemented from time to time.

“*Taxable Note Proceeds Subaccount*” means the Taxable Note Proceeds Subaccount within the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 hereof.

“*Taxable Security Instrument*” means, with respect to the Taxable Funding Loan, the Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series B), dated the Delivery Date of the Series 2018 Governmental Notes, from the Borrower in favor of the Governmental Lender and assigned by the Governmental Lender to the Fiscal Agent pursuant to the Assignment, as the same may be amended from time to time. The Taxable Security Instrument shall be amended and restated into the form attached to the Taxable Freddie Mac Commitment upon the occurrence of the Conversion Date.

“*Tax Certificate*” means (a) with respect to the Series 2018 Tax-Exempt Governmental Notes, the Tax Certificate of the Borrower executed by the Borrower on the Delivery Date of the Series 2018 Tax-Exempt Governmental Notes with the endorsement of the Governmental Lender; and (b) with respect to the Series 2021 Governmental Notes, the Tax Certificate of the Borrower executed by the Borrower on the Delivery Date of the Series 2021 Governmental Notes with the endorsement of the Governmental Lender.

“*Tax-Exempt Freddie Mac Commitment*” means the commitment from Freddie Mac to the Freddie Mac Seller/Service pursuant to which Freddie Mac has agreed to purchase the Tax-Exempt Funding Loan following the Conversion Date, subject to the terms and conditions set forth therein, as such commitment may be amended, modified or supplemented from time to time.

“*Tax-Exempt Funding Loan*” means, together, the Series 2018 Tax-Exempt Funding Loan and the Series 2021 Funding Loan.

“*Tax-Exempt Governmental Notes*” means, collectively, the Series 2018A-1 Governmental Note, the Series 2018A-2 Governmental Note, the Series 2021A Governmental Note, and the Series 2021B Governmental Note.

“*Tax-Exempt Note Proceeds Subaccount*” means the Tax-Exempt Note Proceeds Subaccount within the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 hereof.

“*Tax-Exempt Project Loan*” means, together, the Series 2018 Tax-Exempt Project Loan and the Series 2021 Project Loan.

“*Tax-Exempt Project Notes*” means, together, the Series 2018 Tax-Exempt Project Note and the Series 2021 Project Note.

“*Tax-Exempt Security Instrument*” means, with respect to the Tax-Exempt Funding Loan, the Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series A), dated the Delivery Date of the Series 2018 Governmental Notes, from the Borrower in favor of the Governmental Lender and assigned by the Governmental Lender to the Fiscal Agent pursuant to the Assignment, as amended by the _____, dated the Delivery Date of the Series 2021 Governmental Notes, between the Borrower and the Governmental Lender and assigned by the Governmental Lender to the Fiscal Agent pursuant to the Assignment, as the same may be amended from time to time. The Tax-Exempt Security Instrument shall be amended and restated into the form attached to the Construction Phase Financing Agreement upon the occurrence of the Conversion Date.

“*Tax Regulatory Agreement*” means the Amended and Restated Regulatory Agreement, dated the Delivery Date of the Series 2021 Governmental Notes, between the Governmental Lender, the Fiscal Agent, the Borrower, and the Trustee, as it may be amended and supplemented from time to time. The Tax Regulatory Agreement amends and restates in entirety the Tax Regulatory Agreement, dated the Delivery Date of the Series 2018 Governmental Notes, between the Governmental Lender, the Fiscal Agent, the Borrower, and the Trustee.

“*Title Company*” means Commercial Partners Title, LLC, a Minnesota limited liability company, its successors and assigns.

“*Transferee Representations Letter*” has the meaning set forth in Section 2.08 hereof.

“*Treasury Regulations*” means the regulations promulgated under the Code.

“*Trustee*” means U.S. Bank National Association, a national banking association, its successors and assigns, in its capacity as trustee for the Subordinate Bonds under the Subordinate Indenture.

“*Unassigned Rights*” means all of the rights of the Governmental Lender and its directors, officers, members, elected officials, attorneys, accountants, employees, agents and consultants to be held harmless and indemnified, to be paid its fees and expenses, to give or withhold consent to amendments, changes, modifications and alterations, to receive notices and the right to enforce such rights.

“*U.S. Bank*” means U.S. Bank National Association, a national banking association, its successors and assigns, in its capacity as a co-Initial Funding Lender.

“*Window Period*” means the three (3) consecutive month period prior to the Maturity Date.

Section 1.02 Interpretation. The words “hereof,” “herein,” “hereunder,” and other words of similar import refer to this Funding Loan Agreement as a whole and not to any particular Article, Section or other subdivision. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as in effect from time to time. References to Articles, Sections, and other subdivisions of this Funding Loan Agreement are to the designated Articles, Sections and other subdivisions of this Funding

Loan Agreement as originally executed. The headings of this Funding Loan Agreement are for convenience only and shall not define or limit the provisions hereof.

ARTICLE II

THE FUNDING LOANS

Section 2.01 *Terms of the Series 2018 Funding Loan.*

(a) The total principal amount of the Series 2018 Funding Loan is hereby expressly limited to the Authorized Amount of the Series 2018 Funding Loan. The Series 2018 Funding Loan was originated and funded by the Administrative Agent to the Governmental Lender in accordance with subsection (b) below. The proceeds of the Series 2018 Funding Loan were deposited with the Fiscal Agent and disbursed in accordance with this Funding Loan Agreement, the Construction Continuing Covenant Agreement, and the Disbursing Agreement. The Series 2018 Funding Loan was evidenced by the Series 2018 Governmental Notes and bears interest and is paid in accordance with the payment terms set forth in the Series 2018 Governmental Notes and this Funding Loan Agreement.

(b) On the terms and conditions set forth in the Construction Continuing Covenant Agreement, the Series 2018 Funding Loan was originated by the Administrative Agent on a draw-down basis. The proceeds of the Series 2018 Funding Loan shall be advanced by the Administrative Agent in installments directly to the Fiscal Agent for deposit to the Tax-Exempt Note Proceeds Account of the Project Account and the Taxable Note Proceeds Account of the Project Account upon receipt of an Advance Request and the satisfaction of the conditions to such advance set forth in the Construction Continuing Covenant Agreement and the form of requisition attached as *Exhibit E* hereto. Upon the advancement of the proceeds of the Series 2018 Funding Loan in accordance with the terms hereof, the principal amount of the applicable Series 2018 Governmental Note (to be designated by the Administrative Agent) in a principal amount equal to the amount so advanced shall be deemed to be increased automatically and without further acts on the part of the Governmental Lender or the Fiscal Agent. The initial installment of the Series 2018 Tax-Exempt Funding Loan was in the amount of \$50,001, representing the initial advance of the Series 2018 Tax-Exempt Funding Loan (consisting of \$50,001 of the Series 2018 Tax-Exempt Funding Loan evidenced by the Series 2018A-1 Governmental Note and \$0 of the Series 2018 Tax-Exempt Funding Loan evidenced by the Series 2018A-2 Governmental Note), which amount was advanced by the Administrative Agent and deposited into the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund in accordance with Sections 2.12 and 4.02 hereof. Notwithstanding anything in this Funding Loan Agreement to the contrary, no additional amounts of the Series 2018 Funding Loan may be drawn down and funded hereunder after the Advance Termination Date. Any extension of the Advance Termination Date shall be subject to the receipt by the Fiscal Agent of (i) the prior written consent of the Administrative Agent and Freddie Mac and (ii) an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that such extension will not adversely affect the tax-exempt status of the Series 2018 Tax-Exempt Governmental Note. The proceeds of the Series 2018 Governmental Notes shall be advanced in the following order: (1) first, proceeds of the Series 2018 Tax-Exempt Governmental Note; and (2) second, proceeds of the Series 2018 Taxable Governmental Note.

(c) The Fiscal Agent shall maintain in its books a log which shall reflect the principal amount of each of the Series 2018 Governmental Notes advanced by the Administrative Agent from time to time (i) in accordance with the provisions of subsection (b) above, or (ii) during the Construction Phase, with respect to interest due on the Series 2018 Funding Loan and other amounts due to the Administrative Agent, in accordance with the immediately following sentence (the “**Series 2018 Record of Advances**”). The Administrative Agent shall give the Fiscal Agent notice of any advances made directly to the Administrative Agent or the Initial Funding Lender as permitted under the Construction

Continuing Covenant Agreement, and the Fiscal Agent shall enter the amounts of such advances in the Series 2018 Record of Advances. The principal amount due on each of the Series 2018 Governmental Notes shall be only such amount as has been advanced by the Administrative Agent as reflected in the Series 2018 Record of Advances and not otherwise prepaid pursuant to the terms of this Funding Loan Agreement. The records maintained by the Fiscal Agent in such regard will be conclusive evidence of the principal amount of the Series 2018 Governmental Notes (absent manifest error). The Fiscal Agent shall notify the Governmental Lender, the Freddie Mac Seller/Servicer, Freddie Mac, and the Borrower if any advance of the proceeds of the Series 2018 Funding Loan is not made by the Administrative Agent when due hereunder.

(d) The Series 2018 Funding Loan shall bear interest payable on each Interest Payment Date at (i) the applicable Construction Phase Interest Rate during the Construction Phase and (ii) the Permanent Phase Interest Rate during the Permanent Phase. Interest shall accrue on the principal amount of the Series 2018 Funding Loan which has been advanced hereunder and is outstanding as reflected on the Series 2018 Record of Advances.

(e) The Series 2018 Funding Loan shall mature on October 1, 2036, subject to scheduled monthly principal payments, and to optional and mandatory prepayment prior to maturity as provided in Article III hereof. The unpaid principal balance of the Series 2018 Funding Loan shall be paid on the dates and in the amounts set forth on the initial respective Governmental Note Amortization Schedule. If the Forward Commitment Maturity Date is extended by Freddie Mac in accordance with the Freddie Mac Commitment and the Construction Phase Financing Agreement, the first principal payment date under each of the Governmental Note Amortization Schedules for the Series 2018 Governmental Notes shall automatically be extended to the first day of the month immediately succeeding the Conversion Date (with the succeeding principal installments remaining consistent with the original schedule, but occurring on later dates). Additionally, in the event the outstanding principal amount of the Series 2018 Funding Loan on the Conversion Date is less than the starting principal amount set forth in the initial Governmental Note Amortization Schedules for the Series 2018 Governmental Notes, new Governmental Note Amortization Schedules will be generated on the Conversion Date at such lesser outstanding principal amount based on the parameters set forth in the Freddie Mac Commitment. In the event any of the initial Governmental Note Amortization Schedules for the Series 2018 Governmental Notes are modified in accordance with this subsection (e), a replacement Governmental Note Amortization Schedule will be provided by the Freddie Mac Seller/Servicer which will be attached to the Series 2018 Governmental Note on the Conversion Date. All unpaid principal and all accrued and unpaid interest outstanding under the Series 2018 Funding Loan shall be due and payable on the Maturity Date.

(f) Payment of principal of, Prepayment Premium, if any, and interest on the Series 2018 Funding Loan shall be paid by wire transfer in immediately available funds to an account within the United States of America designated by the Funding Lender (unless otherwise directed by the Funding Lender).

(g) Subject to Section 2.13 hereof, on or before the date fixed for payment, money shall be deposited by the Borrower with the Fiscal Agent to pay, and the Fiscal Agent is hereby authorized and directed to apply such money to the payment of, the Series 2018 Funding Loan, together with accrued interest thereon to the date of payment.

(h) In no contingency or event whatsoever shall the aggregate of all amounts deemed interest hereunder and charged or collected pursuant to the terms of this Funding Loan Agreement exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such court determines the Funding Lender has charged or received interest hereunder in excess of the highest applicable rate, the Funding Lender shall

apply, in its sole discretion, and set off such excess interest received by the Funding Lender against other obligations due or to become due under the Financing Documents related to the Series 2018 Governmental Notes and such rate shall automatically be reduced to the maximum rate permitted by such law.

(i) On or prior to the Conversion Date, the Governmental Lender shall execute and deliver to the Fiscal Agent a consolidated Tax-Exempt Governmental Note, which consolidates the Series 2018A-1 Governmental Note, the Series 2018A-2 Governmental Note, the Series 2021A Governmental Note, and the Series 2021B Governmental Note, with a single Governmental Note Amortization Schedule in substantially the form set forth in *Exhibit G*. On or prior to the Conversion Date, the Taxable Governmental Note and the Taxable Project Note shall be consolidated into an Amended and Restated Taxable Project Note, which the Governmental Lender shall endorse if required by the Freddie Mac Seller/Service, and the Taxable Governmental Note shall no longer be outstanding hereunder.

Section 2.01A Terms of the Series 2021 Funding Loan.

(b) The total principal amount of the Series 2021 Funding Loan is hereby expressly limited to the Authorized Amount of the Series 2021 Funding Loan. The Series 2021 Funding Loan shall be originated and funded by the Administrative Agent to the Governmental Lender in accordance with subsection (b) below. The proceeds of the Series 2021 Funding Loan shall be deposited with the Fiscal Agent and disbursed in accordance with this Funding Loan Agreement, the Construction Continuing Covenant Agreement, and the Disbursing Agreement. The Series 2021 Funding Loan shall be evidenced by the Series 2021 Governmental Notes and shall bear interest and be paid in accordance with the payment terms set forth in the Series 2021 Governmental Notes and this Funding Loan Agreement.

(b) On the terms and conditions set forth in the Construction Continuing Covenant Agreement, the Series 2021 Funding Loan was originated by the Administrative Agent on a draw-down basis. The proceeds of the Series 2021 Funding Loan shall be advanced by the Administrative Agent in installments directly to the Fiscal Agent for deposit to the Tax-Exempt Note Proceeds Account of the Project Account upon receipt of an Advance Request and the satisfaction of the conditions to such advance set forth in the Construction Continuing Covenant Agreement and the form of requisition attached as *Exhibit E* hereto. Upon the advancement of the proceeds of the Series 2021 Funding Loan in accordance with the terms hereof, the principal amount of the applicable Series 2021 Governmental Note (to be designated by the Administrative Agent) in a principal amount equal to the amount so advanced shall be deemed to be increased automatically and without further acts on the part of the Governmental Lender or the Fiscal Agent. The initial installment of the Series 2021 Funding Loan shall be in the amount of \$300,000, representing the initial advance of the Series 2021 Funding Loan, which amount shall be advanced by the Administrative Agent and deposited into the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund in accordance with Sections 2.12 and 4.02 hereof. Notwithstanding anything in this Funding Loan Agreement to the contrary, no additional amounts of the Series 2021 Funding Loan may be drawn down and funded hereunder after the Advance Termination Date. Any extension of the Advance Termination Date shall be subject to the receipt by the Fiscal Agent of (i) the prior written consent of the Administrative Agent and Freddie Mac and (ii) an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that such extension will not adversely affect the tax-exempt status of the Series 2021 Governmental Note.

(c) The Fiscal Agent shall maintain in its books a log which shall reflect the principal amount of each of the Series 2021 Governmental Notes advanced by the Administrative Agent from time to time (i) in accordance with the provisions of subsection (b) above, or (ii) during the Construction Phase, with respect to interest due on the Series 2021 Funding Loan and other amounts due to the

Administrative Agent, in accordance with the immediately following sentence (the “**Series 2021 Record of Advances**”). The Administrative Agent shall give the Fiscal Agent notice of any advances made directly to the Administrative Agent or the Initial Funding Lender as permitted under the Construction Continuing Covenant Agreement, and the Fiscal Agent shall enter the amounts of such advances in the Series 2021 Record of Advances. The principal amount due on each of the Series 2021 Governmental Notes shall be only such amount as has been advanced by the Administrative Agent as reflected in the Series 2021 Record of Advances and not otherwise prepaid pursuant to the terms of this Funding Loan Agreement. The records maintained by the Fiscal Agent in such regard will be conclusive evidence of the principal amount of the Series 2021 Governmental Notes (absent manifest error). The Fiscal Agent shall notify the Governmental Lender, the Freddie Mac Seller/Servicer, Freddie Mac, and the Borrower if any advance of the proceeds of the Series 2021 Funding Loan is not made by the Administrative Agent when due hereunder.

(d) The Series 2021 Funding Loan shall bear interest payable on each Interest Payment Date at (i) the applicable Construction Phase Interest Rate during the Construction Phase and (ii) the Permanent Phase Interest Rate during the Permanent Phase. Interest shall accrue on the principal amount of the Series 2021 Funding Loan which has been advanced hereunder and is outstanding as reflected on the Series 2021 Record of Advances.

(e) The Series 2021 Funding Loan shall mature on October 1, 2036, subject to scheduled monthly principal payments, and to optional and mandatory prepayment prior to maturity as provided in Article III hereof. The unpaid principal balance of the Series 2021 Funding Loan shall be paid on the dates and in the amounts set forth on the initial respective Governmental Note Amortization Schedule. If the Forward Commitment Maturity Date is extended by Freddie Mac in accordance with the Freddie Mac Commitment and the Construction Phase Financing Agreement, the first principal payment date under each of the Governmental Note Amortization Schedules for the Series 2021 Governmental Notes shall automatically be extended to the first day of the month immediately succeeding the Conversion Date (with the succeeding principal installments remaining consistent with the original schedule, but occurring on later dates). Additionally, in the event the outstanding principal amount of the Series 2021 Funding Loan on the Conversion Date is less than the starting principal amount set forth in the initial Governmental Note Amortization Schedules for the Series 2021 Governmental Notes, new Governmental Note Amortization Schedules will be generated on the Conversion Date at such lesser outstanding principal amount based on the parameters set forth in the Freddie Mac Commitment. In the event any of the initial Governmental Note Amortization Schedules for the Series 2021 Governmental Notes are modified in accordance with this subsection (e), a replacement Governmental Note Amortization Schedule will be provided by the Freddie Mac Seller/Servicer which will be attached to the Series 2018 Governmental Note on the Conversion Date. All unpaid principal and all accrued and unpaid interest outstanding under the Series 2021 Funding Loan shall be due and payable on the Maturity Date.

(f) Payment of principal of, Prepayment Premium, if any, and interest on the Series 2021 Funding Loan shall be paid by wire transfer in immediately available funds to an account within the United States of America designated by the Funding Lender (unless otherwise directed by the Funding Lender).

(g) Subject to Section 2.13 hereof, on or before the date fixed for payment, money shall be deposited by the Borrower with the Fiscal Agent to pay, and the Fiscal Agent is hereby authorized and directed to apply such money to the payment of, the Series 2021 Funding Loan, together with accrued interest thereon to the date of payment.

(h) In no contingency or event whatsoever shall the aggregate of all amounts deemed interest hereunder and charged or collected pursuant to the terms of this Funding Loan Agreement exceed the

highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such court determines the Funding Lender has charged or received interest hereunder in excess of the highest applicable rate, the Funding Lender shall apply, in its sole discretion, and set off such excess interest received by the Funding Lender against other obligations due or to become due under the Financing Documents related to the Series 2021 Governmental Notes and such rate shall automatically be reduced to the maximum rate permitted by such law.

(i) In accordance with Section 2.01(i) hereof, on or prior to the Conversion Date, the Governmental Lender shall execute and deliver to the Fiscal Agent the consolidated Tax-Exempt Governmental Note.

Section 2.02 Pledged Security. To secure the payment of the principal of, Prepayment Premium, if any, and interest on the Funding Loans according to their tenor and effect, and the performance and observance by the Governmental Lender of all the covenants expressed or implied herein and in the Governmental Notes, and the payment and performance of all amounts and obligations under the Continuing Covenant Agreement, the Governmental Lender does hereby grant, bargain, sell, convey, pledge and assign a security interest, unto the Fiscal Agent, and its successors in such capacity and its and their assigns in and to the following (said property being herein referred to as the “**Pledged Security**”) for the benefit of the Funding Lender:

(a) All right, title and interest of the Governmental Lender in and to all Revenues;

(b) All right, title and interest of the Governmental Lender in and to the Project Loan Agreement, the Project Notes, the Security Instrument and the other Project Loan Documents (other than the Unassigned Rights), including all extensions and renewals of the terms thereof, if any, including, but without limiting the generality of the foregoing, the present and continuing right to receive, receipt for, collect or make claim for any of the money, income, revenues, issues, profits and other amounts payable or receivable thereunder (including all casualty insurance benefits or condemnation awards), whether payable under the above referenced documents or otherwise, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Governmental Lender or any other Person is or may become entitled to do under said documents; and

(c) Except for funds, money or securities in the Cost of Issuance Fund, the Administration Fund and the Rebate Fund, all funds, money and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Funding Loans by the Governmental Lender or by anyone on its behalf or with its written consent to the Fiscal Agent, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

The foregoing notwithstanding, if the Governmental Lender or its successors or assigns shall pay or cause to be paid to the Funding Lender in full the principal, interest, and Prepayment Premium, if any, to become due with respect to the Funding Loan at the times and in the manner provided in Article IX hereof, and if the Governmental Lender shall keep, perform and observe, or cause to be kept, performed and observed, all of its covenants, warranties and agreements contained herein, then these presents and the estate and rights hereby granted shall, at the option of the Governmental Lender, cease, terminate and be void, and thereupon the Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and, subject to the provisions of Sections 4.11 and 4.12 hereof and Article IX hereof, reconvey to the Governmental Lender the estate hereby conveyed, and assign and

deliver to the Governmental Lender any property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except for the Rebate Fund and cash held by the Fiscal Agent for the payment of interest on and principal of the Governmental Notes; otherwise, this Funding Loan Agreement to be and shall remain in full force and effect.

Section 2.03 Limited Obligations. The Governmental Notes are special, limited obligations of the Governmental Lender payable solely from the Pledged Security and any other revenues, funds, and assets pledged under this Funding Loan Agreement and not from any other revenues, funds, or assets of the Governmental Lender. The Governmental Notes are not a general obligation, debt, or bonded indebtedness of the Governmental Lender, the State, or any political subdivision thereof (other than of the Governmental Lender to the limited extent set forth in this Funding Loan Agreement) and the holders of the Governmental Notes do not have the right to have any excises or taxes levied by the Governmental Lender, the State, or any political subdivision thereof for the payment of the principal of and any Prepayment Premium and interest on the Governmental Notes. None of the Governmental Lender, the State, or any political subdivision of the State will be obligated to pay the principal of and the interest on the Governmental Notes or other costs incident thereto except from the Pledged Security pledged under this Funding Loan Agreement. No provision, covenant, or agreement contained in this Funding Loan Agreement or the Governmental Notes, or any obligation herein or therein imposed upon the Governmental Lender, or the breach thereof, shall constitute or give rise to or impose a liability upon the Governmental Lender (except from the Pledged Security), or upon any of its officers, employees, or agents, or constitute a charge upon the Governmental Lender's general credit or taxing powers; provided that nothing contained herein or in the Act impairs the rights of the Fiscal Agent to enforce the covenants made for the security of the Governmental Notes as provided herein and in the Act. Any recourse for a cause of action under this Funding Loan Agreement or the Governmental Notes shall be payable solely from the Pledged Security.

Section 2.04 Funding Loan Agreement Constitutes Contract. In consideration of the origination and funding of the Funding Loans by the Administrative Agent, on behalf of the Initial Funding Lender, the provisions of this Funding Loan Agreement shall be part of the contract of the Governmental Lender with the Administrative Agent, on behalf of the Initial Funding Lender, and any successors or assigns thereof in such capacity from time to time.

Section 2.05 Form and Execution. The Series 2018A-1 Governmental Note and the Series 2018A-2 Governmental Note shall be in substantially the form attached as Exhibit A-1 hereto, and the Series 2018B-1 Governmental Note and the Series 2018B-2 Governmental Note shall be in substantially the format attached as Exhibit A-2 hereto. The Series 2021A Governmental Note and the Series 2021B Governmental Note shall be in substantially the form attached as Exhibit G hereto. The Series 2021A Governmental Note Governmental Note shall be issued in favor of U.S. Bank, and the Series 2021B Governmental Note shall be issued in favor of BMO Harris Bank. The Governmental Notes shall be executed on behalf of the Governmental Lender by the manual or facsimile signatures of the Mayor and City Manager of the Governmental Lender. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Governmental Notes. In case said officers of the Governmental Lender whose manual or facsimile signatures shall appear on any of the Governmental Notes shall cease to be said officer of the Governmental Lender before the delivery of the Governmental Notes, such manual or facsimile signature shall nevertheless be valid and sufficient for all purposes, the same as if said officer of the Governmental Lender had remained in office until delivery. The Governmental Notes may be signed on behalf of the Governmental Lender by said officers as are at the time of execution of the Governmental Notes proper officers of the Governmental Lender, even though at the date of the Governmental Notes, said officers were not such officers. Any reproduction of the official seal of the Governmental Lender on the Governmental Notes shall have the same force and effect as if the official seal of the Governmental Lender had been impressed on the Governmental Notes.

Section 2.06 Authentication. The Governmental Notes shall not be valid or obligatory for any purpose or entitled to any security or benefit under this Funding Loan Agreement unless a certificate of authentication on the Governmental Notes, substantially in the forms set forth in *Exhibit A-1*, *Exhibit A-2*, and *Exhibit G*, as applicable, shall have been duly executed by an Responsible Officer of the Fiscal Agent; and such executed certificate of authentication upon the Governmental Notes shall be conclusive evidence that the Governmental Notes have been duly executed, registered, authenticated, and delivered under this Funding Loan Agreement.

Section 2.07 Mutilated, Lost, Stolen or Destroyed Governmental Note. In the event a Governmental Note is mutilated, lost, stolen or destroyed, the Governmental Lender shall execute and the Fiscal Agent shall authenticate a new Governmental Note substantially in the form set forth in *Exhibit A-1*, *Exhibit A-2*, and *Exhibit G*, as the case may be, in exchange and substitution for and upon cancellation of the mutilated Governmental Note or in lieu of and in substitution for such lost, stolen or destroyed Governmental Note, upon payment by the Administrative Agent, on behalf of the Initial Funding Lender, of any applicable tax or governmental charge and the reasonable expenses and charges of the Governmental Lender and the Fiscal Agent in connection therewith, and in the case where a Governmental Note is lost, stolen or destroyed, the filing with the Fiscal Agent of evidence satisfactory to it that such Governmental Note was lost, stolen or destroyed, and of the ownership thereof, and furnishing the Governmental Lender and the Fiscal Agent with indemnity satisfactory to each of them. In the event a Governmental Note shall have matured, instead of delivering a new Governmental Note the Governmental Lender may pay the same without surrender thereof.

Section 2.08 Registration; Transfer of Funding Loan; Transferee Representations Letter.

(a) The Funding Loans shall be fully registered as to principal and interest in the manner and with any additional designation as the Fiscal Agent deems necessary for the purpose of identifying the registered owner thereof. The Funding Loans shall be transferable only on the registration books of the Fiscal Agent. The Fiscal Agent shall maintain books or other records showing the name and date of registration, address and employer identification number of the registered owner of the Funding Loans and any transfers of the Funding Loan as provided herein. The Funding Loans shall initially be registered to the Initial Funding Lender, upon the Conversion Date shall be registered to the Freddie Mac Seller/Service, and upon the Freddie Mac Purchase Date, shall be registered to Freddie Mac.

(b) The Funding Lender shall have the right to sell, assign or otherwise transfer in whole its interest in the Funding Loans or to grant a participation interest in the Funding Loans in a percentage of not less than twenty-five percent (25%) of the outstanding principal amount of the Funding Loans (except during the Construction Phase there shall be no such limit on participation in the Funding Loans); provided that the Funding Loans may be transferred, or any participation interest therein granted, only to an “accredited investor” as that term is defined in Rule 501 of Regulation D under the Securities Act or a “qualified institutional buyer” as that term is defined under Rule 144A of the Securities Act (such “accredited investor” or “qualified institutional buyer” a “**Qualified Transferee**”) that delivers a letter to the Fiscal Agent substantially in the form attached hereto as *Exhibit C* setting forth certain representations with respect to such Qualified Transferee (the “**Transferee Representations Letter**”). Notwithstanding the preceding sentence, no Transferee Representations Letter shall be required for the Funding Lender Representative to (i) transfer the Funding Loans to any affiliate or other party related to the Funding Lender that is a Qualified Transferee or (ii) sell or transfer the Funding Loans to a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loans or securitized interests therein are not expected to be sold or transferred except to (x) owners or beneficial owners thereof that are Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least “A” or better. In connection with any sale, assignment or transfer of the Funding Loans, the Funding Lender

shall give notice of such sale, assignment or transfer to the Fiscal Agent and the Fiscal Agent shall record such sale, assignment or transfer on its books or other records maintained for the registration of transfer of the Funding Loans.

Section 2.09 Restrictions on Transfer. The Governmental Notes and any participation interest therein may be transferred, in accordance with Section 2.08 hereof and this Section 2.09. Subject to the exceptions set forth in Section 2.08 hereof, the Fiscal Agent shall not register any transfer or exchange of the Governmental Notes unless the prospective transferee delivers to the Governmental Lender and the Fiscal Agent the required Transferee Representations Letter substantially in the form set forth in ***Exhibit C*** to this Funding Loan Agreement. The Fiscal Agent shall be entitled to rely, without any further inquiry, on any Transferee Representations Letter delivered to it and shall be fully protected in registering any transfer or exchange of the Governmental Notes or any interest therein in reliance on any such transferee representations which appear on their face to be correct and of which the Fiscal Agent has no actual knowledge otherwise. Any such holder desiring to effect such transfer shall agree to indemnify the Governmental Lender and the Fiscal Agent from and against any and all liability, cost, or expense (including attorneys' fees) that may result if the transfer is not so exempt or is not made in accordance with such federal and state laws. Following the initial sale of the Tax-Exempt Governmental Notes to the Funding Lender, the Borrower and any "related party" (as defined in Section 144(a)(3) of the Code) shall be prohibited from purchasing the Tax-Exempt Governmental Notes in an amount related to the outstanding principal amount of the Tax-Exempt Project Notes without the prior written consent of the Governmental Lender.

Section 2.10 Series 2018 Funding Loan Closing Conditions; Delivery of Series 2018 Governmental Notes. Closing of the Series 2018 Funding Loan on the Delivery Date of the Series 2018 Governmental Notes was conditioned upon, and the Governmental Lender executed and delivered to the Fiscal Agent, and the Fiscal Agent authenticated the Series 2018 Governmental Notes and delivered the Series 2018 Governmental Notes to the Administrative Agent, upon receipt by the Fiscal Agent of the following:

(a) executed counterparts of the Funding Loan Agreement, the Project Loan Agreement, and the Tax Regulatory Agreement, all as such documents were then in effect, and the Tax Certificate for the Series 2018 Tax-Exempt Governmental Notes;

(b) an opinion of Bond Counsel or counsel to the Governmental Lender to the effect that the Governmental Lender is duly organized and existing under the laws of the State and duly authorized, executed and delivered the Funding Loan Agreement (as then in effect), the Series 2018 Governmental Notes and the other Financing Documents to which it is a party, and such documents are valid and binding special, limited obligations of the Governmental Lender enforceable in accordance with their terms subject to customary exceptions;

(c) the initial advance of the proceeds of the Series 2018 Funding Loan by the Administrative Agent, on behalf of the Initial Funding Lender, in the amount set forth in Section 2.01(b) hereof;

(d) the executed Series 2018 Project Notes and an endorsement of the Series 2018 Project Notes by the Governmental Lender in favor of the Fiscal Agent;

(e) the executed counterparts of the Security Instrument, the Assignment, the Construction Phase Financing Agreement and the Construction Continuing Covenant Agreement, all as such documents were then in effect;

(f) an opinion of counsel to the Borrower to the effect that the Borrower is duly organized and validly existing and in good standing under the laws of the state in which it has been organized and in good standing under the laws of each other state in which the Borrower transacts business and has full power and authority to enter into the Financing Documents to which it is a party, that its execution and delivery of and performance of its covenants in such documents do not contravene law or any provision of any other documents to which it is a party or by which it or such property is bound or affected, and that all such agreements have been duly authorized, executed and delivered by the Borrower, and are legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms;

(g) a customary approving opinion of Bond Counsel, including but not limited to an opinion to the effect that the interest on the Series 2018 Tax-Exempt Governmental Notes, under laws in effect on the date of such opinion, is excluded from gross income for federal income tax purposes and, where applicable, for State income tax purposes;

(h) a certified copy of the Resolution related to the Series 2018 Governmental Notes;

(i) the written request and authorization to the Fiscal Agent by the Governmental Lender to authenticate and deliver the Series 2018 Governmental Notes to the Administrative Agent upon funding to the Fiscal Agent of the initial advance of the Series 2018 Funding Loan; and

(j) receipt by the Fiscal Agent of the amounts specified in Section 2.12 of this Funding Loan Agreement and Section 3.03 of the Project Loan Agreement.

Series 2.10A Series 2021 Funding Loan Closing Conditions; Delivery of Series 2021 Governmental Notes. Closing of the Series 2021 Funding Loan on the Delivery Date of the Series 2021 Governmental Notes shall be conditioned upon, and the Governmental Lender shall only execute and deliver to the Fiscal Agent, and the Fiscal Agent shall only authenticate the Series 2021 Governmental Notes and deliver the Series 2021 Governmental Notes to the Administrative Agent upon, receipt by the Fiscal Agent of the following:

(a) executed counterparts of this Funding Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement, and the Tax Certificate for the Series 2021 Governmental Notes;

(b) an opinion of Bond Counsel or counsel to the Governmental Lender to the effect that the Governmental Lender is duly organized and existing under the laws of the State and has duly authorized, executed and delivered this Funding Loan Agreement, the Series 2021 Governmental Notes and the other Financing Documents to which it is a party, and such documents are valid and binding special, limited obligations of the Governmental Lender enforceable in accordance with their terms subject to customary exceptions;

(c) the initial advance of the proceeds of the Series 2021 Funding Loan by the Administrative Agent, on behalf of the Initial Funding Lender, in the amount set forth in Section 2.01A(b) hereof;

(d) the executed Series 2021 Project Notes and an endorsement of the Series 2021 Project Notes by the Governmental Lender in favor of the Fiscal Agent;

(e) the executed counterparts of the Security Instrument, the Assignment, the Construction Phase Financing Agreement and the Construction Continuing Covenant Agreement;

(f) an opinion of counsel to the Borrower to the effect that the Borrower is duly organized and validly existing and in good standing under the laws of the state in which it has been organized and in good standing under the laws of each other state in which the Borrower transacts business and has full power and authority to enter into the Financing Documents to which it is a party, that its execution and delivery of and performance of its covenants in such documents do not contravene law or any provision of any other documents to which it is a party or by which it or such property is bound or affected, and that all such agreements have been duly authorized, executed and delivered by the Borrower, and are legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms;

(g) a customary approving opinion of Bond Counsel, including but not limited to an opinion to the effect that the interest on the Series 2021 Tax-Exempt Governmental Note, under laws in effect on the date of such opinion, is excluded from gross income for federal income tax purposes and, where applicable, for State income tax purposes;

(h) an opinion of Bond Counsel as described in Section 8.03(A) hereof;

(i) an opinion of counsel to the Funding Lender Representative as described in Section 8.03(B);

(j) a certified copy of the Resolution related to the Series 2021 Governmental Notes;

(k) the written request and authorization to the Fiscal Agent by the Governmental Lender to authenticate and deliver the Series 2021 Governmental Notes to the Administrative Agent upon funding to the Fiscal Agent of the initial advance of the Series 2021 Funding Loan; and

(l) receipt by the Fiscal Agent of the amounts specified in Section 2.12 of this Funding Loan Agreement and Section 3.03 of the Project Loan Agreement.

Section 2.11 Conditions of Second and Subsequent Advances of Funding Loan Proceeds. Following the initial advance of the proceeds of the Series 2018 Funding Loan described in Section 2.01(b) hereof in the amount of \$50,001 and the initial advance of the proceeds of the Series 2021 Funding Loan described in Section 2.01A(b) hereof in the amount of \$300,000, additional advances of the proceeds of the Series 2018 Funding Loan and the Series 2021 Funding Loan shall be conditioned on the delivery by the Borrower (a) to the Fiscal Agent of evidence that the Tax Regulatory Agreement has been recorded in the property records of Hennepin County, Minnesota; and (b) to the Administrative Agent, the items required under the Construction Continuing Covenant Agreement.

Section 2.12 *Establishment of Project Loan Fund; Application of Funding Loan Proceeds and Other Money.*

(a) The Fiscal Agent shall establish, maintain, and hold in trust, and there is hereby established with the Fiscal Agent a Project Loan Fund and therein a Borrower Equity Account and a Project Account (and within the Project Account a Taxable Note Proceeds Subaccount, and a Tax-Exempt Note Proceeds Subaccount). No amount shall be charged against the Project Loan Fund except as expressly provided in this Section 2.12 and Section 4.02 hereof.

(b) Upon compliance by the Borrower with all applicable conditions in the Construction Continuing Covenant Agreement (as then in effect), the initial advance of proceeds of the Series 2018 Funding Loan were delivered by the Administrative Agent to the Fiscal Agent on behalf of the Governmental Lender on the Delivery Date of the Series 2018 Governmental Notes and thereafter,

subject to the provisions of Section 2.11 hereof, will be delivered on a draw-down basis as provided for in Section 2.01(b) hereof. Upon compliance by the Borrower with all applicable conditions in the Construction Continuing Covenant Agreement, the initial advance of proceeds of the Series 2018 Funding Loan will be delivered by the Administrative Agent to the Fiscal Agent on behalf of the Governmental Lender on the Delivery Date of the Series 2021 Governmental Notes and thereafter, subject to the provisions of Section 2.11 hereof, will be delivered on a draw-down basis as provided for in Section 2.01A(b) hereof. Upon receipt, the Fiscal Agent shall deposit such proceeds evidenced by the Tax-Exempt Governmental Notes to the credit of the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund and such proceeds evidenced by the Series 2018 Taxable Governmental Note to the credit of the Taxable Note Proceeds Subaccount of the Project Account of the Project Loan Fund. Amounts in the Project Loan Fund shall be disbursed as provided in subsection (d) below, subject to the conditions set forth in Sections 3.01 and 3.01A of the Project Loan Agreement. Upon the disbursement of all amounts to be disbursed from the Project Loan Fund, the Fiscal Agent shall close the Project Loan Fund.

(c) The Borrower shall deliver or cause to be delivered from sources other than the Loans, (i) to the Fiscal Agent, on or prior to the Delivery Date of the Series 2018 Governmental Notes, any Borrower Equity Deposit for deposit to the credit of the Borrower Equity Account of the Project Loan Fund or the Cost of Issuance Fund; (ii) to the Fiscal Agent, on or prior to the Delivery Date of the Series 2021 Governmental Notes, any Borrower Equity Deposit for deposit to the credit of the Borrower Equity Account of the Project Loan Fund or the Cost of Issuance Fund; and (iii) to the Servicer any Initial Debt Service Deposit. The Fiscal Agent shall also deposit in the Borrower Equity Account any additional amounts delivered from time to time to the Fiscal Agent and directed by the Borrower or Servicer to be deposited therein, excluding any proceeds of the Loans. Notwithstanding the foregoing, the proceeds of the Subordinate Bonds will not be deposited with the Fiscal Agent. The proceeds of the Subordinate Bonds will be disbursed pursuant to the provisions of the Construction Continuing Covenant Agreement and the Disbursing Agreement (except the disbursement of Issuance Expenses of the Subordinate Bonds shall not be subject to the provisions of the Disbursing Agreement.

(d) Upon the making of the initial deposits described above in this Section 2.12, the Governmental Lender shall originate the Project Loans pursuant to the Project Loan Agreement and the Fiscal Agent shall make the initial disbursement of amounts in the Project Loan Fund to (i) the Title Company for further disbursement in accordance with the Disbursing Agreement, or (ii) otherwise as provided in Section 4.02 hereof. A portion of the initial disbursement may be used to pay Costs of Issuance.

Section 2.13 *Direct Loan Payments to Servicer; Servicer Disbursement of Fees.*

(a) Notwithstanding any provision in this Funding Loan Agreement to the contrary, during any period that a Servicer is engaged with respect to the Loans (during the Construction Phase the Administrative Agent will serve as the Servicer), the Governmental Lender and the Fiscal Agent agree that all payments of principal of, Prepayment Premium, if any, and interest on the Funding Loans and all fees due hereunder and under the Project Loan Agreement shall be paid by the Borrower to the Servicer. The Servicer shall remit all payments collected from the Borrower of principal of, Prepayment Premium, if any, and interest on the Funding Loans, together with other amounts due to the Funding Lender, directly to the Funding Lender (without payment through the Fiscal Agent) per the instructions of the Funding Lender Representative. The Servicer shall be entitled to retain its Servicing Fee (if any) collected from the Borrower and shall remit the Governmental Lender Fee (if any) to the Governmental Lender and shall remit the Fiscal Agent's Ordinary Fees and Expenses to the Fiscal Agent, together with any other amounts due to the Governmental Lender and the Fiscal Agent collected by the Servicer from the Borrower, in each case in accordance with their respective instructions. Any payment made in

accordance with the provisions of this Section shall be accompanied by sufficient information to identify the source and proper application of such payment. The Servicer shall promptly notify the Fiscal Agent, the Funding Lender Representative, and the Governmental Lender in writing of any failure of the Borrower to make any payment of principal of, Prepayment Premium, if any, and interest on the Funding Loans when due or to pay any fees due hereunder or under the Project Loan Agreement, and the Fiscal Agent and the Governmental Lender shall not be deemed to have any notice of such failure unless it has received such notice in writing.

(b) If the Funding Loans are sold or transferred as provided in Section 2.08 hereof, the Funding Lender Representative shall notify the Fiscal Agent and the Borrower in writing of the name and address of the transferee.

(c) So long as payments of principal of, Prepayment Premium, if any, and interest on the Governmental Notes and all fees due hereunder and under the Project Loan Agreement are being made to the Administrative Agent or the Servicer in accordance with this Section 2.13 and no Event of Default has occurred of which the Fiscal Agent has been given, or been deemed to have, notice thereof pursuant to this Funding Loan Agreement, the Fiscal Agent shall have no obligations to collect loan payments with respect to the Funding Loans, nor shall it be obligated to collect loan payments or fee payments pursuant to the Project Loan Agreement, except at the express written direction of the Funding Lender Representative. Notwithstanding the foregoing, the Funding Lender Representative may elect to have the Fiscal Agent collect and remit loan payments and fee payments hereunder and under the Project Loan Agreement upon written notice of such election to the Fiscal Agent, the Borrower and the Governmental Lender.

Section 2.14 Conversion. If the Notice of Conversion is issued in the timeframe required under the Construction Phase Financing Agreement, Conversion will occur on the Conversion Date indicated in such Notice of Conversion. If the Notice of Conversion is not so issued, Conversion will not occur and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligations with respect to the purchase of the Tax-Exempt Funding Loan or otherwise with respect to the Loans or the Project.

ARTICLE III

PREPAYMENT OF THE FUNDING LOANS

Section 3.01 *Prepayment of the Funding Loans Prior to Maturity.*

(a) **Optional Prepayment.** The Funding Loans, together with accrued interest thereon, are subject to optional prepayment in whole upon optional prepayment of the Project Loans in accordance with the notice and other prepayment provisions set forth in (i) the Project Notes; or (ii) during the Construction Phase, the Construction Continuing Covenant Agreement.

(b) **Mandatory Prepayment.** The Funding Loans, together with accrued interest thereon, and together with Prepayment Premium (to the extent payable under the Project Notes), are subject to mandatory prepayment on any Business Day, in whole or in part as indicated below, at the earliest practicable date upon the occurrence of any of the following:

(i) in whole or in part, upon the occurrence of a mandatory prepayment of the Project Loans pursuant to a Project Notes and receipt by the Fiscal Agent of a written direction by the Funding Lender Representative that the Funding Loans shall be subject to mandatory prepayment as a result thereof;

(ii) in part, on the Interest Payment Date next following the completion of the acquisition, construction, and equipping of the Project, to the extent amounts remaining in the Taxable Note Proceeds Account of the Project Account of the Project Loan Fund or in the Tax-Exempt Note Proceeds Account of the Project Account of the Project Loan Fund are transferred to the Loan Prepayment Fund pursuant to Section 4.02(e) hereof;

(iii) in part, in the event the Borrower elects to make a Pre-Conversion Loan Equalization Payment;

(iv) in whole, on or after the Forward Commitment Maturity Date, at the written direction of the Administrative Agent, if the Notice of Conversion is not issued by the Freddie Mac Seller/Servicer prior to the Forward Commitment Maturity Date; or

(v) in whole, at the written direction of the Administrative Agent, as provided in the Construction Continuing Covenant Agreement.

Section 3.02 *Notice of Prepayment.* Notice of the intended prepayment of the Funding Loans shall be given by the Fiscal Agent by first class mail, postage prepaid, or by overnight delivery service, to the Funding Lender. All such prepayment notices shall be given not less than ten (10 days (not less than thirty (30) days in the case of optional prepayment occurring after Conversion) nor more than sixty (60) days prior to the date fixed for prepayment. Notices of prepayment shall state (a) the prepayment date; (b) the prepayment amount; and (c) the place or places where amounts due upon such prepayment will be payable.

Notice of such prepayment shall also be sent by first class mail, postage prepaid, or by overnight delivery service, to the Servicer, not later than the time of mailing of notices required by the first paragraph above, and in any event no later than simultaneously with the mailing of notices required by the

first paragraph above; provided, that neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the prepayment of the Funding Loans.

Notwithstanding the foregoing, in the event the Fiscal Agent is not collecting and remitting loan payments hereunder, the Fiscal Agent shall have no obligation to send prepayment notices pursuant to this Section 3.02.

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ARTICLE IV

REVENUES AND FUNDS

Section 4.01 *Pledge of Revenues and Assets; Establishment of Funds.* The pledge and assignment of and the security interest granted in the Pledged Security pursuant to Section 2.02 hereof shall attach, be perfected and be valid and binding from and after the time of the closing of the Funding Loans and delivery of the Governmental Notes by the Fiscal Agent or by any Person authorized by the Fiscal Agent to deliver the Governmental Notes. The Pledged Security so pledged and then or thereafter received by the Fiscal Agent shall immediately be subject to the lien of such pledge and security interest without any physical delivery thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof.

In addition to the Project Loan Fund established pursuant to Section 2.12 hereof, the Fiscal Agent shall establish, maintain and hold in trust the following funds and accounts, each of which is hereby established and each of which shall be disbursed and applied only as herein authorized:

- (a) Revenue Fund;
- (b) Loan Payment Fund;
- (c) Loan Prepayment Fund;
- (d) Administration Fund;
- (e) Cost of Issuance Fund; and
- (f) Rebate Fund.

The funds and accounts established pursuant to Section 2.12 hereof and this Section 4.01 shall be maintained in the corporate trust department of the Fiscal Agent as segregated trust accounts, separate and identifiable from all other funds held by the Fiscal Agent. The Fiscal Agent shall, at the written direction of an Authorized Officer of the Governmental Lender, and may, in its discretion, establish such additional accounts within any Fund, and subaccounts within any of the accounts, as the Governmental Lender or the Fiscal Agent may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that Fund and its accounts, or for the purpose of complying with the requirements of the Code relating to arbitrage, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of this Funding Loan Agreement with respect to a deposit or use of money in the funds established hereunder, or result in commingling of funds not permitted hereunder.

Section 4.02 *Project Loan Fund.*

(a) The Fiscal Agent shall deposit proceeds of the Tax-Exempt Funding Loan into the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund upon receipt of each advance thereof as provided in Section 2.12(b) hereof. The Fiscal Agent shall deposit the proceeds of the Taxable Funding Loan into the Taxable Note Proceeds Subaccount of the Project Account of the

Project Loan Fund upon receipt of each advance thereof as provided in Section 2.12(b) hereof. On the Delivery Date of the Series 2018 Governmental Notes, the Fiscal Agent deposited \$0.00 of the Borrower Equity Deposit into the Borrower Equity Account of the Project Loan Fund, as well as any additional amounts delivered from time to time to the Fiscal Agent and directed by the Borrower or Servicer to be deposited therein (excluding any proceeds of the Governmental Notes), as provided in Section 2.12(c) hereof. On the Delivery Date of the Series 2021 Governmental Notes, the Fiscal Agent shall deposit \$_____ of the Borrower Equity Deposit into the Borrower Equity Account of the Project Loan Fund, as well as any additional amounts delivered from time to time to the Fiscal Agent and directed by the Borrower or Servicer to be deposited therein (excluding any proceeds of the Governmental Notes), as provided in Section 2.12(c) hereof.

(b) Amounts on deposit in the Project Loan Fund shall be disbursed from time to time by the Fiscal Agent to the Title Company in accordance with this Funding Loan Agreement and the Construction Continuing Covenant Agreement, and thereafter by the Title Company pursuant to the Disbursing Agreement, for the purpose of paying (i) Costs of the Project from the Taxable Note Proceeds Subaccount of the Project Account and from the Tax-Exempt Note Proceeds Subaccount of the Project Account; (ii) other costs of the Project from the Tax-Exempt Note Proceeds Subaccount of the Project Account, subject to the ninety-five percent (95%) “qualified residential rental project” use requirement in Section 142(a) of the Code, the two percent (2%) costs of issuance limitation in Section 147(g) of the Code, the reimbursement limitation in Section 1.150-2 of the Treasury Regulations, and the working capital limitations in Section 1.148-6(d) of the Treasury Regulations (with respect solely to the Tax-Exempt Note Proceeds Subaccount of the Project Account); and (iii) other costs of the Project from the Borrower Equity Account and Taxable Note Proceeds Subaccount of the Project Account. In addition, amounts in the Project Loan Fund shall be transferred to the Loan Prepayment Fund, the Rebate Fund and the Borrower at the times and in the manner provided in subsection (e) below.

Amounts in the Tax-Exempt Note Proceeds Subaccount and Taxable Note Proceeds Subaccount of the Project Account of the Project Loan Fund shall be transferred to the Loan Prepayment Fund, the Rebate Fund and the Borrower at the times and in the manner provided in subsection (e) below.

(c) The Fiscal Agent shall make disbursements from the respective accounts and subaccounts of the Project Loan Fund for purposes described in subsection (b) above only upon the receipt of Requisitions signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer (which shall be the Administrative Agent during the Construction Phase) signifying the consent to the Requisition by the Servicer. The Fiscal Agent shall have no right or duty to determine whether any requested disbursement from the Project Loan Fund complies with the terms, conditions, and provisions of the Construction Continuing Covenant Agreement. The countersignature of the Authorized Officer of the Servicer on a Requisition shall be deemed a certification and, insofar as the Fiscal Agent and the Governmental Lender are concerned, constitute conclusive evidence, that all of the terms, conditions, and requirements of the Construction Continuing Covenant Agreement applicable to such disbursement have been fully satisfied or waived. The Fiscal Agent shall, immediately upon each receipt of a completed Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer, initiate procedures with the provider of a Qualified Investment to make withdrawals as necessary to fund the Requisition.

Notwithstanding anything to the contrary contained herein, no signature of an Authorized Officer of the Borrower shall be required during any period in which a default has occurred and is then continuing under the Loans or any Financing Document (notice of which default has been given in writing by the Funding Lender Representative or the Servicer to the Fiscal Agent and the Governmental Lender, and the Fiscal Agent shall be entitled to conclusively rely on any such written notice as to the occurrence and continuation of such a default).

(d) If a Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer or (as permitted hereunder) solely by an Authorized Officer of the Servicer, is received by the Fiscal Agent, the requested disbursement shall be paid by the Fiscal Agent to the Title Company, as soon as practicable, but in no event later than three (3) Business Days following receipt thereof by the Fiscal Agent. Upon final disbursement of all amounts to be deposited in the Project Loan Fund, including all interest accrued therein, the Fiscal Agent shall close the Project Loan Fund.

(e) Immediately prior to any mandatory prepayment of the Funding Loan pursuant to Section 3.01(b)(i) hereof, any amount then remaining in the Project Loan Fund shall, at the written direction of the Funding Lender Representative, be transferred to the Loan Prepayment Fund to pay amounts due on the Funding Loans, if any. In addition, any amount remaining in the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund or the Taxable Note Proceeds Subaccount of the Project Account of the Project Loan Fund following completion of the construction of the Project in accordance with the Construction Continuing Covenant Agreement, evidenced by an instrument signed by the Funding Lender Representative or the Servicer, shall be transferred to the Loan Prepayment Fund and used to prepay the Funding Loans in accordance with Section 3.01(b)(ii) hereof, unless the Fiscal Agent receives an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that a use of such money for other than prepayment of the Funding Loans will not adversely affect the tax-exempt status of the Tax-Exempt Governmental Notes; provided, that any amounts in the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund in excess of the amount needed to fund the related prepayment of the Funding Loans shall be transferred to the Rebate Fund. In the event there are funds remaining in the Borrower Equity Account following completion of the construction of the Project in accordance with the Construction Continuing Covenant Agreement and the Conversion Date has occurred, and provided no default by the Borrower exists under this Funding Loan Agreement or any Project Loan Document, such funds shall be paid by the Fiscal Agent to the Borrower at the written direction of the Funding Lender Representative or the Servicer.

(f) Amounts on deposit in the Project Loan Fund shall be invested as provided in Section 4.08 hereof. All Investment Income on amounts on deposit in the Project Loan Fund shall be retained in and credited to and become a part of the amounts on deposit in the Project Loan Fund, and shall constitute part of any transfers required by subsection (b) or (e) of this Section 4.02.

Section 4.03 *Application of Revenues.*

(a) All Revenues received by the Fiscal Agent shall be deposited by the Fiscal Agent, promptly upon receipt thereof, to the Revenue Fund, except (i) the proceeds of the Series 2018 Funding Loan received by the Fiscal Agent pursuant to Section 2.01(b) hereof, which shall be applied in accordance with the provisions of Section 2.12 hereof; (ii) the proceeds of the Series 2021 Funding Loan received by the Fiscal Agent pursuant to Section 2.01A(b) hereof; (iii) as otherwise specifically provided in subsection (c) below with respect to certain deposits into the Loan Prepayment Fund; (iv) with respect to Investment Income to the extent required under the terms hereof to be retained in the funds and accounts to which they are attributable; and (v) with respect to amounts required to be transferred between funds and accounts as provided in this Article IV.

(b) Subject to Section 2.13 hereof, on each Interest Payment Date or any other date on which payment of principal of or interest on the Funding Loans becomes due and payable, the Fiscal Agent, out of money in the Revenue Fund, shall credit the following amounts to the following funds, but in the order and within the limitations hereinafter indicated with respect thereto, as follows:

FIRST: to the Loan Payment Fund, an amount equal to the principal of and interest due on the Funding Loans on such date (including scheduled principal pursuant to each of the Governmental Note Amortization Schedules); and

SECOND: to the Loan Prepayment Fund, an amount equal to the principal and interest due on the Funding Loans on such date with respect to a mandatory prepayment of all or a portion of the Funding Loans pursuant to Section 3.01(b) hereof (other than any extraordinary mandatory prepayment as described in clause (i) or (iii) of subsection (c) below).

(c) Promptly upon receipt, the Fiscal Agent shall deposit directly to the Loan Prepayment Fund (i) Net Proceeds representing casualty insurance proceeds or condemnation awards paid as a prepayment of the Project Loans, such amount to be applied to provide for the extraordinary mandatory prepayment of all or a portion of the Funding Loans pursuant to Section 3.01(b)(i) hereof; (ii) funds paid to the Fiscal Agent to be applied to the optional prepayment of all or a portion of the Funding Loans pursuant to Section 3.01(a) hereof; and (iii) amounts transferred to the Loan Prepayment Fund from the Project Loan Fund pursuant to Section 4.02(e) hereof.

(d) Subject to Section 2.13 hereof, should the amount in the Loan Payment Fund be insufficient to pay the amount due on the Funding Loans on any given Interest Payment Date, the Fiscal Agent shall credit to the Loan Payment Fund the amount of such deficiency by charging the following funds and accounts in the following order of priority: (1) the Revenue Fund; and (2) the Loan Prepayment Fund, except no such charge to the Loan Prepayment Fund shall be made from money to be used to effect a prepayment for which notice of prepayment has been provided for hereunder.

Section 4.04 *Application of Loan Payment Fund.* Subject to Section 2.13 hereof, the Fiscal Agent shall charge the Loan Payment Fund, on each Interest Payment Date, an amount equal to the unpaid interest and principal due on the Funding Loans on such Interest Payment Date as provided in Sections 4.03(a) and 4.03(b), and shall cause the same to be applied to the payment of such interest and principal when due. Any money remaining in the Loan Payment Fund on any Interest Payment Date after application as provided in the preceding sentence may, to the extent there shall exist any deficiency in the Loan Prepayment Fund to prepay the Funding Loans if called for prepayment on such Interest Payment Date, be transferred to the Loan Prepayment Fund to be applied for such purpose.

Any Investment Income on amounts on deposit in the Loan Payment Fund shall be deposited by the Fiscal Agent upon receipt thereof in the Revenue Fund.

No amount shall be charged against the Loan Payment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

Section 4.05 *Application of Loan Prepayment Fund.* Any money credited to the Loan Prepayment Fund shall be applied as set forth in Section 4.03(b) and (c) hereof; provided, however, that to the extent any money credited to the Loan Prepayment Fund is in excess of the amount necessary to effect the prepayments described in Section 4.03(b) and (c) hereof it shall be applied to make up any deficiency in the Loan Payment Fund on any Interest Payment Date, to the extent money then available in accordance with Section 4.03(d) hereof in the Revenue Fund is insufficient to make up such deficiency; provided that no money be used to effect a prepayment for which a conditional notice of prepayment, the conditions of which have been satisfied, or an unconditional notice of prepayment has been provided shall be so transferred to the Loan Payment Fund.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Loan Prepayment Fund shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Loan Prepayment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

Section 4.06 Administration Fund. Subject to Section 2.13 hereof, the Fiscal Agent shall deposit into the Administration Fund, promptly upon receipt thereof, all amounts received from the Servicer (or the Borrower if no Servicer exists for the Loans) designated for deposit into such fund. Amounts in the Administration Fund shall be withdrawn or maintained, as appropriate, by the Fiscal Agent and used **FIRST**, to pay to the Fiscal Agent when due the Fiscal Agent's Ordinary Fees and Expenses; **SECOND**, to pay to the Governmental Lender when due the Governmental Lender Fee; **THIRD**, to pay when due the reasonable fees and expenses of a Rebate Analyst in connection with the computations relating to arbitrage rebate required under this Funding Loan Agreement, the Project Loan Agreement, the Tax Certificate for the Series 2018 Tax-Exempt Governmental Notes, and the Series 2021 Governmental Notes upon receipt of an invoice from the Rebate Analyst; **FOURTH**, to pay to the Fiscal Agent any Fiscal Agent's Extraordinary Fees and Expenses due and payable from time to time, as set forth in an invoice submitted to the Borrower and the Servicer; **FIFTH**, to pay to the Governmental Lender any extraordinary expenses it may incur in connection with the Loans or this Funding Loan Agreement from time to time, as set forth in an invoice submitted to the Fiscal Agent and the Servicer; **SIXTH**, to pay to the Funding Lender Representative any unpaid amounts due under the Continuing Covenant Agreement, as certified in writing by the Funding Lender Representative to the Fiscal Agent; **SEVENTH**, to make up any deficiency in the Loan Prepayment Fund on any prepayment date of the Funding Loans, to the extent money then available in accordance with Section 4.03(d) hereof in the Loan Prepayment Fund is insufficient to prepay the Funding Loans scheduled for prepayment on such prepayment date; and **EIGHTH**, to transfer any remaining balance after application as aforesaid to the Revenue Fund.

In the event that the amounts on deposit in the Administration Fund are not equal to the amounts payable from the Administration Fund as provided in the preceding paragraph on any date on which such amounts are due and payable, the Fiscal Agent shall give notice to the Borrower and the Servicer of such deficiency and of the amount of such deficiency and request payment within two (2) Business Days to the Fiscal Agent of the amount of such deficiency. Upon payment by the Borrower or the Servicer of such deficiency, the amounts for which such deficiency was requested shall be paid by the Fiscal Agent.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Administration Fund not needed to pay the foregoing amounts shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Administration Fund except as expressly provided in this Article IV and Section 6.05 hereof.

Section 4.07 [Reserved].

Section 4.08 Investment of Funds. The money held by the Fiscal Agent shall constitute trust funds for the purposes hereof. Any money attributable to each of the funds and accounts hereunder shall be, except as otherwise expressly provided herein, invested by the Fiscal Agent, at the written direction of the Borrower (or, in the case of the Rebate Fund, as provided in Section 5.07(b) hereof), in Qualified Investments which mature or shall be subject to prepayment or withdrawal at par without penalty on or prior to the earlier of (i) six (6) months from the date of investment, and (ii) the date such money is needed; provided, that if the Fiscal Agent shall have entered into any investment agreement requiring investment of money in any fund or account hereunder in accordance with such investment agreement and if such investment agreement constitutes a Qualified Investment, such money shall be invested in accordance with such requirements. The Fiscal Agent shall be entitled to rely on any written direction of

the Borrower as to the suitability and legality of the directed investment. In the absence of written direction from the Borrower, the Fiscal Agent shall hold amounts on deposit in the funds and accounts established under this Funding Loan Agreement uninvested. Such investments may be made through the investment or securities department of the Fiscal Agent. The Fiscal Agent may purchase from or sell to itself or an affiliate, as principal or agent, securities herein authorized. The Fiscal Agent shall be entitled to assume, absent receipt by the Fiscal Agent of written notice to the contrary, that any investment which at the time of purchase is a Qualified Investment remains a Qualified Investment thereafter.

Qualified Investments representing an investment of money attributable to any fund or account shall be deemed at all times to be a part of said fund or account, and, except as otherwise may be provided expressly in other Sections hereof, the interest thereon and any profit arising on the sale thereof shall be credited to the Revenue Fund, and any loss resulting on the sale thereof shall be charged against the Revenue Fund. Such investments shall be sold at the best price obtainable (at least par) whenever it shall be necessary so to do in order to provide money to make any transfer, withdrawal, payment or disbursement from said fund or account. In the case of any required transfer of money to another such fund or account, such investments may be transferred to that fund or account in lieu of the required money if permitted hereby as an investment of money in that fund or account. The Fiscal Agent shall not be liable or responsible for any loss, fee, tax, or other charge resulting from any investment made in accordance herewith.

In computing for any purpose hereunder the amount in any fund or account on any date, obligations so purchased shall be valued at Fair Market Value.

Section 4.09 *[Reserved].*

Section 4.10 *Accounting Records.* The Fiscal Agent shall maintain accurate books and records for all funds and accounts established hereunder.

Section 4.11 *Amounts Remaining in Funds.* After full payment of the Funding Loans (or provision for payment thereof having been made in accordance with Section 9.01 hereof) and full payment of the fees, charges and expenses of the Governmental Lender, the Fiscal Agent, the Rebate Analyst, the Funding Lender and the Servicer and other amounts required to be paid hereunder or under any Project Loan Document, including, but not limited to, the Continuing Covenant Agreement (as certified in writing to the Fiscal Agent by the Governmental Lender with respect to amounts due to the Governmental Lender and by the Funding Lender Representative or the Servicer on its behalf with respect to amounts owed under the Continuing Covenant Agreement and by the Rebate Analyst with respect to amounts due to the Rebate Analyst), any amounts remaining in any fund or account hereunder other than the Rebate Fund shall be paid to the Borrower.

Section 4.12 *Rebate Fund; Compliance with Tax Certificates.* The Rebate Fund shall be established by the Fiscal Agent and held and applied as provided in this Section 4.12. On any date on which any amounts are required by applicable federal tax law to be rebated to the federal government, amounts shall be deposited into the Rebate Fund by the Borrower for such purpose. All money at any time deposited in the Rebate Fund shall be held by the Fiscal Agent in trust, to the extent required to satisfy the rebate requirement (as set forth in the Tax Certificate for the Series 2018 Tax-Exempt Governmental Notes and the Tax Certificate for the Series 2021 Governmental Notes) and as calculated by the Rebate Analyst, for payment to the government of the United States of America, and neither the Governmental Lender, the Borrower nor the Funding Lender shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section 4.12, the Tax Certificate for the Series 2018 Tax-Exempt Governmental Notes, and the Tax Certificate for the Series 2021 Governmental Notes. The Fiscal Agent shall conclusively be deemed to

have complied with such provisions if it follows the written instructions of the Governmental Lender, Bond Counsel or the Rebate Analyst, including supplying all necessary information in the manner set forth in the Tax Certificate for the Series 2018 Tax-Exempt Governmental Notes and the Tax Certificate for the Series 2021 Governmental Notes, and shall not be required to take any actions under the Tax Certificate for the Series 2018 Tax-Exempt Governmental Notes and the Tax Certificate for the Series 2021 Governmental Notes in the absence of written instructions from the Governmental Lender, Bond Counsel or the Rebate Analyst.

Within fifty-five (55) days of the end of the fifth Rebate Year and each fifth Rebate Year thereafter, the Borrower shall deliver to the Fiscal Agent and the Governmental Lender a certificate that it has determined no Rebatable Arbitrage (as defined below) is due or shall cause the Rebate Analyst to calculate the amount of rebatable arbitrage, in accordance with Section 148(f)(2) of the Code and Section 1.148-3 of the Treasury Regulations (taking into account any exceptions with respect to the computation of the rebatable arbitrage, described, if applicable, in the Tax Certificate for the Series 2018 Tax-Exempt Governmental Notes and the Tax Certificate for the Series 2021 Governmental Notes (e.g., the temporary investments exceptions of Section 148(f)(4)(B) and (C) of the Code)), for this purpose treating the last day of the applicable Rebate Year as a (computation) date, within the meaning of Section 1.148-1(b) of the Treasury Regulations (the “**Rebatable Arbitrage**”). Pursuant to Section 2.04 of the Project Loan Agreement, the Borrower shall cause the Rebate Analyst to provide any such calculations to the Fiscal Agent and the Governmental Lender. In the event that the Borrower fails to provide such information to the Fiscal Agent and the Governmental Lender within fifty-five (55) days of the end of the fifth Rebate Year and each fifth Rebate Year thereafter, the Borrower shall select the Rebate Analyst, with the prior written approval of the Governmental Lender, and shall cause the Rebate Analyst to calculate the amount of rebatable arbitrage as required herein.

Within fifty-five (55) days of the end of the fifth Rebate Year and each fifth Rebate Year thereafter, upon the written direction of the Governmental Lender, Bond Counsel or the Rebate Analyst, an amount shall be deposited to the Rebate Fund by the Fiscal Agent from amounts provided by the Borrower, if and to the extent required so that the balance in the Rebate Fund shall equal the amount of Rebatable Arbitrage so calculated in accordance with the preceding paragraph.

The Fiscal Agent shall pay, as directed by the Governmental Lender, Bond Counsel or the Rebate Analyst, to the United States Department of the Treasury, out of amounts in the Rebate Fund:

- (i) Not later than sixty (60) days after the end of (A) the fifth Rebate Year, and (B) each applicable fifth Rebate Year thereafter, an amount equal to at least ninety (90%) of the Rebatable Arbitrage calculated as of the end of such Rebate Year; and
- (ii) Not later than sixty (60) days after the payment in whole of the Funding Loans, an amount equal to one hundred percent (100%) of the Rebatable Arbitrage calculated as of the end of such applicable Rebate Year, and any income attributable to the Rebatable Arbitrage, computed in accordance with Section 148(f) of the Code.

Each payment required to be made under this Section shall be made to the Internal Revenue Service Center, Ogden, Utah 84201 (or such other address provided in such direction), on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038-T, which shall be prepared by the Rebate Analyst and provided to the Fiscal Agent.

Notwithstanding any provision of this Funding Loan Agreement to the contrary, the obligation to remit payment of the Rebatable Arbitrage to the United States of America and to comply with all other requirements of Sections 2.04 and 4.03 of the Project Loan Agreement and this Section 4.12, and the

requirements of the Tax Certificate for the Series 2018 Tax-Exempt Governmental Notes and the Tax Certificate for the Series 2021 Governmental Notes shall survive the defeasance or payment in full of the Funding Loans.

Any funds remaining in the Rebate Fund after payment in full of the Funding Loans and payment and satisfaction of any Rebate Requirement, or provision made therefor satisfactory to the Fiscal Agent, shall be withdrawn and remitted to the Borrower.

The Fiscal Agent shall obtain and keep such records of the computations made pursuant to this Section 4.12 as are required under Section 148(f) of the Code to the extent furnished to the Fiscal Agent. The Borrower shall or shall cause the Rebate Analyst to provide to the Governmental Lender and the Fiscal Agent copies of all rebate computations made pursuant to this Section 4.12. The Fiscal Agent shall keep and make available to the Borrower such records concerning the investments of the gross proceeds of the Funding Loans and the investments of earnings from those investments made by the Fiscal Agent as may be requested by the Borrower in order to enable the Borrower to cause the Rebate Analyst to make the aforesaid computations as are required under Section 148(f) of the Code.

Notwithstanding the foregoing, the computations and payments of Rebateable Arbitrage need not be made to the extent that neither the Governmental Lender nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on an opinion of Bond Counsel, to the effect that such failure will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Governmental Notes, a copy of which shall be provided to the Fiscal Agent and the Funding Lender Representative, at the expense of the Borrower.

Section 4.13 *Cost of Issuance Fund.* The Fiscal Agent shall use money on deposit to the credit of the Cost of Issuance Fund to pay the costs of issuance of the Series 2018 Governmental Notes on the Delivery Date of the Series 2018 Governmental Notes or to pay the costs of issuance of the Series 2021 Governmental Notes on the Delivery Date for the Series 2021 Governmental Notes or as soon as practicable thereafter in accordance with a Requisition in the form of *Exhibit D* to be given to the Fiscal Agent by the Borrower on the respective Delivery Date, along with appropriate invoices for such expenses. Amounts in the Cost of Issuance Fund funded with proceeds of the Funding Loans, if any, shall be expended prior to the application of any Costs of Issuance Deposit. Investment Income on amounts on deposit in the Cost of Issuance Fund shall be retained in such fund. Amounts remaining on deposit in the Cost of Issuance Fund six (6) months after the Delivery Date of the Series 2021 Governmental Notes shall be transferred to the Borrower. Upon such final disbursement, the Fiscal Agent shall close the Cost of Issuance Fund.

Section 4.14 *Reports from the Fiscal Agent.* The Fiscal Agent shall, on or before the fifteenth day of each month, file with the Funding Lender Representative, the Servicer, the Governmental Lender (at its written request) and the Borrower a statement setting forth in respect of the preceding calendar month:

- (i) the amount withdrawn or transferred by it, and the amount deposited within or on account of each fund and account held by it under the provisions of this Funding Loan Agreement, including the amount of investment income on each fund and account;
- (ii) the amount on deposit with it at the end of such month to the credit of each fund and account;
- (iii) a brief description of all obligations held by it as an investment of money in each such fund and account; and

(iv) any other information which the Funding Lender Representative or the Governmental Lender may reasonably request and to which the Fiscal Agent has access in the ordinary course of its operations.

Upon the written request of the Funding Lender, the Fiscal Agent, at the cost of the Borrower, shall provide a copy of such statement to Funding Lender. All records and files pertaining to the Pledged Security shall be open at all reasonable times to the inspection of the Governmental Lender and the Funding Lender Representative or the Servicer and their agents and representatives upon reasonable prior notice during normal business hours.

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ARTICLE V

GENERAL COVENANTS AND REPRESENTATIONS

Section 5.01 *Payment of Principal and Interest.* The Governmental Lender covenants that it will promptly pay or cause to be paid, but only from the sources identified herein, sufficient amounts to provide for the payment of the principal of, Prepayment Premium, if any, and interest on the Funding Loans at the place, on the dates and in the manner provided herein and in the Governmental Notes, according to the true intent and meaning thereof.

Section 5.02 *Performance of Covenants.* The Governmental Lender covenants that it will faithfully perform at all times any and all of its covenants, undertakings, stipulations and provisions contained in this Funding Loan Agreement, in the Governmental Notes and in all proceedings pertaining thereto.

Section 5.03 *Instruments of Further Assurance.* The Governmental Lender covenants that it will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, such supplements hereto, and such further acts, instruments and transfers as may be reasonably required for the better assuring, transferring, conveying, pledging, assigning, and confirming unto the Fiscal Agent all and singular its interest in the property herein described and the revenues, receipts, and other amounts pledged hereby to the payment of the principal of, Prepayment Premium, if any, and interest on the Funding Loans. Any and all interest in property hereafter acquired which is of any kind or nature herein provided to be and become subject to the lien hereof shall and without any further conveyance, assignment or act on the part of the Governmental Lender or the Fiscal Agent, become and be subject to the lien of this Funding Loan Agreement as fully and completely as though specifically described herein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Governmental Lender under this Section 5.03. The Governmental Lender covenants and agrees that, except as herein otherwise expressly provided, it has not and will not sell, convey, mortgage, encumber or otherwise dispose of any part of its interest in the Pledged Security or the revenues or receipts therefrom.

The Governmental Lender will promptly notify the Fiscal Agent, the Funding Lender Representative, and the Servicer in writing of the occurrence of any of the following:

- (i) the submission of any claim or the initiation of any legal process, litigation or administrative or judicial investigation against the Governmental Lender with respect to the Loans;
- (ii) any change in the location of the Governmental Lender's principal office or any change in the location of the Governmental Lender's books and records relating to the transactions contemplated hereby;
- (iii) the occurrence of any default or Event of Default of which the Governmental Lender has actual knowledge;
- (iv) the commencement of any proceedings or any proceedings instituted by or against the Governmental Lender in any federal, state or local court or before any governmental body or agency, or before any arbitration board, relating to the Governmental Notes; or

(v) the commencement of any proceedings by or against the Governmental Lender under any applicable bankruptcy, reorganization, liquidation, rehabilitation, insolvency or other similar law now or hereafter in effect or of any proceeding in which a receiver, liquidator, conservator, trustee or similar official shall have been, or may be, appointed or requested for the Governmental Lender or any of its assets relating to the Loans.

Section 5.04 *Inspection of Project Books.* The Governmental Lender covenants and agrees that all books and documents in its possession relating to the Project shall, upon reasonable prior notice, during normal business hours, be open to inspection and copying by such accountants or other agents as the Fiscal Agent or the Funding Lender Representative may from time to time reasonably designate.

Section 5.05 *No Modification of Security; Additional Indebtedness.* The Governmental Lender covenants to and for the benefit of the Funding Lender that it will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

(i) alter, modify or cancel, or agree to consent to alter, modify or cancel any agreement to which the Governmental Lender is a party, or which has been assigned to the Governmental Lender, and which relates to or affects the security for the Loans or the payment of any amount owed under the Financing Documents; or

(ii) create or suffer to be created any lien upon the Pledged Security or any part thereof other than the lien created hereby and by the Security Instrument.

Section 5.06 *Damage, Destruction or Condemnation.* Net Proceeds resulting from casualty to or condemnation of the Project shall be applied as provided in the Continuing Covenant Agreement and, to the extent consistent therewith, Section 3.01(b)(i) hereof.

Section 5.07 *Tax Covenants.*

(a) *Governmental Lender's Covenants.* The Governmental Lender covenants that it will:

(i) neither make or use nor cause to be made or used any investment or other use of the proceeds of the Tax-Exempt Funding Loan or the money and investments held in the funds and accounts in any manner which would cause the Tax-Exempt Governmental Notes to be "arbitrage bonds" under Section 148 of the Code and the Treasury Regulations issued under Section 148 of the Code or which would otherwise cause the interest payable on the Tax-Exempt Governmental Notes to be includable in gross income for federal income tax purposes;

(ii) enforce or cause to be enforced all material obligations of the Borrower under the Tax Regulatory Agreement in accordance with its terms and seek to cause the Borrower to correct any violation of the Tax Regulatory Agreement within a reasonable period after it first discovers or becomes aware of any such violation;

(iii) not take or cause to be taken any other action or actions, or fail to take any action or actions, if the same would cause the interest payable on the Tax-Exempt Governmental Notes to be includable in gross income for federal income tax purposes;

(iv) at all times do and perform all acts and things permitted by law and necessary of which it has knowledge in order to assure that interest paid by the Governmental Lender on the Tax-Exempt Funding Loan evidenced by the Tax-Exempt Governmental Notes will be excludable from the gross income for federal income tax purposes, of the Funding Lender

pursuant to the Code, except in the event where the Funding Lender is a “substantial user” of the facilities financed with the Tax-Exempt Funding Loan and the Tax-Exempt Project Loan or a “related person” within the meaning of the Code; and

(v) not take any action or permit or suffer any action within its control and of which it has knowledge to be taken if the result of the same would be to cause the Tax-Exempt Governmental Notes to be “federally guaranteed” within the meaning of Section 149(b) of the Code and the Treasury Regulations.

In furtherance of the covenants in this Section 5.07, on the Delivery Date of the Series 2018 Governmental Notes, the Governmental Lender executed and delivered an endorsement to the Tax Certificate for the Series 2018 Tax-Exempt Governmental Notes, and on the Delivery Date of the Series 2021 Governmental Notes, the Governmental Lender will execute and deliver an endorsement to the Tax Certificate for the Series 2021 Governmental Notes, which is by this reference incorporated into this Funding Loan Agreement and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full, and by its acceptance of this Funding Loan Agreement the Fiscal Agent acknowledges receipt of the Tax Certificate for the Series 2018 Tax-Exempt Governmental Notes and the Tax Certificate for the Series 2021 Governmental Notes and acknowledges its incorporation into this Funding Loan Agreement by this reference and agrees to comply with the terms specifically applicable to it.

(b) *Fiscal Agent’s Covenants.* The Fiscal Agent agrees that it will invest funds held under this Funding Loan Agreement in accordance with the covenants and terms of this Funding Loan Agreement, the Tax Certificate for the Series 2018 Tax-Exempt Governmental Notes, and the Tax Certificate for the Series 2021 Governmental Notes (this covenant shall extend through the term of the Funding Loans, to all funds and accounts created under this Funding Loan Agreement, and all money on deposit to the credit of any such fund or account). The Fiscal Agent covenants to and for the benefit of the Funding Lender that, notwithstanding any other provisions of this Funding Loan Agreement or of any other Financing Document, it will not knowingly make or cause to be made any investment or other use of the money in the funds or accounts created hereunder which would cause the Tax-Exempt Governmental Notes to be classified as “arbitrage bonds” within the meaning of Sections 103(b) and 148 of the Code or would cause the interest on the Tax-Exempt Governmental Notes to be includable in gross income for federal income tax purposes; provided that the Fiscal Agent shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Governmental Lender, the Funding Lender Representative, Bond Counsel, or the Rebate Analyst. This covenant shall extend, throughout the term of the Funding Loans, to all funds created under this Funding Loan Agreement and all money on deposit to the credit of any such fund. Pursuant to this covenant, with respect to the investments of the funds and accounts under this Funding Loan Agreement, the Fiscal Agent obligates itself to comply throughout the term of the Funding Loans with the requirements of Sections 103(b) and 148 of the Code; provided that the Fiscal Agent shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Governmental Lender, Bond Counsel, or the Rebate Analyst. The Fiscal Agent further covenants that should the Governmental Lender, the Borrower, or the Funding Lender Representative file with the Fiscal Agent (it being understood that none of the Governmental Lender, the Borrower, or the Funding Lender Representative has an obligation to so file), or should the Fiscal Agent receive, an opinion of Bond Counsel to the effect that any proposed investment or other use of proceeds of the Funding Loan would cause the Tax-Exempt Governmental Notes to become “arbitrage bonds,” then the Fiscal Agent will comply with any written instructions of the Governmental Lender, the Borrower, the Funding Lender Representative or Bond Counsel regarding such investment (which shall, in any event, be a Qualified Investment) or use so as to prevent the Tax-Exempt Governmental Notes from becoming “arbitrage bonds,” and the Fiscal Agent will bear no liability to the

Governmental Lender, the Borrower, the Funding Lender, or the Funding Lender Representative for investments made in accordance with such instructions.

Section 5.08 *Representations and Warranties of the Governmental Lender.* The Governmental Lender hereby represents and warrants as follows:

(a) The Governmental Lender is a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State.

(b) The Governmental Lender has all necessary power and authority to issue the Governmental Notes and to execute and deliver this Funding Loan Agreement, the Project Loan Agreement and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The revenues and assets pledged for the repayment of the Funding Loan are and will be free and clear of any pledge, lien or encumbrance prior to, or equal with, the pledge created by this Funding Loan Agreement, and all action on the part of the Governmental Lender to that end has been duly and validly taken.

(d) The Financing Documents to which the Governmental Lender is a party have been validly authorized, executed and delivered by the Governmental Lender.

(e) To the actual knowledge of the Governmental Lender, the execution and delivery of the Governmental Notes and this Funding Loan Agreement, the consummation of the transactions on the part of the Governmental Lender contemplated thereby and the fulfillment of or compliance with the terms and conditions thereof do not conflict with or result in the breach of any of the terms, conditions or provisions of any agreement or instrument or judgment, order or decree to which the Governmental Lender is now a party or by which it is bound, nor do they constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature upon any property or assets of the Governmental Lender under the terms of any instrument or agreement.

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ARTICLE VI

DEFAULT PROVISIONS AND REMEDIES OF FISCAL AGENT AND FUNDING LENDER

Section 6.01 *Events of Default.* Each of the following shall be an event of default with respect to the Funding Loan (an “**Event of Default**”) under this Funding Loan Agreement:

(a) failure to pay the principal of, Prepayment Premium, if any, or interest on the Funding Loans when due, whether on an Interest Payment Date, at the stated maturity thereof, by proceedings for prepayment thereof, by acceleration or otherwise; or

(b) failure to observe the covenants set forth in Section 5.05 hereof; or

(c) failure to observe or perform any of the covenants, agreements or conditions on the part of the Governmental Lender (other than those set forth in Sections 5.01 and 5.05 hereof) set forth in this Funding Loan Agreement or in the Governmental Notes and the continuance thereof for a period of thirty (30) days (or such longer period, if any, as is specified herein for particular defaults) after written notice thereof to the Governmental Lender from the Fiscal Agent or the Funding Lender Representative specifying such default and requiring the same to be remedied; provided that if such default cannot be cured within such thirty (30) day period through the exercise of diligence and the Governmental Lender commences the required cure within such thirty (30) day period and continues the cure with diligence and the Governmental Lender reasonably anticipates that the default could be cured within sixty (60) days, the Governmental Lender shall have sixty (60) days following receipt of such notice to effect the cure; or

(d) receipt by the Fiscal Agent of written notice from the Funding Lender Representative of the occurrence of an “Event of Default” under the Project Loan Agreement or the Continuing Covenant Agreement.

The Fiscal Agent will promptly notify the Governmental Lender, the Servicer and the Funding Lender Representative after a Responsible Officer obtains actual knowledge of the occurrence of an Event of Default or obtains actual knowledge of the occurrence of an event which would become an Event of Default with the passage of time or the giving of notice or both.

Section 6.02 *Acceleration; Other Remedies Upon Event of Default.* Upon the occurrence of an Event of Default, the Fiscal Agent shall, upon the written request of the Funding Lender Representative, by notice in writing delivered to the Governmental Lender, declare the principal of the Funding Loans and the interest accrued thereon immediately due and payable, and interest shall continue to accrue thereon until such amounts are paid.

At any time after the Funding Loans shall have been so declared due and payable, and before any judgment or decree for the payment of the money due shall have been obtained or entered, the Fiscal Agent may, but only if directed in writing by the Funding Lender Representative, by written notice to the Governmental Lender, and the Fiscal Agent, rescind and annul such declaration and its consequences if the Governmental Lender or the Borrower shall pay to or deposit with the Fiscal Agent a sum sufficient to pay all principal on the Funding Loans then due (other than solely by reason of such declaration) and all unpaid installments of interest (if any) on the Funding Loans then due, with interest at the rate borne by the Funding Loans on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable fees and expenses of the Fiscal Agent (including its counsel)

shall have been made good or cured or adequate provision shall have been made therefor, and all outstanding amounts then due and unpaid under the Financing Documents (collectively, the “**Cure Amount**”) shall have been paid in full, and all other defaults hereunder shall have been made good or cured or waived in writing by the Funding Lender Representative; but no such rescission and annulment shall extend to or shall affect any subsequent default, nor shall it impair or exhaust any right or power consequent thereon.

Upon the occurrence and during the continuance of an Event of Default, the Fiscal Agent in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the Funding Lender, may also proceed to protect and enforce any rights of the Fiscal Agent and, to the full extent that the Funding Lender itself might do, the rights of the Funding Lender under the laws of the State or under this Funding Loan Agreement by such of the following remedies as the Fiscal Agent shall deem most effectual to protect and enforce such rights; provided that, the Fiscal Agent may undertake any such remedy only upon the receipt of the prior written consent of the Funding Lender Representative (which consent may be given in the sole discretion of the Funding Lender Representative):

(i) by mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of, Prepayment Premium, if any, or interest on the Funding Loans and to require the Governmental Lender to carry out any covenants or agreements with or for the benefit of the Funding Lender and to perform its duties under the Act, this Funding Loan Agreement, the Project Loan Agreement or the Tax Regulatory Agreement (as applicable) to the extent permitted under the applicable provisions thereof;

(ii) by pursuing any available remedies under the Project Loan Agreement, the Tax Regulatory Agreement or any other Financing Document;

(iii) by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder; and

(iv) by action or suit in equity enjoin any acts or things that may be unlawful or in violation of the rights of the Funding Lender and execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of the Fiscal Agent in order to have the claim of the Funding Lender against the Governmental Lender allowed in any bankruptcy or other proceeding.

No remedy by the terms of this Funding Loan Agreement conferred upon or reserved to the Fiscal Agent or to the Funding Lender is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Fiscal Agent or the Funding Lender hereunder or under the Project Loan Agreement, the Tax Regulatory Agreement, the Continuing Covenant Agreement or any other Financing Document, as applicable, 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 Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder, whether by the Fiscal Agent or the Funding Lender, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereto.

Upon the occurrence and during the continuance of an Event of Default under Section 6.01(c) hereof, the Borrower and its partners shall have the same rights to notice and cure as those conferred upon the Governmental Lender pursuant to Section 6.01(c) and this Section 6.02; provided that, the Borrower

and its partners may undertake to cure any such Event of Default only upon the receipt of the prior written consent of the Governmental Lender.

Section 6.03 *Funding Lender Representative Control of Proceedings.* If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Funding Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Funding Loan Agreement. In addition, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender (and in connection therewith the Fiscal Agent shall transfer or assign to the Funding Lender Representative all of its interest in the Pledged Security at the request of the Funding Lender Representative). In no event shall the exercise of any of the foregoing rights result in an acceleration of the Funding Loans without the express direction of the Funding Lender Representative.

Section 6.04 *Waiver by Governmental Lender.* Upon the occurrence of an Event of Default, to the extent that such right may then lawfully be waived, neither the Governmental Lender nor anyone claiming through or under it shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or prepayment laws now or hereinafter in force, in order to prevent or hinder the enforcement of this Funding Loan Agreement; and the Governmental Lender, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisal and prepayment to which it may be entitled under the laws of the State and the United States of America.

Section 6.05 *Application of Money After Default.* All money collected by the Fiscal Agent at any time pursuant to this Article shall, except to the extent, if any, otherwise directed by a court of competent jurisdiction, be credited by the Fiscal Agent to the Revenue Fund. Such money so credited to the Revenue Fund and all other money from time to time credited to the Revenue Fund shall at all times be held, transferred, withdrawn and applied as prescribed by the provisions of Article IV hereof and this Section 6.05.

In the event that at any time the money credited to the Revenue Fund, the Loan Payment Fund, and the Loan Prepayment Fund available for the payment of interest or principal then due with respect to the Governmental Notes shall be insufficient for such payment, such money shall be applied as follows and in the following order of priority:

(a) For payment of all amounts due to the Fiscal Agent incurred in performance of its duties under this Funding Loan Agreement, including, without limitation, the payment of all reasonable fees and expenses of the Fiscal Agent incurred in exercising any remedies under this Funding Loan Agreement.

(b) To the extent directed in writing by the Funding Lender Representative, to the reimbursement of any unreimbursed advances made by or on behalf of the Funding Lender pursuant to the Continuing Covenant Agreement or the Security Instrument.

(c) Unless the full principal amount of the Funding Loans shall have become or have been declared due and payable:

FIRST: to the Funding Lender, all installments of interest then due on the Funding Loans in the order of the maturity of such installments; and

SECOND: to the Funding Lender, unpaid principal of and Prepayment Premium, if any, on the Funding Loans which shall have become due, whether at maturity or by call for prepayment, in the order in which they became due and payable.

(d) If the full principal amount of the Governmental Notes shall have become or have been declared due and payable, to the Funding Lender for the payment of the principal of, Prepayment Premium, if any, and interest then due and unpaid on the Funding Loans without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest.

(e) Notwithstanding subsections (c) and (d) above, during the Construction Phase, any amounts payable to the Funding Lender pursuant to such subsections will instead be paid to the Administrative Agent for distribution to the Initial Funding Lender as provided in the Construction Continuing Covenant Agreement.

Section 6.06 Remedies Not Exclusive. No right or remedy conferred upon or reserved to the Fiscal Agent, the Funding Lender or the Funding Lender Representative by the terms of this Funding Loan Agreement is intended to be exclusive of any other right or remedy, but each and every such remedy shall be cumulative and shall be in addition to every other right or remedy given to the Fiscal Agent, the Funding Lender or the Funding Lender Representative under this Funding Loan Agreement or existing at law or in equity or by statute (including the Act).

Section 6.07 Fiscal Agent May Enforce Rights Without Governmental Notes. All rights of action and claims, including the right to file proof of claims, under this Funding Loan Agreement may be prosecuted and enforced by the Fiscal Agent at the written direction of the Funding Lender Representative without the possession of the Governmental Notes or the production thereof in any trial or other proceedings relating thereto. Subject to the rights of the Funding Lender Representative to direct proceedings hereunder, any such suit or proceeding instituted by the Fiscal Agent shall be brought in its name as Fiscal Agent without the necessity of joining as plaintiffs or defendants any Funding Lender, and any recovery or judgment shall be for the benefit as provided herein of the Funding Lender.

Section 6.08 [Reserved].

Section 6.09 Termination of Proceedings. In case the Fiscal Agent (at the direction of the Funding Lender Representative) or the Funding Lender Representative shall have proceeded to enforce any right under this Funding Loan Agreement by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower and the Funding Lender shall be restored to their former positions and rights hereunder with respect to the Pledged Security herein conveyed, and all rights, remedies and powers of the Fiscal Agent and the Funding Lender Representative shall continue as if no such proceedings had been taken.

Section 6.10 Waivers of Events of Default. The Fiscal Agent shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Funding Loan upon the written direction of the Funding Lender Representative. In case of any such waiver or rescission, or in case any proceeding taken by the Fiscal Agent on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Borrower, the Servicer, the Funding Lender Representative and the Funding Lender shall be restored to their former positions and rights hereunder,

respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

Section 6.11 *Interest on Unpaid Amounts and Default Rate for Nonpayment.* In the event that principal of or interest payable on the Funding Loan is not paid when due, there shall be payable on the amount not timely paid, on each Interest Payment Date, interest at the Default Rate, to the extent permitted by law. Interest on the Funding Loans shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

Section 6.12 *Assignment of Project Loans; Remedies Under the Project Loans.*

(a) The Funding Lender Representative shall have the right, with respect to the Project Loans, in its sole and absolute discretion, without directing the Fiscal Agent to effect an acceleration of the Funding Loans, to instruct the Fiscal Agent in writing to assign the Project Notes, the Security Instrument and the other Project Loan Documents to the Funding Lender Representative, in which event the Fiscal Agent shall (i) endorse and deliver the Project Notes to the Funding Lender Representative and assign (in recordable form) the Security Instrument, (ii) execute and deliver to the Funding Lender Representative all documents prepared by the Funding Lender Representative necessary to assign (in recordable form) all other Project Loan Documents to the Funding Lender Representative and (iii) execute all such documents prepared by the Funding Lender Representative as are necessary to legally and validly effectuate the assignments provided for in the preceding clauses (i) and (ii). The Fiscal Agent's assignments to the Funding Lender Representative pursuant to this Section 6.12 shall be without recourse or warranty except that the Fiscal Agent shall represent and warrant in connection therewith (A) that the Fiscal Agent has not previously endorsed or assigned any such documents or instruments and (B) that the Fiscal Agent has the corporate authority to endorse and assign such documents and instruments and such endorsements and assignments have been duly authorized.

(b) The Funding Lender Representative shall have the right, in its own name or on behalf of the Governmental Lender or the Fiscal Agent, to declare any default and exercise any remedies under the Project Loan Agreement, the Project Notes, the Security Instrument or any other Project Loan Document, whether or not the Governmental Notes have been accelerated or declared due and payable by reason of an Event of Default or the occurrence of a mandatory prepayment.

Section 6.13 *Substitution.* Upon receipt of written notice from the Funding Lender Representative and the approval of the Governmental Lender as and to the extent permitted under the Tax Regulatory Agreement, the Fiscal Agent shall exchange the Project Notes and the Security Instrument for new Project Notes and Security Instrument, evidencing and securing a new loan (the "**New Project Loan**"), which may be executed by a person other than the Borrower (the "**New Borrower**"), provided that if the Fiscal Agent, the Funding Lender or a nominee of the Fiscal Agent or the Funding Lender has acquired the Project through foreclosure, by accepting a deed in lieu of foreclosure or by comparable conversion of the Project, no approval from the Governmental Lender of such exchange shall be required. Prior to accepting a New Project Loan, the Fiscal Agent shall have received (i) written evidence that the New Borrower shall have executed and recorded a document substantially in the form of the Tax Regulatory Agreement (or executed and recorded an assumption of all of the Borrower's obligations under the Tax Regulatory Agreement) and that the Project Loan Documents have been modified as necessary to be applicable to the New Project Loan; and (ii) an opinion of Bond Counsel, to the effect that such exchange and modification, in and of itself, shall not affect the exclusion, from gross income, for federal income tax purposes of the interest payable on the Tax-Exempt Governmental Notes.

ARTICLE VII

CONCERNING THE FISCAL AGENT

Section 7.01 *Standard of Care.* The Fiscal Agent, prior to an Event of Default and after the curing or waiver of all such events which may have occurred, shall perform such duties and only such duties as are specifically set forth in this Funding Loan Agreement. The Fiscal Agent, during the existence of any such Event of Default (which shall not have been cured or waived), shall exercise such rights and powers vested in it by this Funding Loan Agreement and use the same degree of care and skill in its exercise as a prudent Person would exercise or use under similar circumstances in the conduct of such Person's own affairs.

No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its breach of trust, own negligence or willful misconduct, except that:

(a) prior to an Event of Default hereunder, and after the curing or waiver of all such Events of Default which may have occurred:

(i) the duties and obligations of the Fiscal Agent shall be determined solely by the express provisions of this Funding Loan Agreement, and the Fiscal Agent shall not be liable except with regard to the performance of such duties and obligations as are specifically set forth in this Funding Loan Agreement; and

(ii) in the absence of bad faith on the part of the Fiscal Agent, the Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Fiscal Agent by the Person or Persons authorized to furnish the same; and

(b) at all times, regardless of whether or not any such Event of Default shall exist:

(i) the Fiscal Agent shall not be liable for any error of judgment made in good faith by an officer or employee of the Fiscal Agent except for willful misconduct or negligence by the officer or employee of the Fiscal Agent as the case may be; and

(ii) the Fiscal Agent shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Funding Lender Representative relating to the time, method and place of conducting any proceeding for any remedy available to the Fiscal Agent, or exercising any trust or power conferred upon the Fiscal Agent under this Funding Loan Agreement.

Section 7.02 *Reliance Upon Documents.* Except as otherwise provided in Section 7.01 hereof:

(a) the Fiscal Agent may rely upon the authenticity or truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, notarial seal, stamp, acknowledgment, verification, request, consent, order, bond, or other paper or document of the proper party or parties, including any Electronic Notice as permitted hereunder or under the Project Loan Agreement;

(b) any notice, request, direction, election, order or demand of the Governmental Lender mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender (unless other evidence in respect thereof be herein specifically prescribed), and any resolution of the Governmental Lender may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by an Authorized Officer of the Governmental Lender;

(c) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Borrower mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Borrower by any Authorized Officer of the Borrower (unless other evidence in respect thereof be herein specifically prescribed), and any resolution or certification of the Borrower may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by a secretary or other authorized representative of the Borrower;

(d) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Servicer mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Servicer by an Authorized Officer of the Servicer (unless other evidence in respect thereof be herein specifically prescribed);

(e) any notice, request, direction, election, order or demand of the Funding Lender Representative mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Funding Lender Representative by any Authorized Officer of the Funding Lender Representative (unless other evidence in respect thereof be herein specifically prescribed);

(f) [Intentionally Omitted];

(g) [Intentionally Omitted];

(h) in the administration of the trusts of this Funding Loan Agreement, the Fiscal Agent may execute any of the trusts or powers hereby granted directly or through its agents, receivers or attorneys and shall not be responsible for the misconduct or negligence of such agent, receiver, or attorney appointed with due care, and the Fiscal Agent may consult with counsel (who may be counsel for the Governmental Lender, the Servicer or the Funding Lender Representative) and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken or permitted by it hereunder in good faith and in accordance with the opinion of such counsel;

(i) whenever in the administration of the trusts of this Funding Loan Agreement, the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or permitting any action hereunder, such matters (unless other evidence in respect thereof be herein specifically prescribed), may in the absence of negligence or willful misconduct on the part of the Fiscal Agent, be deemed to be conclusively proved and established by a certificate of an officer or authorized agent of the Governmental Lender or the Borrower and such certificate shall in the absence of bad faith on the part of the Fiscal Agent be full warrant to the Fiscal Agent for any action taken or permitted by it under the provisions of this Funding Loan Agreement, but in its discretion the Fiscal Agent may in lieu thereof accept other evidence of such matter or may require such further or additional evidence as it may deem reasonable;

(j) the recitals herein and in the Governmental Notes (except the Fiscal Agent's certificate of authentication thereon) shall not be considered as made by or imposing any obligation or liability upon the Fiscal Agent; the Fiscal Agent makes no representations as to the value or condition of the Pledged Security or any part thereof, or as to the title of the Governmental Lender or the Borrower to the Pledged

Security, or as to the security of this Funding Loan Agreement, or of the Governmental Notes issued hereunder; and the Fiscal Agent shall incur no liability or responsibility in respect of any of such matters;

(k) the Fiscal Agent shall not be personally liable for debts contracted or liability for damages incurred in the management or operation of the Pledged Security except for its own willful misconduct or negligence; and every provision of this Funding Loan Agreement relating to the conduct or affecting the liability of or affording protection to the Fiscal Agent shall be subject to the provisions of this subsection (k);

(l) the Fiscal Agent shall not be required to ascertain or inquire as to the performance or observance of any of the covenants or agreements (except to the extent they obligate the Fiscal Agent) herein or in any contracts or securities assigned or conveyed to or pledged with the Fiscal Agent hereunder, except Events of Default that are evident under Section 6.01(a) hereof; the Fiscal Agent shall not be required to take notice or be deemed to have notice or actual knowledge of any default or Event of Default specified in Section 6.01 hereof (except defaults under Section 6.01(a) hereof to the extent they are collecting loan payments hereunder) unless the Responsible Officer shall receive from the Governmental Lender or the Funding Lender Representative written notice stating that a default or Event of Default has occurred and specifying the same, and in the absence of such notice the Fiscal Agent may conclusively assume that there is no such default; and every provision contained in this Funding Loan Agreement or related instruments or in any such contract or security wherein the duty of the Fiscal Agent depends on the occurrence and continuance of such default shall be subject to the provisions of this subsection (l);

(m) the Fiscal Agent shall be under no duty to review or analyze any financial or other statements or reports or certificates furnished pursuant to any provisions hereof and shall not be deemed to have notice of any information contained therein or event of default which may be disclosed in any manner therein, except to the extent such statement or reports are furnished by or under the direction of the Fiscal Agent, and shall be under no other duty in respect of the same except to retain the same in its files and permit the inspection of the same at reasonable times by the Funding Lender; and

(n) the Fiscal Agent shall be under no obligation to exercise those rights or powers vested in it by this Funding Loan Agreement, other than such rights and powers which it shall be obliged to exercise in the ordinary course of its administration of the trusts and other duties under the terms and provisions of this Funding Loan Agreement and as required by law, at the request or direction of the Funding Lender Representative pursuant to Section 6.03 hereof, unless the Funding Lender Representative shall have offered to the Fiscal Agent reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in the compliance with such request or direction.

None of the provisions contained in this Funding Loan Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

The Fiscal Agent is authorized and directed to execute in its capacity as Fiscal Agent, the Project Loan Agreement and the Tax Regulatory Agreement and shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the delivery of the Governmental Notes.

The Fiscal Agent or any of its affiliates may act as advisor or sponsor with respect to any Qualified Investments.

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Funding Loan Agreement. If the party sending the Electronic Notice elects to give the Fiscal Agent e-mail or facsimile instructions (or instructions by a similar electronic method), the Fiscal Agent's understanding of such instructions shall be deemed controlling. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such instructions notwithstanding that such instructions conflict or are inconsistent with a subsequent written instruction. The Borrower, the Administrative Agent, the Governmental Lender, or any other party sending such Electronic Notice pursuant to this Funding Loan Agreement agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Fiscal Agent, including without limitation the risk of the Fiscal Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

In no event shall the Fiscal Agent be liable for incidental, indirect, special, consequential or punitive damages or penalties (including but not limited to lost profits), even if the Fiscal Agent has been advised of the likelihood of such damages or penalty and regardless of the form of action.

Any resolution, certification, notice, request, direction, election, order or demand delivered to the Fiscal Agent pursuant to this Section 7.02 shall remain in effect until the Fiscal Agent receives written notice to the contrary from the party that delivered such instrument accompanied by revised information for such party.

The Fiscal Agent shall have no responsibility for the value of any collateral or with respect to the perfection or priority of any security interest in any collateral except as otherwise provided in Section 7.17 hereof.

Section 7.03 *Use of Proceeds.* The Fiscal Agent shall not be accountable for the use or application of the Governmental Notes authenticated or delivered hereunder or of the proceeds of the Funding Loan except as provided herein.

Section 7.04 *[Reserved].*

Section 7.05 *Trust Imposed.* All money received by the Fiscal Agent shall, until used or applied as herein provided, be held in trust for the purposes for which it was received.

Section 7.06 *Compensation of Fiscal Agent.* The Fiscal Agent shall be entitled to the Fiscal Agent's Ordinary Fees and Expenses in connection with the services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties of the Fiscal Agent hereunder or under any Financing Document to the extent money is available therefor, in accordance with Section 4.06 hereof, exclusive of Extraordinary Services. The Fiscal Agent shall be entitled to Fiscal Agent's Extraordinary Fees and Expenses in connection with any Extraordinary Services performed consistent with the duties hereunder or under any of the Financing Documents; provided the Fiscal Agent shall not incur any Fiscal Agent's Extraordinary Fees and Expenses without the consent of the Funding Lender Representative. If any property, other than cash, shall at any time be held by the Fiscal Agent subject to this Funding Loan Agreement, or any supplement hereto, as security for the Funding Loans, the Fiscal Agent, if and to the extent authorized by a receivership, bankruptcy, or other court of competent jurisdiction or by the instrument subjecting such property to the provisions of this Funding Loan Agreement as such security for the Funding Loans, shall be entitled to make advances for the purpose of preserving such property or of discharging tax liens or other liens or encumbrances thereon. Payment to the Fiscal Agent for its services and reimbursement to the Fiscal Agent for its expenses, disbursements, liabilities and advances, shall be limited to the sources described in the Project Loan Agreement and in Sections 4.06, 4.11 and 6.05 hereof. The Governmental Lender shall have no

liability for Fiscal Agent's fees, costs or expenses. Subject to the provisions of Section 7.09 hereof, the Fiscal Agent agrees that it shall continue to perform its duties hereunder and under the Financing Documents even in the event that money designated for payment of its fees shall be insufficient for such purposes or in the event that the Borrower fails to pay the Fiscal Agent's Ordinary Fees and Expenses or, if applicable, the Fiscal Agent's Extraordinary Fees and Expenses as required by the Project Loan Agreement.

The Borrower shall indemnify and hold harmless the Fiscal Agent and its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants and servants, past, present or future, from and against (a) any and all claims by or on behalf of any person arising from any cause whatsoever in connection with this Funding Loan Agreement or transactions contemplated hereby, the Project, or the delivery of the Governmental Notes or the Loans; (b) any and all claims arising from any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project, or the delivery of the Governmental Notes or the Loans; and (c) all costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon; except that the Borrower shall not be required to indemnify any person for damages caused by the gross negligence, willful misconduct or unlawful acts of such person or which arise from events occurring after the Borrower ceases to own the Project. In the event that any action or proceeding is brought or claim made against the Fiscal Agent, or any of its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants or servants, with respect to which indemnity may be sought hereunder, the Borrower, upon written notice thereof from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. The indemnified party shall have the right to approve a settlement to which it is a party and to employ separate counsel in any such action or proceedings and to participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel. The provisions of this Section 7.06 shall survive the termination of this Funding Loan Agreement.

Section 7.07 *Qualifications of Fiscal Agent.* There shall at all times be a Fiscal Agent hereunder which shall be an association or a corporation organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws to exercise corporate trust powers. Any successor Fiscal Agent shall have a combined capital and surplus of at least \$50,000,000 (or shall be a wholly owned subsidiary of an association or corporation that has such combined capital and surplus), and be subject to supervision or examination by federal or state authority, or shall have been appointed by a court of competent jurisdiction pursuant to Section 7.11 hereof. If such association or corporation publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority referred to above, then for the purposes of this Section 7.07, the combined capital and surplus of such association or corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Fiscal Agent shall cease to be eligible in accordance with the provisions of this Section 7.07 and another association or corporation is eligible, the Fiscal Agent shall resign immediately in the manner and with the effect specified in Section 7.09 hereof.

Section 7.08 *Merger of Fiscal Agent.* Any association or corporation into which the Fiscal Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any association or corporation resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall, ipso facto, be and become successor Fiscal Agent hereunder and vested with all the title to the whole property or Pledged Security and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary

notwithstanding, and shall also be and become successor Fiscal Agent in respect of the legal interest of the Fiscal Agent in the Loans.

Section 7.09 *Resignation by the Fiscal Agent.* The Fiscal Agent may at any time resign from the trusts hereby created by giving written notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative. Such notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative may be served personally or sent by certified mail or overnight delivery service. The resignation of the Fiscal Agent shall not be effective until a successor Fiscal Agent has been appointed as provided herein and such successor Fiscal Agent shall have agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder.

Section 7.10 *Removal of the Fiscal Agent.* The Fiscal Agent may be removed at any time, either with or without cause, with the consent of the Funding Lender Representative (which consent of the Funding Lender Representative shall not be unreasonably withheld), by a written instrument signed by the Governmental Lender and delivered to the Fiscal Agent, the Servicer and the Borrower. The Fiscal Agent may also be removed by a written instrument signed by the Funding Lender Representative and delivered to the Fiscal Agent, the Servicer, the Governmental Lender and the Borrower. In each case written notice of such removal shall be given to the Servicer, the Borrower and to the Funding Lender. Any such removal shall take effect on the day specified in such written instrument(s), but the Fiscal Agent shall not be discharged from the trusts hereby created until a successor Fiscal Agent has been appointed and has accepted such appointment and has agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder.

Section 7.11 *Appointment of Successor Fiscal Agent.*

(a) In case at any time the Fiscal Agent shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or shall be adjudged a bankrupt or insolvent, or if a receiver of the Fiscal Agent or of its property shall be appointed, or if a public supervisory office shall take charge or control of the Fiscal Agent or of its property or affairs, a vacancy shall forthwith and ipso facto be created in the office of such Fiscal Agent hereunder, and the Governmental Lender, with the written consent of the Funding Lender Representative, shall promptly appoint a successor Fiscal Agent. Any such appointment shall be made by a written instrument executed by an Authorized Officer of the Governmental Lender. If the Governmental Lender fails to appoint a successor Fiscal Agent within ten (10) days following the resignation or removal of the Fiscal Agent pursuant to Section 7.09 or 7.10 hereunder, as applicable, the Funding Lender Representative may appoint a successor Fiscal Agent.

(b) If, in a proper case, no appointment of a successor Fiscal Agent shall be made pursuant to subsection (a) above within sixty (60) days following delivery of all required notices of resignation given pursuant to Section 7.09 hereof or of removal of the Fiscal Agent pursuant to Section 7.10 hereof, the retiring Fiscal Agent may apply to any court of competent jurisdiction to appoint a successor Fiscal Agent. The court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Fiscal Agent.

Section 7.12 *Concerning Any Successor Fiscal Agent.* Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Governmental Lender a written instrument accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the Pledged Security and the rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Governmental Lender, the Borrower or the Funding Lender Representative, or of its successor, and upon payment of all amounts due such predecessor,

including but not limited to fees and expenses of counsel, execute and deliver such instruments as may be appropriate to transfer to such successor Fiscal Agent all the Pledged Security and the rights, powers and trusts of such predecessor hereunder; and every predecessor Fiscal Agent shall deliver all securities and money held by it as Fiscal Agent hereunder to its successor. Should any instrument in writing from the Governmental Lender be required by a successor Fiscal Agent for more fully and certainly vesting in such successor the Pledged Security and all rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental Lender. The resignation of any Fiscal Agent and the instrument or instruments removing any Fiscal Agent and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed and/or recorded by the successor Fiscal Agent in each recording office where this Funding Loan Agreement shall have been filed and/or recorded. Each successor Fiscal Agent shall mail notice by first class mail, postage prepaid, at least once within thirty (30) days of such appointment, to the Funding Lender.

Section 7.13 *Successor Fiscal Agent.* In the event of a change in the office of Fiscal Agent, the predecessor Fiscal Agent which shall have resigned or shall have been removed shall cease to be Fiscal Agent with respect to the Governmental Notes, and the successor Fiscal Agent shall become such Fiscal Agent.

Section 7.14 *Appointment of Co-Fiscal Agent or Separate Fiscal Agent.* It is the intent of the Governmental Lender and the Fiscal Agent that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State) denying or restricting the right of banking corporations or associations to transact business as Fiscal Agent in such jurisdiction. It is recognized that in case of litigation under or connected with this Funding Loan Agreement, the Project Loan Agreement or any of the other Financing Documents, and, in particular, in case of the enforcement of any remedies on default, or in case the Fiscal Agent deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein or therein granted to the Fiscal Agent or hold title to the properties in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Fiscal Agent, with the consent of the Governmental Lender and the Funding Lender Representative, appoint an additional individual or institution as a co-fiscal agent or separate fiscal agent.

In the event that the Fiscal Agent appoints an additional individual or institution as a co-fiscal agent or separate fiscal agent, in the event of the incapacity or lack of authority of the Fiscal Agent, by reason of any present or future law of any jurisdiction, to exercise any of the rights, powers, trusts and remedies granted to the Fiscal Agent herein or to hold title to the Pledged Security or to take any other action that may be necessary or desirable in connection therewith, each and every remedy, power, right, obligation, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Funding Loan Agreement to be imposed upon, exercised by or vested in or conveyed to the Fiscal Agent with respect thereto shall be imposed upon, exercisable by and vest in such separate fiscal agent or co-fiscal agent, but only to the extent necessary to enable such co-fiscal agent or separate fiscal agent to exercise such powers, rights, trusts and remedies, and every covenant and obligation necessary to the exercise thereof by such co-fiscal agent or separate fiscal agent shall run to and be enforceable by either of them, subject to the remaining provisions of this Section 7.14. Such co-fiscal agent or separate fiscal agent shall deliver an instrument in writing acknowledging and accepting its appointment hereunder to the Governmental Lender and the Fiscal Agent.

Should any instrument in writing from the Governmental Lender be required by the co-fiscal agent or separate fiscal agent so appointed by the Fiscal Agent for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental

Lender, the Fiscal Agent and the Borrower. If the Governmental Lender shall fail to deliver the same within thirty (30) days of such request, the Fiscal Agent is hereby appointed attorney-in-fact for the Governmental Lender to execute, acknowledge and deliver such instruments in the Governmental Lender's name and stead. In case any co-fiscal agent or separate fiscal agent, or a successor to either, shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such co-fiscal agent or separate fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a new Fiscal Agent or successor to such co-fiscal agent or separate fiscal agent.

Every co-fiscal agent or separate fiscal agent shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

(a) the Governmental Notes shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Funding Loan Agreement conferred upon the Fiscal Agent in respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by the Fiscal Agent;

(b) all rights, powers, trusts, duties and obligations conferred or imposed upon the Fiscal Agent shall be conferred or imposed upon or exercised or performed by the Fiscal Agent, or by the Fiscal Agent and such co-fiscal agent, or separate fiscal agent jointly, as shall be provided in the instrument appointing such co-fiscal agent or separate fiscal agent, except to the extent that under the law of any jurisdiction in which any particular act or acts are to be performed the Fiscal Agent shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-fiscal agent or separate fiscal agent;

(c) any request in writing by the Fiscal Agent to any co-fiscal agent or separate fiscal agent to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking or the refraining from taking of such action by such co-fiscal agent or separate fiscal agent;

(d) any co-fiscal agent or separate fiscal agent to the extent permitted by law shall delegate to the Fiscal Agent the exercise of any right, power, trust, duty or obligation, discretionary or otherwise;

(e) the Fiscal Agent at any time by an instrument in writing with the concurrence of the Governmental Lender evidenced by a certified resolution may accept the resignation of or remove any co-fiscal agent or separate fiscal agent appointed under this Section 7.14 and in case an Event of Default shall have occurred and be continuing, the Fiscal Agent shall have power to accept the resignation of or remove any such co-fiscal agent or separate fiscal agent without the concurrence of the Governmental Lender, and upon the request of the Fiscal Agent, the Governmental Lender shall join with the Fiscal Agent in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal; a successor to any co-fiscal agent or separate fiscal agent so resigned or removed may be appointed in the manner provided in this Section 7.14;

(f) no Fiscal Agent or co-fiscal agent hereunder shall be personally liable by reason of any act or omission of any other Fiscal Agent hereunder;

(g) any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing executed by the Funding Lender Representative and delivered to the Fiscal Agent shall be deemed to have been delivered to each such co-fiscal agent or separate fiscal agent; and

(h) any money, papers, securities or other items of personal property received by any such co-fiscal agent or separate fiscal agent hereunder shall forthwith, so far as may be permitted by law, be turned over to the Fiscal Agent.

The total compensation of the Fiscal Agent and any co-fiscal agent or separate fiscal agent shall be as, and may not exceed the amount, provided in Section 7.06 hereof.

Section 7.15 *Notice of Certain Events.* The Fiscal Agent shall give written notice to the Governmental Lender, the Servicer and the Funding Lender Representative of any failure by the Borrower to comply with the terms of the Tax Regulatory Agreement or any Determination of Taxability of which a Responsible Officer has actual knowledge.

Section 7.16 *[Reserved].*

Section 7.17 *Filing of Financing Statements.* The Fiscal Agent shall not be responsible for filing or for the sufficiency or accuracy of any financing statements initially filed to perfect security interests granted under this Funding Loan Agreement. The Fiscal Agent shall file continuation statements with respect to each UCC financing statement relating to the Pledged Security filed by the Borrower at the time of the issuance of the Governmental Notes; provided that a copy of the filed initial financing statement is timely delivered to the Fiscal Agent. In addition, unless the Fiscal Agent shall have been notified in writing by the Governmental Lender or the Funding Lender Representative that any such initial filing or description of collateral was or has become defective, the Fiscal Agent shall be fully protected in (a) relying on such initial filing and descriptions in filing any financing or continuation statements or modifications thereto pursuant to this section and (b) filing any continuation statements in the same filing offices as the initial filings were made. The Borrower shall be responsible for the customary fees charged by the Fiscal Agent for the preparation and filing of continuation statements and for the reasonable costs incurred by the Fiscal Agent in the preparation and filing of all continuation statements hereunder, including attorneys' fees and expenses. These fees shall be considered "Extraordinary Services" fees.

Section 7.18 *USA Patriot Act Requirements of the Fiscal Agent.* To help the government of the United States of America fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual Person such as a business entity, a charity, a trust, or other legal entity, the Fiscal Agent may request documentation to verify such Person's formation and existence as a legal entity. The Fiscal Agent may also request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such Person or other relevant documentation.

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ARTICLE VIII

AMENDMENTS OF CERTAIN DOCUMENTS

Section 8.01 *Amendments to This Funding Loan Agreement.* Any of the terms of this Funding Loan Agreement and the Governmental Notes may be amended or waived only by an instrument signed by the Fiscal Agent and the Governmental Lender, and with the prior written consent of the Funding Lender Representative.

Section 8.02 *Amendments to Financing Documents Require Consent of Funding Lender Representative.* Neither the Governmental Lender nor the Fiscal Agent shall consent to any amendment, change or modification of any Financing Document without the prior written consent of the Funding Lender Representative. The Fiscal Agent shall enter into such amendments to the Financing Documents as shall be directed by the Funding Lender Representative, including entering into the amendments and/or amendments and restatements attached as exhibits to the Construction Phase Financing Agreement on the Conversion Date.

Section 8.03 *Opinion of Bond Counsel Required.* No amendment to this Funding Loan Agreement, the Governmental Notes, the Project Loan Agreement, the Project Notes, the Security Instrument, or the Tax Regulatory Agreement shall become effective unless and until (i) the Funding Lender Representative shall have consented to the same in writing in its sole discretion; (ii) the Funding Lender Representative, the Governmental Lender and the Fiscal Agent shall have received, at the expense of the Borrower, (A) an opinion of Bond Counsel to the effect that such amendment, change or modification will not, in and of itself, cause interest on the Tax-Exempt Governmental Notes to be includable in gross income of the holders thereof for federal income tax purposes, and (B) an opinion of counsel acceptable to the Funding Lender Representative to the effect that any such proposed amendment, change, or modification is authorized and complies with the provisions of this Funding Loan Agreement and is a legal, valid and binding obligation of the parties thereto, subject to normal exceptions relating to bankruptcy, insolvency and equitable principles limitations; and (iii) to the extent the Borrower is not in default under the Financing Documents and such amendment would change the essential economic terms of the Project Loans or impose upon the Borrower greater liability under the Financing Documents, the Borrower has consented to the same.

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ARTICLE IX

SATISFACTION AND DISCHARGE OF FUNDING LOAN AGREEMENT

Section 9.01 *Discharge of Lien.* If the Governmental Lender shall pay or cause to be paid to the Funding Lender the principal, interest, and Prepayment Premium, if any, to become due with respect to the Funding Loan at the times and in the manner stipulated herein and in the Governmental Notes, in any one or more of the following ways:

(a) by the payment of all unpaid principal of (including Prepayment Premium, if any) and interest on the Funding Loans; or

(b) after the Conversion Date (or, if the Conversion Date does not occur, the latest date on which Conversion was permitted to occur under the Construction Phase Financing Agreement) and prior to the Window Period, by the deposit to the account of the Fiscal Agent, in trust, of money or securities in the necessary amount to pay the principal, Prepayment Premium and interest to the Maturity Date; or

(c) by the delivery of the Governmental Notes by the Funding Lender to the Fiscal Agent for cancellation;

and shall have paid all amounts due and owing under the other Financing Documents, and shall have paid all fees and expenses of and any other amounts due to the Fiscal Agent, the Servicer and the Rebate Analyst, and if the Governmental Lender shall keep, perform and observe all and singular the covenants and promises in the Governmental Notes and in this Funding Loan Agreement expressed as to be kept, performed, and observed by it or on its part, then these presents and the estates and rights hereby granted shall cease, determine and be void, and thereupon the Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and reconvey to the Governmental Lender the estate hereby conveyed, and assign and deliver to the Governmental Lender any interest in property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except amounts held by the Fiscal Agent for the payment of principal of, interest, and Prepayment Premium, if any, on the Governmental Notes, the payment of any amounts owed to the United States of America pursuant to Section 4.12 hereof.

After the Conversion Date (or, if the Conversion Date does not occur, the latest date on which Conversion was permitted to occur under the Construction Phase Financing Agreement) and prior to the Window Period and subject to the satisfaction of the conditions set forth in Section 4.04(c) of the Project Loan Agreement, the Funding Loans shall, prior to the Maturity Date, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section 9.01 based on a deposit of moneys or securities with the Fiscal Agent pursuant to subsection (b) above if, under circumstances which do not cause interest on the Tax-Exempt Governmental Notes to become includable in the holders' gross income for purposes of federal income taxation, the following conditions shall have been fulfilled: (i) there shall be on deposit with the Fiscal Agent either money or noncallable and nonprepayable direct obligations of the United States of America (or other defeasance securities constituting Qualified Investments approved in writing by the Funding Lender Representative) in an amount, together with anticipated earnings thereon (but not including any reinvestment of such earnings), which will be sufficient to pay, when due, the principal and interest due and to become due on the Funding Loans up to and on the Maturity Date; (ii) the Fiscal Agent shall have received a verification report of a firm of certified public accountants or financial analyst reasonably acceptable to the Fiscal

Agent and the Funding Lender Representative as to the adequacy of the amounts or securities so deposited to fully pay the Funding Loans; (iii) the Fiscal Agent and the Funding Lender Representative shall have received a written opinion of nationally recognized counsel experienced in bankruptcy matters to the effect that if the Borrower, any general partner, member or guarantor of the Borrower, or the Governmental Lender were to become a debtor in a proceeding under the Bankruptcy Code (x) payment of such money to the Funding Lender would not constitute a voidable preference under Section 547 of the Bankruptcy Code and (y) the automatic stay provisions of Section 362(a) of the Bankruptcy Code would not prevent application of such money to the payment of the Funding Loans; (iv) the Fiscal Agent and the Funding Lender Representative shall have received an opinion of Bond Counsel to the effect that the defeasance of the Funding Loans is in accordance with the provisions of this Funding Loan Agreement and that such defeasance will not adversely affect the exclusion of interest on the Tax-Exempt Governmental Notes from gross income for federal income tax purposes; and (v) the Fiscal Agent shall have received written confirmation that all fees, expenses or reimbursement of any advances due to the Funding Lender and the Servicer under the Financing Documents have been fully paid.

Section 9.02 *Discharge of Liability on Funding Loans.* Upon the deposit with the Fiscal Agent, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 9.01 hereof) to pay or prepay the Funding Loans (whether upon or prior to their maturity or the prepayment date of the Funding Loans) provided that, if the Funding Loans are to be prepaid prior to the maturity thereof, notice of such prepayment shall have been given as provided in Article III hereof, or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, all liability of the Governmental Lender in respect of the Funding Loans shall cease, terminate and be completely discharged, except only that thereafter the Funding Lender shall be entitled to payment by the Governmental Lender, and the Governmental Lender shall remain liable for such payment, but only out of the money or securities deposited with the Fiscal Agent as aforesaid for their payment, subject, however, to the provisions of Section 9.03 hereof.

Section 9.03 *Payment of Funding Loans After Discharge of Funding Loan Agreement.* Notwithstanding any provisions of this Funding Loan Agreement, and subject to applicable unclaimed property laws of the State, any money deposited with the Fiscal Agent or any paying agent in trust for the payment of the principal of, interest, or Prepayment Premium, if any, on a Governmental Note remaining unclaimed for three (3) years after the final Maturity Date or earlier payment date: (a) shall be reported and disposed of, at the expense of the Borrower, by the Fiscal Agent in accordance with applicable unclaimed property laws; and (b) to the extent permitted by applicable law, shall be paid to the Borrower, whereupon all liability of the Governmental Lender and the Fiscal Agent with respect to such money shall cease, and the Funding Lender shall thereafter look solely to the Borrower for payment of any amounts then due. All money held by the Fiscal Agent and subject to this Section 9.03 shall be held uninvested and without liability for interest thereon.

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ARTICLE X
INTENTIONALLY OMITTED

ARTICLE XI

MISCELLANEOUS

Section 11.01 *Servicing of the Loans.* The Funding Lender Representative may appoint a Servicer (which may be the Funding Lender Representative if the Funding Lender Representative elects to service the Loans) to service the Loans as provided in Section 3.02 of the Project Loan Agreement. During the Construction Phase, the Servicer shall be the Administrative Agent.

Section 11.02 *Limitation of Rights.* With the exception of rights herein expressly conferred, nothing expressed or to be implied from this Funding Loan Agreement or the Governmental Notes is intended or shall be construed to give to any Person other than the Parties hereto, the Funding Lender, the Funding Lender Representative, the Servicer and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Funding Loan Agreement or any covenants, conditions and provisions hereof.

Section 11.03 *Construction of Conflicts; Severability.* Notwithstanding anything provided herein, or in any of the documents referred to herein, in the event that any contracts or other documents executed by the Borrower or any other arrangements agreed to by the Borrower in order to finance or refinance the Project with the proceeds of the Funding Loans, the interest on which is excluded from gross income for federal income tax purposes under Section 103(a) of the Code are inconsistent with the Project Loan Documents, then the Project Loan Documents shall be controlling in all respects. If any provision of this Funding Loan Agreement shall be held or deemed to be, or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections contained in this Funding Loan Agreement shall not affect the remaining portions of this Funding Loan Agreement or any part thereof.

Section 11.04 *Notices.*

(a) Whenever in this Funding Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth below or as may be required or permitted by this Funding Loan Agreement by Electronic Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender

Representative, the Borrower or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

The Governmental Lender: CITY OF MINNETONKA, MINNESOTA
14600 Minnetonka Boulevard
Minnetonka, MN 55345-1502
Attn: Julie Wischnack, Community Development Director
Email: jwischnack@minnetonkamn.gov
Telephone: 952-939-8282

The Fiscal Agent: U.S. BANK NATIONAL ASSOCIATION
Corporate Trust Services
60 Livingston Avenue, Third Floor
EP-MN-WS3C
Saint Paul, MN 55107-2292
Attn: Dan Sheff, Vice President
Email: dan.sheff@usbank.com
Telephone: 651-466-6302

The Borrower: MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP
c/o Dominion Development & Acquisition, LLC
2905 Northwest Boulevard, Suite 150
Plymouth, MN 55441-7400
Attn: Ryan Lunderby
Email: rlunderby@dominiuminc.com
Telephone: 763-354-5634

with copies to: WINTHROP & WEINSTINE, P.A.
225 South Sixth Street, Suite 3500
Minneapolis, MN 55402-4629
Attn: Scott Jahnke, Esq.
Email: sjahnke@winthrop.com
Telephone: 612-604-6497
(which copy shall not constitute notice to Borrower)

CITIBANK, N.A.
390 Greenwich Street, Second Floor
New York, NY 10013
Attn: Mark Sherman, Director
Email: mark.sherman@citi.com

CITIBANK, N.A.
388 Greenwich Street, Eighth Floor
New York, NY 10013
Attn: Mark Sherman
Email: mark.sherman@citi.com

NIXON PEABODY LLP
799 Ninth Street NW, Suite 500
Washington, DC 20001-4501
Attn: Matthew W. Mullen, Esq.
Email: mmullen@nixonpeabody.com

TCAM
30 Federal Street, Floor 6
Boston, MA 02210
Attn: Jenny Netzer

Administrative Agent, Funding
Lender Representative, and
Servicer (during Construction
Phase):

U.S. BANK NATIONAL ASSOCIATION
Community Lending Division
800 Nicollet Mall, Third Floor
BC-MN-H5AD
Minneapolis, MN 55402
Attn: Daniel P. Smith
Email: daniel.smith1@usbank.com
Telephone: 612-303-3689

U.S. BANK NATIONAL ASSOCIATION
Community Lending
1307 Washington Avenue, Suite 300
St. Louis, MO 63103
Attn: Alexander J. Silversmith
Email: alexander.silversmith@usbank.com
Telephone: 314-335-2661

with copies to:

STINSON LLP
50 South Sixth Street, Suite 2600
Minneapolis, MN 55402
Attn: Steve Mayeron, Esq.
Email: steve.mayeron@stinson.com
Telephone: 612-335-1502

BMO HARRIS BANK N.A.
115 South LaSalle Street, 19W
Chicago, IL 60603
Attn: Allison Porter-Bell
Email: allison.porter-bell@bmo.com
Telephone: 312-461-3150

CHARITY & ASSOCIATES, P.C.
20 North Clark Street, Suite 1150
Chicago, IL 60602
Attn: Brandon R. Calvert, Esq.
Email: brandon.calvert@charity-associates.com
Telephone: 312-564-4967

Funding Lender Representative
(from Conversion Date to Freddie
Mac Purchase Date) and Servicer
(as of Freddie Mac Purchase Date):

KEYBANK NATIONAL ASSOCIATION
11501 Outlook Street, Suite 300
Mailcode: KS-01-11-0501
Overland Park, KS 66211
Attn: Ms. Gina Sullivan
Email: Gina_Sullivan@KeyBank.com

Funding Lender Representative (as
of Freddie Mac Purchase Date):

FEDERAL HOME LOAN MORTGAGE CORPORATION
8100 Jones Branch Drive, MS B4P
McLean, VA 22102
Attn: Multifamily Operations – Loan Accounting
Email: mfla@freddiemac.com
Telephone: 703-714-4177

with a copy to:

FEDERAL HOME LOAN MORTGAGE CORPORATION
8200 Jones Branch Drive, MS 210
McLean, VA 22102
Attn: Managing Associate General Counsel – Multifamily Legal
Division
Email: joshua_schonfeld@freddiemac.com
Telephone: 703-903-2000

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Funding Lender Representative and by any party to the Funding Lender Representative to the Servicer.

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Funding Loan Agreement.

(b) The Fiscal Agent shall provide to the Funding Lender Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default pursuant to Section 6.01 hereof known to the Fiscal Agent; and (ii) any written information or other written communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative and the Servicer for any such information or other communication.

Section 11.05 *Funding Lender Representative.*

(a) The Administrative Agent is the initial Funding Lender Representative with respect to the Governmental Notes. Upon the Conversion Date, the Freddie Mac Seller/Servicer shall become the Funding Lender Representative and upon the Freddie Mac Purchase Date, Freddie Mac shall become the Funding Lender Representative. The Funding Lender Representative shall be entitled to all the rights and privileges of the Funding Lender hereunder and under the other Financing Documents.

(b) The Funding Lender Representative may provide written notice to the Fiscal Agent designating particular individuals or Persons authorized to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative, and such notice may be amended or rescinded by the Funding Lender Representative at any time by subsequent written notice. The Funding Lender Representative may be removed and a successor appointed by a written notice in the form of ***Exhibit B*** hereto given by the Funding Lender to the Fiscal Agent, the Governmental Lender, the Servicer and the Borrower. The removal and reappointment shall be effective immediately upon receipt of such notice by the Fiscal Agent. The Funding Lender may appoint any Person to act as Funding

Lender Representative, including, without limitation, the Servicer. If, for any reason, a Funding Lender Representative resigns by written notice provided to the Fiscal Agent, the Funding Lender, the Governmental Lender, the Servicer and the Borrower, all references to Funding Lender Representative herein and in the other Financing Documents shall be deemed to refer to the Funding Lender until a successor Funding Lender Representative is appointed by the Funding Lender.

(c) Whenever pursuant to this Funding Loan Agreement or any other Financing Document, the Funding Lender Representative exercises any right given to it to approve or disapprove, any arrangement or term hereof, the decision of the Funding Lender Representative to approve or disapprove or to decide whether arrangements or terms are acceptable or not acceptable shall be in the sole discretion of the Funding Lender Representative, except as otherwise specifically indicated.

(d) Each Funding Lender, by their purchase or other acquisition of the Funding Loans, shall be deemed to have acknowledged and agreed to the provisions of this Funding Loan Agreement and the other Financing Documents with respect to the Funding Lender Representative and the rights and privileges thereof, including but not limited to the right to control all remedies in respect of the Governmental Notes and the Loans; provided, however, that as long as the Administrative Agent is the Funding Lender Representative, its rights to control all remedies shall be subject to the terms of the Construction Continuing Covenant Agreement.

Section 11.06 *Payments Due on Non-Business Days.* In any case where a date of payment with respect to the Funding Loans shall be a day other than a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such date, and no interest shall accrue for the period after such date provided that payment is made on such next succeeding Business Day.

Section 11.07 *Counterparts.* This Funding Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.08 *Laws Governing Funding Loan Agreement.* The effect and meanings of this Funding Loan Agreement and the rights of all parties hereunder shall be governed by, and construed according to, the internal laws of the State without regard to conflicts of laws principles.

Section 11.09 *No Recourse.* No recourse under or upon any obligation, covenant or agreement contained in this Funding Loan Agreement or in the Governmental Notes shall be had against any member, officer, commissioner, director or employee (past, present or future) of the Governmental Lender, either directly or through the Governmental Lender or its governing body or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, or otherwise, of any sum that may be due and unpaid by the Governmental Lender or its governing body upon the Governmental Notes. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such member, officer, commissioner, director or employee, as such, to respond by reason of any act of omission on his/her part or otherwise, for the payment for or to the Funding Lender or otherwise of any sum that may remain due and unpaid with respect to the Funding Loans hereby secured is, by the acceptance hereof, expressly waived and released as a condition of and in consideration for the execution of this Funding Loan Agreement and the delivery of the Governmental Notes.

Section 11.10 *Successors and Assigns.* All the covenants and representations contained in this Funding Loan Agreement by or on behalf of the parties hereto shall bind and inure to the benefit of their successors and assigns, whether so expressed or not.

Section 11.11 *Amendment to Original Funding Loan Agreement.* This Funding Loan Agreement amends, replaces, and restates the Original Funding Loan Agreement but does not extinguish or constitute a novation of the Series 2018 Funding Loan (the “**Existing Indebtedness**”) evidenced by the Original Funding Loan Agreement, and the liens and security interests securing the Existing Indebtedness shall continue in effect and secure the Funding Loans.

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

IN WITNESS WHEREOF, the Governmental Lender, the Administrative Agent, and the Fiscal Agent have caused this Amended and Restated Funding Loan Agreement to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

CITY OF MINNETONKA, MINNESOTA

By _____
Its Mayor

By _____
Its City Manager

Execution page of the Administrative Agent, on behalf of the Initial Funding Lender, to the Amended and Restated Funding Loan Agreement, dated as of the date and year first written above.

U.S. BANK NATIONAL ASSOCIATION

By _____
Its _____

Execution page of the Fiscal Agent to the Amended and Restated Funding Loan Agreement, dated as of the date and year first written above.

U. S. BANK NATIONAL ASSOCIATION

By _____
Its Vice President

The undersigned, as the Funding Lender Representative, hereby acknowledges and consents to this Amended and Restated Funding Loan Agreement, dated as of the date and year first written above.

U.S. BANK NATIONAL ASSOCIATION

By _____
Its _____

EXHIBIT A-1

FORM OF SERIES 2018 TAX-EXEMPT GOVERNMENTAL NOTE

BY ITS ACQUISITION HEREOF, THE HOLDER OF THIS NOTE AGREES (A) THAT (I) IF APPLICABLE, IT HAS EXECUTED THE REQUIRED TRANSFEREE REPRESENTATIONS IN SUBSTANTIALLY THE FORM REQUIRED BY THE FUNDING LOAN AGREEMENT AND (II) THAT IT WILL NOT SELL OR OTHERWISE TRANSFER THIS NOTE EXCEPT AS PROVIDED IN THE FUNDING LOAN AGREEMENT, AND (B) THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS NOTE IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF HENNEPIN
CITY OF MINNETONKA

MULTIFAMILY NOTE
with designation as
Multifamily Housing Revenue Note
(Legends of Minnetonka Project)
Series 2018A[-1] [-2]

US \$ _____

September __, 2018

FOR VALUE RECEIVED, the undersigned, the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “**Obligor**”), promises to pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement referenced below) to the order of [U.S. Bank National Association, a national banking association] [BMO Harris Bank N.A., a national banking association], or its registered assigns (the “**Funding Lender**”), the maximum principal sum of _____ and ___/100 Dollars (US \$ _____), plus Prepayment Premium, if any, and interest thereon and to pay the other amounts owing from time to time hereunder, all as set forth below.

This Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A[-1] [-2] (this “**Note**”) is being delivered pursuant to that certain Funding Loan Agreement, dated as of September 1, 2018 (together with any and all amendments, modifications, supplements and restatements, the “**Funding Loan Agreement**”), between U.S. Bank National Association, a national banking association, as administrative agent (the “**Administrative Agent**”) for the Funding Lender, the Obligor, and U.S. Bank National Association, a national banking association, in its capacity as fiscal agent under the Funding Loan Agreement (the “**Fiscal Agent**”), pursuant to which the Obligor has incurred a loan in the maximum aggregate principal amount of \$ _____ (the “**Funding Loan**”), and this Note is entitled to the benefits of the Funding Loan Agreement and is subject to the terms, conditions and provisions thereof. The Obligor is using the proceeds of the Funding Loan to make a loan to Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the “**Borrower**”) pursuant to a Project Loan Agreement, dated as of September 1, 2018 (the “**Project Loan Agreement**”), between the Obligor, the Borrower and the Fiscal Agent. The outstanding principal balance of this Note at any time shall be an amount equal to

the proceeds of this Note advanced by Administrative Agent, on behalf of the Funding Lender, according to the Funding Loan Agreement and not otherwise repaid.

In addition to this Note, the Tax-Exempt Funding Loan is also evidenced by the Governmental Lender's Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A[-1] [-2].

1. **Defined Terms.** As used in this Note, (i) the term "Funding Lender" means the registered holder of this Note, and (ii) the term "Indebtedness" means the principal of, Prepayment Premium, if any, and interest on or any other amounts due at any time under the Tax-Exempt Notes, the Taxable Governmental Notes, or the Funding Loan Agreement. "Event of Default" and other capitalized terms used but not defined in this Note shall have the meanings given to such term in the Funding Loan Agreement.

2. **Payments of Principal and Interest.** The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) on the first calendar day of each month commencing October 1, 2018 interest on this Note at (i) the Construction Phase Interest Rate during the Construction Phase and (ii) the Permanent Phase Interest Rate during the Permanent Phase, and shall also pay interest on this Note at the foregoing rates on the date of any optional or mandatory prepayment or acceleration of all or part of the Funding Loan pursuant to the Funding Loan Agreement, in an amount equal to the accrued and unpaid interest to the date of prepayment on the portion of this Note subject to prepayment (each such date for payment an "**Interest Payment Date**"). Interest shall accrue on the principal amount of this Note which has been advanced under the Funding Loan Agreement and is outstanding as reflected on the Record of Advances.

The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) the outstanding principal of this Note in full on October 1, 2036 (the "**Maturity Date**") and in monthly installments on each date set forth on the Governmental Note Amortization Schedule attached as Schedule 1 hereto in an amount equal to the corresponding amounts set forth thereon (as such Schedule 1 may be replaced by a new Governmental Note Amortization Schedule provided by the Freddie Mac Seller/Service on the Conversion Date as provided in Section 2.01(e) of the Funding Loan Agreement) or at such earlier times and in such amounts as may be required, in the event of an optional or mandatory prepayment or acceleration of the Funding Loan pursuant to the Funding Loan Agreement. The outstanding principal hereof is subject to acceleration at the time or times and under the terms and conditions, and with notice, if any, as provided under the Funding Loan Agreement.

3. **Manner of Payment.** All payments under this Note shall be made in lawful currency of the United States and in immediately available funds as provided for herein and in the Funding Loan Agreement.

4. **Application of Payments.** If at any time the Funding Lender receives any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, the Funding Lender may apply that payment to amounts then due and payable in any manner and in any order determined by the Funding Lender, in the Funding Lender's discretion. Neither the Funding Lender's acceptance of a payment in an amount that is less than all amounts then due and payable nor the Funding Lender's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by, among other things, the Pledged Security pledged pursuant to the Funding Loan Agreement.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Note shall at once become due and payable, at the option of the Funding Lender, as governed by the Funding Loan Agreement, without any prior notice to the Obligor (unless required by applicable law). The Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayment; Prepayment Premium.** This Note is subject to prepayment as specified in the Funding Loan Agreement. Prepayment Premium shall be payable as specified in the Funding Loan Agreement.

8. **Forbearance.** Any forbearance by the Funding Lender in exercising any right or remedy under this Note or any other document evidencing or securing the Funding Loan or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by the Funding Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of the Funding Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by the Funding Lender of any security for the obligations under this Note shall not constitute an election by the Funding Lender of remedies so as to preclude the exercise of any other right or remedy available to the Funding Lender.

9. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by the Obligor and all endorsers and guarantors of this Note and all other third-party obligors.

10. **Loan Charges.** Neither this Note nor any of the other Financing Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the rate of interest which results in the maximum amount of interest allowed by applicable law (the "**Maximum Interest Rate**"). If any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor in connection with the Funding Loan is interpreted so that any interest or other charge provided for herein or in any other Financing Document evidencing or securing the Funding Loan, whether considered separately or together with other charges provided for in any such other Financing Document, violates that law, and the Obligor is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Funding Lender in excess of the permitted amounts will be applied by Funding Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor has been violated, all indebtedness that constitutes interest, as well as all other charges made in connection with the indebtedness that constitute interest, will be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

11. **Governing Law.** This Note shall be governed by the internal law of the State of Minnesota (the "**Property Jurisdiction**").

12. **Captions.** The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note.

13. **Address for Payment.** All payments due under this Note shall be payable at the principal office of the Funding Lender as designated by the Funding Lender in writing to the Administrative Agent (during the Construction Phase only), the Fiscal Agent, and the Servicer.

14. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at the Default Rate. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date or on the date of any mandatory prepayment or acceleration, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date or such other date at the Default Rate.

15. **Limited Obligation.** This Note is a special, limited obligation of the Obligor payable solely from the Pledged Security and any other revenues, funds and assets pledged under the Funding Loan Agreement and not from any other revenues, funds or assets of the Obligor. This Note is not a general obligation, debt or bonded indebtedness of the Obligor, the State or any political subdivision thereof (other than of the Obligor to the limited extent set forth in the Funding Loan Agreement) and the holder of this Note does not have the right to have any excises or taxes levied by the Obligor, the State or any political subdivision thereof for the payment of the principal of and any Prepayment Premium and interest on this Note. None of the Obligor, the State, or any political subdivision of the State will be obligated to pay the principal of and the interest on this Note or other costs incident thereto except from the Pledged Security pledged under the Funding Loan Agreement. No provision, covenant, or agreement contained in this Note or the Funding Loan Agreement, or any obligation herein or therein imposed upon the Obligor, or the breach thereof, shall constitute or give rise to or impose a liability upon the Obligor (except from the Pledged Security), or upon any of its officers, employees, or agents, or constitute a charge upon the Obligor's general credit or taxing powers; provided that nothing contained herein or in the Act impairs the rights of the Fiscal Agent to enforce the covenants made for the security of the Obligor as provided herein and in the Act. Any recourse for a cause of action under this Note or the Funding Loan Agreement shall be payable solely from the Pledged Security, and the agreement of the Obligor to perform or cause the performance of the covenants and other provisions herein referred to shall be subject at all times to the availability of revenues or other funds furnished for such purpose in accordance with the Project Loan Agreement, sufficient to pay all costs of such performance or the enforcement thereof.

IN WITNESS WHEREOF, the Obligor has caused this Note to be duly executed in its name by the manual or facsimile signatures of the Mayor and City Manager, the seal of the Obligor having been intentionally omitted as permitted by law, and has caused this Note to be dated as of the date first written above.

CITY OF MINNETONKA, MINNESOTA

By _____
Its Mayor

By _____
Its City Manager

CERTIFICATE OF AUTHENTICATION

This Multifamily Note is issued under the provisions of and described in the within-mentioned Funding Loan Agreement.

Date of Authentication: _____

U.S. BANK NATIONAL ASSOCIATION, as Fiscal Agent

By: _____
Authorized Signer

SCHEDULE I

GOVERNMENTAL NOTE AMORTIZATION SCHEDULE

EXHIBIT A-2

FORM OF SERIES 2018 TAXABLE GOVERNMENTAL NOTE

BY ITS ACQUISITION HEREOF, THE HOLDER OF THIS NOTE AGREES (A) THAT (I) IF APPLICABLE, IT HAS EXECUTED THE REQUIRED TRANSFEREE REPRESENTATIONS IN SUBSTANTIALLY THE FORM REQUIRED BY THE FUNDING LOAN AGREEMENT AND (II) THAT IT WILL NOT SELL OR OTHERWISE TRANSFER THIS NOTE EXCEPT AS PROVIDED IN THE FUNDING LOAN AGREEMENT, AND (B) THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS NOTE IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF HENNEPIN
CITY OF MINNETONKA

MULTIFAMILY NOTE
with designation as
Taxable Multifamily Housing Revenue Note
(Legends of Minnetonka Project)
Series 2018B[-1][-2]

US \$ _____

September __, 2018

FOR VALUE RECEIVED, the undersigned, the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “**Obligor**”), promises to pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement referenced below) to the order of [U.S. Bank National Association, a national banking association] [BMO Harris Bank N.A., a national banking association], or its registered assigns (the “**Funding Lender**”), the maximum principal sum of _____ and ___/100 Dollars (US \$ _____), plus Prepayment Premium, if any, and interest thereon and to pay the other amounts owing from time to time hereunder, all as set forth below.

This Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B[-1][-2] (this “**Note**”) is being delivered pursuant to that certain Funding Loan Agreement, dated as of September 1, 2018 (together with any and all amendments, modifications, supplements and restatements, the , the “**Funding Loan Agreement**”), between U.S. Bank National Association, a national banking association, as administrative agent (the “**Administrative Agent**”) for the Funding Lender, the Obligor, and U.S. Bank National Association, a national banking association, in its capacity as fiscal agent under the Funding Loan Agreement (the “**Fiscal Agent**”), pursuant to which the Obligor has incurred a loan in the maximum aggregate principal amount of \$ _____ (the “**Funding Loan**”), and this Note is entitled to the benefits of the Funding Loan Agreement and is subject to the terms, conditions and provisions thereof. The Obligor is using the proceeds of the Funding Loan to make a loan to Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the “**Borrower**”), pursuant to a Project Loan Agreement, dated as of September 1, 2018 (the “**Project Loan Agreement**”), between the Obligor, the Borrower, and the Fiscal Agent. The outstanding principal balance of this Note at any time shall be an amount equal to

the proceeds of this Note advanced by the Administrative Agent, on behalf of the Funding Lender, according to the Funding Loan Agreement and not otherwise repaid.

In addition to this Note, the Taxable Funding Loan is also evidenced by the Governmental Lender's Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B[-1] [-2].

1. **Defined Terms.** As used in this Note, (i) the term "Funding Lender" means the registered holder of this Note, and (ii) the term "Indebtedness" means the principal of, Prepayment Premium, if any, and interest on or any other amounts due at any time under the Taxable Governmental Notes, the Tax-Exempt Governmental Notes, or the Funding Loan Agreement. "Event of Default" and other capitalized terms used but not defined in this Note shall have the meanings given to such term in the Funding Loan Agreement.

2. **Payments of Principal and Interest.** The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) on the first calendar day of each month commencing October 1, 2018 interest on this Note at (i) the Construction Phase Interest Rate during the Construction Phase, and (ii) the Permanent Phase Interest Rate during the Permanent Phase, and shall also pay interest on this Note at the foregoing rates on the date of any optional or mandatory prepayment or acceleration of all or part of the Funding Loan pursuant to the Funding Loan Agreement, in an amount equal to the accrued and unpaid interest to the date of prepayment on the portion of this Note subject to prepayment (each such date for payment an "**Interest Payment Date**"). Interest shall accrue on the principal amount of this Note which has been advanced under the Funding Loan Agreement and is outstanding as reflected on the Record of Advances.

The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) the outstanding principal of this Note in full on October 1, 2036 (the "**Maturity Date**") or at such earlier times and in such amounts as may be required, in the event of an optional or mandatory prepayment or acceleration of the Funding Loan pursuant to the Funding Loan Agreement. The Governmental Note Amortization Schedule to be attached as Schedule 1 hereto will be provided by the Freddie Mac Seller/Servicer on the Conversion Date as provided in Section 2.01(e) of the Funding Loan Agreement. The outstanding principal hereof is subject to acceleration at the time or times and under the terms and conditions, and with notice, if any, as provided under the Funding Loan Agreement.

3. **Manner of Payment.** All payments under this Note shall be made in lawful currency of the United States and in immediately available funds as provided for herein and in the Funding Loan Agreement.

4. **Application of Payments.** If at any time the Funding Lender receives any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, the Funding Lender may apply that payment to amounts then due and payable in any manner and in any order determined by the Funding Lender, in the Funding Lender's discretion. Neither the Funding Lender's acceptance of a payment in an amount that is less than all amounts then due and payable nor the Funding Lender's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by, among other things, the Pledged Security pledged pursuant to the Funding Loan Agreement.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Note shall at once

become due and payable, at the option of the Funding Lender, as governed by the Funding Loan Agreement, without any prior notice to the Obligor (unless required by applicable law). The Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayment; Prepayment Premium.** This Note is subject to prepayment as specified in the Funding Loan Agreement. Prepayment Premium shall be payable as specified in the Funding Loan Agreement.

8. **Forbearance.** Any forbearance by the Funding Lender in exercising any right or remedy under this Note or any other document evidencing or securing the Funding Loan or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by the Funding Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of the Funding Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by the Funding Lender of any security for the obligations under this Note shall not constitute an election by the Funding Lender of remedies so as to preclude the exercise of any other right or remedy available to the Funding Lender.

9. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by the Obligor and all endorsers and guarantors of this Note and all other third-party obligors.

10. **Loan Charges.** Neither this Note nor any of the other Financing Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the rate of interest which results in the maximum amount of interest allowed by applicable law (the "**Maximum Interest Rate**"). If any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor in connection with the Funding Loan is interpreted so that any interest or other charge provided for herein or in any other Financing Document evidencing or securing the Funding Loan, whether considered separately or together with other charges provided for in any such other Financing Document, violates that law, and the Obligor is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Funding Lender in excess of the permitted amounts will be applied by Funding Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor has been violated, all indebtedness that constitutes interest, as well as all other charges made in connection with the indebtedness that constitutes interest, will be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

11. **Governing Law.** This Note shall be governed by the internal law of the State of Minnesota (the "**Property Jurisdiction**").

12. **Captions.** The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note.

13. **Address for Payment.** All payments due under this Note shall be payable at the principal office of the Funding Lender as designated by the Funding Lender in writing to the Administrative Agent (during the Construction Phase only), the Fiscal Agent, and the Servicer.

14. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at the Default Rate. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date or on the date of any mandatory prepayment or acceleration, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date or such other date at the Default Rate.

15. **Limited Obligation.** This Note is a special, limited obligation of the Obligor payable solely from the Pledged Security and any other revenues, funds and assets pledged under the Funding Loan Agreement and not from any other revenues, funds or assets of the Obligor. This Note is not a general obligation, debt or bonded indebtedness of the Obligor, the State or any political subdivision thereof (other than of the Obligor to the limited extent set forth in the Funding Loan Agreement) and the holder of this Note does not have the right to have any excises or taxes levied by the Obligor, the State or any political subdivision thereof for the payment of the principal of and any Prepayment Premium and interest on this Note. None of the Obligor, the State, or any political subdivision of the State will be obligated to pay the principal of and the interest on this Note or other costs incident thereto except from the Pledged Security pledged under the Funding Loan Agreement. No provision, covenant, or agreement contained in this Note or the Funding Loan Agreement, or any obligation herein or therein imposed upon the Obligor, or the breach thereof, shall constitute or give rise to or impose a liability upon the Obligor (except from the Pledged Security), or upon any of its officers, employees, or agents, or constitute a charge upon the Obligor's general credit or taxing powers; provided that nothing contained herein or in the Act impairs the rights of the Fiscal Agent to enforce the covenants made for the security of the Obligor as provided herein and in the Act. Any recourse for a cause of action under this Note or the Funding Loan Agreement shall be payable solely from the Pledged Security, and the agreement of the Obligor to perform or cause the performance of the covenants and other provisions herein referred to shall be subject at all times to the availability of revenues or other funds furnished for such purpose in accordance with the Project Loan Agreement, sufficient to pay all costs of such performance or the enforcement thereof.

IN WITNESS WHEREOF, the Obligor has caused this Note to be duly executed in its name by the manual or facsimile signatures of the Mayor and City Manager, the seal of the Obligor having been intentionally omitted as permitted by law, and has caused this Note to be dated as of the date first written above.

CITY OF MINNETONKA, MINNESOTA

By _____
Its Mayor

By _____
Its City Manager

CERTIFICATE OF AUTHENTICATION

This Multifamily Note is issued under the provisions of and described in the within-mentioned Funding Loan Agreement.

Date of Authentication: _____

U.S. BANK NATIONAL ASSOCIATION, as Fiscal Agent

By: _____
Authorized Signer

SCHEDULE I
GOVERNMENTAL NOTE AMORTIZATION SCHEDULE

EXHIBIT B

**FORM OF NOTICE OF APPOINTMENT
OF FUNDING LENDER REPRESENTATIVE**

U.S. Bank National Association
Corporate Trust Services
60 Livingston Avenue, 3rd Floor
EP-MN-WS3C
St. Paul, MN 55107-2292

City of Minnetonka, Minnesota
14600 Minnetonka Boulevard
Minnetonka, Minnesota 55345

Minnetonka Leased Housing Associates III, LLLP
c/o Dominion Development & Acquisition, LLC
2905 Northwest Boulevard, Suite 150
Plymouth, MN 55441-7400

Re: [Legends of Minnetonka Project] [Bren Road Station Project]

Ladies and Gentlemen:

The undersigned, U.S. Bank National Association, a national banking association, as administrative agent (the “**Administrative Agent**”) for U.S. Bank National Association, a national banking association, and BMO Harris Bank N.A., a national banking association (together, the “**Initial Funding Lender**”), as holders of the Governmental Notes (as defined in the Funding Loan Agreement described below) delivered pursuant to the [Funding Loan Agreement, dated as of September 1, 2018] [Amended and Restated Funding Loan Agreement, dated as of March 1, 2021] (the “**Funding Loan Agreement**”), between the Administrative Agent, the City of Minnetonka, Minnesota (the “**Governmental Lender**”), and U.S. Bank National Association, a national banking association (the “**Fiscal Agent**”). Pursuant to Section 11.05 of the Funding Loan Agreement, you are hereby notified that, effective immediately upon receipt of this notice by the Fiscal Agent, the Funding Lender Representative appointed under Section 11.05 of the Funding Loan Agreement shall be the Administrative Agent. [The person or entity previously appointed as Funding Lender Representative shall upon the effectiveness of this notice no longer have any further rights or obligations as Funding Lender Representative.]

The following individual or individuals shall have the authority to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative and the signature(s) set forth next to his/her (their) name(s) is (are) his/her (their) true and correct signature(s).

NAME

SIGNATURE

Additional individuals may be given such authority by written notice to you from the Funding Lender Representative or from the Funding Lender.

This notice is dated as of the _____ day of _____, _____.

**[[FUNDING LENDER] [ADMINISTRATIVE
AGENT] SIGNATURE BLOCK]**

By: _____

Name: _____

Title: _____

EXHIBIT C

FORM OF TRANSFEREE REPRESENTATIONS LETTER

[To be prepared on letterhead of transferee]

[Date]

City of Minnetonka, Minnesota
14600 Minnetonka Boulevard
Minnetonka, Minnesota 55345

U.S. Bank National Association
Corporate Trust Services
60 Livingston Avenue, 3rd Floor
EP-MN-WS3C
St. Paul, Minnesota 55107-2292

Re: Bren Road Station Project

Ladies and Gentlemen:

The undersigned (the “**Funding Lender**”) hereby acknowledges receipt of the [for **U.S. Bank (2018)**: Governmental Lender’s Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1 (the “**Series 2018A-1 Governmental Note**”) and the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1 (the “**Series 2018B-1 Governmental Note**,” and together with the Series 2018A-1 Governmental Note, the “**Governmental Notes**”)] [for **U.S. Bank (2021)**: Governmental Lender’s Multifamily Note with designation as Multifamily Housing Revenue Note (Bren Road Station Project), Series 2021A (the “**Governmental Note**”)] [for **BMO Harris Bank (2018)**: the Governmental Lender’s Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2 (the “**Series 2018A-2 Governmental Note**”) and the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-2 (the “**Series 2018B-2 Governmental Note**,” and together with the Series 2018A-2 Governmental Note, the “**Governmental Notes**”)] [for **BMO Harris Bank (2021)**: Governmental Lender’s Multifamily Note with designation as Multifamily Housing Revenue Note (Bren Road Station Project), Series 2021B (the “**Governmental Note**”)] delivered pursuant to the [Funding Loan Agreement, dated as of September 1, 2018] [Amended and Restated Funding Loan Agreement, dated as of March 1, 2021] (the “**Funding Loan Agreement**”), between U.S. Bank National Association, a national banking association, in its capacity as administrative agent for the Initial Funding Lender described therein, the City of Minnetonka, Minnesota (the “**Governmental Lender**”), and U.S. Bank National Association, a national banking association, in its capacity as fiscal agent under the Funding Loan Agreement (the “**Fiscal Agent**”). Capitalized terms used herein and not otherwise defined have the meanings given to such terms in the Funding Loan Agreement.

In connection with the [origination/purchase] of the Funding Loan by the Funding Lender, the Funding Lender hereby makes the following representations upon which you may rely:

1. The Funding Lender has authority to [originate/purchase] the Funding Loan evidenced by the Governmental Note[s] and to execute this letter, and any other instruments and documents required to be executed by the Funding Lender in connection with the [origination/purchase] of the Funding Loan evidenced by the Governmental Note[s].

2. The Funding Lender is an “accredited investor” under Regulation D of the Securities Act of 1933 (the “Act”) or a “qualified institutional buyer” under Rule 144(a) of said Act (such “accredited investor” or “qualified institutional buyer,” a “**Qualified Transferee**”), and therefore, has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the Funding Loan as evidenced by the Governmental Note[s].

3. The Funding Lender acknowledges that it is [originating/purchasing] the Funding Loan evidenced by the Governmental Note[s] for investment for its own account and not with a present view toward resale or the distribution thereof (except as set forth below), in that it does not now intend to resell or otherwise dispose of all or any part of its interests in the Funding Loan evidenced by the Governmental Note[s] (except as set forth below); provided, however, that the Funding Lender may, notwithstanding the foregoing and the terms of Paragraph 4 below, (i) grant participation interests in the Loan as provided in Section 2.08 of the Funding Loan Agreement, (ii) transfer the Funding Loan evidenced by the Governmental Note[s] to any affiliate or other party related to the Funding Lender that is a Qualified Transferee or (iii) sell or transfer the Funding Loan evidenced by the Governmental Note[s] to a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loan evidenced by the Governmental Note[s] or securitized interests therein are not expected to be sold except to (x) owners or beneficial owners thereof that are Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least “A” or better [INSERT FOR INITIAL FUNDING LENDER TRANSFEREE REPRESENTATION LETTER; provided, further, however, the Funding Lender has originated and funded the Funding Loan evidenced by the Governmental Note[s] with the expectation that such Funding Loan will be sold to KeyBank National Association, a national banking association on the Conversion Date and thereafter delivered to the Federal Home Loan Mortgage Corporation (“**Freddie Mac**”) pursuant to the forward commitment, dated [_____, 2018] [_____, 2021] (the “**Freddie Mac Commitment**”),] [INSERT FOR FREDDIE MAC SELLER/SERVICER TRANSFEREE REPRESENTATION LETTER; provided, further, however, the Funding Lender is purchasing the Funding Loan evidenced by the Governmental Note[s] with the expectation that such Funding Loan will be sold to the Federal Home Loan Mortgage Corporation (“**Freddie Mac**”) pursuant to the forward commitment, dated [_____, 2018] [_____, 2021] (the “**Freddie Mac Commitment**”)].

4. In addition to the right to sell or transfer the Funding Loan evidenced by the Governmental Note[s] as set forth in Paragraph 3 above, the Funding Lender further acknowledges its right to sell or transfer the Funding Loan evidenced by the Governmental Note[s], subject, as required under the Funding Loan Agreement, to the delivery to the Fiscal Agent of a transferee representations letter from the transferee to substantially the same effect as this Transferee Representations Letter or in such other form authorized by the Funding Loan Agreement with no revisions except as may be approved in writing by the Governmental Lender.

5. The Funding Lender understands that the Governmental Note[s] are not registered under the Act and that such registration is not legally required as of the date hereof; and further understands that the Governmental Note[s] (a) are not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will

not carry a rating from any rating service and (d) will be delivered in a form which may not be readily marketable.

6. The Funding Lender understands that (a) the Funding Loan evidenced by the Governmental Note[s] is not secured by any pledge of any moneys received or to be received from taxation by the State of Minnesota or any political subdivision thereof and that the Governmental Lender has not pledged its full faith, credit and taxing powers to the repayment of the Funding Loan evidenced by the Governmental Note[s]; (b) the Funding Loan evidenced by the Governmental Note[s] does not and will not represent or constitute a general obligation or a pledge of the faith and credit of the Governmental Lender, the State of Minnesota or any political subdivision thereof; and (c) the liability of the Governmental Lender with respect to the Funding Loan evidenced by the Governmental Note[s] is limited to the Pledged Security as set forth in the Funding Loan Agreement.

7. The Funding Lender has either been supplied with or been given access to information, including financial statements and other financial information, which it considers necessary to make an informed decision in connection with the [origination/purchase] of the Funding Loan evidenced by the Governmental Note[s]. The Funding Lender has not relied upon the Governmental Lender, its counsel, or its advisors for any information in connection with its purchase of the Funding Loan evidenced by the Governmental Note[s].

8. The Funding Lender has made its own inquiry and analysis with respect to the Funding Loan evidenced by the Governmental Note[s] and the security therefor, and other material factors affecting the security and payment of the Funding Loan evidenced by the Governmental Note[s]. The Funding Lender is aware that the business of the Borrower involves certain economic variables and risks that could adversely affect the security for the Funding Loan evidenced by the Governmental Note[s].

All agreements, representations and warranties made herein shall survive the execution and delivery of this letter agreement and, notwithstanding any investigation heretofore or hereafter, shall continue in full force and effect.

[U.S. BANK NATIONAL ASSOCIATION]

By: _____
Name: _____
Title: _____

[BMO HARRIS BANK N.A.]

By: _____
Name: _____
Title: _____

EXHIBIT D

**COSTS OF ISSUANCE REQUISITION
(Cost of Issuance Fund)**

Dated: _____, 20__

TO: U.S. Bank National Association, as Fiscal Agent

Re: [Legends of Minnetonka Project] [Bren Road Station Project]

You are requested to disburse funds from the Cost of Issuance Fund pursuant to Section 4.13 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this Costs of Issuance Requisition (Cost of Issuance Fund) (the “**Requisition**”). The terms used in this requisition shall have the meaning given to those terms in the [Funding Loan Agreement, dated as of September 1, 2018] [Amended and Restated Funding Loan Agreement, dated as of March 1, 2021] (the “**Funding Loan Agreement**”), between U.S. Bank National Association, a national banking association, as administrative agent for the Initial Funding Lender, the City of Minnetonka, Minnesota, and U.S. Bank National Association, as fiscal agent, securing the Governmental Notes.

REQUISITION NO.:	_____
PAYMENT DUE TO:	See attached schedule
AMOUNT TO BE DISBURSED	\$ _____

The undersigned, on behalf of Minnetonka Leased Housing Associates III, LLLP, a limited liability limited partnership duly organized and existing under the laws of the State of Minnesota (the “**Borrower**”), certifies that:

- (a) the expenditures for which money is requisitioned by this Requisition represent proper charges against the Cost of Issuance Fund, have not been included in any previous requisition and are set forth in the schedule attached to this Requisition, with invoices attached for any sums for which reimbursement is requested; and
- (b) the money requisitioned is not greater than that necessary to meet obligations due and payable or to reimburse the applicable party for funds actually advanced for Costs of Issuance.

Attached to this Requisition is a schedule, together with copies of invoices or bills of sale covering all items for which payment is being requested.

IN WITNESS WHEREOF, the undersigned has executed this Costs of Issuance Requisition (Cost of Issuance Fund) as of the date and year first above written.

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

By: Minnetonka Leased Housing Associates SPE III,
LLC, a Delaware limited liability company
Its: General Partner

By: _____
Name: _____
Its: _____

EXHIBIT E

**PROJECT LOAN FUND REQUISITION
(Project Loan Fund)**

Dated: _____, 20__

TO: U.S. Bank National Association, as Fiscal Agent

Re: [Legends of Minnetonka Project] [Bren Road Station Project]

You are requested to disburse funds from the Project Loan Fund pursuant to Section 4.02 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this Project Loan Fund Requisition (Project Loan Fund) (the “**Requisition**”). The terms used in this requisition shall have the meaning given to those terms in the [Funding Loan Agreement, dated as of September 1, 2018] [Amended and Restated Funding Loan Agreement, dated as of March 1, 2021] (the “**Funding Loan Agreement**”), between U.S. Bank National Association, a national banking association (the “**Administrative Agent**”), as administrative agent for the Initial Funding Lender, the City of Minnetonka, Minnesota (the “**Governmental Lender**”), and U.S. Bank National Association, a national banking association (the “**Fiscal Agent**”), securing the Governmental Notes.

REQUISITION NO.: _____

PAYMENT DUE TO: _____

AMOUNT TO BE DISBURSED

See attached schedule

\$ _____ from the Tax-Exempt Note Proceeds

Subaccount of the Project Account;

\$ _____ from the Taxable Note Proceeds

Subaccount of the Project Account; and

\$ _____ from the Borrower Equity Account

The undersigned, the duly chosen, qualified, and acting representative of Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the “**Borrower**”), on behalf of the Borrower hereby represents and warrants that the following information and certifications provided in connection with this Requisition are true and correct as of the date hereof and authorizes Servicer (which, during the Construction Phase, is the Administrative Agent) to submit this Requisition to the Fiscal Agent on behalf of Borrower:

1. Purposes for which disbursement is requested are specified in the **attached schedule**.
2. Party or parties to whom the disbursements shall be made are specified in the **attached schedule** (may be the undersigned in the case of reimbursement for advances and payments made or cost incurred for work done by the undersigned); provided, that no reimbursement shall be made for advances and payments made prior to [February 15, 2018, with respect to the Series 2018 Tax-Exempt Governmental Notes] [February 8, 2021, with respect to the Series 2021 Governmental Notes] (which is the date that is sixty (60) days prior to the date that the Governmental Lender declared its official intent to reimburse expenditures related to the Project as permitted under Section 1.150-2(d) of the Treasury Regulations).

3. The undersigned certifies that:
- a. the conditions precedent to disbursement set forth in the Construction Continuing Covenant Agreement have been satisfied;
 - b. the disbursement requested pursuant to this Requisition will be used solely to pay a cost or costs allowable under the Funding Loan Agreement, the Subordinate Indenture and the Construction Continuing Covenant Agreement, as applicable;
 - c. none of the items for which disbursement is requested pursuant to this Requisition has formed the basis for any disbursement previously made from the Project Loan Fund and all such items have been properly recorded in Borrower's books and are set forth on the schedule attached hereto, along with paid invoices attached for any sum for which reimbursement is requested and invoices or bills of sales for all other items;
 - d. all labor and materials for which disbursements have been requested have been incorporated into the Project in accordance with reasonable and standard building practices, the Construction Continuing Covenant Agreement and all applicable laws, ordinances, rules and regulations of any governmental authority having jurisdiction over the Project;
 - e. the materials, supplies and equipment furnished or installed for the Improvements are not subject to any lien or security interest or that the funds to be disbursed pursuant to this Requisition are to be used to satisfy any such lien or security interest;
 - f. all of the funds being requisitioned are being used in compliance with all tax covenants set forth in the Funding Loan Agreement, the Subordinate Indenture, the Subordinate Loan Agreement, the Project Loan Agreement, the Tax Regulatory Agreement and the [Tax Certificate for the Series 2018 Tax-Exempt Governmental Notes] [Tax Certificate for the Series 2021 Governmental Notes], including that none of the proceeds of the Funding Loan evidenced by the [Series 2018 Tax-Exempt Governmental Note] [Series 2021 Governmental Note] (including investment earnings thereon) will be used to provide an airplane, a skybox or any other private luxury box, any facility primarily used for gambling, health club facility or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;
 - g. with respect to amounts from the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund and the Subordinate Bonds Proceeds Subaccount of the Project Account of the Project Loan Fund, not less than ninety-five percent (95%) of the sum of:
 - (A) the amounts requisitioned by this Requisition; plus
 - (B) all amounts previously requisitioned and disbursed from the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund and the Subordinate Bonds Proceeds Subaccount of the Project Account of the Project Loan Fund;

have been or will be applied by Borrower to pay the Costs of the Project (as defined in the Funding Loan Agreement) and Project Costs (as defined in the Subordinate Indenture);

- h. the Borrower is not in default under the Project Loan Agreement, the Construction Continuing Covenant Agreement or any other Project Loan Document, or Subordinate Loan Documents to which it is a party and nothing has occurred to the knowledge of Borrower that would prevent the performance of its obligations under such documents;
- i. no amounts being requisitioned hereby will be used to pay, or reimburse, any Costs of Issuance incurred in connection with the delivery of the [Series 2018 Governmental Notes] [Series 2021 Governmental Notes] or Issuance Expenses incurred in connection with the delivery of the Subordinate Bonds or pay debt service with respect to the Loans or the Subordinate Bonds; and
- j. Funds deposited with Borrower for further disbursement to third parties shall be paid to such third parties by check dated the date of such deposit and Borrower reasonably expects such funds will be disbursed from its account within five Business Days of such deposit.

[Following items may not be required for Initial Disbursement]

4. Estimated costs of completing the uncompleted construction as of the date of this Requisition: _____.

5. Percent of construction completed as of the date this request: _____%

IN WITNESS WHEREOF, the undersigned has executed this Project Loan Fund Requisition (Project Loan Fund) as of the date and year first above written.

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

By: Minnetonka Leased Housing Associates SPE III, LLC, a Delaware limited liability company
Its: General Partner

By: _____
Name: _____
Its: _____

APPROVED:

U.S. BANK NATIONAL ASSOCIATION, as Administrative Agent

By: _____
Name: _____
Title: _____

EXHIBIT F

CONSTRUCTION PHASE INTEREST RATE

The Construction Phase Interest Rate will be the Loan Rate (as defined in the Construction Continuing Covenant Agreement).

EXHIBIT G

FORM OF SERIES 2021 GOVERNMENTAL NOTE

BY ITS ACQUISITION HEREOF, THE HOLDER OF THIS NOTE AGREES (A) THAT (I) IF APPLICABLE, IT HAS EXECUTED THE REQUIRED TRANSFEREE REPRESENTATIONS IN SUBSTANTIALLY THE FORM REQUIRED BY THE FUNDING LOAN AGREEMENT AND (II) THAT IT WILL NOT SELL OR OTHERWISE TRANSFER THIS NOTE EXCEPT AS PROVIDED IN THE FUNDING LOAN AGREEMENT, AND (B) THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS NOTE IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF HENNEPIN
CITY OF MINNETONKA

MULTIFAMILY NOTE
with designation as
Multifamily Housing Revenue Note
(Legends of Minnetonka Project)
Series 2021[A] [B]

US \$ _____

March 2, 2021

FOR VALUE RECEIVED, the undersigned, the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “**Obligor**”), promises to pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement referenced below) to the order of [U.S. Bank National Association, a national banking association] [BMO Harris Bank N.A., a national banking association], or its registered assigns (the “**Funding Lender**”), the maximum principal sum of _____ and ___/100 Dollars (US \$ _____), plus Prepayment Premium, if any, and interest thereon and to pay the other amounts owing from time to time hereunder, all as set forth below.

This Multifamily Note with designation as Multifamily Housing Revenue Note (Bren Road Station Project), Series 2021[A] [B] (this “**Note**”) is being delivered pursuant to that certain Amended and Restated Funding Loan Agreement, dated as of March 1, 2021 (together with any and all amendments, modifications, supplements and restatements, the “**Funding Loan Agreement**”), between U.S. Bank National Association, a national banking association, as administrative agent (the “**Administrative Agent**”) for the Funding Lender, the Obligor, and U.S. Bank National Association, a national banking association, in its capacity as fiscal agent under the Funding Loan Agreement (the “**Fiscal Agent**”), pursuant to which the Obligor has incurred a loan in the maximum aggregate principal amount of \$ _____ (the “**Funding Loan**”), and this Note is entitled to the benefits of the Funding Loan Agreement and is subject to the terms, conditions and provisions thereof. The Obligor is using the proceeds of the Funding Loan to make a loan to Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the “**Borrower**”) pursuant to an Amended and Restated Project Loan Agreement, dated as of March 1, 2021 (the “**Project Loan Agreement**”), between the Obligor, the Borrower and the Fiscal Agent. The outstanding principal balance of this Note at any time

shall be an amount equal to the proceeds of this Note advanced by Administrative Agent, on behalf of the Funding Lender, according to the Funding Loan Agreement and not otherwise repaid.

In addition to this Note, the Series 2021 Funding Loan is also evidenced by the Governmental Lender's Multifamily Note with designation as Multifamily Housing Revenue Note (Bren Road Station Project), Series 2021[A] [B].

1. **Defined Terms.** As used in this Note, (i) the term "Funding Lender" means the registered holder of this Note, and (ii) the term "Indebtedness" means the principal of, Prepayment Premium, if any, and interest on or any other amounts due at any time under the Series 2021 Notes or the Funding Loan Agreement. "Event of Default" and other capitalized terms used but not defined in this Note shall have the meanings given to such term in the Funding Loan Agreement.

2. **Payments of Principal and Interest.** The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) on the first calendar day of each month commencing April 1, 2021 interest on this Note at (i) the Construction Phase Interest Rate during the Construction Phase and (ii) the Permanent Phase Interest Rate during the Permanent Phase, and shall also pay interest on this Note at the foregoing rates on the date of any optional or mandatory prepayment or acceleration of all or part of the Series 2021 Funding Loan pursuant to the Funding Loan Agreement, in an amount equal to the accrued and unpaid interest to the date of prepayment on the portion of this Note subject to prepayment (each such date for payment an "**Interest Payment Date**"). Interest shall accrue on the principal amount of this Note which has been advanced under the Funding Loan Agreement and is outstanding as reflected on the Series 2021 Record of Advances.

The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) the outstanding principal of this Note in full on October 1, 2036 (the "**Maturity Date**") and in monthly installments on each date set forth on the Governmental Note Amortization Schedule attached as Schedule 1 hereto in an amount equal to the corresponding amounts set forth thereon (as such Schedule 1 may be replaced by a new Governmental Note Amortization Schedule provided by the Freddie Mac Seller/Service on the Conversion Date as provided in Section 2.01A(e) of the Funding Loan Agreement) or at such earlier times and in such amounts as may be required, in the event of an optional or mandatory prepayment or acceleration of the Series 2021 Funding Loan pursuant to the Funding Loan Agreement. The outstanding principal hereof is subject to acceleration at the time or times and under the terms and conditions, and with notice, if any, as provided under the Funding Loan Agreement.

3. **Manner of Payment.** All payments under this Note shall be made in lawful currency of the United States and in immediately available funds as provided for herein and in the Funding Loan Agreement.

4. **Application of Payments.** If at any time the Funding Lender receives any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, the Funding Lender may apply that payment to amounts then due and payable in any manner and in any order determined by the Funding Lender, in the Funding Lender's discretion. Neither the Funding Lender's acceptance of a payment in an amount that is less than all amounts then due and payable nor the Funding Lender's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by, among other things, the Pledged Security pledged pursuant to the Funding Loan Agreement.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Note shall at once become due and payable, at the option of the Funding Lender, as governed by the Funding Loan Agreement, without any prior notice to the Obligor (unless required by applicable law). The Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayment; Prepayment Premium.** This Note is subject to prepayment as specified in the Funding Loan Agreement. Prepayment Premium shall be payable as specified in the Funding Loan Agreement.

8. **Forbearance.** Any forbearance by the Funding Lender in exercising any right or remedy under this Note or any other document evidencing or securing the Series 2021 Funding Loan or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by the Funding Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of the Funding Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by the Funding Lender of any security for the obligations under this Note shall not constitute an election by the Funding Lender of remedies so as to preclude the exercise of any other right or remedy available to the Funding Lender.

9. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by the Obligor and all endorsers and guarantors of this Note and all other third-party obligors.

10. **Loan Charges.** Neither this Note nor any of the other Financing Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the rate of interest which results in the maximum amount of interest allowed by applicable law (the "**Maximum Interest Rate**"). If any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor in connection with the Series 2021 Funding Loan is interpreted so that any interest or other charge provided for herein or in any other Financing Document evidencing or securing the Series 2021 Funding Loan, whether considered separately or together with other charges provided for in any such other Financing Document, violates that law, and the Obligor is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Funding Lender in excess of the permitted amounts will be applied by Funding Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor has been violated, all indebtedness that constitutes interest, as well as all other charges made in connection with the indebtedness that constitute interest, will be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

11. **Governing Law.** This Note shall be governed by the internal law of the State of Minnesota (the "**Property Jurisdiction**").

12. **Captions.** The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note.

13. **Address for Payment.** All payments due under this Note shall be payable at the principal office of the Funding Lender as designated by the Funding Lender in writing to the Administrative Agent (during the Construction Phase only), the Fiscal Agent, and the Servicer.

14. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly installment or the occurrence of such other Event of Default, as applicable, at the Default Rate. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date or on the date of any mandatory prepayment or acceleration, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date or such other date at the Default Rate.

15. **Limited Obligation.** This Note is a special, limited obligation of the Obligor payable solely from the Pledged Security and any other revenues, funds and assets pledged under the Funding Loan Agreement and not from any other revenues, funds or assets of the Obligor. This Note is not a general obligation, debt or bonded indebtedness of the Obligor, the State or any political subdivision thereof (other than of the Obligor to the limited extent set forth in the Funding Loan Agreement) and the holder of this Note does not have the right to have any excises or taxes levied by the Obligor, the State or any political subdivision thereof for the payment of the principal of and any Prepayment Premium and interest on this Note. None of the Obligor, the State, or any political subdivision of the State will be obligated to pay the principal of and the interest on this Note or other costs incident thereto except from the Pledged Security pledged under the Funding Loan Agreement. No provision, covenant, or agreement contained in this Note or the Funding Loan Agreement, or any obligation herein or therein imposed upon the Obligor, or the breach thereof, shall constitute or give rise to or impose a liability upon the Obligor (except from the Pledged Security), or upon any of its officers, employees, or agents, or constitute a charge upon the Obligor's general credit or taxing powers; provided that nothing contained herein or in the Act impairs the rights of the Fiscal Agent to enforce the covenants made for the security of the Obligor as provided herein and in the Act. Any recourse for a cause of action under this Note or the Funding Loan Agreement shall be payable solely from the Pledged Security, and the agreement of the Obligor to perform or cause the performance of the covenants and other provisions herein referred to shall be subject at all times to the availability of revenues or other funds furnished for such purpose in accordance with the Project Loan Agreement, sufficient to pay all costs of such performance or the enforcement thereof.

IN WITNESS WHEREOF, the Obligor has caused this Note to be duly executed in its name by the manual or facsimile signatures of the Mayor and City Manager, the seal of the Obligor having been intentionally omitted as permitted by law, and has caused this Note to be dated as of the date first written above.

CITY OF MINNETONKA, MINNESOTA

By _____
Its Mayor

By _____
Its City Manager

CERTIFICATE OF AUTHENTICATION

This Multifamily Note is issued under the provisions of and described in the within-mentioned Funding Loan Agreement.

Date of Authentication: _____

U.S. BANK NATIONAL ASSOCIATION, as Fiscal Agent

By: _____
Authorized Signer

SCHEDULE I

GOVERNMENTAL NOTE AMORTIZATION SCHEDULE

MN140-198 (JAE)
702047v2

**First Draft
February 15, 2021**

**AMENDED AND RESTATED
PROJECT LOAN AGREEMENT**

between

**CITY OF MINNETONKA, MINNESOTA,
as Governmental Lender**

**U.S. BANK NATIONAL ASSOCIATION,
as Fiscal Agent**

and

**MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP,
as Borrower**

Relating to:

**Bren Road Station (formerly Legends of Minnetonka)
11001 Bren Road East
Minnetonka, Minnesota**

**Maximum Series 2018 Project Loan Principal Amount: \$58,789,808
Maximum Series 2021 Project Loan Principal Amount: \$300,000**

Dated as of March 1, 2021

All of the right, title and interest of the City of Minnetonka, Minnesota (the “Governmental Lender”) (except for its Unassigned Rights) in and to this Amended and Restated Project Loan Agreement are being assigned to U.S. Bank National Association, as Fiscal Agent, as security for the Funding Loan made pursuant to that certain Amended and Restated Funding Loan Agreement, dated as of March 1, 2021, between the Governmental Lender, U.S. Bank National Association, as Administrative Agent for the Initial Funding Lender named therein, and the Fiscal Agent.

This instrument was drafted by:

Kennedy & Graven, Chartered (JAE)
150 South Fifth Street, Suite 700
Minneapolis, Minnesota 55402-1299
(612) 337-9300

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**AMENDED AND RESTATED
PROJECT LOAN AGREEMENT**

THIS AMENDED AND RESTATED PROJECT LOAN AGREEMENT is made and entered into as of March 1, 2021 (the “**Project Loan Agreement**”), between the CITY OF MINNETONKA, MINNESOTA, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “**Governmental Lender**”), U.S. BANK NATIONAL ASSOCIATION, a national banking association (together with any successor Fiscal Agents appointed under the Funding Loan Agreement, the “**Fiscal Agent**”), and MINNETONKA LEASED HOUSING ASSOCIATES III, LLLP, a Minnesota limited liability limited partnership (together with its successors and assigns permitted hereunder, the “**Borrower**”). Capitalized terms are defined in Section 1.01 of this Project Loan Agreement or in the Funding Loan Agreement (hereinafter defined).

RECITALS

A. Pursuant to Minnesota Statutes, Chapter 462C, as amended (the “**Act**”), and the Project Loan Agreement, dated as of September 1, 2018 (the “**Original Project Loan Agreement**”), between the Governmental Lender and the Borrower, at the Borrower’s request, the Governmental Lender made two mortgage loans to the Borrower corresponding in principal amount to the Series 2018 Tax-Exempt Funding Loan and the Series 2018 Taxable Funding Loan defined and described below (individually, the “**Series 2018 Tax-Exempt Project Loan**” and the “**Series 2018 Taxable Project Loan**,” and collectively, the “**Series 2018 Project Loan**”) to provide for the financing of a 262-unit senior housing rental development located at 11001 Bren Road East, Minnetonka, Minnesota known as Bren Road Station, formerly known as Legends of Minnetonka (the “**Project**”).

B. The Governmental Lender made the Series 2018 Tax-Exempt Project Loan to the Borrower with the proceeds received from the separate tax-exempt loan made to the Governmental Lender pursuant to the Funding Loan Agreement, dated as of September 1, 2018 (the “**Original Funding Loan Agreement**”), between U.S. Bank National Association, a national banking association, as administrative agent for the Initial Funding Lender (the “**Administrative Agent**”), the Governmental Lender, and the Fiscal Agent, in the maximum aggregate principal amount of \$32,410,000 (the “**Series 2018 Tax-Exempt Funding Loan**”). The Series 2018 Tax-Exempt Funding Loan is evidenced by the Governmental Lender’s (i) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1, in the maximum principal amount of \$16,205,000 (the “**Series 2018A-1 Governmental Note**”); and (ii) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2, in the maximum principal amount of \$16,205,000 (the “**Series 2018A-2 Governmental Note**,” and together with the Series 2018A-1 Governmental Note, the “**Series 2018 Tax-Exempt Governmental Note**”). The Governmental Lender made the Series 2018 Taxable Project Loan to the Borrower with the proceeds received from the separate taxable loan made to the Governmental Lender pursuant to the Original Funding Loan Agreement in the maximum aggregate principal amount of \$26,379,808 (the “**Series 2018 Taxable Funding Loan**,” together with the Series 2018 Tax-Exempt Funding Loan, the “**Series 2018 Funding Loan**,” and further together with the Series 2018 Project Loan, the “**Series 2018 Loans**”). The Series 2018 Taxable Funding Loan is evidenced by the Governmental Lender’s (1) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1, in the maximum principal amount of \$13,189,904 (the “**Series 2018B-1 Governmental Note**”); and (2) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-2, in the maximum principal amount of

\$13,189,904 (the “**Series 2018B-2 Governmental Note,**” and together with the Series 2018B-1 Governmental Note, the “**Series 2018 Taxable Governmental Note**”). The Series 2018 Tax-Exempt Governmental Note and the Series 2018 Taxable Governmental Note are referred to herein as the “**Series 2018 Governmental Notes.**” The Series 2018 Governmental Notes are each dated September 14, 2018. The Governmental Lender delivered the Series 2018 Governmental Notes to the Administrative Agent, which delivered the Series 2018 Governmental Notes to U.S. Bank National Association, a national banking association, and BMO Harris Bank N.A., a national banking association (together, the “**Initial Funding Lender**”).

C. Pursuant to the Act and this Project Loan Agreement, which amends and restates the Original Project Loan Agreement in its entirety, the Governmental Lender is also agreeing to make an additional mortgage loan to the Borrower in the maximum aggregate principal amount of \$300,000 (the “**Series 2021 Project Loan**”), for the purpose of providing financing for additional costs of the Project.

D. The Governmental Lender is making the Series 2021 Project Loan to the Borrower with the proceeds received from a separate loan made to the Governmental Lender pursuant to the Amended and Restated Funding Loan Agreement, dated as of March 1, 2021 (the “**Funding Loan Agreement**”), between the Administrative Agent, the Governmental Lender, and the Fiscal Agent, which amends and restates in entirety the Original Funding Loan Agreement, in the maximum aggregate principal amount of \$300,000 (the “**Series 2021 Funding Loan,**” and together with the Series 2021 Project Loan, the “**Series 2021 Loans**”). The Funding Loan Agreement amends and restates the Original Funding Loan Agreement in its entirety. The Series 2021 Funding Loan is evidenced by the Governmental Lender’s (i) Multifamily Note with designation as Multifamily Housing Revenue Note (Bren Road Station Project), Series 2021A, in the maximum principal amount of \$150,000 (the “**Series 2021A Governmental Note**”); and (ii) Multifamily Note with designation as Multifamily Housing Revenue Note (Bren Road Station Project), Series 2021B, in the maximum principal amount of \$150,000 (the “**Series 2021B Governmental Note,**” and together with the Series 2021A Governmental Note, the “**Series 2021 Governmental Notes**”). The Series 2021 Governmental Notes are dated March 2, 2021. The Governmental Lender will deliver the Series 2021 Governmental Notes to the Administrative Agent, which will deliver the Series 2021 Governmental Notes to the Initial Funding Lender.

E. In connection with the Series 2021 Funding Loan and the issuance of the Series 2021 Governmental Notes, the maximum principal amount of the Series 2018 Taxable Funding Loan will be decreased by \$300,000 so that the principal amount of the Series 2018 Funding Loan and the Series 2021 Funding Loan shall not exceed \$58,489,808. As a result, the principal amount of the Series 2018B-1 Governmental Note shall not exceed \$13,039,904, and the principal amount of the Series 2018B-2 Governmental Note shall not exceed \$13,039,904.

F. The Administrative Agent, on behalf of the Initial Funding Lender, pursuant to the terms and subject to the conditions of the Funding Loan Agreement, the Construction Phase Financing Agreement, and the Construction Continuing Covenant Agreement, has agreed to originate and fund the Series 2018 Funding Loan and the Series 2021 Funding Loan (together, the “**Funding Loans**”) to the Governmental Lender on a draw-down basis, which proceeds of the Funding Loans will be used by the Governmental Lender to fund the Series 2018 Project Loan and the Series 2021 Project Loan (together, the “**Project Loans**”) to the Borrower in corresponding installments pursuant to this Project Loan Agreement. The Administrative Agent, on behalf of the Initial Funding Lender, will administer the Series 2018 Loans and the Series 2021 Loans (together, the “**Loans**”) during the Construction Phase in accordance with the Construction Phase Financing Agreement (as it relates to the Series 2018 Tax-Exempt Funding Loan, the Series 2021 Funding Loan, the Series 2018 Tax-Exempt Project Loan,

and the Series 2021 Project Loan), the Construction Continuing Covenant Agreement, and the other Financing Documents.

G. The Borrower has agreed to use the proceeds of the Project Loans to finance the acquisition, construction and equipping of the Project and to pay certain closing costs with respect to the Loans.

H. The Borrower's repayment obligations in respect of the Series 2018 Tax-Exempt Project Loan are evidenced by the Multifamily Note (Series A) (the "**Series 2018 Tax-Exempt Project Note**"), and the Borrower's repayment obligations in respect of the Series 2018 Taxable Project Loan are evidenced by the Multifamily Note (Series B) (the "**Series 2018 Taxable Project Note**," and together with the Series 2018 Tax-Exempt Project Note and all riders and modifications thereto, the "**Series 2018 Project Notes**"), each dated September 14, 2018, delivered to the Governmental Lender, which Series 2018 Project Notes were endorsed by the Governmental Lender to the Fiscal Agent as security for the Series 2018 Funding Loan. The Borrower's repayment obligations in respect of the Series 2021 Project Loan will be evidenced by the Multifamily Note (together with all riders and modifications thereto, the "**Series 2021 Project Note**"), dated March 2, 2021, delivered to the Governmental Lender, which Series 2021 Project Notes will be endorsed by the Governmental Lender to the Fiscal Agent as security for the Series 2021 Funding Loan.

I. To secure the Borrower's obligations under the Series 2018 Tax-Exempt Project Note, the Borrower executed and delivered to the Governmental Lender a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series A), dated September 14, 2018 (the "**Original Tax-Exempt Security Instrument**"), with respect to the Project, which Original Tax-Exempt Security Instrument was assigned by the Governmental Lender to the Fiscal Agent as security for the Series 2018 Tax-Exempt Funding Loan. To secure the Borrower's obligations under the Series 2021 Tax-Exempt Project Note, the Borrower and the Governmental Lender will execute a[n] _____ Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated March 2, 2021 (the "**Amended Tax-Exempt Security Instrument**"), which amends the Original Tax-Exempt Security Instrument (as amended, the "**Tax-Exempt Security Instrument**"), with respect to the Project, which Amended Tax-Exempt Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Series 2021 Funding Loan.

J. To secure the Borrower's obligations under the Series 2018 Taxable Project Note, the Borrower executed and delivered to the Governmental Lender a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series B), dated September 14, 2018 (the "**Taxable Security Instrument**," and together with the Tax-Exempt Security Instrument, the "**Security Instrument**"), with respect to the Project, which Taxable Security Instrument was assigned by the Governmental Lender to the Fiscal Agent as security for the Series 2018 Taxable Funding Loan.

K. The Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise ("**Freddie Mac**"), has entered into a commitment (the "**Tax-Exempt Freddie Mac Commitment**") with KeyBank National Association, a national banking association (the "**Freddie Mac Seller/Servicer**"), whereby Freddie Mac has committed, subject to the satisfaction of the Conditions to Conversion set forth in the Construction Phase Financing Agreement on or before the Forward Commitment Maturity Date, to facilitate the financing of the Project in the Permanent Phase by purchasing the Series 2018 Tax-Exempt Funding Loan and the Series 2021 Funding Loan (together, the "**Tax-Exempt Funding Loan**") from the Freddie Mac Seller/Servicer following the Conversion Date.

On or before the Conversion Date, it is expected that Freddie Mac will revise the Tax-Exempt Freddie Mac Commitment to increase it by \$300,000 to include the tax-exempt Series 2021 Funding Loan.

L. If the Conditions to Conversion are satisfied on or before the Forward Commitment Maturity Date as provided for in the Tax-Exempt Freddie Mac Commitment and the Construction Phase Financing Agreement, the Series 2018 Tax-Exempt Project Loan and the Series 2021 Project Loan (together, the “**Tax-Exempt Project Loan**”) will convert from the Construction Phase to the Permanent Phase on the Conversion Date and, on such Conversion Date, the Administrative Agent shall deliver, and the Freddie Mac Seller/Servicer shall purchase, the Tax-Exempt Funding Loan, as evidenced by the Series 2018 Tax-Exempt Governmental Note and the Series 2021 Governmental Notes (together, the “**Tax-Exempt Governmental Notes**”). If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Tax-Exempt Project Loan will not convert from the Construction Phase to the Permanent Phase, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligation with respect to the purchase of the Tax-Exempt Funding Loan and the Initial Funding Lender will remain the owner of the Tax-Exempt Funding Loan as the holder of the Tax-Exempt Governmental Notes.

M. Freddie Mac entered into a separate commitment (the “**Taxable Freddie Mac Commitment**”) with the Freddie Mac Seller/Servicer, whereby Freddie Mac committed, subject to the satisfaction of the Conditions to Conversion set forth in the commitment, to facilitate the financing of the Project in the Permanent Phase by making a conventional supplemental loan to amend and restate the Series 2018 Taxable Funding Loan made under the Funding Loan Agreement. On or before the Conversion Date, it is expected that Freddie Mac will revise the Taxable Freddie Mac Commitment to decrease it by \$300,000.

N. If the Conditions to Conversion associated with the Taxable Freddie Mac Commitment are satisfied on or before the Forward Commitment Maturity Date as provided for in the Taxable Freddie Mac Commitment, the Freddie Mac Seller/Servicer will make a conventional loan to purchase and amend and restate the Series 2018 Taxable Funding Loan and the Series 2018 Taxable Funding Loan will no longer be outstanding under the Funding Loan Agreement. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Series 2018 Taxable Project Loan will remain outstanding, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligation with respect to amending and restating the Series 2018 Taxable Funding Loan and the Initial Funding Lender will remain the owner of the Series 2018 Taxable Funding Loan as the holder of the Series 2018 Taxable Governmental Note.

O. As a Condition to Conversion, the Series 2018 Tax-Exempt Project Note and the Series 2021 Project Note (together, the “**Tax-Exempt Project Notes**”) and the Tax-Exempt Security Instrument are required to be amended and restated and the Borrower is required to enter into a Continuing Covenant Agreement with the Freddie Mac Seller/Servicer (the “**Freddie Mac Continuing Covenant Agreement**”), in each case pursuant to the forms attached to the Construction Phase Financing Agreement. As additional Conditions to Conversion, (i) the Series 2018 Taxable Governmental Note and the Series 2018 Taxable Project Note will be exchanged for a single Amended and Restated Taxable Project Note and the Series 2018 Taxable Governmental Note will no longer be outstanding under the Funding Loan Agreement, and the single Amended and Restated Taxable Project Note will be assigned to the Freddie Mac Seller/Servicer; (ii) the Tax-Exempt Governmental Notes will be consolidated into a single Governmental Note with a single Governmental Note Amortization Schedule; and (iii) the Taxable Security Instrument will be amended and restated and the Borrower will be required to enter into a Multifamily Loan Agreement with the Freddie Mac Seller/Servicer, in each case pursuant to the forms attached to the Taxable Freddie Mac Commitment and the Series 2018 Taxable Funding Loan will no

longer be governed by the Funding Loan Agreement. After Conversion, all references herein to “Funding Loan” shall mean the Tax-Exempt Funding Loan, all references herein to the “Project Loan” shall mean the Tax-Exempt Project Loan, and the term “Security Instrument” shall mean the Tax-Exempt Security Instrument, as amended and restated.

P. If the Conditions to Conversion are satisfied and the Tax-Exempt Funding Loan is purchased by the Freddie Mac Seller/Servicer on the Conversion Date as set forth above, the Freddie Mac Seller/Servicer shall deliver the Tax-Exempt Funding Loan to Freddie Mac for purchase pursuant to the terms of the Tax-Exempt Freddie Mac Commitment and the Guide (such date of purchase by Freddie Mac being referred to as the “**Freddie Mac Purchase Date**”).

Q. Upon the occurrence of the Freddie Mac Purchase Date, the Freddie Mac Seller/Servicer will assign to Freddie Mac all of its rights and interest in the Tax-Exempt Funding Loan, the Tax-Exempt Governmental Notes, the Funding Loan Agreement, the Freddie Mac Continuing Covenant Agreement and the other Financing Documents. KeyBank National Association will act as Servicer for the Loans on behalf of Freddie Mac, as Funding Lender, on and after the Freddie Mac Purchase Date.

R. To provide additional financing for the Project, the Governmental Lender issued its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C (the “**Subordinate Bonds**”), dated September 14, 2018, in the original aggregate principal amount of \$4,090,000, pursuant to a Subordinate Indenture of Trust, dated as of September 1, 2018 (the “**Subordinate Indenture**”), between the Governmental Lender and U.S. Bank National Association, a national banking association, as trustee for the Subordinate Bonds (the “**Trustee**”). The proceeds of the Subordinate Bonds were loaned to the Borrower (the “**Subordinate Loan**”) pursuant to a Subordinate Loan Agreement, dated as of September 1, 2018 (the “**Subordinate Loan Agreement**”), between the Governmental Lender and the Borrower, and the Borrower applied such proceeds to finance a portion of the acquisition, construction, and equipping of the Project and to pay certain closing costs with respect to the Subordinate Loan. The Subordinate Indenture, the Subordinate Loan Agreement, and the Subordinate Bonds and all related documents and any renewals or extensions thereof and all indebtedness owed thereunder, including the Subordinate Loan, shall be and are subordinated, inferior and subject to the Financing Documents, as the Financing Documents may be revised, modified, extended or amended from time to time, and all indebtedness owed thereunder pursuant to a Subordination Agreement, dated September 14, 2018, between the Fiscal Agent and the Trustee and consented to by the Borrower and Dominion Holdings II, LLC, as guarantor.

NOW, THEREFORE, for and in consideration of the mutual covenants and representations hereinafter contained, the parties hereto agree as follows:

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ARTICLE I
DEFINITIONS

Section 1.01 Definitions. All words and phrases (except for Event of Default) defined in the Funding Loan Agreement and the Continuing Covenant Agreement shall have the same meanings for the purposes of this Project Loan Agreement. In addition to the words and phrases defined in the Funding Loan Agreement, the Continuing Covenant Agreement, and elsewhere herein, the following words and phrases shall have the following meanings:

“*Event of Default*” means any of those events specified in and defined by the applicable provisions of Article VII hereof to constitute an event of default.

“*Fee Component*” means the regular, ongoing fees due from time to time to the Governmental Lender, the Fiscal Agent and the Rebate Analyst, if any, expressed as a flat, fixed amount or in terms of a percentage of the unpaid principal amount of the Funding Loan on an annual basis.

“*Funding Loan Agreement*” means the Amended and Restated Funding Loan Agreement, dated as of March 1, 2021, between the Administrative Agent, the Governmental Lender, and the Fiscal Agent, as amended, supplemented or restated from time to time. The Funding Loan Agreement amends and restates in entirety the Funding Loan Agreement, dated as of September 1, 2018, between the Administrative Agent, the Governmental Lender, and the Fiscal Agent.

“*Project Loan Agreement*” means this Amended and Restated Project Loan Agreement, dated as of March 1, 2021, between the Governmental Lender, the Fiscal Agent, and the Borrower, together with any amendments hereto. The Project Loan Agreement amends and restates in entirety the Project Loan Agreement, dated as of September 1, 2018, between the Governmental lender, the Fiscal Agent, and the Borrower.

“*Project Loan Payment*” means each payment of the Project Loan on each Project Loan Payment Date pursuant to the Project Notes and this Project Loan Agreement.

“*Project Loan Payment Date*” means (A) the first day of each calendar month, commencing October 1, 2018, with respect to the Series 2018 Project Loan, (B) the first day of each calendar month, commencing April 1, 2021, with respect to the Series 2021 Project Loan, or (C) any other date on which the Project Loan is prepaid or paid, whether at scheduled maturity or upon prepayment or acceleration of the maturity thereof; provided, however, that if a Project Loan Payment Date is not a Business Day, payment shall be made on the first Business Day following such Project Loan Payment Date.

“*Project Note Amortization Schedule*” means the Project Note Amortization Schedule attached as Schedule 1 to each of the Project Notes (as such Schedule 1 may be replaced by a new amortization schedule provided by the Freddie Mac Seller/Servicer as provided in the Funding Loan Agreement).

“*Servicing Fee*” means, during the Permanent Phase, the ordinary fee payable to the Servicer in connection with the servicing of the Project Loan and the Funding Loan payable monthly in an amount equal to one-twelfth of 0.10% of the outstanding principal balance of the Project Loan, computed on the basis of a three hundred sixty (360) day year of twelve (12) thirty (30) day months.

“*Taxes*” means all taxes, water rents, sewer rents, assessments and other governmental or municipal or public or private dues, fees, charges and levies and any liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Project or any part thereof, or upon any leases pertaining thereto, or upon the rents, issues, income or profits thereof, whether any or all of the aforementioned be levied directly or indirectly or as excise taxes or as income taxes.

Section 1.02 *Interpretation.* Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. Words importing persons include firms, partnerships, limited liability companies, joint ventures, associations and corporations. References to Articles, Sections and other subdivisions of this Project Loan Agreement are the Articles, sections and other subdivisions of this Project Loan Agreement as originally executed.

The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar terms refer to this Project Loan Agreement; the term “heretofore” means before the date of execution of this Project Loan Agreement; and the term “hereafter” means after the date of execution of this Project Loan Agreement.

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ARTICLE II

REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.01 *Representations, Warranties and Covenants of the Governmental Lender.* The Governmental Lender makes the following representations, warranties and covenants for the benefit of the Borrower, the Fiscal Agent, the Funding Lender and the Servicer:

(a) The Governmental Lender is a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State.

(b) The Governmental Lender has all necessary power and authority to incur the indebtedness of the Funding Loan evidenced by the Governmental Notes and to make the Project Loans from the proceeds thereof, and to execute, and deliver this Project Loan Agreement, the Funding Loan Agreement, and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The Governmental Lender has taken all action on its part to incur the Funding Loans evidenced by the Governmental Notes and make the Project Loans from the proceeds thereof and for the sale, execution and delivery thereof.

(d) Each of the Financing Documents to which the Governmental Lender is a party has been duly and validly authorized, executed and delivered by the Governmental Lender.

(e) Based on the advice of Bond Counsel, the Governmental Lender has complied with the provisions of the laws of the State, including, but not limited to, the Act, which are prerequisites to the consummation of the transactions on the part of the Governmental Lender described or contemplated in the Financing Documents. To the actual knowledge of the Governmental Lender, the execution and delivery of the Governmental Notes and the Financing Documents to which the Governmental Lender is a party, the consummation of the transactions on the part of the Governmental Lender contemplated thereby and the fulfillment of or compliance with the terms and conditions thereof do not conflict with or result in the breach of any of the terms, conditions or provisions of any agreement or instrument or judgment, order or decree to which the Governmental Lender is now a party or by which it is bound, nor do they constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature upon any property or assets of the Governmental Lender under the terms of any instrument or agreement.

(f) Based on the advice of Bond Counsel, no authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained, is required for the due execution and delivery by the Governmental Lender of, and performance by the Governmental Lender of its obligations under, the Financing Documents.

(g) There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of the Governmental Lender, threatened against the Governmental Lender by or before any court, governmental agency or public board or body, nor, to the Governmental Lender's knowledge, is there any basis therefor, which (i) affects or questions the existence or the territorial jurisdiction of the

Governmental Lender or the title to office of any member of the governing body of the Governmental Lender; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any Financing Documents or the issuance, sale, execution or delivery of the Governmental Notes; (iii) affects or questions the validity or enforceability of the Governmental Notes or any Financing Document; (iv) questions the tax-exempt status of the Tax-Exempt Governmental Notes; or (v) questions the power or authority of the Governmental Lender to perform its obligations under the Governmental Notes or any Financing Document, or to carry out the transactions contemplated by the Governmental Notes and the Financing Documents.

(h) No officer or other official of the Governmental Lender has any personal financial interest in the Project or the Borrower or in the transactions contemplated by this Project Loan Agreement.

(i) Upon the discovery by the Governmental Lender of any noncompliance by the Borrower with this Project Loan Agreement, the Tax Certificate for the Series 2018 Tax-Exempt Governmental Notes, the Tax Certificate for the Series 2021 Governmental Notes, or the Tax Regulatory Agreement, the Governmental Lender will promptly notify the Fiscal Agent, the Servicer and the Funding Lender Representative of such noncompliance.

It is expressly acknowledged that the Governmental Lender makes no representation as to the financial position or business condition of the Borrower and does not represent or warrant as to any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made and furnished by the Borrower in connection with the issuance, sale, execution and delivery of the Governmental Notes, or as to the correctness, completeness or accuracy of such statements.

Section 2.02 *Representations, Warranties and Covenants of the Borrower.* The Borrower makes the following representations, warranties and covenants, all of which, together with the other representations and agreements of the Borrower contained in this Project Loan Agreement, are relied upon by the Governmental Lender, the Funding Lender, the Servicer and the Fiscal Agent and serve as a basis for the undertakings of the Governmental Lender, the Servicer and the Fiscal Agent contained in this Project Loan Agreement:

(a) The Borrower is a limited liability limited partnership duly organized, validly existing and in good standing under the laws of the state in which it has been organized and is duly qualified to conduct its business under the laws of the State and in every other state in which the nature of its business requires such qualification, has full legal right, power and authority to enter into this Project Loan Agreement and the other Financing Documents, and to carry out and consummate all transactions contemplated hereby and by the other Financing Documents, and by proper action has duly authorized the execution, delivery and performance of this Project Loan Agreement and the other Financing Documents. All corporate general partners and all general partners which are limited liability companies, if any, of the Borrower are duly organized and in good standing under the laws of their respective states of organization and are duly qualified to transact business in the State as either domestic or foreign corporations or limited liability companies, as applicable. All partnership general partners, if any, are duly formed and in good standing under the laws of their respective states of formation and, to the extent required by the laws of the State, are duly qualified to transact business in the State as either domestic or foreign partnerships or limited liability companies, as applicable.

(b) The Borrower has the legal right, power and authority to (i) own its properties and assets, including, but not limited to, the Project; (ii) to carry on its business as now being conducted and the Borrower contemplates it to be conducted with respect to the Project; and (iii) execute and deliver, carry

out its obligations under, and close the transactions provided for in, the Financing Documents to which it is a party.

(c) Each of the Financing Documents to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general principles of equity.

(d) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained or those necessary to be obtained during the course of construction of the Project, is required for the due execution and delivery or approval, as the case may be, by the Borrower of, and the performance by the Borrower of its obligations under, the Financing Documents.

(e) None of the execution and delivery of the Financing Documents to which the Borrower is a party, the consummation of the transactions provided for in the Financing Documents, or the Borrower's fulfillment of or compliance with the terms and conditions of the Financing Documents (i) violates or will violate any law, rule or regulation of any governmental agency or body having jurisdiction over the Borrower, or any of its activities or properties, or any judgment, order, writ, injunction or decree to which the Borrower is subject, or any of the organizational or other governing documents of the Borrower; (ii) conflicts or will conflict with any agreement, instrument or license to which the Borrower is now a party or by which it or any of its properties or assets is bound or results or will result in a breach of, or constitutes or will constitute a default (with due notice or the passage of time or both) under, any such agreement, instrument or license; (iii) contravenes or will contravene any such law, rule or regulation or any such judgment, order, writ, injunction or decree; or (iv) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, except for any lien, charge or encumbrance permitted under the terms of the Financing Documents.

(f) There is no action, suit, proceeding, inquiry or investigation pending or, to the Borrower's knowledge, threatened against or affecting the Borrower or any of its properties (including, without limitation, the Project), which, if adversely determined, would (i) impair the right of the Borrower to carry on its business substantially as now conducted and as contemplated by the Financing Documents; (ii) adversely affect the financial condition of the Borrower; (iii) prohibit, restrain or enjoin the making of the Funding Loan or the Project Loan or the execution and delivery of any of the Financing Documents; (iv) adversely affect the validity or enforceability of any of the Financing Documents; or (v) adversely affect the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Governmental Notes.

(g) The Project and the operation of the Project (in the manner contemplated by the Financing Documents) conform and, following completion of the construction and equipping of the Project, will continue to conform in all material respects with the requirements of the Act as well as all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project.

(h) The Borrower has filed or caused to be filed all federal, state and local tax returns which are required to be filed or has obtained appropriate extensions therefor, and has paid or caused to be paid

all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due.

(i) The Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party which default would materially adversely affect the transactions contemplated by the Financing Documents or the operations of the Borrower or the enforceability of the Financing Documents to which the Borrower is a party or the ability of the Borrower to perform all obligations thereunder.

(j) The Borrower agrees to pay all costs of maintenance and repair, all Taxes and assessments, insurance premiums (including public liability insurance and insurance against damage to or destruction of the Project) concerning or in any way related to the Project, or any part thereof, and any expenses or renewals thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments concerning or in any way related to the Project.

(k) If the Borrower is a partnership, all of the partnership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests except as may be permitted by the Borrower's partnership agreement, which shall be subordinate to the Security Instrument. If the Borrower is a limited liability company, all of the ownership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests. Nothing in this Project Loan Agreement shall prevent the Borrower from issuing additional partnership interests or ownership interests if such units are issued in accordance with all applicable securities laws.

(l) The representations and warranties of the Borrower contained in the Tax Certificate for the Series 2018 Tax-Exempt Governmental Notes, the Tax Certificate for the Series 2021 Governmental Notes, and Tax Regulatory Agreement are true and accurate in all material respects.

(m) The information, statements or reports furnished in writing to the Governmental Lender, the Servicer and the Funding Lender Representative by the Borrower in connection with this Project Loan Agreement or the consummation of the transactions contemplated hereby do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading; and the representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower's closing certificates, as of the Delivery Date of the Series 2018 Governmental Notes and the Delivery Date of the Series 2021 Governmental Notes, are true and correct in all material respects, do not contain any untrue statement of a material fact, and do not omit to state a material fact necessary to make the representations, warranties, statements, information and descriptions contained therein, in the light of the circumstances under which they were made, not misleading; and any estimates or assumptions contained in any certificate of the Borrower delivered as of the Delivery Date of the Series 2018 Governmental Notes and the Delivery Date of the Series 2021 Governmental Notes are reasonable.

(n) To the knowledge of the Borrower, no member, commissioner, officer or employee of the Governmental Lender has been or is in any manner interested, directly or indirectly, in that person's own name or in the name of any other person, in the Financing Documents, the Borrower or the Project, in any contract for property or materials to be furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Financing Documents.

(o) The Borrower intends to hold the Project for its own account and has no current plans to sell, and has not entered into any agreement, to sell all or any portion of the Project.

(p) The Project is located wholly within the boundaries of the City of Minnetonka, Hennepin County, Minnesota.

(q) The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exclusion from gross income for federal income tax purposes of the interest on the Tax-Exempt Governmental Notes. The Borrower shall operate the Project as required by the Tax Regulatory Agreement.

(r) The Funding Loan Agreement has been submitted to the Borrower for examination, and the Borrower, by execution of this Project Loan Agreement, acknowledges and agrees that it has participated in the drafting of the Funding Loan Agreement and that it is bound by, shall adhere to the provisions of, covenants and agrees to perform all obligations required of the Borrower pursuant to, and shall have the rights set forth by the applicable terms and conditions of, the Funding Loan Agreement.

(s) The Borrower has entered into a purchase agreement to purchase the land upon which the Project will be built and plans to use the proceeds of the Governmental Notes to purchase the land and construct the Project. Upon closing on the land, the Borrower shall have a fee simple interest in the land and improvements on the land, subject only to liens permitted under the Security Instrument.

(t) The Borrower acknowledges that (i) it understands the nature and structure of the transactions relating to the financing of the Project, (ii) it is familiar with the provisions of all of the documents and instruments relating to the financing, (iii) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (iv) it has not relied on the Governmental Lender, the Fiscal Agent, Freddie Mac, the Funding Lender, the Funding Lender Representative or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Financing Documents or otherwise relied on the Governmental Lender, the Fiscal Agent, Freddie Mac, the Funding Lender, the Funding Lender Representative or the Servicer in any manner.

Section 2.03 Representations and Warranties of the Fiscal Agent. The Fiscal Agent makes the following representations and warranties for the benefit of the Governmental Lender, the Borrower, the Funding Lender and the Servicer:

(a) The Fiscal Agent is a national banking association, duly organized and existing under the laws of the United States. The Fiscal Agent is duly authorized to act as a fiduciary and to execute the trust created by the Funding Loan Agreement, and meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(b) The Fiscal Agent has complied with the provisions of law which are prerequisite to the consummation of, and has all necessary power (including trust powers) and authority (i) to execute and deliver this Project Loan Agreement and the other Financing Documents to which it is a party, (ii) to perform its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) to consummate the transactions contemplated by this Project Loan Agreement and the other Financing Documents to which it is a party.

(c) The Fiscal Agent has duly authorized (i) the execution and delivery of this Project Loan Agreement and the other Financing Documents to which it is a party, (ii) the performance by the Fiscal

Agent of its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) the actions of the Fiscal Agent contemplated by this Project Loan Agreement and the other Financing Documents to which it is a party.

(d) Each of the Financing Documents to which the Fiscal Agent is a party has been duly executed and delivered by the Fiscal Agent and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding obligation of the Fiscal Agent, enforceable against the Fiscal Agent in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(e) The Fiscal Agent meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(f) The Fiscal Agent has complied with the provisions of law which are prerequisites to the consummation of the transactions on the part of the Fiscal Agent described or contemplated in the Financing Documents.

(g) No approval, permit, consent, authorization or order of any court, governmental agency or public board or body not already obtained is required to be obtained by the Fiscal Agent as a prerequisite to (i) the execution and delivery of this Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party, (ii) the authentication or delivery of the Governmental Notes, (iii) the performance by the Fiscal Agent of its obligations under this Project Loan Agreement and the other Financing Documents to which it is a party, or (iv) the consummation of the transactions contemplated by this Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party. The Fiscal Agent makes no representation or warranty relating to compliance with any federal or state securities laws.

Section 2.04 *Arbitrage and Rebate Fund Calculations.* The Borrower shall (a) take or cause to be taken all actions necessary or appropriate in order to fully and timely comply with Section 4.12 of the Funding Loan Agreement, and (b) if required to do so under Section 4.12 of the Funding Loan Agreement, select at the Borrower's expense, a Rebate Analyst reasonably acceptable to the Governmental Lender for the purpose of making any and all calculations required under Section 4.12 of the Funding Loan Agreement. Such calculations, if required, shall be made in the manner and at such times as specified in Section 4.12 of the Funding Loan Agreement. The Borrower shall cause the Rebate Analyst to provide any such calculations to the Fiscal Agent and the Governmental Lender at such times and with such directions as are necessary to comply fully with the arbitrage and rebate requirements set forth in the Funding Loan Agreement and to comply fully with Section 148 of the Code, including the timely payment of any arbitrage rebate owed.

Section 2.05 *Tax Covenants of the Borrower.* The Borrower covenants and agrees that:

(a) It will at all times comply with the terms of the Tax Certificate for the Series 2018 Tax-Exempt Governmental Notes, the Tax Certificate for the Series 2021 Governmental Notes, and the Tax Regulatory Agreement;

(b) It will not take, or permit to be taken on its behalf, any action which would cause the interest payable on the Tax-Exempt Governmental Notes to be included in gross income of the Funding Lender, for federal income tax purposes (excluding any action that causes such interest to be includable

in gross income for federal income tax purposes as a result of the application of Section 147(a) of the Code or any successor provision of the Code and applicable Treasury Regulations or any successor law or regulation), and will take such action as may be necessary in the opinion of Bond Counsel to continue such exclusion from gross income, including without limitation the preparation and filing of all statements required to be filed by it in order to maintain the exclusion (including, but not limited to, the filing of all reports and certifications required by the Tax Regulatory Agreement);

(c) No changes will be made to the Project, no actions will be taken by the Borrower and the Borrower will not omit to take any actions, which will in any way adversely affect the tax-exempt status of the Tax-Exempt Governmental Notes (except for any changes, actions, or omissions that adversely affect the tax-exempt status of the Tax-Exempt Governmental Notes as a result of the application of Section 147(a) of the Code or any successor provision of the Code and applicable Treasury Regulations or any successor law or regulation);

(d) It will comply with the requirements of Section 148 of the Code and the Treasury Regulations issued thereunder throughout the term of the Funding Loan and the Project Loan and will not make any use of the proceeds of the Funding Loan or the Project Loan, or of any other funds which may be deemed to be proceeds of the Tax-Exempt Governmental Notes under the Code and the related regulations of the United States Treasury, which would cause the Tax-Exempt Governmental Notes to be “arbitrage bonds” within the meaning of Section 148 of the Code;

(e) If the Borrower becomes aware of any situation, event or condition which would, to the best of its knowledge, result in the interest on the Tax-Exempt Governmental Notes becoming includable in gross income of the Funding Lender for purposes of federal income tax purposes (except to the extent such interest is includable in gross income for federal income tax purposes as a result of the application of Section 147(a) of the Code or any successor provision of the Code and applicable Treasury Regulations or any successor law or regulation), it will promptly give written notice of such circumstance, event or condition to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Servicer;

(f) The full amount of each disbursement from the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund will be applied to pay or to reimburse the Borrower for the payment of Costs of the Project and, after taking into account any proposed disbursement, (i) at least ninety-five percent (95%) of the net proceeds (as defined in Section 150 of the Code) of the Series 2018 Tax-Exempt Governmental Notes and at least ninety-five percent (95%) of the net proceeds (as defined in Section 150 of the Code) of the Series 2021 Governmental Notes will be used to provide a qualified residential rental project (as defined in Section 142(d) of the Code); (ii) less than twenty-five (25%) of the net proceeds of the Series 2018 Tax-Exempt Governmental Notes and less than twenty-five (25%) of the net proceeds of the Series 2021 Governmental Notes will have been disbursed to pay or to reimburse the Borrower for the cost of acquiring land; and (iii) no more than five percent (5%) of the proceeds (as defined for purposes of Section 147(g) of the Code) of the Series 2018 Tax-Exempt Governmental Notes and no more than five percent (5%) of the proceeds (as defined for purposes of Section 147(g) of the Code) of the Series 2021 Governmental Notes will be disbursed to provide working capital;

(g) The Borrower will cause all of the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Act, the Code, the Tax Certificate for the Series 2018 Tax-Exempt Governmental Notes, the Tax Certificate for the Series 2021 Governmental Notes, and the Tax Regulatory Agreement;

(h) All leases will comply with all applicable laws and the Tax Regulatory Agreement;

(i) In connection with any lease or grant by the Borrower of the use of the Project, the Borrower will require that the lessee or user of any portion of the Project not use that portion of the Project in any manner which would violate the covenants set forth in this Project Loan Agreement, the Tax Certificate for the Series 2018 Tax-Exempt Governmental Notes, the Tax Certificate for the Series 2021 Governmental Notes, or the Tax Regulatory Agreement;

(j) No proceeds of the Tax-Exempt Funding Loan shall be used for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition; provided, however, that this limitation shall not apply with respect to any building (and the equipment therefor) if rehabilitation expenditures (as defined in Section 147(d) of the Code) with respect to such building equal or exceed fifteen percent (15%) of the portion of the cost of acquiring such building (and equipment) financed with the proceeds; and provided, further, that this limitation shall not apply with respect to any structure other than a building if rehabilitation expenditures with respect to such structure equal or exceed one hundred percent (100%) of the portion of the cost of acquiring such structure financed with the proceeds;

(k) From the proceeds of the Tax-Exempt Funding Loan and investment earnings thereon, an amount not in excess of two percent (2%) of the proceeds of the Series 2018 Tax-Exempt Governmental Notes, will be used for Costs of Issuance of the Series 2018 Tax-Exempt Governmental Notes, and an amount not in excess of two percent (2%) of the proceeds of the Series 2021 Governmental Notes, will be used for Costs of Issuance of the Series 2021 Governmental Notes all within the meaning of Section 147(g)(1) of the Code; and

(l) No proceeds of the Tax-Exempt Funding Loan shall be used directly or indirectly to provide any airplane, skybox or other private luxury box, health club facility, facility used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

In the event of a conflict between the terms and requirements of this Section 2.05, the Tax Certificate for the Series 2018 Tax-Exempt Governmental Notes, and the Tax Certificate for the Series 2021 Governmental Notes, the terms and requirements of the Tax Certificates shall control.

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ARTICLE III

THE PROJECT LOANS

Section 3.01 *Conditions to Funding the Series 2018 Project Loan.* On the Delivery Date of the Series 2018 Governmental Notes and thereafter, the Governmental Lender caused the proceeds of the first advance of the Series 2018 Funding Loan to be deposited with the Fiscal Agent in accordance with Sections 2.01 and 2.12 of the Funding Loan Agreement and Section 3.03 hereof. The Fiscal Agent used such proceeds as provided in Article II of the Funding Loan Agreement to make the Series 2018 Project Loan, provided that no initial disbursements of proceeds were made until the following conditions were met:

(a) The Borrower shall have executed and delivered to the Governmental Lender the Series 2018 Project Notes and the Governmental Lender shall have endorsed the Series 2018 Project Notes to the Fiscal Agent;

(b) The Security Instrument and the Assignment (both as then in effect), with only such changes therein as shall be approved in writing by Funding Lender Representative, shall have been executed and delivered by the Borrower and the Governmental Lender, respectively, and delivered to the Title Company for recording in the appropriate office for officially recording real estate documents in the jurisdiction in which the Project is located (the “**Recorder’s Office**”);

(c) The Tax Regulatory Agreement (as then in effect) shall have been executed and delivered by the parties thereto and shall have been delivered to the Title Company for recording in the Recorder’s Office, and the Fiscal Agent shall have received evidence satisfactory to it of such delivery;

(d) All other Financing Documents not listed above shall have been executed and delivered by all parties thereto and delivered to the Fiscal Agent;

(e) The Borrower shall have delivered to the Fiscal Agent, the Governmental Lender, the Funding Lender Representative and the Servicer a certificate confirming, as of the Delivery Date, the matters set forth in Section 2.02 hereof and an opinion of its counsel or other counsel satisfactory to the Fiscal Agent, the Governmental Lender, Bond Counsel, the Funding Lender Representative, Freddie Mac and the Freddie Mac Seller/Servicer; and

(f) The Borrower shall have satisfied all conditions to the first advance set forth in the Construction Continuing Covenant Agreement.

Pursuant to Section 2.11 of the Funding Loan Agreement, the second and subsequent advances of the Series 2018 Funding Loan were conditioned on the delivery by the Borrower to the Fiscal Agent of the items listed in Section 2.11 of the Funding Loan Agreement.

Section 3.01A *Conditions to Funding the Series 2021 Project Loan.* On the Delivery Date of the Series 2021 Governmental Notes and thereafter, the Governmental Lender shall cause the proceeds of the first advance of the Series 2021 Funding Loan to be deposited with the Fiscal Agent in accordance with Sections 2.01A and 2.12 of the Funding Loan Agreement and Section 3.03 hereof. The Fiscal Agent shall use such proceeds as provided in Article II of the Funding Loan Agreement to make the Series 2021

Project Loan, provided that no initial disbursements of proceeds shall be made until the following conditions have been met:

(a) The Borrower shall have executed and delivered to the Governmental Lender the Series 2021 Project Notes and the Governmental Lender shall have endorsed the Series 2021 Project Notes to the Fiscal Agent;

(b) The Security Instrument and the Assignment for the Series 2021 Governmental Notes, with only such changes therein as shall be approved in writing by Funding Lender Representative, shall have been executed and delivered by the Borrower and the Governmental Lender, respectively, and delivered to the Title Company for recording in the Recorder's Office;

(c) The Tax Regulatory Agreement shall have been executed and delivered by the parties thereto and shall have been delivered to the Title Company for recording in the Recorder's Office, and the Fiscal Agent shall have received evidence satisfactory to it of such delivery;

(d) All other Financing Documents not listed above shall have been executed and delivered by all parties thereto and delivered to the Fiscal Agent;

(e) The Borrower shall have delivered to the Fiscal Agent, the Governmental Lender, the Funding Lender Representative and the Servicer a certificate confirming, as of the Delivery Date, the matters set forth in Section 2.02 hereof and an opinion of its counsel or other counsel satisfactory to the Fiscal Agent, the Governmental Lender, Bond Counsel, the Funding Lender Representative, Freddie Mac and the Freddie Mac Seller/Servicer; and

(f) The Borrower shall have satisfied all conditions to the first advance set forth in the Construction Continuing Covenant Agreement.

Pursuant to Section 2.11 of the Funding Loan Agreement, the second and subsequent advances of the Series 2021 Funding Loan are conditioned on the delivery by the Borrower to the Fiscal Agent of the items listed in Section 2.11 of the Funding Loan Agreement.

Section 3.02 *Terms of the Project Loans; Servicing.*

(a) The Series 2018 Project Loan shall (i) be evidenced by the Series 2018 Project Notes; (ii) be secured by the Security Instrument on a parity basis with the Series 2021 Project Loan; (iii) be in the maximum aggregate principal amount of \$58,789,808; (iv) bear interest as provided in the Series 2018 Project Notes; (v) provide for principal and interest payments in accordance with the Series 2018 Project Notes; and (vi) be subject to optional and mandatory prepayment at the times, in the manner and on the terms, and have such other terms and provisions, as provided herein and in the Series 2018 Project Notes. The outstanding principal balance of the Series 2018 Project Loan at any time shall be an amount equal to the proceeds of the Series 2018 Funding Loan advanced by the Funding Lender, minus any amounts prepaid with respect to the principal in accordance with the terms hereof and the Series 2018 Project Notes. The outstanding principal balance of the Series 2018 Project Notes at any time shall be an amount equal to the proceeds of the corresponding Series 2018 Governmental Notes (Tax-Exempt or Taxable) advanced by the Funding Lender (as designated by the Funding Lender), minus any amounts prepaid with respect to the principal in accordance with the terms hereof and such Series 2018 Project Note.

(b) The Series 2021 Project Loan shall (i) be evidenced by the Series 2021 Project Notes; (ii) be secured by the Security Instrument on a parity basis with the Series 2018 Project Loan; (iii) be in the maximum aggregate principal amount of \$300,000; (iv) bear interest as provided in the Series 2021 Project Notes; (v) provide for principal and interest payments in accordance with the Series 2021 Project Notes; and (vi) be subject to optional and mandatory prepayment at the times, in the manner and on the terms, and have such other terms and provisions, as provided herein and in the Series 2021 Project Notes. The outstanding principal balance of the Series 2021 Project Loan at any time shall be an amount equal to the proceeds of the Series 2021 Funding Loan advanced by the Funding Lender, minus any amounts prepaid with respect to the principal in accordance with the terms hereof and the Series 2021 Project Notes. The outstanding principal balance of the Series 2021 Project Notes at any time shall be an amount equal to the proceeds of the corresponding Series 2021 Governmental Notes advanced by the Funding Lender (as designated by the Funding Lender), minus any amounts prepaid with respect to the principal in accordance with the terms hereof and such Series 2021 Project Note.

(c) The Funding Lender Representative may appoint a Servicer to service the Loans for all or a portion of the term of the Loans. The Administrative Agent shall be the Servicer of the Loans during the Construction Phase. On the Freddie Mac Purchase Date, the Freddie Mac Seller/Servicer shall become the Servicer and shall service the Loans as required by the Freddie Mac Commitment and the Guide. The Funding Lender Representative may remove a Servicer or appoint a replacement Servicer, in its discretion, by written notice provided to the Governmental Lender, the Fiscal Agent and the Borrower. Any successor Servicer shall signify its acceptance of the duties and obligations imposed upon it by the Funding Loan Agreement and this Project Loan Agreement by executing such instrument(s) as shall be acceptable to the Funding Lender Representative, a copy of which shall be provided to the parties hereto.

(d) Notwithstanding any provision in this Project Loan Agreement to the contrary, during any period that a Servicer is engaged with respect to the Loans, the Governmental Lender and the Fiscal Agent agree that all payments of principal of, Prepayment Premium, if any, and interest on the Funding Loans and all fees due hereunder and under the Funding Loan Agreement shall be paid by the Borrower to the Servicer. The Servicer shall remit all payments collected from the Borrower of principal of, Prepayment Premium, if any, and interest on the Funding Loans, together with other amounts due to the Funding Lender, directly to the Funding Lender (without payment through the Fiscal Agent) per the instructions of the Funding Lender Representative. The Servicer shall be entitled to retain its Servicing Fee (if any) collected from the Borrower and shall remit the Fee Component with respect to the Governmental Lender to the Governmental Lender and shall remit the Fiscal Agent's Ordinary Fees and Expenses to the Fiscal Agent, together with any other amounts due to the Governmental Lender and the Fiscal Agent collected by the Servicer from the Borrower, in each case in accordance with their respective instructions. Any payment made in accordance with the provisions of this Section shall be accompanied by sufficient information to identify the source and proper application of such payment. The Servicer shall promptly notify the Fiscal Agent, the Funding Lender Representative, and the Governmental Lender in writing of any failure of the Borrower to make any payment of principal of, Prepayment Premium, if any, and interest on the Funding Loans when due or to pay any fees due hereunder or under the Funding Loan Agreement, and the Fiscal Agent and the Governmental Lender shall not be deemed to have any notice of such failure unless it has received such notice in writing.

(e) The Governmental Lender, the Fiscal Agent, and the Borrower hereby acknowledge and agree that (i) the Funding Lender Representative has appointed the Servicer (which during the Construction Phase shall be the Administrative Agent) to service and administer the Project Loans; (ii) the selection or removal of any Servicer is in the sole and absolute discretion of the Funding Lender Representative; and (iii) neither the Governmental Lender nor the Fiscal Agent shall terminate or attempt

to terminate any Servicer as the servicer for the Project Loans or appoint or attempt to appoint a substitute servicer for the Project Loans. The Governmental Lender, the Fiscal Agent, and the Borrower further hereby acknowledge and agree with respect to the Servicer during the Permanent Phase that: (1) the Guide is subject to amendment without the consent of the Fiscal Agent, the Governmental Lender or the Borrower; and (2) none of the Fiscal Agent, the Governmental Lender or the Borrower shall have any rights under, or be a third party beneficiary of, the Guide.

Section 3.03 Deposits.

(a) On the Delivery Date of the Series 2018 Governmental Notes, (i) the initial advance of the Tax-Exempt Funding Loan pursuant to the Funding Loan Agreement in the amount of \$50,001 was deposited with the Fiscal Agent into the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund in accordance with Sections 2.12 and 4.02 of the Funding Loan Agreement; and (ii) the initial advance of the Taxable Funding Loan pursuant to the Funding Loan Agreement in the amount of \$0.00 was deposited with the Fiscal Agent into the Taxable Note Proceeds Subaccount of the Project Account of the Project Loan Fund, in accordance with Sections 2.12 and 4.02 of the Funding Loan Agreement. On each date of an advance of the proceeds of the Series 2018 Funding Loan (except for an advance to pay interest and other amounts due to the Administrative Agent or the Initial Funding Lender as provided in Sections 4.3 and 9.8 of the Construction Continuing Covenant Agreement), such proceeds shall be deposited into either the Tax-Exempt Note Proceeds Subaccount or the Taxable Note Proceeds Subaccount in the Project Account of the Project Loan Fund. On the Delivery Date of the Series 2018 Governmental Notes, from the Borrower Equity Deposit, the Borrower deposited with the Fiscal Agent the sum of (1) \$0.00 for credit to the Cost of Issuance Fund, and (2) \$0.00 for credit to the Borrower Equity Account of the Project Loan Fund. The Borrower deposited with the Servicer the sum of \$0.00 as the Initial Debt Service Deposit. Subject to the conditions listed in Section 3.01 hereof, amounts on deposit in the Project Loan Fund are to be disbursed by the Fiscal Agent to the Title Company for further disbursement in accordance with the Construction Continuing Covenant Agreement and the Disbursing Agreement, or otherwise as provided in Section 2.12(d) of the Funding Loan Agreement.

(b) On the Delivery Date of the Series 2021 Governmental Notes, \$300,000 of the initial advance of the Tax-Exempt Funding Loan pursuant to the Funding Loan Agreement shall be deposited with the Fiscal Agent into the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund in accordance with Sections 2.12 and 4.02 of the Funding Loan Agreement. On each date of an advance of the proceeds of the Series 2021 Funding Loan (except for an advance to pay interest and other amounts due to the Administrative Agent or the Initial Funding Lender as provided in Sections 4.3 and 9.8 of the Construction Continuing Covenant Agreement), such proceeds shall be deposited into the Tax-Exempt Note Proceeds Subaccount in the Project Account of the Project Loan Fund. On the Delivery Date of the Series 2021 Governmental Notes, from the Borrower Equity Deposit, the Borrower will deposit with the Fiscal Agent the sum of (1) \$_____ for credit to the Cost of Issuance Fund, and (2) \$_____ for credit to the Borrower Equity Account of the Project Loan Fund. The Borrower will deposit with the Servicer the sum of \$_____ as the Initial Debt Service Deposit. Subject to the conditions listed in Section 3.01 hereof, amounts on deposit in the Project Loan Fund are to be disbursed by the Fiscal Agent to the Title Company for further disbursement in accordance with the Construction Continuing Covenant Agreement and the Disbursing Agreement, or otherwise as provided in Section 2.12(d) of the Funding Loan Agreement.

To the extent that amounts in the Cost of Issuance Fund from the above-mentioned sources are insufficient to pay all costs of closing the Loans, the Borrower shall cause the payment of such additional costs of closing the Loans to be made on its behalf as such amounts become due.

Section 3.04 *Assignment to Fiscal Agent.* The parties hereto acknowledge, and the Borrower consents to, the pledge and assignment by the Governmental Lender to the Fiscal Agent pursuant to the Funding Loan Agreement of all of the Governmental Lender's right, title, and interest in this Project Loan Agreement (excluding the Unassigned Rights), the Project Loans, the Project Notes, the Security Instrument, and the Revenues as security for the payment of the principal of, Prepayment Premium, if any, and interest on the Governmental Notes and the payment of any other amounts due under the Financing Documents.

Section 3.05 *Investment of Funds.* Except as otherwise provided in the Funding Loan Agreement, any money held as a part of any fund or account established under the Funding Loan Agreement shall be invested or reinvested by the Fiscal Agent as directed by the Borrower in Qualified Investments in accordance with Section 4.08 of the Funding Loan Agreement.

The Borrower acknowledges that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant the Borrower the right to receive brokerage confirmations of the security transactions as they occur, to the extent permitted by law, the Borrower specifically waives compliance with 12 C.F.R. Part 12 and hereby notifies the Fiscal Agent hereunder that no brokerage confirmations need be sent relating to the security transactions as they occur.

Section 3.06 *Damage; Destruction and Eminent Domain.* If, prior to payment in full of the Project Loans, the Project or any portion thereof is destroyed or damaged in whole or in part by fire or other casualty, or title to, or the temporary use of, the Project or any portion thereof shall have been taken by the exercise of the power of eminent domain, and the Governmental Lender, the Borrower, the Fiscal Agent or the Servicer receives Net Proceeds from insurance or any condemnation award in connection therewith, such Net Proceeds shall be utilized as provided in the Project Loan Documents and the Funding Loan Agreement.

Section 3.07 *Enforcement of Financing Documents.* The Fiscal Agent or the Funding Lender Representative may enforce and take all reasonable steps, actions and the proceedings necessary for the enforcement of all terms, covenants and conditions of the Funding Loan Agreement and the other Financing Documents as and to the extent set forth herein and therein.

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ARTICLE IV

LOAN PAYMENTS

Section 4.01 *Payments Under the Project Notes; Independent Obligation of Borrower.*

(a) **Payment Obligations.** The Borrower agrees to repay the Project Loans on each Project Loan Payment Date as provided in the Project Notes, and in all instances at the times and in the amounts necessary to enable the Fiscal Agent, on behalf of the Governmental Lender, or the Servicer, to pay all amounts payable with respect to the Funding Loans, when due, whether at maturity or upon prepayment (with the Prepayment Premium, if applicable), acceleration or otherwise. To ensure such timely payment during the Permanent Phase, the Servicer shall collect from the Borrower, and the Borrower shall provide to the Servicer the foregoing payments not less than two (2) Business Days prior to each respective Project Loan Payment Date.

The obligation of the Borrower to make the payments set forth in this Article IV shall be an independent obligation of the Borrower, separate from its obligation to make payments under the Project Notes, provided that in all events payments made by the Borrower under and pursuant to the Project Notes shall be credited against the Borrower's obligations hereunder on a dollar for dollar basis. If for any reason a Project Notes or any provision of a Project Notes shall be held invalid or unenforceable against the Borrower by any court of competent jurisdiction, such Project Notes or such provision of such Project Notes shall be deemed to be the obligation of the Borrower pursuant to this Project Loan Agreement to the full extent permitted by law and such holding shall not invalidate or render unenforceable any of the provisions of this Article IV and shall not serve to discharge any of the Borrower's payment obligations hereunder or eliminate the credit against such obligations to the extent of payments made under the Project Notes.

(b) **Obligations Unconditional; No Set-Off.** The obligations of the Borrower to repay the Project Loans, to perform all of its obligations under the Project Loan Documents, to provide indemnification pursuant to Section 6.01 hereof, to pay costs, expenses and charges pursuant to Section 4.02 hereof and to make any and all other payments required by this Project Loan Agreement, the Funding Loan Agreement or any other documents contemplated by this Project Loan Agreement or by the Project Loan Documents shall, subject to the limitations set forth in Section 4.06 hereof, be absolute and unconditional, and shall be paid or performed without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Project or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Governmental Lender's legal organization or status, or any default of the Governmental Lender or the Fiscal Agent hereunder or under any other Financing Document, and regardless of the invalidity of any action of the Governmental Lender or the invalidity of any portion of this Project Loan Agreement.

(c) **Payments from Borrower to Fiscal Agent or Servicer.** Each payment by the Borrower hereunder or under the Project Notes shall be made in immediately available funds to the

Servicer (which, during the Construction Phase, shall be the Administrative Agent) on each Project Loan Payment Date or such other date when such payment is due; provided, however, that during the Permanent Phase such Project Loan Payment shall be made directly to the Fiscal Agent if there is no Servicer or if the Borrower is so directed in writing by the Funding Lender Representative. Each such payment shall be made to the Fiscal Agent or the Servicer, as applicable, by deposit to such account as the Fiscal Agent or the Servicer may designate by written notice to the Borrower. Whenever any Project Loan Payment or any other payment under this Project Loan Agreement or under the Project Notes shall be stated to be due on a day that is not a Business Day, such payment shall be made on the first Business Day immediately thereafter.

Section 4.02 *Additional Payments Under the Project Notes and This Project Loan Agreement.*

(a) In addition to the payments set forth in Section 4.01 hereof, payments to be made by the Borrower under the Project Notes include certain money to be paid in respect of, among others, the Fee Component, the Servicing Fee, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents, as set forth in subsection (b) below. To the extent that any portion of the Fee Component, the Servicing Fee, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents remain due and owing at any time, such amounts remaining due and owing shall be payable from money on deposit in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement or from other money of the Borrower, to the extent that money in the Administration Fund is insufficient for such purposes. All other fees and expenses shall be payable from money of the Borrower as provided in subsection (b) below.

(b) In addition to the funding of the initial deposits required of the Borrower described in Section 3.03 hereof, the Borrower shall pay (or cause to be paid by the Servicer or the Fiscal Agent (to the extent paid from money on deposit in the Borrower Equity Account/Taxable Note Proceeds Subaccount, as applicable)), in consideration of the funding of the Series 2018 Project Loans, the following fees, expenses and other money payable in connection with the Loans:

(i) On the Delivery Date of the Series 2018 Governmental Notes, from money on deposit in the Borrower Equity Account/Taxable Note Proceeds Subaccount or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Administrative Agent, the origination fees of the Initial Funding Lender, together with all third-party and out-of-pocket expenses of the Administrative Agent and the Initial Funding Lender (including but not limited to the fees and expenses of counsel to the Administrative Agent and the Initial Funding Lender) in connection with the Series 2018 Loans.

(ii) On the Delivery Date of the Series 2018 Governmental Notes, from money on deposit in the Borrower Equity Account/Taxable Note Proceeds Subaccount or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to Freddie Mac, all third-party and out-of-pocket expenses of Freddie Mac (including but not limited to the fees and expenses of counsel to Freddie Mac) in connection with the Series 2018 Loans.

(iii) On the Delivery Date of the Series 2018 Governmental Notes, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Governmental Lender, the Governmental Lender Fee, together with all third-party and out-of-pocket expenses of the Governmental Lender (including but not limited to the fees and expenses of Bond Counsel and counsel to the Governmental

Lender) in connection with the Series 2018 Loans and the issuance of the Series 2018 Governmental Notes.

(iv) On or after the Delivery Date of the Series 2018 Governmental Notes, from money on deposit in the Borrower Equity Account/Taxable Note Proceeds Subaccount or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Freddie Mac Seller/Servicer, its commitment fees and application fees, together with all third-party and out-of-pocket expenses of the Freddie Mac Seller/Servicer (including but not limited to the fees and expenses of counsel to the Freddie Mac Seller/Servicer, if any) in connection with the Series 2018 Loans.

(v) On the Delivery Date of the Series 2018 Governmental Notes, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Fiscal Agent, an acceptance fee in an amount equal to \$750, together with all third-party and out-of-pocket expenses of the Fiscal Agent (including but not limited to the fees and expenses of counsel to the Fiscal Agent) in connection with the Series 2018 Loans and the issuance of the Series 2018 Governmental Notes.

(vi) To the Fiscal Agent, the Fiscal Agent's Ordinary Fees and Expenses and the Fiscal Agent's Extraordinary Fees and Expenses when due from time to time.

(vii) To the Governmental Lender, any extraordinary expenses not covered by the Governmental Lender Fee the Governmental Lender may incur in connection with the Financing Documents or the Project from time to time, including any expenses (including accountant or attorneys' fees) incurred in connection with any audit, inquiry, document request or other investigation by the Internal Revenue Service, the Minnesota Department of Revenue, the State Auditor, or any other federal or State agency.

(viii) To the Rebate Analyst, the reasonable fees and expenses of such Rebate Analyst in connection with the computations relating to arbitrage rebate required under the Funding Loan Agreement and this Project Loan Agreement when due from time to time.

(ix) To the Funding Lender Representative, any amount due and owing the Funding Lender Representative from time to time but unpaid under the Continuing Covenant Agreement.

(x) To the Servicer, the amount of any portion of the Servicing Fee remaining unpaid and any fees, costs and expenses of the Servicer as provided in the Continuing Covenant Agreement.

(xi) To the Servicer, the amounts required to be deposited in respect of reserves and impounds required under the Continuing Covenant Agreement and the other Project Loan Documents.

(xii) If the Fiscal Agent is collecting and remitting loan payments under the Funding Loan Agreement, to the Fiscal Agent, within two (2) Business Days of receipt from the Fiscal Agent of a notice of deficiency in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement, the amount of any such deficiency in the Administration Fund.

(c) In addition to the funding of the initial deposits required of the Borrower described in Section 3.03 hereof, the Borrower shall pay (or cause to be paid by the Servicer or the Fiscal Agent (to

the extent paid from money on deposit in the Borrower Equity Account/Taxable Note Proceeds Subaccount, as applicable)), in consideration of the funding of the Series 2021 Project Loan, the following fees, expenses and other money payable in connection with the Series 2021 Loans:

(i) On the Delivery Date of the Series 2021 Governmental Notes, from money on deposit in the Borrower Equity Account or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Administrative Agent, the origination fees of the Initial Funding Lender, together with all third-party and out-of-pocket expenses of the Administrative Agent and the Initial Funding Lender (including but not limited to the fees and expenses of counsel to the Administrative Agent and the Initial Funding Lender) in connection with the Series 2021 Loans.

(ii) On the Delivery Date of the Series 2021 Governmental Notes, from money on deposit in the Borrower Equity Account or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to Freddie Mac, all third-party and out-of-pocket expenses of Freddie Mac (including but not limited to the fees and expenses of counsel to Freddie Mac) in connection with the Series 2021 Loans.

(iii) On the Delivery Date of the Series 2021 Governmental Notes, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Governmental Lender, the Governmental Lender Fee, together with all third-party and out-of-pocket expenses of the Governmental Lender (including but not limited to the fees and expenses of Bond Counsel and counsel to the Governmental Lender) in connection with the Series 2021 Loans and the issuance of the Series 2021 Governmental Notes.

(iv) On or after the Delivery Date of the Series 2021 Governmental Notes, from money on deposit in the Borrower Equity Account or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Freddie Mac Seller/Service, its commitment fees and application fees, together with all third-party and out-of-pocket expenses of the Freddie Mac Seller/Service (including but not limited to the fees and expenses of counsel to the Freddie Mac Seller/Service, if any) in connection with the Series 2021 Loans.

(v) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Fiscal Agent, an acceptance fee in an amount equal to \$_____, together with all third-party and out-of-pocket expenses of the Fiscal Agent (including but not limited to the fees and expenses of counsel to the Fiscal Agent) in connection with the Series 2021 Loans and the issuance of the Series 2021 Governmental Notes.

(vi) To the Fiscal Agent, the Fiscal Agent's Ordinary Fees and Expenses and the Fiscal Agent's Extraordinary Fees and Expenses when due from time to time.

(vii) To the Governmental Lender, any extraordinary expenses not covered by the Governmental Lender Fee the Governmental Lender may incur in connection with the Financing Documents or the Project from time to time, including any expenses (including accountant or attorneys' fees) incurred in connection with any audit, inquiry, document request or other investigation by the Internal Revenue Service, the Minnesota Department of Revenue, the State Auditor, or any other federal or State agency.

(viii) To the Rebate Analyst, the reasonable fees and expenses of such Rebate Analyst in connection with the computations relating to arbitrage rebate required under the Funding Loan Agreement and this Project Loan Agreement when due from time to time.

(ix) To the Funding Lender Representative, any amount due and owing the Funding Lender Representative from time to time but unpaid under the Continuing Covenant Agreement.

(x) To the Servicer, the amount of any portion of the Servicing Fee remaining unpaid and any fees, costs and expenses of the Servicer as provided in the Continuing Covenant Agreement.

(xi) To the Servicer, the amounts required to be deposited in respect of reserves and impounds required under the Continuing Covenant Agreement and the other Project Loan Documents.

(xii) If the Fiscal Agent is collecting and remitting loan payments under the Funding Loan Agreement, to the Fiscal Agent, within two (2) Business Days of receipt from the Fiscal Agent of a notice of deficiency in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement, the amount of any such deficiency in the Administration Fund.

Section 4.03 *Payments to Rebate Fund.* The Borrower shall pay when due to the Fiscal Agent at the Principal Office of the Fiscal Agent any amount required to be deposited in the Rebate Fund in accordance with Section 4.12 of the Funding Loan Agreement.

Section 4.04 *Prepayment.*

(a) **Optional Prepayment of the Project Loans.** The Borrower shall have the option to prepay the Project Loans in whole, together with all accrued and unpaid interest thereon, as provided in the respective Project Notes.

(b) **Mandatory Prepayment of the Project Loans.** The Borrower shall be required to prepay all or a portion of the outstanding principal balance of the Project Loans, together with accrued interest thereon, and together with any Prepayment Premium due under the applicable Project Note, as provided therein. Additionally, the Borrower shall be required to prepay all or a portion of the outstanding principal balance of the Project Loans, together with accrued interest thereon, and together with any Prepayment Premium due under the applicable Project Note, in connection with the following:

(i) in part, in the event the Borrower elects to make a Pre-Conversion Loan Equalization Payment;

(ii) in whole, on or after the Forward Commitment Maturity Date, at the written direction of the Administrative Agent, if the Notice of Conversion is not issued by the Freddie Mac Seller/Servicer prior to the Forward Commitment Maturity Date; and

(iii) in whole, as required under the Construction Continuing Covenant Agreement.

(c) **Defeasance of the Funding Loans.** In addition, after the Conversion Date and prior to the Window Period, the Borrower may cause a defeasance of one or more of the Funding Loans resulting in a release of the Pledged Security by satisfying the conditions set forth hereunder and in Article IX of the Funding Loan Agreement. In connection therewith, the Borrower will give written notice (a

“**Defeasance Notice**”) to the Funding Lender Representative, the Servicer, the Governmental Lender and the Fiscal Agent of the date the Borrower desires to defease the applicable Funding Loan (the “**Defeasance Date**”). The Defeasance Date may not be more than sixty (60) calendar days, nor less than thirty (30) calendar days, after the delivery of the Defeasance Notice. In connection with the delivery of the Defeasance Notice, the Borrower shall cause to be paid to the Funding Lender Representative the Defeasance Fee set forth in the Continuing Covenant Agreement. In addition to, and not in limitation of any other provisions of this Project Loan Agreement, the Borrower shall pay all fees, costs and expenses in connection with any defeasance whether or not such defeasance occurs. Following such defeasance in accordance with the terms and conditions hereof and the Funding Loan Agreement, the respective Project Loan shall be deemed paid in full, and the Borrower shall be entitled to the release of the respective Security Instrument, the Pledged Security and other security provided by it for the respective Project Loan, subject to the terms and conditions hereof and the other Financing Documents.

Section 4.05 *Borrower’s Obligations Upon Prepayment.* In the event of any prepayment, the Borrower will timely pay, or cause to be paid through the Servicer, an amount equal to the principal amount of the Funding Loans or portion thereof called for prepayment, together with interest accrued to the prepayment date and Prepayment Premium, if any. In addition, the Borrower will timely pay all fees, costs, and expenses associated with any prepayment of the Funding Loans.

Section 4.06 *Limits on Personal Liability.*

(a) During the Construction Phase, the obligations of the Borrower under this Project Loan Agreement and the other Financing Documents shall be full-recourse liabilities of the Borrower.

(b) During the Permanent Phase, except as otherwise set forth in the Project Notes and subsection (c) below, the obligations of the Borrower under this Project Loan Agreement and the other Financing Documents shall be non-recourse liabilities of the Borrower which shall be enforced only against the Project and other property of the Borrower encumbered by the Financing Documents and not personally against the Borrower or any partner of the Borrower or any successor or assign of the Borrower. However, nothing in this Section 4.06 shall limit the right of the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative to proceed against the Borrower to recover any fees owing to any of them or any actual out-of-pocket expenses (including but not limited to actual out-of-pocket attorneys’ fees incurred by any of them) incurred by any of them in connection with the enforcement of any rights under this Project Loan Agreement or the other Financing Documents. Nothing in this Section 4.06 shall limit any right that the Servicer or the Funding Lender Representative may have to enforce the Project Notes, the Security Instrument, or any other Financing Document in accordance with their terms.

(c) During the Permanent Phase, notwithstanding anything contained in any other provision of this Project Loan Agreement to the contrary (but subject to the provisions of Section 7.06 hereof), the following obligations of the Borrower shall be and remain the joint and several full recourse obligations of the Borrower and the Borrower’s general partner: (i) the Borrower’s obligations to the Governmental Lender and the Fiscal Agent under Sections 4.02(b)(iii), (v), (vi), and (vii) hereof and 4.02(c)(iii), (v), (vi), and (vii) hereof; (ii) the Borrower’s obligations under Sections 2.05 and 6.01 hereof; (iii) the Borrower’s obligation to pay any and all rebate amounts that may be or become owing with respect to the Funding Loan and fees and expenses of the Rebate Analyst as provided in Sections 2.04 and 4.03 hereof and in the Tax Certificate for the Series 2018 Tax-Exempt Governmental Notes and the Tax Certificate for the Series 2021 Governmental Notes; and (iv) the Borrower’s obligation to pay legal fees and expenses under Section 7.04 hereof.

Section 4.07 *Compliance with Governmental Lender's Private Activity Bond Policy.* The Borrower agrees to comply with the Governmental Lender's Policy Number 2.5 related to Tax Exempt Financing.

ARTICLE V

SPECIAL COVENANTS OF BORROWER

Section 5.01 *Performance of Obligations.* The Borrower shall keep and faithfully perform all of its covenants and undertakings contained herein and in the Financing Documents, including without limitation its obligations to make all payments set forth herein and therein in the amounts, at the times and in the manner set forth herein and therein.

Section 5.02 *Compliance with Applicable Laws.* All work performed in connection with the Project shall be performed in strict compliance with all applicable federal, state, county and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter.

Section 5.03 *Funding Loan Agreement Provisions.* The execution of this Project Loan Agreement shall constitute conclusive evidence of approval of the Funding Loan Agreement by the Borrower. Whenever the Funding Loan Agreement by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Funding Loan Agreement, and the Borrower shall carry out and perform all of its obligations under the Funding Loan Agreement as fully as if the Borrower were a party to the Funding Loan Agreement.

Section 5.04 *Reserved.*

Section 5.05 *Borrower to Maintain Its Existence; Certification of No Default.*

(a) The Borrower agrees to maintain its existence and maintain its current legal status with authority to own and operate the Project.

(b) In addition to performing all other similar requirements under the Financing Documents to which the Borrower is a party, the Borrower shall, within thirty (30) days after the end of each calendar year, render to the Fiscal Agent a certificate executed by an Authorized Officer of the Borrower to the effect that the Borrower is not, as of the date of such certificate, in default of any of its covenants, agreements, representations or warranties under any of the Financing Documents to which the Borrower is a party and that, to the best of the Borrower's knowledge, after reasonable investigation, there has occurred no default or Event of Default (as such terms are defined in each respective Financing Document) under any of the Financing Documents.

Section 5.06 *Borrower to Remain Qualified in State and Appoint Agent.* The Borrower will remain duly qualified to transact business in the State and will maintain an agent in the State on whom service of process may be made in connection with any actions against the Borrower.

Section 5.07 *Sale or Other Transfer of Project.* The Borrower may convey and transfer the Project only upon strict compliance with the provisions of the Financing Documents, and upon receipt of the prior written consent of the Governmental Lender and the Funding Lender Representative.

Section 5.08 *Right to Perform Borrower's Obligations.* In the event the Borrower fails to perform any of its obligations under this Project Loan Agreement, the Governmental Lender, the Fiscal Agent, the Servicer, the Borrower's limited partners, and/or the Funding Lender Representative, after

giving requisite notice, if any, and subject to Section 5.05 of the Funding Loan Agreement, may, but shall be under no obligation to, perform such obligation and pay all costs related thereto, and all such costs so advanced shall become an additional obligation of the Borrower hereunder, payable on demand and if not paid on demand with interest thereon at the default rate of interest payable under the Project Loan Documents.

Section 5.09 *Notice of Certain Events.* The Borrower shall promptly advise the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Servicer in writing of the occurrence of any Event of Default hereunder or any event which, with the passage of time or service of notice or both, would constitute an Event of Default, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

Section 5.10 *Survival of Covenants.* The provisions of Sections 2.04, 2.05, 4.02, 4.03, 6.01 and 7.04 hereof shall survive the expiration or earlier termination of this Project Loan Agreement and, with regard to the Fiscal Agent, the resignation or removal of the Fiscal Agent.

Section 5.11 *Access to Project; Records.* Subject to reasonable notice and the rights of tenants at the Project, the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, and the respective duly authorized agents of each, shall have the right (but not any duty or obligation) at all reasonable times and during normal business hours: (a) to enter the Project and any other location containing the records relating to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; (b) to inspect and audit any and all of the Borrower's records or accounts pertaining to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; and (c) to require the Borrower, at the Borrower's sole expense, (i) to furnish such documents to the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, as the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative, as the case may be, from time to time, deems reasonably necessary in order to determine that the provisions of the Financing Documents have been complied with and (ii) to make copies of any records that the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative or the respective duly authorized agents of each, may reasonably require. The Borrower shall make available to the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, such information concerning the Project, the Security Instrument and the Financing Documents as any of them may reasonably request.

Section 5.12 *Tax Regulatory Agreement.* The covenants of the Borrower in the Tax Regulatory Agreement shall be deemed to constitute covenants of the Borrower running with the land and an equitable servitude for the benefit of the Governmental Lender and the Funding Lender and shall be binding upon any owners of the Project until such time as such restrictions expire as provided in the Tax Regulatory Agreement. The Borrower covenants to file of record the Tax Regulatory Agreement and such other documents, and to take such other steps as are necessary in order to assure that the restrictions contained in the Tax Regulatory Agreement will, subject to the terms of the Tax Regulatory Agreement, be binding upon all owners of the Project. The Borrower covenants to include such restrictions or a reference to such restrictions in any documents transferring any interest in the Project to another to the end that such transferee has notice of, and is bound by, the Tax Regulatory Agreement. Subject to the provisions of Section 7.06 of hereof, the Governmental Lender and the Fiscal Agent shall have the right to seek specific performance of or injunctive relief to enforce the requirements of any covenants of the Borrower contained in the Tax Regulatory Agreement.

Section 5.13 *Damage, Destruction and Condemnation.* If prior to full payment of the Funding Loan (or provision for payment of the Funding Loan in accordance with the provisions of the

Funding Loan Agreement) the Project or any portion of it is destroyed (in whole or in part) or is damaged by fire or other casualty, or title to, or the temporary use of, the Project or any portion of it shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, or shall be transferred pursuant to an agreement or settlement in lieu of eminent domain proceedings, the Borrower shall nevertheless be obligated to continue to pay the amounts specified in this Project Loan Agreement and in the Project Notes to the extent the Project Loans are not prepaid in full in accordance with the terms of the Project Loan Documents.

Section 5.14 *Obligation of the Borrower To Construct the Project.* The Borrower shall proceed with reasonable dispatch (and in no event later than required under the Financing Documents) to complete the construction, development and equipping of the Project as required by the Financing Documents. If amounts on deposit in the Project Loan Fund designated for the Project and available to be disbursed to the Borrower are not sufficient to pay the costs of the acquisition, construction, development and equipping, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender Representative or the Funding Lender in respect of any such additional costs or to any diminution or abatement in the repayment of the Project Loans. None of the Fiscal Agent, the Governmental Lender, the Funding Lender, the Funding Lender Representative or the Servicer makes any representation or warranty, either express or implied, that money, if any, which will be paid into the Project Loan Fund or otherwise made available to the Borrower will be sufficient to complete the Project, and none of the Fiscal Agent, the Governmental Lender, the Funding Lender, the Funding Lender Representative or the Servicer shall be liable to the Borrower, the Funding Lender, or any other person if for any reason the Project is not completed.

Section 5.15 *Filing of Financing Statements.* The Borrower shall file or record or cause to be filed or recorded on or prior to the Delivery Date of the Series 2018 Governmental Notes and the Delivery Date of the Series 2021 Governmental Notes all UCC financing statements which are required to be filed or recorded in order fully to protect and preserve the security interests relating to the priority of the Project Loans, the Funding Loans, the Pledged Security and the Security Instrument, and the rights and powers of the Governmental Lender, the Fiscal Agent and the Funding Lender in connection with such security interests. The Borrower shall cooperate with the Fiscal Agent in connection with the filing of any continuation statements for the purpose of continuing without lapse the effectiveness of such financing statements.

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ARTICLE VI

INDEMNIFICATION

Section 6.01 *Indemnification.*

(a) **Indemnified Losses.** To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender and each of their respective officers, governing commissioners, members, directors, officials, employees, attorneys and agents (collectively, the “**Indemnified Parties**”) against any and all losses, damages (including but not limited to consequential and punitive damages), claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including without limitation reasonable attorneys’ fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise (collectively, “**Losses**”), to the extent arising, directly or indirectly, out of or based upon or in any way relating to:

(i) any breach by the Borrower of its obligations under the Financing Documents or the execution, amendment, restructuring or enforcement thereof, or in connection with transactions contemplated thereby, including the issuance, sale, transfer, or resale of a Governmental Note;

(ii) any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project Loans or the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation, construction or equipping of, the Project or any part thereof;

(iii) any accident, injury to, or death of persons or loss of or damage to property occurring in, on or about the Project or any part thereof;

(iv) any lien (other than liens permitted under the Continuing Covenant Agreement) or charge upon payments by the Borrower to the Governmental Lender, the Fiscal Agent or the Servicer hereunder, or any Taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Governmental Lender or the Fiscal Agent in respect of any portion of the Project (other than income and similar taxes on fees received or earned in connection therewith);

(v) any violation of any environmental law, rule or regulation with respect to, or the release of any hazardous materials from, the Project or any part thereof;

(vi) [Reserved];

(vii) the enforcement of, or any action taken by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative related to remedies under this Project Loan Agreement, the Funding Loan Agreement or any other Financing Document;

(viii) any untrue statement of a material fact or alleged untrue statement of a material fact by the Borrower contained in any offering statement or document for the Governmental Notes or any of the Financing Documents to which the Borrower is a party, or any omission or alleged omission by the Borrower of a material fact from any offering statement or document for the Governmental Notes or any of the Financing Documents to which the Borrower is a party necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading;

(ix) any declaration of taxability of interest on the Tax-Exempt Governmental Notes or allegations (or regulatory inquiry) that interest on the Tax-Exempt Governmental Notes is includable in gross income for federal income tax purposes (except to the extent taxable under Section 147(a) of the Code or any successor provision of the Code and applicable Treasury Regulations or any successor law or regulation);

(x) any audit or inquiry by the Internal Revenue Service, the State Auditor, or the Minnesota Department of Revenue with respect to the Project and/or the tax-exempt status of the Tax-Exempt Governmental Notes; or

(xi) the Fiscal Agent's acceptance or administration of the trust of the Funding Loan Agreement, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Governmental Notes to which it is a party;

except (A) in the case of the foregoing indemnification of the Fiscal Agent, or any of its respective officers, commissioners, members, directors, officials, employees, attorneys, and agents, to the extent such Losses are caused by the negligence, unlawful acts, or willful misconduct of such Indemnified Party; or (B) in the case of the foregoing indemnification of the Servicer, the Funding Lender or the Governmental Lender or any of their respective officers, commissioners, members, directors, officials, employees, attorneys, and agents, to the extent such Losses are caused by the gross negligence or willful misconduct of such Indemnified Party.

Notwithstanding the foregoing, during the Permanent Phase, nothing in this subsection (a) shall impose any recourse liability on the Borrower or its partners for the payment of any principal or interest on the Project Loans.

(b) **Procedures.** In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from such Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected or approved by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that such Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may employ separate counsel at the expense of the Borrower only if, in such Indemnified Party's good faith judgment, a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

(c) **Borrower to Remain Obligated.** Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Project Loan Agreement, the Security Instrument and the Tax Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party

pursuant to this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer unless (i) such subsequent owner assumed in writing at the time of such transfer all obligations of the Borrower under this Section 6.01 (including obligations under this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer) and (ii) any such transfer is in compliance with the requirements of the Financing Documents.

(d) **Survival.** The provisions of this Section 6.01 shall survive the termination of this Project Loan Agreement.

Section 6.02 *Limitation With Respect to the Funding Lender.* Notwithstanding anything in this Project Loan Agreement to the contrary, in the event that the Funding Lender (or its nominee) shall become the owner of the Project as a result of a foreclosure or a deed in lieu of foreclosure, or comparable conversion of the Project Loans, the Funding Lender (or its nominee) shall not be liable for any breach or default of any prior owner of the Project under this Project Loan Agreement and shall only be responsible for defaults and obligations incurred or occurring during the period that the Funding Lender (or its nominee) is the owner of the Project. Accordingly, during any period that the Funding Lender (or its nominee) owns the Project and that this Article VI is applicable to the Funding Lender (or its nominee), the Funding Lender's (or its nominee's) obligations under this Article VI shall be limited to acts and omissions of the Funding Lender (or its nominee) occurring during the period of the Funding Lender's (or its nominee's) ownership of the Project.

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ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.01 *Events of Default.* The following shall be “**Events of Default**” under this Project Loan Agreement, and the term “Event of Default” shall mean, whenever it is used in this Project Loan Agreement, one or all of the following events:

(a) If any representation or warranty made by the Borrower in the Financing Documents or any certificate, statement, data or information furnished by the Borrower in connection therewith or included by the Borrower in its application to the Governmental Lender for assistance proves at any time to have been incorrect when made in any material respect;

(b) If the Borrower fails to pay any amounts due under this Project Loan Agreement, the Project Notes or the Security Instrument at the times and in the amounts required by this Project Loan Agreement, the Project Notes and the Security Instrument, as applicable, provided that, during the Construction Phase, this Section 7.01(b) is subject to any applicable cure or grace period set forth in the Construction Continuing Covenant Agreement;

(c) If the Borrower fails to observe or perform any other term, covenant, condition or agreement (after taking into account any applicable cure period) set forth in this Project Loan Agreement, which failure continues for a period of thirty (30) days after notice of such failure by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative to the Borrower (unless such default cannot with due diligence be cured within thirty (30) days but can be cured within a reasonable period and will not, in the Funding Lender Representative’s sole discretion, adversely affect the Funding Lender or result in impairment of this Project Loan Agreement or any other Financing Document, in which case no Event of Default shall be deemed to exist so long as Borrower shall have commenced to cure the default or Event of Default within thirty (30) days after receipt of notice, and thereafter diligently and continuously prosecutes such cure to completion); provided, however, no such notice or grace periods shall apply in the case of any such failure which could, in the Funding Lender Representative’s judgment, absent immediate exercise by the Funding Lender Representative of a right or remedy under this Agreement, result in harm to the Funding Lender, impairment of this Project Loan Agreement or any other Financing Document;

(d) The occurrence of a default under the Continuing Covenant Agreement or the Security Instrument (after taking into account any applicable cure period thereunder) shall at the discretion of the Funding Lender Representative constitute an Event of Default under this Project Loan Agreement but only if the Fiscal Agent is provided written notice by the Funding Lender Representative that an Event of Default has occurred under such Financing Document and the Fiscal Agent is instructed by the Funding Lender Representative that such default constitutes an Event of Default hereunder. The occurrence of an Event of Default hereunder shall in the discretion of the Funding Lender Representative constitute a default under the other Financing Documents.

Nothing contained in this Section 7.01 is intended to amend or modify any of the provisions of the Financing Documents or to bind the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative to any notice and cure periods other than as expressly set forth in the Financing Documents.

Section 7.02 Remedies on Default. Subject to Section 7.06 hereof, whenever any Event of Default hereunder shall have occurred and be continuing, the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), may take any one or more of the following remedial steps:

(a) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may take such action, without notice or demand, as the Funding Lender deems advisable to protect and enforce its rights against the Borrower and in and to the Project, including declaring the Project Loans to be immediately due and payable (including, without limitation, declaring the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Project Notes to be immediately due and payable).

(b) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may, without being required to give any notice (other than to the Governmental Lender or the Fiscal Agent, as applicable), except as provided herein, pursue all remedies of a creditor under the laws of the State, as supplemented and amended, or any other applicable laws.

(c) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may take whatever action at law or in equity may appear necessary or desirable to collect the payments under this Project Loan Agreement then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Project Loan Agreement.

In addition, subject to Section 7.06 hereof, the Governmental Lender and the Fiscal Agent may pursue remedies with respect to the Unassigned Rights.

Any amounts collected pursuant to Article IV hereof and any other amounts which would be applicable to payment of principal of and interest and any Prepayment Premium on the Funding Loans collected pursuant to action taken under this Section 7.02 shall be applied in accordance with the provisions of the Funding Loan Agreement.

Notwithstanding the foregoing, if an Event of Default shall arise hereunder, the limited partners of the Borrower or affiliates under common control with the limited partners of the Borrower shall have the right, but not the obligation, to cure such default and the Governmental Lender shall accept such cure as if made on behalf of the Borrower.

Section 7.03 No Remedy Exclusive. Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available against the Borrower hereunder or under the Financing Documents or otherwise at law or in equity may be exercised by the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), at any time and from time to time, whether or not the Funding Lender has accelerated the Project Loans, and whether or not the Funding Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Financing Documents. No remedy conferred upon or reserved to the Funding Lender or the Fiscal Agent by this Project Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Project Loan 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 Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) to

exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly required by this Project Loan Agreement.

Section 7.04 *Agreement to Pay Attorneys' Fees and Expenses.* In the event the Borrower shall default under any of the provisions of this Project Loan Agreement and the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative shall employ attorneys or incur other expenses for the collection of loan payments or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained in this Project Loan Agreement or in the Project Notes, the Borrower shall on demand therefor reimburse the reasonable fees of such attorneys and such other expenses so incurred.

Section 7.05 *No Additional Waiver Implied by One Waiver.* In the event any agreement contained in this Project Loan Agreement shall be breached by any party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 7.06 *Control of Proceedings.*

(a) If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Project Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Project Loan Agreement. In addition, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender. In no event shall the exercise of any of the foregoing rights result in an acceleration of the Project Loans without the express direction of the Funding Lender Representative.

(b) The Governmental Lender and the Fiscal Agent covenant that they will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

(i) prosecute any action with respect to a lien on the Project; or

(ii) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Project Loans; or

(iii) interfere with or attempt to influence the exercise by the Funding Lender Representative of any of its rights under the Financing Documents upon the occurrence of any event of default by the Borrower under the Financing Documents; or

(iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Project Loans or the Funding Loans.

(c) Notwithstanding subsections (a) and (b) above, the Governmental Lender or the Fiscal Agent may:

(i) specifically enforce the tax covenants of the Borrower specified in Sections 2.04 and 2.05 hereof or seek injunctive relief against acts which may be in violation thereof; and

(ii) specifically enforce the Tax Regulatory Agreement or seek injunctive relief against acts which may be in violation of the Tax Regulatory Agreement or are otherwise inconsistent with the operation of the Project in accordance with applicable requirements of the Internal Revenue Code and state law (but in neither the case of clause (i) above or this clause (ii) may the Governmental Lender or the Fiscal Agent seek any form of monetary damages from the Borrower in connection with such enforcement).

In addition, notwithstanding subsections (a) and (b) above, the Governmental Lender and the Fiscal Agent may seek specific performance of the other Unassigned Rights (provided no monetary damages are sought), and nothing herein shall be construed to limit the rights of the Governmental Lender, the Fiscal Agent or any indemnified party related to the Governmental Lender or the Fiscal Agent under Section 6.01 hereof (each a “**Related Indemnified Party**”) to enforce their respective rights against the Borrower under Sections 4.02, 4.03, 6.01, and 7.04 hereof, provided that no obligation of the Borrower to the Governmental Lender, the Fiscal Agent or any Related Indemnified Party under such sections shall be secured by or in any manner constitute a lien on, or security interest in, the Project, whether in favor of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party, and all such obligations are and shall be subordinate in priority, in right to payment and in all other respects to all other obligations, liens, rights (including without limitation the right to payment) and interests arising or created under the Financing Documents (except for the Fiscal Agent’s right to receive payment of reasonable fees and expenses pursuant to Section 6.05(a) of the Funding Loan Agreement after an event of default with respect to the Funding Loans, which reasonable fees and expenses of the Fiscal Agent shall be payable as provided thereunder). Accordingly, none of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party shall have the right to enforce any monetary obligation arising under such sections other than directly against the Borrower, without recourse to the Project. In addition, any such enforcement must not cause the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future.

Section 7.07 Assumption of Obligations. At the Funding Lender’s discretion, in the event that the Fiscal Agent or the Funding Lender or their respective assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under this Project Loan Agreement, the Project Notes, the Tax Regulatory Agreement, and any other Financing Documents to which the Borrower is a party or with respect to which it is a third-party beneficiary. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

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ARTICLE VIII

MISCELLANEOUS

Section 8.01 *Notices.*

(a) Whenever in this Project Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower, the investor limited partner of the Borrower or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth in Section 11.04 of the Funding Loan Agreement or as required or permitted by this Project Loan Agreement by Electronic Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Funding Lender Representative and a duplicate copy of each notice or other communication given hereunder by any party to the Funding Lender Representative shall be given to the Servicer.

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Project Loan Agreement. If the party sending the Electronic Notice elects to give the Fiscal Agent e-mail or facsimile instructions (or instructions by a similar electronic method), the Fiscal Agent's understanding of such instructions shall be deemed controlling. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such instructions notwithstanding that such instructions conflict or are inconsistent with a subsequent written instruction. The Borrower, the Administrative Agent, the Governmental Lender, or any other party sending such Electronic Notice pursuant to this Project Loan Agreement agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Fiscal Agent, including, without limitation, the risk of the Fiscal Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

(b) The Fiscal Agent shall provide to the Funding Lender Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default hereunder known to the Fiscal Agent and (ii) any written information or other communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative for any such information or other communication.

Section 8.02 *Concerning Successors and Assigns.* All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive

the financing herein contemplated and shall continue in full force and effect so long as the obligations hereunder are outstanding. Whenever in this Project Loan Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Project Loan Agreement shall bind its successors and assigns and inure to the benefit of the successors and assigns of the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender and the Funding Lender Representative, as applicable.

Section 8.03 *Governing Law.* This Project Loan Agreement and the Exhibits attached hereto shall be construed in accordance with and governed by the internal laws of the State and, where applicable, the laws of the United States of America.

Section 8.04 *Modifications in Writing.* Modification or the waiver of any provisions of this Project Loan Agreement or consent to any departure by the parties therefrom shall in no event be effective unless the same shall be in writing approved by the parties hereto and shall require the prior written consent of the Funding Lender Representative and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Borrower in any case shall entitle it to any other or further notice or demand in the same circumstances.

Section 8.05 *Further Assurances and Corrective Instruments.* The Governmental Lender, the Fiscal Agent and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required (including such supplements or further instruments requested by the Funding Lender Representative) for correcting any inadequate or incorrect description of the performance of this Project Loan Agreement.

Section 8.06 *Captions.* The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Project Loan Agreement.

Section 8.07 *Severability.* The invalidity or unenforceability of any provision of this Project Loan Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

Section 8.08 *Counterparts.* This Project Loan Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 8.09 *Amounts Remaining in Loan Payment Fund or Other Funds.* It is agreed by the parties hereto that any amounts remaining in the Loan Payment Fund or other funds and accounts established under the Funding Loan Agreement upon expiration or sooner termination of the term hereof (and the repayment in full of the Project Loan and all other amounts owing under the Project Loan Documents) shall be paid in accordance with the Funding Loan Agreement.

Section 8.10 *Effective Date and Term.* This Project Loan Agreement shall become effective upon its execution and delivery by the parties hereto, shall be effective and remain in full force from the date hereof, and, subject to the provisions hereof, shall expire on such date as the Funding Loan Agreement shall terminate.

Section 8.11 *Cross-References.* Any reference in this Project Loan Agreement to an "Exhibit," an "Article," a "Section," a "subsection" or a "paragraph" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit attached to this Project Loan Agreement,

an article of this Project Loan Agreement, a section of this Project Loan Agreement, a subsection of the section of this Project Loan Agreement in which the reference appears and a paragraph of the subsection within this Project Loan Agreement in which the reference appears. All exhibits attached to or referred to in this Project Loan Agreement are incorporated by reference into this Project Loan Agreement.

Section 8.12 *Funding Lender Representative and Servicer as Third-Party Beneficiaries.*

The parties hereto agree and acknowledge that the Funding Lender Representative and the Servicer are third-party beneficiaries of this Project Loan Agreement.

Section 8.13 *Non-Liability of Governmental Lender.* The Governmental Lender shall not be obligated to pay the principal (or Prepayment Premium) of or interest on the Funding Loans, except from Revenues and other money and assets received by the Fiscal Agent on behalf of the Governmental Lender pursuant to this Project Loan Agreement. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit of the Governmental Lender or any member is pledged to the payment of the principal (or Prepayment Premium) or interest on the Funding Loans. The Governmental Lender shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Project Loan Agreement, the Funding Loans or the Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Project Loan Agreement.

The Borrower hereby acknowledges that the Governmental Lender's sole source of money to repay the Funding Loans will be provided by the payments made by the Borrower pursuant to this Project Loan Agreement, together with investment income on certain funds and accounts held by the Fiscal Agent under the Funding Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal (or Prepayment Premium) and interest on the Funding Loans as the same shall become due (whether by maturity, prepayment, acceleration or otherwise), then upon notice from the Fiscal Agent or the Funding Lender, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal (or Prepayment Premium) or interest, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Fiscal Agent, the Borrower, the Governmental Lender or any third party, subject to any right of reimbursement from the Fiscal Agent, the Governmental Lender or any such third party, as the case may be, therefor.

Section 8.14 *No Liability of Officers.* No recourse under or upon any obligation, covenant, or agreement or in the Governmental Notes, or under any judgment obtained against the Governmental Lender, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any incorporator, member, director, commissioner, employee, agent or officer, as such, past, present, or future, of the Governmental Lender, either directly or through the Governmental Lender, or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may be due and unpaid by the Governmental Lender upon the Funding Loans. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director, commissioner, employee, agent or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may remain due and unpaid upon the Funding Loans, is hereby expressly waived and released as a condition of and consideration for the execution of this Project Loan Agreement and the issuance of the Governmental Notes.

Section 8.15 *Capacity of the Fiscal Agent.* The Fiscal Agent is entering into this Project Loan Agreement solely in its capacity as Fiscal Agent and shall be entitled to the rights, protections, limitations from liability and immunities afforded it as Fiscal Agent under the Funding Loan Agreement. The Fiscal Agent shall be responsible only for the duties of the Fiscal Agent expressly set forth herein and in the Funding Loan Agreement.

Section 8.16 *Reliance.* The representations, covenants, agreements and warranties set forth in this Project Loan Agreement may be relied upon by the Governmental Lender, the Fiscal Agent, Bond Counsel, the Servicer, the Funding Lender and the Funding Lender Representative. In performing their duties and obligations under this Project Loan Agreement and under the Funding Loan Agreement, the Governmental Lender and the Fiscal Agent may rely upon statements and certificates of the Borrower, upon certificates of tenants believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In addition, the Governmental Lender and the Fiscal Agent may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Governmental Lender or the Fiscal Agent under this Project Loan Agreement and under the Funding Loan Agreement in good faith and in conformity with the opinion of such counsel. It is expressly understood and agreed by the parties to this Project Loan Agreement (other than the Governmental Lender) that:

(a) the Governmental Lender may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Governmental Lender by the Fiscal Agent, the Funding Lender or the Borrower as to the existence of a fact or state of affairs required under this Project Loan Agreement to be noticed by the Governmental Lender;

(b) the Governmental Lender shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such services shall be performed or caused to be performed by the Fiscal Agent, the Funding Lender Representative, the Servicer or the Borrower, as applicable; and

(c) none of the provisions of this Project Loan Agreement shall require the Governmental Lender or the Fiscal Agent to expend or risk its own funds (apart from the proceeds of Funding Loans issued under the Funding Loan Agreement) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Project Loan Agreement, unless it shall first have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

Section 8.17 *Amendment to Original Project Loan Agreement.* This Project Loan Agreement amends, replaces, and restates the Original Project Loan Agreement but does not extinguish or constitute a novation of the Series 2018 Project Loans (the “**Existing Indebtedness**”) evidenced by the Original Project Loan Agreement, and the liens and security interests securing the Existing Indebtedness shall continue in effect and secure the Funding Loans.

IN WITNESS WHEREOF, the Governmental Lender, the Fiscal Agent, and the Borrower have executed this Amended and Restated Project Loan Agreement, all as of the date and year first written above.

CITY OF MINNETONKA, MINNESOTA

By _____
Its Mayor

By _____
Its City Manager

Execution page of the Fiscal Agent to the Amended and Restated Project Loan Agreement, dated as of the date and year first written above.

U. S. BANK NATIONAL ASSOCIATION

By _____
Its Vice President

Execution page of the Borrower to the Amended and Restated Project Loan Agreement, dated as of the date and year first written above.

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

By: Minnetonka Leased Housing Associates SPE III,
LLC, a Delaware limited liability company
Its: General Partner

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

The undersigned, as the Funding Lender Representative, hereby acknowledges and consents to this Amended and Restated Project Loan Agreement, dated as of the date and year first written above.

U.S. BANK NATIONAL ASSOCIATION

By _____
Its _____

City Council Agenda Item #14B
Meeting of Feb. 22, 2021

Brief Description: Resolution approving participation in the Just Deeds coalition

Recommended Action: Approve the resolution

Background

In 2019, the City of Golden Valley Human Rights Commission initiated a project to assist property owners in having discriminatory covenants discharged from their property titles. The project – known as Just Deeds -- shares its name with a broad coalition of community stakeholders committed to acknowledging and addressing systemic racism in housing in Minnesota. The Golden Valley city council officially approved the project in October 2020. The city staff recommends that Minnetonka also participate in the Just Deeds project.

Discriminatory covenants and their impact

A covenant is a promise. In the early 20th century, real estate developers included covenants in property deeds to prevent the property from being sold, leased, or occupied by various groups of persons based on their race, religion or ethnicity. These are discriminatory covenants. Discriminatory covenants vary greatly in the specific wording used, but in general had a common purpose – to prevent Black, Indigenous and people of color and non-Christian persons from owning property. An example of a discriminatory covenant reads: “the said premises shall not at any time be sold, conveyed, leased, or sublet, or occupied by any person or persons who are not full bloods of the so-called Caucasian or White race.”

Discriminatory covenants were common throughout the United States from the early 1900s to the 1960s, including Minnesota, Hennepin County, and Minnetonka. In 2016, the University of Minnesota’s Mapping Prejudice Project began identifying discriminatory covenants in property records and mapping the locations of those properties. The Mapping Prejudice Project has identified 24,131 properties with discriminatory covenants in Hennepin County and over 530 properties in Minnetonka. The period during which deeds were filed spanned from 1922 to 1954, when the area was a township and village. It should be noted that some of the 530 properties have subdivided since that timeframe and the total number of Minnetonka properties presently impacted by such covenants is not known. See attached map. Preliminary research indicates that the City of Minnetonka owns four properties with discriminatory covenants, likely acquired through tax forfeiture. The deed that contained the original discriminatory covenant for one of those city-owned properties is included in the packet.

Discriminatory covenants have been legally unenforceable since 1948, when the United States Supreme Court held that the use of state courts to enforce such restrictions constituted a violation of the Constitution’s guarantee of equal protection under the law. Minnesota enacted legislation in 1919 that prohibited restrictive covenants based on religious faith or creed, but it was not until 1953 that the Minnesota Legislature expanded that prohibition to include restrictive covenants based on race or color. People who were the objects of housing discrimination did not have the right to sue until the adoption in 1961 of what is now the Minnesota Human Rights Act. Nationally, discriminatory covenants were commonplace until 1968, when the federal Fair Housing Act made them explicitly illegal.

Although legally unenforceable now, racially restrictive covenants have had a substantial and long lasting impact on racial minorities, by excluding entire generations from a common means of accumulating wealth and passing that wealth to heirs. According to Mapping Prejudice:

“Today Minneapolis has the lowest African-American homeownership rate in the country. And since most families amass wealth through property ownership, this homeownership gap continues to feed our contemporary racial wealth gap. Wealth is built through generations, with one generation passing resources to another. Thanks in part to the racial biases that have been baked into the real estate market over the last century, the average white household in the United States has ten times as much wealth as the average black household. <https://mappingprejudice.umn.edu/what-are-covenants/> [citations omitted]

Just Deeds Project

The Just Deeds Project was sparked by legislation enacted in 2019. That year, the Minnesota Legislature amended Minn. Stat. § 507.18 to provide a means by which property owners could take affirmative steps to permanently discharge and remove from their property title any restrictive covenant that relates to race, color, creed, national origin or religious belief.

Golden Valley assembled a broad coalition of organizations to assist in the project. The coalition’s mission statement is attached. Coalition participants include Mapping Prejudice, the Minnesota Association of City Attorneys, Edina Realty Title, the Minneapolis Area Association of Realtors, and the St. Paul Area Association of Realtors. Golden Valley staff also coordinated with Hennepin County and numerous cities regarding the project. The cities of Robbinsdale, Crystal and New Hope have joined the coalition, in order to extend the project to the residents of their cities.

The project depends upon the work of volunteer attorneys and title companies, including the Hoff Barry and Dorsey and Whitney law firms, Edina Realty Title and Guaranty Title. Golden Valley also secured assistance from Hennepin County, which has agreed to allow the volunteers to search its electronic property records system at no cost in order to verify whether a property is impacted by a discriminatory covenant. The attorneys prepare the necessary documents and arrange recording the documents after they have been executed by the property owners. Hennepin County has waived the recording fees for the documents.

City staff is recommending that Minnetonka join the coalition. Once the city joins it, the city website will be updated with information about the Just Deeds project and how to contact the city. Communications staff will promote the project via the Minnetonka Memo, social media, and emails to subscribers. The Just Deeds website will also include a link to the city’s website. Residents will be able to send an email to the city, which will be monitored by staff from the Community Development and Legal Departments. City staff will serve as coordinators, putting the attorney volunteers in touch with the property owners and tracking the status for each property.

Staff is also recommending that the city attorney investigate and identify property owned or leased by the city that contains discriminatory covenants. Further, the city attorney would prepare and record an affidavit or request an examiner’s directive discharging such discriminatory covenants pursuant to state law.

Recommendation

Adopt the resolution condemning the use of discriminatory covenants, directing the discharge of discriminatory covenants on city-owned property, and approving participation in the Just Deeds coalition.

Submitted through:

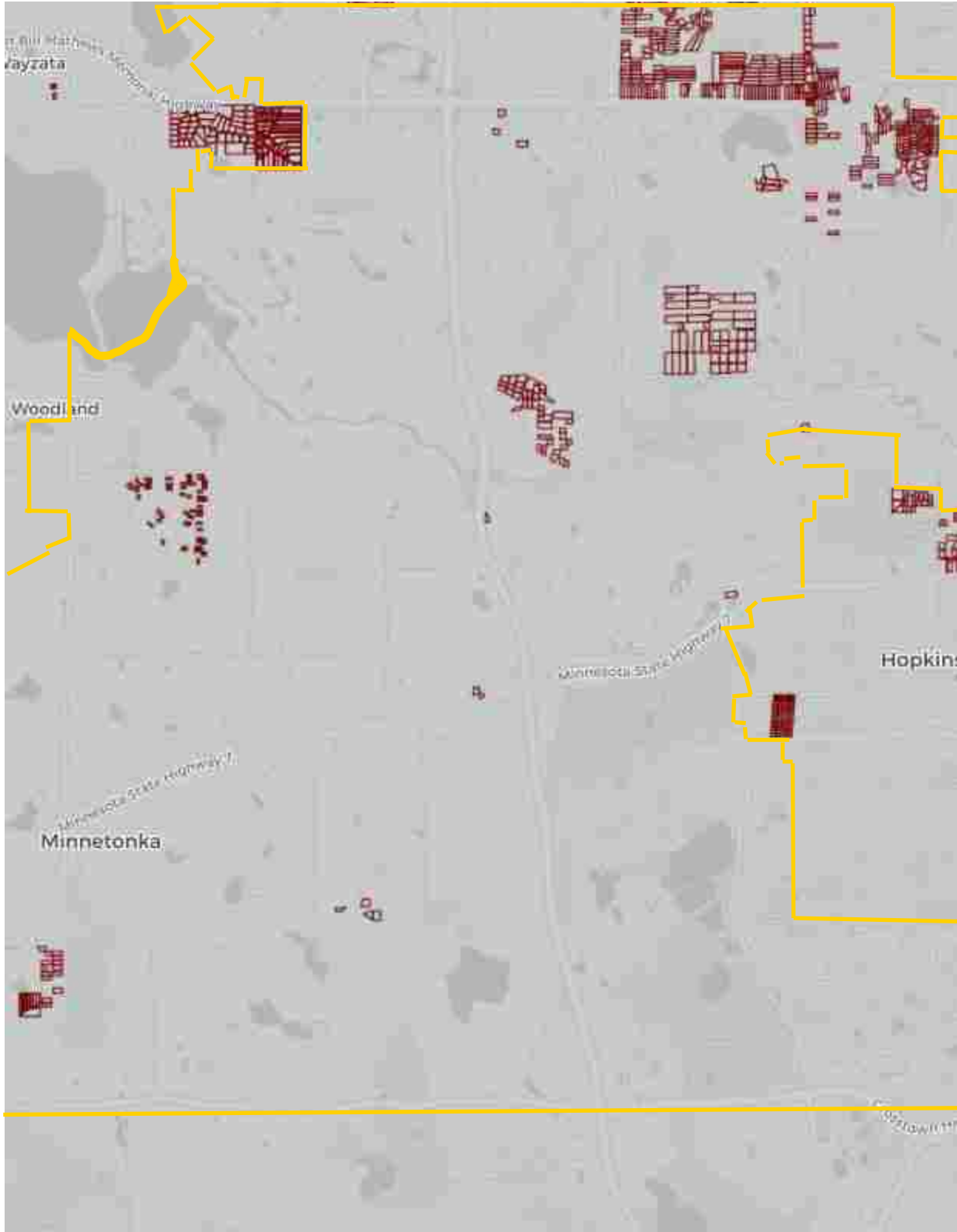
Geralyn Barone, City Manager

Julie Wischnack, A.I.C.P., Community Development Director

Originated by:

Corrine Heine, City Attorney

MAPPING PREJUDICE - MINNETONKA AREA



Taken from Hennepin_County_Racial_Covenants.zip file, <https://conservancy.umn.edu/handle/11299/217209>
Modified with city boundaries [not to scale]



Mission Statement

Just Deeds is a coalition of community stakeholders committed to acknowledging and addressing systemic racism in housing in Minnesota. Coalition members provide free legal and title services to help property owners find discriminatory covenants and remove them from their property titles and will provide the foundation of education and acknowledgement necessary to pursue reconciliation and anti-racist solutions. We represent organizations and entities who share responsibility for creating and correcting systemic racism in housing. We acknowledge the racist systems created and perpetuated within communities, and we will work toward dismantling these systems. Members of the Just Deeds coalition are committed to working toward meaningful and lasting change in Minnesota. Coalition members will achieve this goal by:

1. Educating Minnesotans about the racist practices perpetrated by developers, real estate agents, lawyers, and local, state and federal governments to establish segregated housing and keep wealth and opportunity away from communities of color.
2. Educating Minnesotans so that they understand who has directly and indirectly benefitted from historically racist practices and how those practices have shaped access to property, homeownership and wealth over time.
3. Taking action to dismantle the racist systems that perpetuate inequality and devoting resources to create equity for communities of color.

All members of the Just Deeds Coalition recognize the following truths and principles:

- Systemic racism in housing occurs today. Black, Indigenous, and other communities of color continue to face discrimination and lack of access to affordable housing and home ownership.
- Continued denial of opportunities to build general wealth through home ownership perpetuates inequity within our communities.
- We will not erase or deny history. We will acknowledge it and learn from it.
- We are dedicated to honesty about institutional roles (public and private) in building and perpetuating systemic racism.
- We commit to begin and participate in hard conversations within our communities and institutions about our shared history of discrimination and systemic racism.
- We pledge to examine the current policies and practices of our institutions to prevent future racist actions.
- When we identify racism in our institutions and processes, we will actively work to remove it.

Resolution No. 2021-

Resolution condemning the use of discriminatory covenants, directing the discharge of discriminatory covenants on city-owned property, and approving participation in the Just Deeds coalition

Be it resolved by the City Council of the City of Minnetonka, Minnesota as follows:

Section 1. Background.

- 1.01. Historically, real estate developers used discriminatory covenants to prevent Black, Indigenous and people of color (BIPOC) and non-Christian individuals from buying or occupying property in certain areas.
- 1.02. Discriminatory covenants were common throughout the United States from the early 1900s to the 1960s, including the Twin Cities metropolitan area and Minnetonka.
- 1.03. Discriminatory covenants promoted and established residential racial segregation, which historically and currently has impacted property ownership, accumulation of wealth, property transfers, mortgage eligibility, rental eligibility, property values, property tax base, internet access, and more. Discriminatory covenants fortified systemic racism and compounded economic divestment in specific communities within Hennepin County.
- 1.04. In 2016, the University of Minnesota founded Mapping Prejudice to expose the racist practices that shaped the landscape of the Twin Cities metropolitan area. Mapping Prejudice initially researched restrictive covenants in Hennepin County and created the first-ever comprehensive map of racial covenants in an American city, Minneapolis. The project has now mapped all of Hennepin County, where 24,131 covenants have been identified, and Mapping Prejudice is now working on Ramsey County property records.
- 1.05. According to Mapping Prejudice's research, more than 530 deeds have been filed that affect properties in Minnetonka. The period during which deeds were filed spanned from 1922 to 1954, when the area was organized as either a township or a village.
- 1.06. An example of a common discriminatory covenant in Minnetonka declared that "No person or persons other than of the Caucasian race shall be permitted to occupy said premises or any part thereof."
- 1.07. Based on preliminary review of the Mapping Prejudice data, the City of Minnetonka owns four parcels of land that are affected by historic discriminatory covenants, most likely properties acquired through tax forfeiture.
- 1.08. Discriminatory covenants are no longer enforceable. In *Shelley v. Kraemer*, 334 U.S. 1 (1948), the United States Supreme Court held that enforcement of a racially restrictive covenant by any state court against a person of color would constitute a violation of that person's right to equal protection of the laws, for which the state would be liable. The Minnesota Legislature first enacted legislation to prohibit restrictive covenants based on religious faith or creed in 1919, but it was not until 1953 that the Minnesota Legislature expanded that law to include restrictive

covenants based on race or color. It was not until 1961 that the Minnesota Legislature amended what is now the Minnesota Human Rights Act to expressly create a cause of action for discrimination in the sale or rental of real property based upon race, color, creed, religion or national origin, and, nationally, discriminatory covenants were commonplace until 1968, when the federal Fair Housing Act made them explicitly illegal.

- 1.09. As a result of these judicial and legislative actions, today, Minnesota law and federal law prohibit discrimination in the sale or lease of housing based on race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or familial status.
- 1.10. In 2019, the Minnesota Legislature passed a law authorizing property owners to individually discharge or renounce discriminatory covenants by recording a discharge form in the county property records.
- 1.11. In 2019, the City of Golden Valley Human Rights Commission initiated the Just Deeds Project, which connects residents to volunteer attorneys. The volunteer attorneys assist property owners in preparing and recording documents to discharge discriminatory covenants, as authorized by state law. Other cities, including the cities of Robbinsdale, New Hope and Crystal have expanded the Just Deeds Project to their cities.
- 1.12. The City of Minnetonka recognizes the harm that discriminatory covenants—and the racial, religious, and other discriminatory practices that they represent—cause to society in general and to the individuals who are adversely affected by the presence of discriminatory covenants in the public land records.

Section 2. Council Action.

- 2.01. The City of Minnetonka disavows and condemns the past use of discriminatory covenants.
- 2.02. The city attorney is directed to investigate and to identify any real property owned or leased by the city that contains discriminatory covenants and to prepare and record an affidavit or request an examiner's directive discharging such discriminatory covenants pursuant to Minnesota Statutes § 507.18, subd. 5.
- 2.03. City staff is directed to participate in the work of the Just Deeds Coalition and to educate the community about this and other historically discriminatory practices.

Adopted by the City Council of the City of Minnetonka, Minnesota, on .

Brad Wiersum, Mayor

Attest:

Becky Koosman, City Clerk

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 City Council of the City of Minnetonka, Minnesota, at a meeting held on .

Becky Koosman, City Clerk

City Council Agenda Item #14C
Meeting of Feb. 22, 2021

Brief Description Eagle to Bryant Lake Regional Trail Master Plan Route recommendations and Master Plan production

Recommendation Provide comment and feedback

Background

In June of 2020, Three Rivers Park District kicked off the master planning process for the Eagle to Bryant Lake Regional Trail. The Minnetonka Park Board reviewed a presentation of the public engagement process and provided feedback to Park District staff at their September 2, 2020 meeting. Park District staff have now completed the existing conditions, evaluation phase and public engagement for work to produce a trail master plan. Public outreach included collecting comments and feedback through a project website and interactive map, as well as direct engagement with residents along Baker Road and other areas of the proposed trail corridor via virtual meetings.

Park District staff reviewed the outcomes of their efforts with the Minnetonka Park Board at their Feb. 3, 2021 meeting. Feedback was largely around what a positive asset this trail segment will be for the community, and a few comments to look carefully at the Baker Road/Excelsior Boulevard intersection and other locations where the trail crosses the road.

Park District staff will present an update to the city council on the project, share what they learned through community engagement and talk about the recommendations for the route that will be incorporated into the trail master plan. A technical memorandum outlining route recommendations is attached to this report.

Recommendation

Review the presentation and provide comment and feedback to Three Rivers Park District staff and city staff.

Through:

Geralyn Barone, City Manager
Kelly O'Dea, Recreation Director

Originated by:

Carol HejlStone, Park and Trail Planner

MEMORANDUM

December 18, 2020

To: Maggie Heurung, Danny McCullough
Organization: Three Rivers Park District
From: Connor Cox, Toole Design
Project: Eagle to Bryant Lake Regional Trail Master Plan

Re: Baker Road Trail Alignment – Technical Recommendation

The purpose of this memorandum is to describe the trail alignment recommendation for the 2.4 mile trail segment along Baker Road (Rd) based on technical analysis and field review. The trail along Baker Rd is proposed between Minnetonka Blvd and Rowland Rd (*Figure 1*). This recommendation is based purely on the perspective of technical feasibility and trail user safety and does not incorporate input received from the public engagement process (ongoing). The final trail alignment recommendation in the *Eagle to Bryant Lake Regional Trail Master Plan* will consider input received from community members as well as technical feasibility and trail user safety.



Figure 1: The proposed trail route along Baker Rd between Minnetonka Blvd and Rowland Rd.

Baker Road Trail Alignment Recommendation

The recommended trail alignment along Baker Rd is the:

- West side of Baker Rd between Minnetonka Blvd and Excelsior Blvd
- East side of Baker Rd between Excelsior Blvd and Rowland Rd

Rationale for Recommendation

The following sections describe the rationale for the trail alignment recommendation along Baker Rd.

Information contained in this document is for planning purposes and should not be used for final design of any project. All results, recommendations, concept drawings and commentary contained herein are based on limited data and information and on existing conditions that are subject to change. Further analysis and engineering design are necessary prior to implementing any of the recommendations contained herein.

North of Excelsior Blvd – West side of Baker Rd

- The western side of Baker Rd/ Minnetonka Blvd intersection has an existing marked crosswalk that connects to Minnetonka Mills Park (Figure 2)

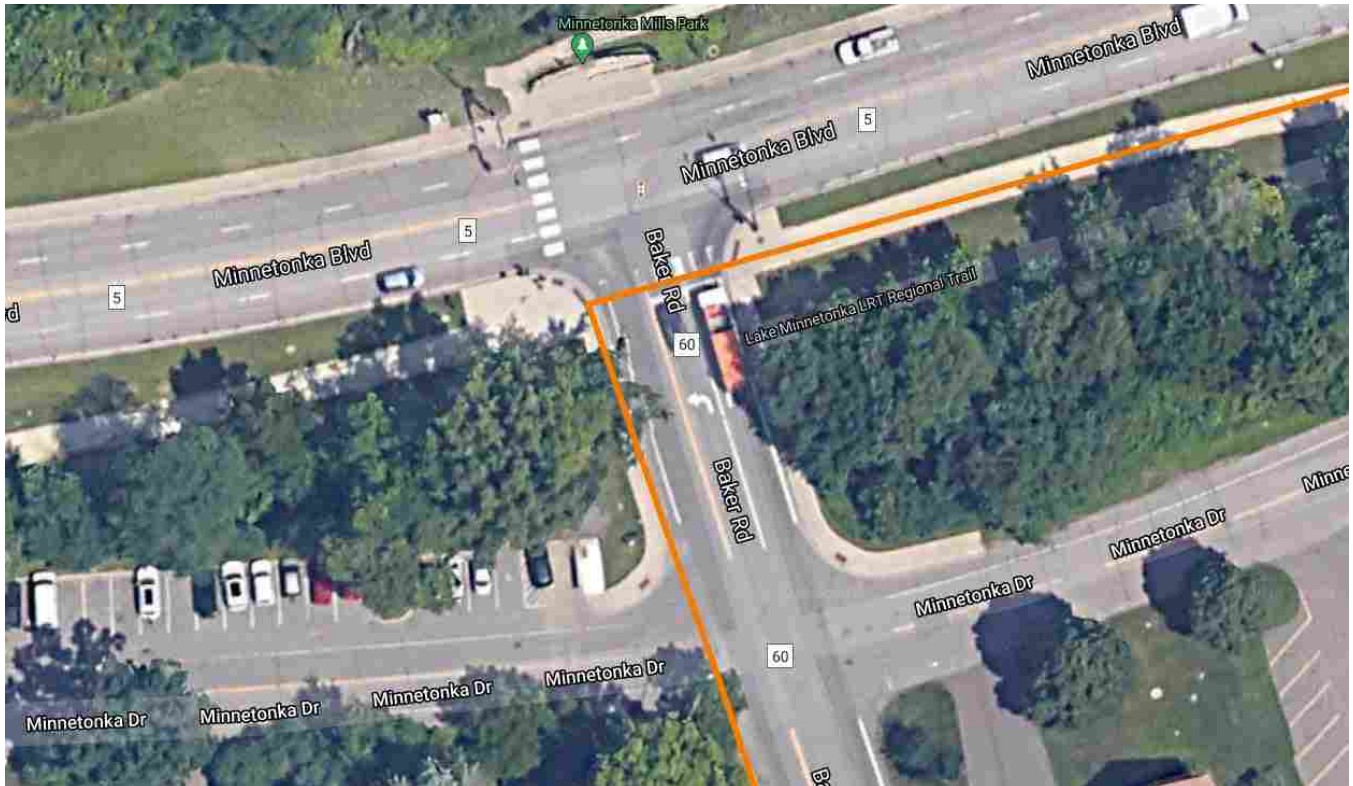


Figure 2: Recommended trail alignment (orange line) at the intersection of Minnetonka Blvd and Baker Rd.

- Provides a direct connection to Hopkins West Junior High School (located on west side of Baker Rd)
- There are **EIGHT** fewer street crossings or on/off ramp crossings on the west side of Baker Rd between Minnetonka Blvd and Excelsior Blvd
 - 15 crossings on the east side
 - Includes **THREE** on/off ramps to Highway 7 on the east side (Figure 3)
 - One off ramp, one on/off ramp, and one slip lane to get on Highway
 - 7 crossings on the west side (this count considers the middle school driveway entry as a street crossing)

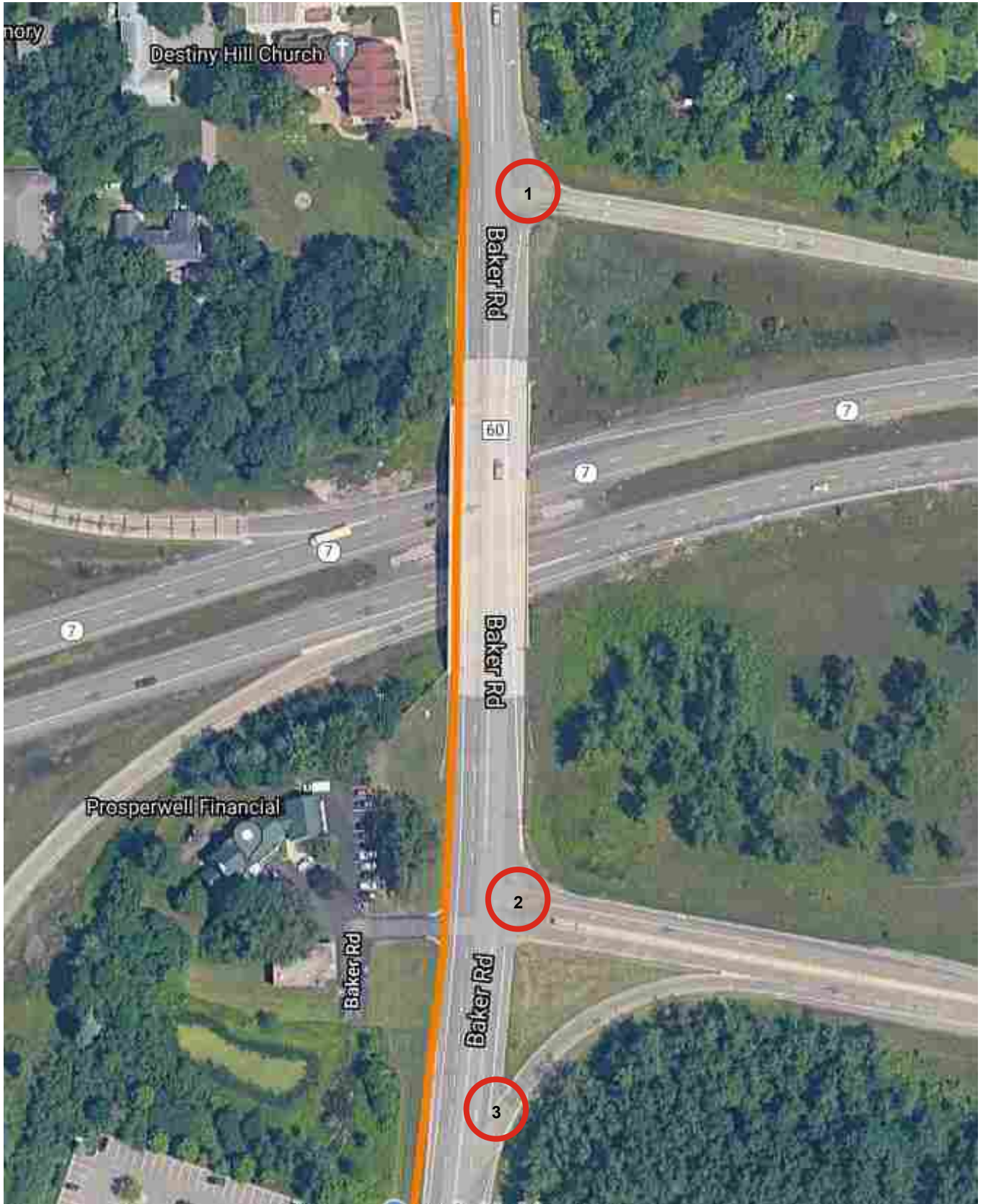


Figure 3: Recommended trail alignment (orange line) over Highway 7 avoids three on/off ramps on the east side.

Excelsior Blvd Intersection Recommendation

- The trail is recommended to cross Excelsior Blvd on the west side to the porkchop island, then cross east over Baker Rd on the south side of the intersection (*Figure 4*)
 - Safest possible scenario for crossing Excelsior Drive
 - It avoids crossing both slip lanes, where drivers are moving fast and likely not looking for trail users
 - There is an existing marked crosswalk on the west side of Baker Rd crossing Excelsior Blvd, but no marked crossing on the east side



Figure 4: *Recommended trail alignment (orange line) at the intersection of Excelsior Blvd and Baker Rd.

**Note – Recommendation assumes that the existing intersection design and configuration will remain when the trail is constructed. If the Excelsior Blvd / Baker Rd intersection is reconstructed in the future, there is an opportunity to make significant safety enhancements for trail users by redesigning the intersection.*

South of Excelsior Blvd – East side of Baker Rd

- The recommended trail on the east side of Baker Rd would connect directly to the proposed regional trail on the north side of Rowland Rd (*Figure 5*)
 - Avoids crossing Baker Rd at Rowland Rd intersection, which would have poor visibility and sight lines due to the crown of the hill on Baker Rd



Figure 5: Recommended trail alignment (orange line) at the intersection of Baker Rd and Rowland Rd. The proposed trail is recommended to continue to the east along the north side of Rowland Rd.

City Council Agenda Item #14D
Meeting of Feb. 22, 2021

Brief Description Concept plan review for Wooddale Builders at 16509 McGinty Road West

Action Requested Discuss concept plan with the applicant. No formal action is required

Background

The subject property is located at the McGinty Road West/Bantas Point Road intersection. It is divided by Bantas Point Road itself and includes large areas of wetland. Given these features, just under four acres of the site's total 12.85 acres are considered buildable.

The property is improved with a single-family home, constructed in 1905, and a large accessory building. It is currently zoned R-1, low-density residential, and is similarly guided in the 2040 Comprehensive Guide Plan.

Proposal

Wooddale Builders has submitted a concept plan for the development of the site. The plan contemplates removing the existing structures and construction of eight one-level-style homes (some with walkout square footage). These homes would be located on lots ranging in size from roughly 12,940 square feet to roughly 18,380 square feet. Access to the residential development would be via a new, private cul-de-sac constructed off Bantas Point Road. The plan further contemplates dock access to an adjacent Grays Bay channel and dredging the channel to accommodate watercraft.¹

Concept Plan Review Process

Staff has outlined the following Concept Plan Review process for the proposal. At this time, a formal application has not been submitted.

- **Neighborhood Meeting.** A virtual neighborhood meeting was held on Jan. 27, 2021. The meeting was attended by representatives of the applicant group, city staff, and approximately 30 area property owners. Some owners expressed concern about Bantas Point Road's existing conditions – roadway width, site lines, and the age of sewer and water infrastructure. Others noted concerns related to the proposed channel dredging and watercraft docking. Many owners had no comments or questions.
- **Planning Commission Concept Plan Review.** The purpose of concept plan review is to give commissioners the opportunity to identify – for the developer and city staff – what they see as the positive components of a development concept and any issues or

¹ The city does not have land-use authority below the ordinary high water level (OHWL) of public waters; it does not control dock access to Lake Minnetonka or its channels. The proposed dredging would require review and approval of multiple outside agencies. At this time, planning staff has not started research/contacted these agencies regarding the dredging review process. In the event that this concept plan results in the submittal of a formal development application, such research and contact will occur.

challenges they foresee. The concept plan review meeting will include a presentation by the developer of conceptual sketches and ideas, but not detailed engineering or architectural drawings. No staff recommendations are provided, no motions are made, and no votes will be taken.

The planning commission reviewed the Wooddale Builders Concept plan on [Feb. 4, 2021](#). Commissioner feedback varied:

- Some commissioners indicated support for PUD zoning, which would afford preservation of open space and high priority trees and provide for a desirable housing type. Other commissioners suggested they did not see a “strong case” to support PUD.
- While some commissioners noted that the site might support eight smaller homes/lots, other commissioners suggested that eight houses seemed too many.

Several area residents also addressed the commission, reiterating concerns raised at the neighborhood meeting.

- **City Council Concept Plan Review.** The city council concept plan review is intended to follow-up to the planning commission meeting and follows the same format. No staff recommendations are provided, the public is invited to offer comments, and council members are afforded the opportunity to ask questions and provide feedback without any formal motions or votes.

Key Topics

Staff has identified, and requests city council feedback on, the following key topics.

1. **Use of PUD Zoning.** The applicant narrative suggests the use of PUD. By city code, PUD zoning may be considered when such use would result in a public benefit. (For more discussion, see the “Additional Information” section of this report.)
 - What is the council’s opinion regarding PUD zoning for this concept?
2. **Number of Homes/Size of Lots.** The plan contemplates the construction of eight homes on the upland portion of the property.
 - Does the council have comments on the number of homes/size of lots?
3. **Site Design.** In concept, roadway access to the residential development would be via Bantas Point Road. The site area near the McGinty Road West/Bantas Point Road intersection would be preserved as open space.
 - Does the council have comments on roadway access or lot configuration?
4. **Other considerations.** What other land use-related items would the council like to comment on?

Staff Recommendation

Staff recommends the city council provide feedback on the key topics identified by staff and any other land use-related items that the council deems appropriate. This discussion is intended to assist the applicant in the preparation of more detailed development plans.

Through: GERALYN BARONE, City Manager
 Julie Wischnack, AICP, Community Development Director
 Loren Gordon, AICP, City Planner

Originator: Susan Thomas, AICP, Assistant City Planner

ADDITIONAL INFORMATION

PUD Zoning

From a land use planning perspective, PUD zoning is intended to provide flexibility from certain subdivision and zoning regulations in order to achieve a public benefit that would not otherwise be achieved within a traditional zoning district, such as R-1. Though perhaps counterintuitive, in granting flexibility from certain standards, the city has the ability to similarly “control” or set conditions that are based on the specific PUD development under consideration. For instance, in a PUD, the city may require that all homes be a single-level, walkout design. Conversely, in the traditional R-1 zoning district, the height of a home is simply restricted by R-1 ordinance to 35 feet; the city cannot control the design or number of stories.

The PUD ordinance (City Code §300.22) states:

PUD zoning may be considered by the city when it would result in one of the following public benefits:

- a) *Greater preservation of existing natural resources, in number or quality, than would otherwise be provided under non-PUD development;*
- b) *Provision of affordable housing;*
- c) *Provision of a housing type or target housing price that is desirable to the city;*
- d) *A mix of land use types;*
- e) *Development that is compatible with existing, surrounding development type and intensity that is no longer allowed in other existing zoning districts; or*
- f) *Greater energy conservation through building and site design than would otherwise be achieved under non-PUD development;*
- g) *Other public benefits as recognized by the city.*

Next Steps

- **Formal Application.** If the developer/applicant chooses to file a formal application, notification of the application would be mailed to area property owners. Area property owners are encouraged to view plans and provide feedback via the city’s website. Through recent website updates: (1) staff can provide owners with ongoing project updates, (2) owners can “follow” projects they are particularly interested in by signing up for automatic notification of project updates; (3) owners may provide project feedback on project; and (4) and staff can review resident comments.
- **Council Introduction.** The proposal would be introduced at a city council meeting. At that time, the council would be provided another opportunity to review the issues identified during the initial concept plan review meeting and to provide direction about any refinements or additional issues they wish to be researched and for which staff recommendations should be prepared.
- **Planning Commission Review.** The planning commission will review and subsequently make a recommendation to the city council on land use matters.

- **City Council Action.** Based on input from the planning commission, EDAC, professional staff, and the general public, the city council would take final action.

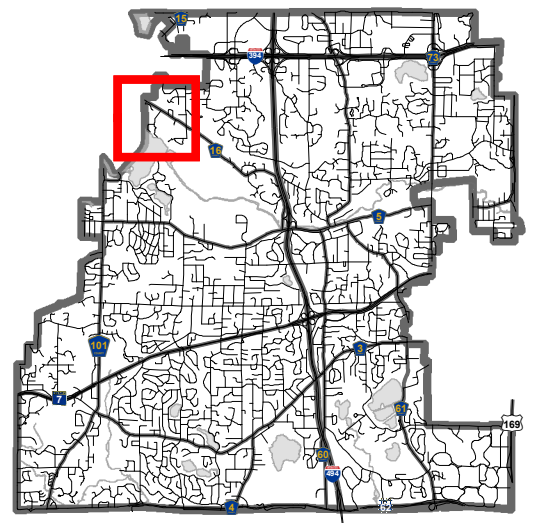
Roles and Responsibilities

- **Applicants.** Applicants are responsible for providing clear, complete and timely information throughout the review process. They are expected to be accessible to both the city and to the public and to respect the integrity of the public process.
- **Public.** Neighbors and the general public will be encouraged and enabled to participate in the review process to the extent they are interested. However, effective public participation involves shared responsibilities. While the city has an obligation to provide information and feedback opportunities, interested residents are expected to accept the responsibility to educate themselves about the project and review process, to provide constructive, timely and germane feedback, and to stay informed and involved throughout the entire process.
- **Planning Commission.** The planning commission hosts the primary forum for public input and provides clear and definitive recommendations to the city council. To serve in that role, the commission identifies and attempts to resolve development issues and concerns prior to the council's consideration by carefully balancing the interests of applicants, neighbors, and the general public.
- **City Council.** As the ultimate decision maker, the city council must be in a position to equitably and consistently weigh all input from their staff, the general public, commissioners, applicants, and other advisors. Accordingly, council members traditionally keep an open mind until all the facts are received. The council ensures that residents have an opportunity to effectively participate in the process.
- **City Staff.** City staff is neither an advocate for the public nor the applicant. Rather, staff provides professional advice and recommendations to all interested parties, including the city council, planning commission, applicant, property owners, and residents. Staff advocates for its professional position, not a project. Staff recommendations consider neighborhood concerns but necessarily reflect professional standards, legal requirements, and broader community interests.



Location Map

Project: Wooddale Builders
 Address: 16509 McGinty Rd W





January 14, 2021

RE: Development of 16509 McGinty, Minnetonka MN by Wooddale Builders

Team

- Woodland Builders – Steve Schwieters, Owner
- Bancor Group, Inc. – Paul Robinson, Development Consultant
- Coldwell Banker – Mike Steadman, Development and Marketing
- Sather Bergquist - Bob Molstad, Engineering and Survey

Summary

We are pleased to submit a concept plan for development of the property at 16509 McGinty Road into 8 villa homesites. We have spent a fair amount of time over the past few months looking at how best to develop the property and meet all of the various and at times conflicting codes of the City. This has included verifying the wetland areas, completing and reverifying our tree survey, meeting with the City as well as a number of neighbors to get their initial feedback. Prior to your review we are holding a neighborhood meeting on January 27 to show our plans to the neighborhood and get additional feedback.

Property

- Size – 12.85 Acres
- Net Acres – 3.9 acres (gross area minus wetlands)
- Zoning – R-1

History

This property was owned by Betty Ice. Betty lived on this property for 98 years. She saw a lot of changes and development around her during the time she lived there. Betty recently died and the property is now held in trust by a number of her family members. Betty's will requires the family to sell the property and as a result the family has been pursuing this since her death.

Proposal

Simply stated we are requesting a rezoning to PUD to develop the Ice property. We are proposing 8 villa lots averaging 16,650 sq. ft. for an overall density of 2 units per net acre 0.62 units per gross acre. We believe this meets the intent and definition of the Low-Density Residential Guiding of this property in the Comprehensive Plan. The 2040 Comprehensive Plan Low Density Residential guiding calls for 2-4 units per acre. Our proposal is on the low end of that range.

This development and its homes will be built by Wooddale Builders. Currently we are proposing custom main floor living villa homes. Generally, all will have a 1 ½ story appearance. A couple examples of the types of home we expect are shown below. These examples are located in Eden Prairie. Wooddale builders has been in business for over 45 years. We are well known in the industry for high quality custom homes. Please visit our website if you would like to learn more about us.

<https://www.wooddalebuilders.com/>



Our concept plan relies in large part on flexibilities that are made possible by using a Planned Unit Development (PUD) approach. We are proposing a PUD because it appears to be the only way to development the property and still meet the City’s tree preservation code. The tree preservation code also encourages using a PUD to meet the City’s requirements. Below is an excerpt from the City Tree Preservation Code with the sentence highlighted that refers or directs developers to use a PUD approach.

19. Tree Protection.

a) **Purpose.** *The goal of this subdivision is to preserve as much as practical Minnetonka's highly valued tree natural resources, ecosystems and viewsheds, while allowing reasonable development to take place and not interfering with how existing homeowners use their property. **This subdivision provides incentives for property owners who wish to subdivide areas that include woodlands and high priority trees to use planned unit development (PUD), which allows the flexibility to both protect woodlands and property rights.***

In addition to the tree preservation code directing us to use a PUD approach we also believe one or more of the benefits described in the PUD zoning code 300.22 section 2, also apply. We are providing a single level living product that that is in high demand and short supply in the City, and while it does not meet the City's definition of affordable this is a housing type that we believe is desirable to the City (300.22 (2) c). We are developing in an area of the City where the most significant connection and impact comes from the development within the Bantas Point Rd area which was developed at an intensity that would no longer be possible (300.22 (2) c). While we are not matching the development intensity of this area, some of the flexibilities we are requesting are not unlike what was permitted as this neighborhood development over time and are also similar to the development in Locust Hills to the west.

Our current concept preserves an area in the northeast corner of the property with the highest concentration of high priority trees. To that end there are only two homes north of our access road and 6 lots south. We are proposing a private drive to help keep the overall development footprint smaller. We chose 6 lots because that number fits on the south side of the roadway. Also, with the current access from Bantas Point as shown, even if we were to reduce the number of units on the south side the road, it would not significantly change the impact to the high priority trees. This approach allows us to make the best, most efficient use of the property while also preserving open space and high priority trees. It also allows us to keep the perimeter of the property along McGinty and Bantas Point looking very much like it does today. In addition to preserving the perimeter we plan on using the required mitigation trees to improve the buffer around the perimeter and to create a buffer between our development and Locust Hills. As we write this narrative, we continue to look for additional creative ways to develop the property. However, before we spend a more time and energy, we want to get some initial feedback from the Planning Commission and Council so we can better understand the goals of the City and in turn the flexibilities you are willing to consider.

PUD Flexibilities Needed

While we understand that the Concept review process is generally a big picture review, we know right now that we will likely need a number of flexibilities to best develop this property and meet the fixed threshold of not more than 35% removal of the High Priority Trees on the property. Because of this we are providing more detail than may be typical at this point to help you give us better feedback. In addition to the tree ordinance, we are also working within the wetland ordinance, storm water regulations, roadways standards, etc, which create a complicated quilt of regulation to work within and /or around, especially for a site of this size. Below is a list of the flexibilities used to create the current concept plan. We have compared our PUD request to the R-1A and R-1 zones. We think our proposed falls generally between the R-1 and R-1A zones without strict adherence to either, while keeping a net density at the low end allowed in the Comprehensive Plan for Low Density Residential Guiding.

	PUD		
	Concept Submittal	R1-A	R1
Lot Area	12,900 min – 16,000 avg	15,000	22,000
Buildable Area	3,500	2,400 (30' per side)	3,500 (30' per side)
Lot width	60'	75' 55' at ROW	110' 80' or ROW
Lot Width Lake	NA		
Lot depth	125'	125'	125'
Front	15'	35'	35'
Side	7.5'	10'	Sum 30' no less than 10'
Rear Yard	35'	30' or 20% whichever less	40' or 20% of lot depth 25' min
Corner Lot	15'	25'	25'
Max Impervious	30% of PUD Area outside of roadway	50%	No limit
FAR	NA	.24 lot area 17,500+ .22 if under	NA
Low Floor	2' above OHWL	2' above OHWL	2' above OHWL
Max Height	35'	35'	35'

Channel Access for Docking

A large portion of the property abuts a channel that provide access to Lake Minnetonka. Ideally, we would like to complete a maintenance dredge of this channel. Dredging will require approval from a number of jurisdictions, including but not limited to the Minnehaha Creek Watershed District (MCWD), the Department of Natural Resources (DNR), Lake Minnetonka Conservation District (LMCD), and could also include approvals from the City and properties abutting the channel. We are initially meeting with the property owners along the channel to get their feedback and are waiting to get feedback from the City before proceeding with a formal application.

We recently surveyed the channel and it is currently 2-3 deep when the water level is at the OHWL of 929.4. An alternative plan we are considering is to extend a dock further into the channel without dredging. This would allow us to offer lake access to our residents for boats that can function in shallower conditions, such as a fishing boat or pontoon. Any multiple docking proposal for Restricted Watercraft would need to be approved by the LMCD.

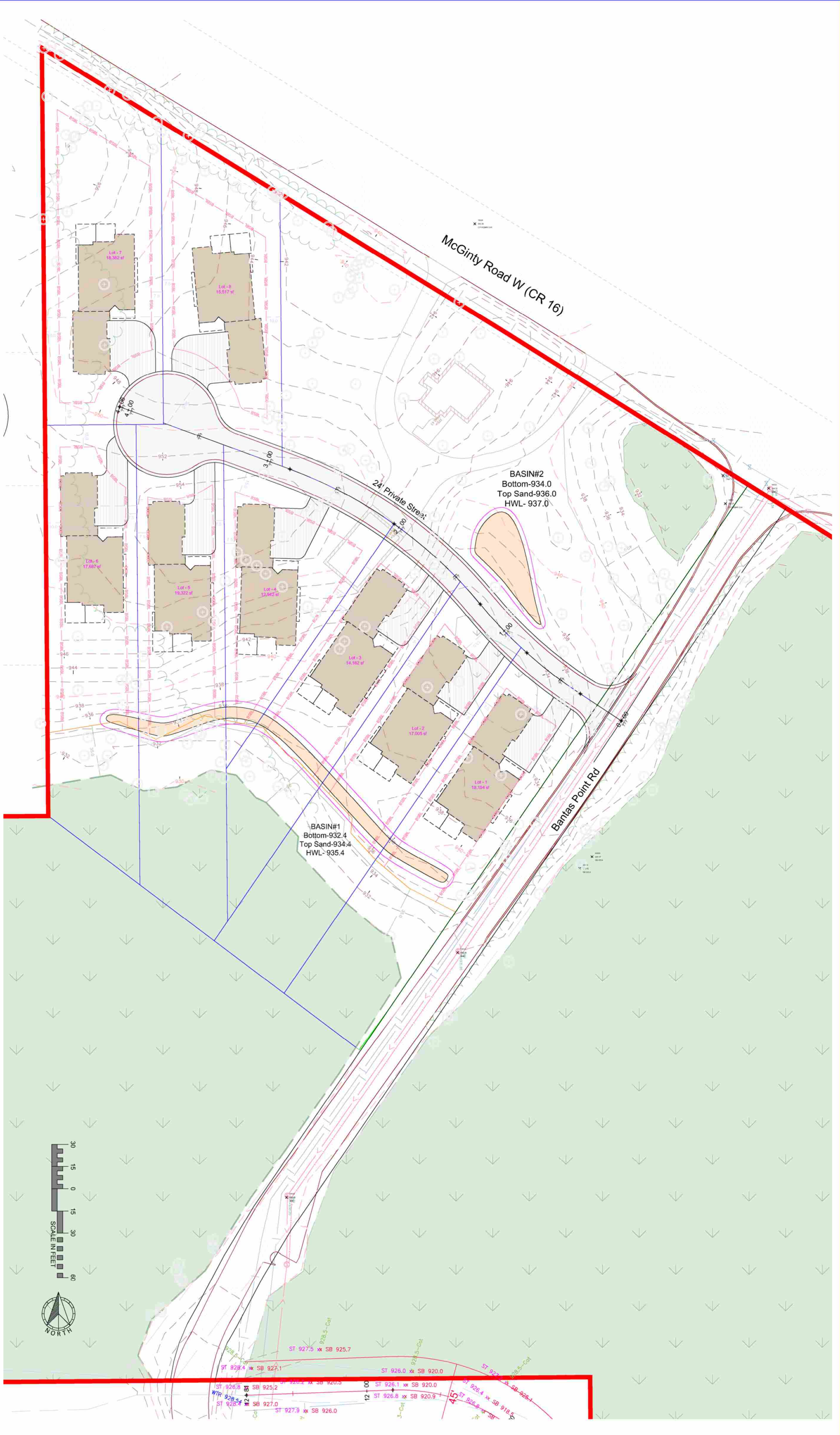
In our initial conversations with residents, we have heard a variety of opinions. Some have said they do not see any advantage to supporting any applications for lake access and, others have suggested some compromises that would make it more palatable such as having a declaration on the property limiting the size, type (e.g., no jet skis) and number of boats (so we could not exceed the number we are requesting now in the future).

Conclusion

We would like to thank you in advance for you review of our concept. We have done the best we can to understand your code without a formal City review. We think this will be a good development in the City. One that we can all be proud of. We look forward to discussing our plans with you.

16509 McGinty Road Development






DRAWING NAME	NO.	BY	DATE	REVISIONS
Lot 1-8 Concept Plan				
DRAWN BY				
CHECKED BY				
DATE				

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Name: P.E.
Date: _____ Lic. No. _____


SATHRE-BERGQUIST, INC.
 150 SOUTH BROADWAY WAYZATA, MN. 55391 (952) 476-6000

CITY PROJECT NO. _____
MINNETONKA, MINNESOTA

CONCEPT PLAN
ICE PARCEL
WOODDALE BUILDERS

FILE NO. 9745-003



14600 Minnetonka Blvd. | Minnetonka, MN 55345 | 952-939-8200 | eminnetonka.com

To: Planning Commission
From: Loren Gordon, AICP, City Planner
Date: Feb. 4, 2021
Subject: Change Memo for the Feb. 4 Planning Commission Agenda

ITEM 9A – 16509 Mcginty Road W

The attached comments were received after publication of the packet.

ITEM 9B – Bren Road Development at 10709 Bren Road East

The applicant has requested the item be pulled from tonight's agenda.

From:
To: [Ashley Cauley](#);
Cc: [Loren Gordon](#); [Susan Thomas](#)
Subject: Re: Wooddale Builders
Date: Sunday, January 31, 2021 4:16:05 PM

Thank you Ashley. I own properties 2512 and 2515 Bantas Point Lane and I am all for the development but have some concerns to pass along. I was unable to make the neighborhood meeting but one of my neighbors called in and spoke about mutual concerns.

1. I'd like to see a turn lane on Bantas Point Rd in and out of the new neighborhood and/or widen the road.
2. I'm concerned about foot traffic on Bantas Point Rd and would like to see a sidewalk especially from the bridge (over the channel) to McGinty. Lots of people walk on the road now.....but with added traffic and foot traffic from the new houses to their docks this could be dangerous. I assume a separate golf cart and walking pathway will be built in the wetlands for access to the neighbor's docks. They will have to cross Bantas Point Rd.....so will have to be cautious on the roadway. NOTE - it is dangerous coming up and over the existing bridge over the channel. Drivers going both ways cannot see traffic or pedestrians when going over the bridge.
3. We NEED a sidewalk on McGinty Rd from Bantas Point Rd to the meet the sidewalk at Locust Hills. It is dangerous walking on McGinty. Ultimately it would be great having sidewalks East to the Cargill property.
4. If you are building we ask that our road at the end of Bantas Point Lane be redone. Many calls have been made to the city and some patches have been done and the fire hydrant was redone....which improved out backed up water. When it rains heavily we still have an excess of water sitting on the road.
5. For the last 2 years (minimum) neighbors and I have had to call to get plowing done at the end of Bantas Pt lane in front of my homes. A smaller plow needs to come each time to have room to push all snow and ice. The fire hydrant gets covered and we have to call to have snow plowed up further on my property 2515 to clear the road and uncover the hydrant.

Please email me if any questions.

Jeannie Buckner
952 240-4924

Sent from my iPad

On Jan 29, 2021, at 10:42 AM, Ashley Cauley <acauley@minnetonkamn.gov> wrote:

Good morning Jeannie –
I've copied Loren Gordon and Susan Thomas on this email. You can email your

From:
To: [Loren Gordon](#); [Bradley Schaeppi](#); [Susan Thomas](#)
Cc:
Subject: Wooddale Builders Proposal McGinty Road
Date: Monday, February 1, 2021 8:51:50 PM

Date: February 1, 2021

From: John and Janine Flynn - 2533 Bantas Point Road, Wayzata, MN 55391

To:

Loren Gordon, Minnetonka Planner
Susan Thomas Minnetonka Assistant City Planner
Bradley Schaeppi - Ward 3 Council Member

We have reviewed Wooddale Builders proposal for the construction of eight villa homes at 16509 McGinty Road and attended their online presentation.

From the meeting and our discussions with neighbors it is apparent the neighborhood universally approves the residential home construction plans and conversely universally disapproves of their desire to dredge over public and private land for improved boat access.

Hurting existing homeowners and destroying nature to help prospective homeowners simply to excessively profit both the developers and inheritors not living in the neighborhood defies all logic and City of Minnetonka values.

The nearly half mile dredging would need to go directly over the city owned lot 0811722130050, Grays Bay Landing Homeowners Association property 0811722130056 and the undeveloped street between our wetland lots.

We would recommend approving the home plans and rejecting the dredging request. If the city approves the dredging over their property where does this end? There are many parcels of land in the wetlands surrounding Lake Minnetonka where access could be obtained at the destruction of both nature and local neighborhoods.

Thanks

John and Janine Flynn

December 2020.

The next planning commission meeting is scheduled to be held Feb. 18, 2021.

6. Report from Planning Commission Members

Acting Chair Hanson asked for a good source to receive updates on the SWLRT. Gordon recommends the Metropolitan Council project page on the SWLRT Green Line Extension at metro council.org/transportation/projects/Light-Rail-Projects/Southwest-LRT. Gordon provided a brief update. The project is on track and fully funded, but has dealt with a few construction delays.

7. Public Hearings: Consent Agenda: None

8. Public Hearings: None

9. Other Business

A. Concept plan for Wooddale Builders at 16509 McGinty Road West.

Acting Chair Hanson introduced the proposal and called for the staff report.

Thomas reported. Staff recommends planning commissioners provide feedback on the key topics identified by staff and any other land-use-related items that commissioners deem appropriate. This discussion is intended to assist the applicant in preparation of more detailed development plans.

Paul Robinson, Bancor Group Vice President of Development, introduced Mike Steadman of Coldwell Banker and Steve Schwieters, owner of Wooddale Builders.

Mr. Schwieters gave a presentation with examples of past villa developments completed by Wooddale Builders.

Audrey Ice, representing the owners of the property, provided a history of the property. She supports the proposed plan, PUD rezoning request, and access to Lake Minnetonka. The surrounding properties have been rezoned to PUD.

Mr. Robinson reviewed the proposal. He stated that:

- The site is 13 acres in total. The development would be located on the upland portion. A wetland delineation was completed. The topography and drainage has been studied.
- All high priority and significant trees were identified.
- The proposal would have eight villa home sites. The average lot size would be 16,500 square feet with houses generally 3,200 square feet to 4,000 square feet in size.
- Access for a private road is being proposed from Bantas Point Road.

Locust Hills neighbors expressed opposition for a different connection that would access Locus Hills.

- Standard and innovative stormwater treatment methods would be utilized to protect 25 percent of the northeast corner of the property.
- The perimeter of the site would look similar to what it does now due to the trees that would be saved and planting of additional trees to increase the buffer around the perimeter along Bantas Point Road and McGinty Road West.
- A buffer would be created between the proposed homes and Locust Hills.
- The public benefits to justify planned unit development (PUD) zoning include saving more trees and allowing greater preservation of natural resources by protecting open space.
- There is a demand for and lack of empty-nest, single-family-villa units in Minnetonka. The density of two units per acre would be a public benefit to the city.
- The proposal would be similar to the area. Surrounding properties have PUD zoning. Locust Hills to the west utilized PUD zoning to gain flexibility with lot size and setback requirements. The Bantas Point neighborhood has lots averaging 15,000 square feet in size and have a variety of setbacks. The exception is the Grays Bay Landing neighborhood on the east which has mostly large lots.
- The proposal would like to maintain the existing channel access to Lake Minnetonka similar to maintenance completed for the Grays Bay Landing and channel to Crosby Cove. The proposal would be for eight docks. An environmental assessment worksheet would need to be approved to dredge the channel. A dock license would need to be granted by the LMCD.
- He provided a list of concerns expressed by neighbors.

Acting Chair Hanson invited members of the public to speak.

John Hinnenthal, 2401 Bantas Point Road, stated that:

- He urged commissioners to not change the zoning from R-1 to PUD. He saw no benefit for higher density on the roads and in the area.
- He opposed dredging of the channel. He did not want the wetland disturbed.
- The bridge is curved, humped, and the sight line is terrible. A docking area would create a safety concern.
- The second plan with the dock boarding the east side of the channel would be better from a safety standpoint.
- He appreciated the commission's time and attention.

Don Amorosi, 2368 Grays Landing Road, Wayzata, stated that:

- He is part of the Grays Landing Homeowners Association. Three

townhouses border the proposed property. He wants the nature to stay as it is now.

- He opposed the proposal.
- He has seen nothing larger than a kayak or canoe travel the channel.
- The road is dangerous. He heard that Bantas Point Road had an accident with a fatality.
- The docks would create a heightened opportunity for crime. The boat docks would be visible from McGinty Road and could be vandalized and looted.
- There would be no benefit except profit.
- Dredging would set a bad precedent. He was told he could not put a bubbler on the north side of his house. Dredging would cause more of an impact.
- The proposal would be an “attack on wildlife.” He is concerned for the fox, owls and deer.
- The channel has not been maintained in years and narrows to 15 feet in width in some parts.
- The proposal would cause overuse of the area.
- Dredging would destroy a beaver dam. The area is already over fished.
- Anyone could use the eight docks. A marina on the south side of Gray’s Landing is used by people from all over the city. The proposal would open up more access to them.
- The marina is less than a mile away and could be used to put boats in instead of dredging the channel.
- He was concerned with additional boats causing erosion and impacting groundwater quality.
- The PUD with villas valued at \$1 million would not create affordable housing.
- The property does not meet any of the requirements for dredging. The DNR and watershed district are designed to prevent “these types of activities” from happening.
- The proposal would exceed reasonable use of the property and would not meet environmental standards.
- He recommended commissioners vote to deny the proposal.

Ron Frick, 2511 Bantas Point Lane, stated that:

- He appreciated being able to meet with the developer in January and for the chance to speak today.
- He appreciated the comments regarding the wetland. Sandhill cranes nest in the area.
- He was concerned with safety on Bantas Point Road. The bridge curves and goes up. The proposal would make it worse.
- He was concerned with access to fire hydrants and fire safety.
- He looked forward to a more detailed plan to address the existing safety

issues of the road that would become worse with the addition of eight houses. It is difficult to see to the left when turning from Bantas Point Road to McGinty Road.

- A turn lane and sidewalk would be a big improvement.

Janine Flynn, 2533 Bantas Point Road, stated that:

- She attended the previous two meetings.
- She objects to the channel being dredged. It would create an environmental impact that would hurt the marsh ecosystem, destroy a beaver house, and have no positive effect. It would set a precedent. Dredging has not been allowed in 30 years.
- The vast majority of the property is not located in a public waterway, but is plotted land owned by the city of Minnetonka and Grays Landing Homeowners Association. She asked if the property owners have the right to reject the proposal.
- She requested the dredging not be allowed. It would be done at the expense of the neighbors and be a detriment to the environment.
- She appreciated the commission's time.

JoAnn Hinnenthal, 2401 Bantas Point Road, stated that:

- The number of deliveries made to the neighborhood has increased lately and caused an increase in traffic. She questioned if delivery drivers would travel on a private road.
- The road is narrow now. She is concerned with traffic safety when vehicles park on both sides of the existing street.
- She appreciates the commission's time.

Henry asked how the residents would reach the proposed docks. Mr. Robinson explained that has not yet been determined, but it looks like the safest option would be to create a boardwalk that would access the docks directly across from the access road. That would prevent the use of golf carts or the need for an access down by the bridge for which neighbors have expressed safety concerns.

Waterman asked for the differences between a villa and a typical single-family residence. Mr. Robinson explained that the proposed villas would be similar to those found in Locust Hills with a main floor that would provide everything needed to live. The master bedroom, office, kitchen, livingroom, bathroom, and laundry would be on the main floor. It would have a smaller footprint with bedrooms downstairs for when the kids visit.

Banks asked if there would be any other amenities. Mr. Robinson answered that the only amenity would be the docks and there would be open, green space in the corner that would have native vegetation.

Powers asked where vehicles would park during large gatherings. Mr. Robinson stated that parking would be allowed on one side of the street. The street would be the same size as the one in Locust Hills.

Maxwell asked what size of boats the docks would be designed to accommodate. Mr. Robinson understood the concerns of neighbors. The original intent was to accommodate boats up to 32 feet, but it would probably be limited to a boat of 24 feet to 26 feet.

Powers asked what the public benefit would be to change the zoning to PUD. Mr. Robinson answered preservation of high-priority trees and open space and providing villa-type housing which is a type that is lacking and in demand in Minnetonka.

Henry asked Mr. Robinson what would be the intended use of the open space. Mr. Robinson responded that the homeowners may choose to make it a picnic or recreation area. The open space would help maintain the natural feel of the area.

Maxwell stated that:

- She supports rezoning the site to a PUD. R-1 zoning requirements would prohibit preservation of the open space and many high-priority trees that would be saved by utilizing PUD zoning.
- She is comfortable with the number of houses and lot sizes. The buildable area ratio of the house to the lot size and the amount of impervious surface on the individual lots adjacent to the wetland need to be provided and reviewed in an application for a PUD.
- The proposal would not increase traffic significantly on the bridge, since the site is located north of the bridge.
- She supports the access being located on Bantas Point Road instead of McGinty Road West or Locust Hills.
- She appreciates the developer working with the topography of the site and designing the units with walkout basements to fit the elevation and leaving the undeveloped green space on the northeast corner. That is important.
- She would be fine with Plan B creating a green, native-vegetation space with no designated use. That would be detailed enough to show the public benefit.
- She appreciates the tree plan and mitigation plan which would provide a buffer between the street and the houses.
- She disliked the environmental impact that could be caused by dredging and the increase in impervious surface.
- She suggested adding a description of how the plan would address the neighbors' primary concerns in the next presentation.

Waterman stated that:

- He agrees with Maxwell in regard to site design and road considerations.
- He thinks he supports the PUD. The proposed housing type is desirable to the city and is a reason to rezone a property to a PUD.
- The developer would be able to save more high-priority trees with the PUD. It appears that the proposal works with the spirit of the PUD to improve a development rather than circumvent ordinance requirements.
- Many of the neighbors' concerns deal with dredging the channel and the developer is already working with the neighbors to address those concerns.

Powers stated that:

- He did not see a strong case to support a PUD.
- This area of Minnetonka is all about environment. It has a character all its own. Locust Hills does not blend in well. He thought maintaining the R-1 zoning would be suitable for the area.
- He would rather see two to five additional trees removed than more of the site covered by impervious surface.

Henry stated that:

- He appreciated commissioners' and the applicants' comments.
- He understood that adding to the diversity of housing stock and saving trees are a public benefit.
- He thought more trees could be saved with R-1 zoning.
- R-1 zoning would fit in better with the neighborhood.
- The private street design for the eight houses would be fine, but the eight families walking across the road to the docks would alter the character of the neighborhood and have an environmental impact.
- Eight houses would be too many.
- He did not see a compelling case to change the zoning to PUD.
- He appreciated that there would be a separate road into the houses. He would like the number of houses that R-1 zoning would allow.

Banks stated that:

- He agreed with Maxwell and Powers. He was on the fence. The concept has a lot of good aspects, but needs work.
- He questioned how the proposal benefits the public and surrounding community.
- The site looks like it could support eight houses.
- The proposal would not significantly increase the traffic in the area. The access point would not cause the proposed residences' traffic to cross the bridge.
- He looks forward to an application that would address the neighbors' concerns and feedback from commissioners. The proposal could be

made more conducive to deserving a PUD.

Acting Chair Hanson stated that:

- He commends Mr. Robinson and the development team for hosting a virtual meeting with the neighbors.
- He felt eight houses would look tight for the site. He suggested removing houses one and four to allow more room on the south side.
- Trees are important to Minnetonka.
- He was fine with the road as proposed.
- He would love to see the applicant address neighbors' concerns half way. He was not sold that this type of housing stock, of expensive single-family houses, is in great need.

Acting Chair Hanson thanked Mr. Robinson and his team for their time.

B. Concept plan for Bren Road Development at 10701 Bren Road East.

This item was removed from the agenda at the applicant's request.

9. Adjournment

Powers moved, second by Banks, to adjourn the meeting at 8:20 p.m. Motion carried unanimously.

By: _____
Lois T. Mason
Planning Secretary

**City Council Agenda Item #15A
Meeting of Feb. 22, 2021**

Brief Description: Appointments to the Minnetonka Sustainability Commission

Recommended Action: Approve the recommended appointments

Background

On February 1, the council interviewed candidates for openings on the new sustainability commission. The council used a ranking system to score the candidates who interviewed. In addition, the sustainability commission has two openings for ex-officio members, one from the park board and one from the planning commission. Those members were self-selected by the commission and are also listed below. I am recommending the appointment of the noted new applicants.

Recommendation

To approve the following appointments to the Minnetonka Sustainability Commission:

- Greta Beck, to serve as a young adult member for a one-year term, effective February 1, 2021 and expiring on June 30, 2022.
- Justin Anderson, to serve as a young adult member for a one-year term, effective February 1, 2021 and expiring on June 30, 2022.
- Ashley Pattain, to serve a three-year term, effective February 1, 2021 and expiring on January 31, 2024.
- Brian Golob, to serve a three-year term, effective February 1, 2021 and expiring on January 31, 2024.
- Edwin Avalos, to serve a two-year term, effective February 1, 2021 and expiring on January 31, 2023.
- Harapanahalli Muralidhara, to serve a three-year term, effective February 1, 2021 and expiring on January 31, 2024.
- Megan Park, to serve a two-year term, effective February 1, 2021 and expiring on January 31, 2023.
- Dave Ingraham, to serve as the park board ex-officio member for a one-year term, effective February 1, 2021 and expiring on January 31, 2022.
- Matt Henry, to serve as the planning commission ex-officio member for a one-year term, effective February 1, 2021 and expiring on January 31, 2022.

The membership roster showing the composition of the above commission following these appointments is attached.

Respectfully submitted,

Brad Wiersum
Mayor



Board Roster



Matt Henry

1st Term Feb 01, 2021 - Jan 31, 2022

Position Planning Commission



David Ingraham

1st Term Feb 01, 2021 - Jan 31, 2022

Position Park Board



Justin M Anderson

1st Term Feb 01, 2021 - Jun 30, 2022

Position Young Person



Greta E Beck

1st Term Feb 01, 2021 - Jun 30, 2022

Position Young Person



Megan Park

1st Term Feb 01, 2021 - Jan 31, 2023



Edwin Avalos

1st Term Feb 01, 2021 - Jan 31, 2023



Harapanahalli Muralidhara

1st Term Feb 01, 2021 - Jan 31, 2024



Brian R Golob

1st Term Feb 01, 2021 - Jan 31, 2024



Ashley N Pattain

1st Term Feb 01, 2021 - Jan 31, 2024