



**Agenda**  
**Minnetonka Economic Development Authority**  
**Monday, June 14, 2021**  
**Following the regular meeting**  
**Council Chambers**

1. Call to Order
2. Roll Call: Calvert-Schaeppi-Coakley-Kirk-Schack-Carter-Wiersum
3. Approval of Agenda
4. Approval of Minutes:
  - A. May 10, 2021 EDA meeting
5. Business Items:
  - A. Doran Apartments at 5959 Shady Oak Road  
Recommendation: Adopt the resolutions (4 votes)
  - B. Emergency Rental Assistance  
Recommendation: Approve the final distribution of COVID-19 rental assistance to Intercongregation Communities Association (ICA) (4 votes)
6. Adjourn

**Minutes**  
**Minnetonka Economic Development Authority**  
**Monday, May 10, 2021**

**1. Call to Order**

Wiersum called the meeting to order at 9:33 p.m.

**2. Roll Call**

Commissioners Rebecca Schack, Susan Carter, Deb Calvert, Bradley Schaeppi, Kissy Coakley, Brian Kirk and President Brad Wiersum were present.

**3. Approval of Agenda**

City Manager Geralyn Barone stated there were no addendums to the materials provided in the meeting packet.

Calvert moved, Kirk seconded a motion to accept the agenda, as presented.

All voted "yes." Motion carried.

**4. Approval of Minutes:**

**A. April 26, 2021 EDA meeting**

Calvert moved, Schack seconded a motion to accept the minutes, as presented.

All voted "yes." Motion carried.

**5. Business Items:**

**A. Applewood Pointe Cooperative at 12201 Minnetonka Blvd**

Community Development Director Julie Wischnack gave a report summarizing the history of the Applewood Pointe Cooperative, how the city was made aware of the violations, what the violations were, and what agreement for remedy was reached by the city and the cooperative's board.

Calvert expressed her appreciation for the affordability provided by the cooperative, acknowledged that running a cooperative can be difficult, and thanked all parties involved in working to remedy the violation.

Kirk commended the Applewood Pointe Cooperative for its contributions to affordable housing in Minnetonka, and expressed his appreciation for the work of city staff and cooperative board members to reach a resolution.

Wiersum congratulated staff for their courage and innovation throughout the process.

Kirk moved, Calvert seconded a motion to adopt EDA Res. 2021-008 approving a remedy for noncompliance by Applewood Pointe Cooperative of Minnetonka.

All voted "yes." Motion carried.

**6. Adjournment**

Calvert moved, Kirk seconded a motion to adjourn the meeting at 9:46 p.m.

All voted "yes." Motion carried.

Respectfully submitted,

A handwritten signature in black ink that reads "Becky Koosman". The signature is written in a cursive, flowing style.

Becky Koosman  
City Clerk



**Economic Development  
Authority Agenda Item 5A  
Meeting of June 14, 2021**

**Title:** Doran Apartments at 5959 Shady Oak Road

**Report From:** Alisha Gray, EDFP, Economic Development and Housing Manager

**Submitted through:** Geralyn Barone, Executive Director  
Julie Wischnack, AICP, Community Development Director

---

**Action Requested:**  Motion     Informational     Public Hearing  
**Form of Action:**     Resolution     Ordinance     Contract/Agreement     Other     N/A  
**Votes needed:**     4 votes     5 votes     N/A     Other

---

**Summary Statement**

This item includes a financing request and contract for private development for Doran Apartments located at 5959 Shady Oak Road. There are two resolutions – one to authorize an interfund loan for the advance of certain costs in connection with a \$280,000 grant for a multi-family housing development, and another to approve a contract for private development with Shady Oak Apartments, LLC.

**Recommended Action**

Adopt the resolutions

**Strategic Profile Relatability**

- |  |  |
|--|--|
| <input type="checkbox"/> Financial Strength & Operational Excellence | <input type="checkbox"/> Safe & Healthy Community                      |
| <input type="checkbox"/> Sustainability & Natural Resources          | <input checked="" type="checkbox"/> Livable & Well-Planned Development |
| <input type="checkbox"/> Infrastructure & Asset Management           | <input type="checkbox"/> Community Inclusiveness                       |
| <input type="checkbox"/> N/A   |  |

Statement: The proposed action approves funding for affordable housing.

**Financial Consideration**

- Is there a financial consideration?     No     Yes \$280,000
- Financing sources:     Budgeted     Budget Modification     New Revenue Source  
 Use of Reserves     Other [Enter]

Statement: The \$280,000 grant will be paid through a loan from the development fund and reimbursed through the Opus TIF District.

## **Background**

Doran Development is proposing a redevelopment of the site located at 5959 Shady Oak Road (currently International Spanish Language Academy). The 5.11-acre site is located immediately east of Shady Oak Road, north of Red Circle Drive. The proposed project would include a six-story apartment building with 356 units (54 affordable units). The units would be a mix of alcove, one, two, and three-bedroom units.

## **Current Proposal**

The proposed project would include a six-story apartment building with 350 units (53 affordable units). The units would be a mix of an alcove, one, two, and three-bedroom units, with the following unit mix:

Proposed affordable rents (based upon 4/1/2020 effective rates):

<b>Unit Type</b>	<b>Unit Count</b>	<b>50% AMI</b>	<b>60% AMI</b>	<b>80% AMI</b>
Studio	4	1 unit at \$905	1 unit at \$1,086	2 units at \$1,448
Alcove + 1BR	37	13 units at \$970	12 units at \$1,164	12 units at \$1,552
2 BR	9	3 units at \$1,163	3 units at \$1,396	3 units at \$1,862
3 BR	3	1 unit at \$1,344	1 unit at \$1,613	1 unit at \$2,151
<b>Total</b>	<b>53 units</b>	<b>18 units</b>	<b>17 units</b>	<b>18 units</b>

Market rate rents on the remaining 297 units range from approximately \$1,400 to \$3,400 per month.

## **Financing Request**

The EDAC and city council both recommended that the developer pursue providing an additional 5% of the units at 80% AMI as indicated in the current proposal. Ehlers has reviewed the developer's request of \$280,000 to provide the 18 units at 80% AMI for a 30-year term. Ehlers finds the level of assistance is appropriate as it has an approximate cost to the developer of \$700,000 to provide the additional units. The attached memo from Ehlers provides further detail on the financing request and analysis.

## **Contract for Private Development**

### *Developer*

- *Shady Oak Apartments, LLC*

### *Construction Commencement and Completion*

- Project abatement and demolition are anticipated to commence by Dec. 31, 2021, and be completed by Dec. 31, 2023.

### *Declaration of Restrictive Covenants*

- The developer will make 54 units affordable to households:
  - 18 units at or below 50% AMI
  - 17 units at or below 60% AMI
  - 18 units at or below 80% AMI

- The city's policy requires a minimum of 30 years of affordability.
- Rents on the affordable units are anticipated to be between \$905 and \$2,151 per month (depending on the size of the unit) and based on 2020 income limits.
- The agreement includes language prohibiting practices that discriminate against Section 8 voucher holders.
  - New language has been added to limit income requirements for new tenants to two times the rent paid for the affordable units.
- The developer is required to give a 90-day notice of a sale to the city if a sale is pending
- The agreement, as has been included in previous documents, includes compliance with labor laws.

### *Assistance*

Staff is recommending up to \$280,000 to assist with the financing of the affordable units. The funding source is the city's development fund. Keith Dahl, from Ehlers, reviewed this request and prepared the attached memo that includes an analysis of the request and a recommendation.

The following is a summary of Ehlers' recommendation that is included in the memo:

- Provide up to \$280,000 in up-front assistance through the city's development fund.
- Require a 30-year term of affordability.

The assistance requested from the developer would result in a per-unit cost of approximately \$491 per year over a 30-year affordability period based on total assistance of \$280,000. The per-unit assistance on previously approved housing redevelopment projects ranges from \$500 per unit/per year to \$4,571 per unit/per year.

Julie Eddington, the city's EDA attorney, has prepared the attached contract for private development. Ms. Eddington will be available at the meeting to answer any questions. The developer will also be available to answer questions related to this request.

### **Additional Information**

[March 15, 2021 – City Council Study Session](#)

[March 11, 2021 – EDAC Meeting](#)

[Feb. 25, 2021 – EDAC Meeting](#)

[Oct. 29, 2020 – EDAC Meeting](#)

[Oct. 12, 2020 City Council – Opus Housing Brief](#)

Location Map

Memo from Ehlers

Memo from Doran Development

April 29, 2021 EDAC – Unapproved Minutes

Draft Contract for Private Development

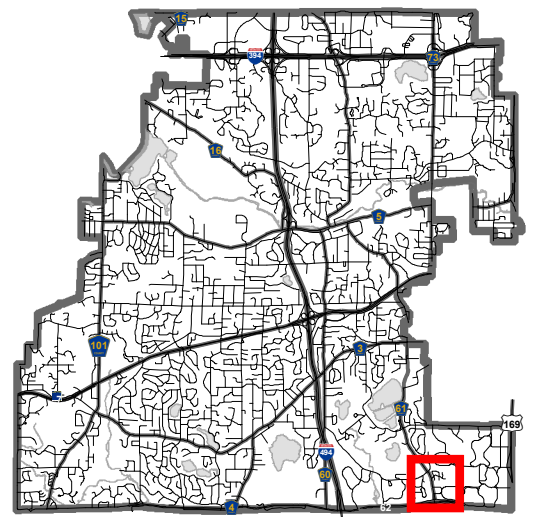
History of Affordable Housing Production and Assistance

[Opus Public Realm Design Guidelines](#)



### Location Map

Project: Doran Development  
Address: 5959 Shady Oak Rd



## MEMORANDUM

TO: Julie Wischnack – Community Development Director  
Alisha Gray – Economic Development and Housing Manager

FROM: Stacie Kvilvang & Keith Dahl - Ehlers

DATE: March 31, 2021

SUBJECT: Doran Development – Analysis of Financial Request

---

Earlier this year, the City requested Doran Development (the “Developer”) to exceed the City’s affordable housing policy in their proposed project, specifically to incorporate an additional 5% of the units affordable at 80% of the area median income (AMI). Subsequently, the Developer submitted a request for public financial assistance seeking \$280,000 in an up-front grant. The Developer is now proposing to construct a 356-unit apartment with studio, alcove, 1, 2, and 3-bedroom units with 5% of the units affordable at 50% AMI, 5% of the units at 60% AMI, and 5% of the units at 80% AMI. The project is anticipated to commence construction later this summer or fall and cost approximately \$90.5 million, or \$254,330 per unit.

Based on our review, we’ve concluded the Developer’s financial request is warranted to support the additional increase in affordable housing units. The annual difference in income by incorporating an additional 5% of the units affordable at 80% AMI is approximately \$43,270 per year. Over a 30-year term (required term of affordability) discounted at a rate of 4.5% (Developers proposed financing rate), the present value calculation or affordability impact to the Developer is slightly over \$700,000.

**Therefore, we conclude assistance in the amount of \$280,000 in up front assistance is supported for this project.** Similar to the Minnetonka Station development, approved earlier this year, the City will be able to reimburse themselves through future tax increment generated from within the proposed Opus Business Park TIF district.

Please contact either of us at 651-697-8500 with any questions.





## 5959 Shady Oak Road

### Development Application Minnetonka, MN

PICTURE

#### Project Narrative May 25<sup>th</sup>, 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	Completed 2/22/21
City Council Study Session	Completed 3/15/21
Minnetonka EDAC	Completed 4/29/21
Planning Commission – Public Hearing	6/4/21
City Council – Final Decision	6/14/21

## **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 350 -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 and 5% of the units at 80% of the area medium income. The project will consist of a concrete podium parking garage with approximately 483 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 six surface parking spaces along the circle drive near the main entrance for short-term guest parking and 2 parking stalls for larger deliveries. 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 studio, 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 19<sup>th</sup> 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 350 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 138 feet from the property line and 161 feet to the townhomes. There is a small section of the building that is set back 87 feet from the property line and 118 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 and the fence and their homes. This revised plan also dedicates an additional 20' of right of way far a future turn lane if necessary.

## **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 10-inch sanitary sewer service is proposed to be constructed within a private easement with 10900 Red Circle Drive..
- 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.



May 21, 2021

Julie Wischnack  
Community Development Director  
City of Minnetonka  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345

**Re: 5959 Shady Oak Road Development – Sustainability Aspects**

Dear Ms. Wischnack,

We have further reviewed the City of Minnetonka's adopted Energy Action Plan regarding sustainable goals to reduce the carbon footprint and promote the use of renewable energy in Minnetonka. In addition to the previous application documents submitted for the proposed development at 5959 Shady Oak Road, please find this letter providing further clarification on the sustainable aspects that will be incorporated into the development. The sustainable features of this proposed development include but are not limited to the following:

- Improved stormwater management provided as an underground infiltration system to provide additional rate control and treatment to the detention ponds that currently exist on-site;
- The project has been enrolled in Xcel's Energy and Centerpoint Energy's Energy Design Assistance program for energy efficiency;
- Installation of electric car charging capabilities;
- Enrollment of the project in a community solar garden program;
- Installation of occupancy and vacancy sensor lighting controls in select building locations;
- Installation of individual programmable thermostats, high quality, energy-efficient windows, energy star (or comparable energy-efficient) appliances and other sustainable building materials
- Installation of low-flow plumbing fixtures
- Hot water recirculation to reduce water waste and decrease water heater energy waste
- Use of Hardie fiber cement siding on the exterior of the building
  - o Raw materials are low in toxicity and at least 75% of raw materials are locally sourced to reduce the amount of transportation needed to supply the product
  - o Hardie uses a unique manufacturing process that bakes the paint on the fiber cement board as a pre-finish, which eliminates volatile organic compounds being released through exterior painting traditionally applied on-site
  - o Fiber cement boards are more durable and require less replacement and maintenance than traditional vinyl siding

# DORAN

DEVELOPMENT

- Use of precast concrete to build the two-story concrete podium for the parking garage
  - o Concrete is created out of natural materials
  - o With the precast concrete plank, beams and columns being fabricated within a factory, this process through the use of molds and forms reduces overall material waste and allows for recycling of materials
  - o Precast concrete can be installed faster than cast in place concrete, which reduces construction timeframes and emissions released from machinery
- The development will be installing Pollinator-friendly landscaping and is planning to partner with the University of Minnesota Bee Squad to introduce a new bee colony on the site to help sustain the local habitat and ecosystem
- Doran has previously achieved LEED certification in several of our past developments and although we will not be seeking LEED Certification at this development, the design of our typical buildings including this one meet the standards to receive LEED Certification

If there are any further questions regarding the sustainable features of the proposed development, please reach out to me to discuss.

Sincerely,



Cody Dietrich  
Director of Development  
Doran Development, LLC  
[Cody.dietrich@dorancompanies.com](mailto:Cody.dietrich@dorancompanies.com)  
952-288-2089

**Unapproved  
Minnetonka Economic Development Advisory Commission  
Virtual Meeting  
Minutes**

**April 29, 2021**

**1. Call to Order**

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

**2. Roll Call**

EDAC commissioners Ann Duginske Cibulka, Maram Falk, Lee Jacobsohn, Melissa Johnston, Steven Tyacke, and Charlie Yunker were present. Jay Hromatka was absent.

Councilmember Deb Calvert was present.

Staff present: Community Development Director Julie Wischnack, Economic Development and Housing Manager Alisha Gray, Economic Development Coordinator Rob Hanson, Financial Consultant Keith Dahl of Ehlers and Associates, and IT Assistants Gary Wicks and Joona Sundstrom.

**3. Approval of EDAC March 11, 2021 Meeting Minutes**

Tyacke motioned, Jacobsohn seconded the motion to approve the March 11, 2021 meeting minutes as submitted. Duginske Cibulka, Falk, Jacobsohn, Johnston, Tyacke, and Yunker voted yes. Hromatka was absent. Motion passed.

**4. Doran Development at 5959 Shady Oak Road**

Gray gave the staff report. She requested commissioners review the financing request and contract for private development and make a recommendation.

Tyacke asked why the number of units was reduced from 375 to 354. Mr. Tony Kuechle, of the applicator for Doran Development, explained that the number of units was reduced to allow a greater setback on the north side and to create 20 feet of right-of-way, which was requested by engineering staff to provide for a future turn lane if needed.

Tyacke asked for the rationale of having none of the one-bedroom-plus-den units being affordable. Mr. Kuechle explained that there would be affordable one-bedroom-plus-den units. Chair Yunker confirmed with Gray that the one-bedroom-plus-den units would be included in the one-bedroom unit category. Gray stated that the one-bedroom-plus-den units could be identified separately from the one-bedroom units.

Duginske Cibulka felt that the developer listened to commissioners' feedback. She was excited that there would be a mix of units and a variety of AML ranges. The assistance is



a small amount in exchange for the number of affordable housing units. The proposal would be a good return on the investment. The project location is great.

Johnston agrees with Duginske Cibulka.

Falk commended the applicant for utilizing the energy design assistance provided by utility companies. She likes the proposal's use of solar energy and rain gardens.

Tyacke thought the design is impressive. He likes the different heights near the entryway. It is an attractive building.

Chair Yunker concurred. The proposal would provide a great level of affordability for the amount of assistance. The design looks great.

Jacobsohn motioned, Duginske Cibulka seconded the motion to recommend that the city council approve the contract agreement included in the staff report for the Doran Development. Duginske Cibulka, Falk, Jacobsohn, Johnston, Tyacke, and Yunker voted yes. Hromatka was absent. Motion passed.

**5. Kraus-Anderson/Aeon Bren Road Development at 10701 Bren Road East**

This item was removed from the agenda.

**6. 2022–2026 EIP**

Gray gave the staff report. She recommended commissioners provide feedback for the draft 2022-2026 EIP.

Chair Yunker encouraged the use of multi-family rehabilitation loan programs to preserve naturally occurring affordable housing. Property owners could be given an option to help bring a building up to code and keep rents affordable.

Tyacke asked if a placeholder should be created to determine what to do with the federal dollars from the American Rescue Plan once the amount and allowed expenditures are known. Gray answered affirmatively. Gray and Wischnack anticipated creating a multi-year spend-down approach once the parameters for what the funds may be used are known.

Jacobsohn asked for more information on the naturally occurring affordable housing Legacy Education Program. Gray explained that the program encourages multi-family housing property owners to contact the city prior to the sale of the land to allow staff the opportunity to connect the seller with a buyer who could preserve the affordable units long term. It would be a low-cost program to the city that could have a big impact on the preservation of affordable units.

**Fourth Draft  
June 10, 2021**

---

---

**CONTRACT  
FOR  
PRIVATE DEVELOPMENT**

**between**

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

**and**

**SHADY OAK APARTMENTS, LLC**

**Dated June 14, 2021**

---

---

This document was drafted by:

KENNEDY & GRAVEN, CHARTERED (JAE)  
150 South Fifth Street, Suite 700  
Minneapolis, Minnesota 55402  
Telephone: (612) 337-9300

**TABLE OF CONTENTS**

PREAMBLE .....1

**ARTICLE I**  
Definitions

Section 1.1. Definitions .....2

**ARTICLE II**  
Representations and Warranties

Section 2.1. Representations of the Authority .....5  
Section 2.2. Representations and Warranties by the Developer .....5

**ARTICLE III**  
Financial Assistance

Section 3.1. Status of the Property .....7  
Section 3.2. Environmental Conditions .....7  
Section 3.3. Financial Assistance .....7  
Section 3.4. Interfund Loan .....8  
Section 3.5. Payment of Administrative Costs .....8  
Section 3.6. Exemption from Business Subsidy Act .....8

**ARTICLE IV**  
Construction of Minimum Improvements

Section 4.1. Construction of Improvements .....9  
Section 4.2. Construction Plans .....9  
Section 4.3. Commencement and Completion of Construction .....10  
Section 4.4. Certificate of Completion .....10

Section 4.5. Affordable Housing Covenants .....11  
Section 4.6. Affordable Housing Reporting .....12  
Section 4.7. Records .....12  
Section 4.8. Property Management Covenant .....12  
Section 4.9. Fees .....13

**ARTICLE V**  
Insurance

Section 5.1. Insurance .....14  
Section 5.2. Subordination .....15

**ARTICLE VI**  
Taxes

Section 6.1. Right to Collect Delinquent Taxes .....16  
Section 6.2. Review of Taxes .....16

ARTICLE VII  
Financing

Section 7.1. Financing .....17

ARTICLE VIII  
Prohibitions Against Assignment and Transfer; Indemnification

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

ARTICLE IX  
Events of Default

Section 9.1. Events of Default Defined .....20  
Section 9.2. Remedies on Default .....20  
Section 9.3. No Remedy Exclusive .....20  
Section 9.4. No Additional Waiver Implied by One Waiver.....21  
Section 9.5. Attorneys' Fees.....21

ARTICLE X  
Additional Provisions

Section 10.1. Conflict of Interests; Authority Representatives Not Individually Liable.....22  
Section 10.2. Equal Employment Opportunity.....22  
Section 10.3. Restrictions on Use .....22  
Section 10.4. Provisions Not Merged With Deed.....22  
Section 10.5. Titles of Articles and Sections.....22  
Section 10.6. Notices and Demands .....22  
Section 10.7. Counterparts .....23  
Section 10.8. Recording .....23  
Section 10.9. Amendment .....23  
Section 10.10. Authority Approvals .....23  
Section 10.11. Termination .....23

SIGNATURES ..... S-1

EXHIBIT A Description of Development Property ..... A-1  
EXHIBIT B Certificate of Completion .....B-1  
EXHIBIT C Declaration of Restrictive Covenants .....C-1

## CONTRACT FOR PRIVATE DEVELOPMENT

THIS CONTRACT FOR PRIVATE DEVELOPMENT, made on or as of the 14<sup>th</sup> day of June, 2021 (the “Agreement”), is between the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), and SHADY OAK APARTMENTS, LLC, a Minnesota limited liability company (the “Developer”).

### WITNESSETH:

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

WHEREAS, the Developer has proposed a development of a rental housing development with approximately 350 units as described further herein as the “Minimum Improvements” on certain property (the “Development Property”) located in the City; and

WHEREAS, the Authority has proposed to provide the Developer with a grant in the amount of \$280,000 (the “Authority Grant”) from the Authority’s Development Fund to assist in financing the acquisition and construction of the Minimum Improvements on the Development Property; and

WHEREAS, the Authority will be reimbursed for the costs of the Authority Grant with tax increment generated from a tax increment financing district to be created within the City pursuant to an interfund loan resolution adopted by the Board of Commissioners of the Authority on June 14, 2021; and

WHEREAS, the Authority believes that the development of the Minimum Improvements pursuant to this Agreement, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State of Minnesota and local laws and requirements; and

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

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

## ARTICLE I

### Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context:

“Act” means the Economic Development Authority Act, Minnesota Statutes, Sections 469.090 through 469.1082, as amended.

“Affiliate” means (a) any corporation, partnership, corporation or other business entity or person controlling, controlled by or under common control with the Developer; and (b) any successor to such party by merger, acquisition, reorganization or similar transaction involving all or substantially all of the assets of such party (or such Affiliate). For the purpose hereof the words “controlling,” “controlled by,” and “under common control with” shall mean, with respect to any corporation, partnership, corporation or other business entity, the ownership of fifty percent (50%) or more of the voting interests in such entity, possession, directly or indirectly, of the power to direct or cause the direction of management policies of such entity, whether ownership of voting securities or by contract or otherwise.

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

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

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

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

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

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

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

“City” means the City of Minnetonka, Minnesota.

“Closing Date” has the meaning provided in Section 3.3(b) hereof.

“Construction Plans” means the plans, specifications, drawings and related documents on the construction work to be performed on the Development Property (including the Minimum Improvements) which (a) shall be as detailed as the plans, specifications, drawings and related documents which are submitted to the appropriate building officials of the City, and (b) shall include at least the following for each building: (1) site plan; (2) foundation plan; (3) basement plans; (4) floor plan for each floor; (5) cross-sections of each (length and width); (6) elevations (all sides); (7) landscape plan; and (8) such

other plans or supplements to the foregoing plans as the Authority may reasonably request to allow it to ascertain the nature and quality of the proposed construction work.

“County” means the County of Hennepin, Minnesota.

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

“Developer” means Shady Oak Apartments, LLC, a Minnesota limited liability company, its successors and assigns.

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

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

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

“Interfund Loan” means the Authority’s interfund loan in the amount of \$280,000, which will be used to reimburse the Authority for the Authority Grant to the Redeveloper.

“Interfund Loan Resolution” means the resolution adopted by the Board of Commissioners of the Authority on June 14, 2021, approving the Interfund Loan.

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

“Minimum Improvements” means the construction on the Development Property of a rental housing development with approximately 350 units, with 53 Rental Housing Units subject to the affordability requirements described in Section 4.5 hereof, and 483 enclosed parking spaces and 6 surface parking spaces.

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

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

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

“Redevelopment Costs” means land acquisition, demolition, underground parking, excavation/grading, and utilities costs.

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

“State” means the State of Minnesota.

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

“Termination Date” means the date of termination of the “Qualified Project Period” as defined in the Declaration.

“Transfer” has the meaning set forth in Section 8.2(a) hereof.

“Unavoidable Delays” means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of war, terrorism, strikes, other labor troubles, fire or other casualty to the Minimum Improvements, acts of God, war, unavailability of labor or materials, national emergency, acts of a public enemy, epidemics, infectious diseases, adverse weather conditions that are abnormal for the time of year and geographic location and have had a material and adverse effect on the construction schedule, concealed or unknown site conditions not revealed prior to the date of this Agreement, or other causes beyond the reasonable control of a party, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the Authority in exercising its rights under this Agreement) which directly result in delays. Unavoidable Delays shall not include delays in the Developer’s obtaining of permits or governmental approvals necessary to enable construction of the Minimum Improvements by the dates such construction is required under Section 4.3 hereof, unless (a) the Developer has timely filed any application and materials required by the City for such permit or approvals, and (b) the delay is beyond the reasonable control of the Developer.

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



## ARTICLE II

### Representations and Warranties

#### Section 2.1. Representations of the Authority.

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

(b) The Authority will use its best efforts to facilitate development of the Minimum Improvements, including but not limited to cooperating with the Developer in obtaining necessary administrative and land use approvals and construction and/or permanent financing pursuant to Section 7.1 hereof.

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

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

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

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

(a) The Developer is a limited liability company organized and in good standing under the laws of the State, is not in violation of any provisions of its organization documents, or, to the best of its knowledge, the laws of the State, is duly authorized to transact business in the State, has power to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action of its partners.

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

(c) The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, State and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed.

(d) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of

this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any partnership or company restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which either is bound, or constitutes a default under any of the foregoing.

(e) The Developer will promptly advise the Authority in writing of all litigation or claims materially affecting the operation of the Minimum Improvements and all written complaints and charges made by any governmental authority materially affecting the operation of the Minimum Improvements or materially affecting Developer or its business which may delay or require Material Changes in construction of the Minimum Improvements.

(f) The proposed redevelopment on the Development Property hereunder would not occur but for the financial assistance being provided by the Authority hereunder.

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

## ARTICLE III

### Financial Assistance

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

#### Section 3.2. Environmental Conditions.

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

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

#### Section 3.3. Financial Assistance.

(a) *Authority Grant.* In order to make development of the Minimum Improvements financially feasible, the Authority will provide a grant to the Developer in an amount of \$280,000 (the "Authority Grant") to reimburse the Developer for qualified Redevelopment Costs.

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

(i) the Developer having provided evidence satisfactory to the Authority that the Developer has paid the costs associated with Redevelopment Costs in at least the principal amount of the Authority Grant;

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

(iii) the Authority having approved Construction Plans for the Minimum Improvements in accordance with Article IV hereof;

(iv) the Developer having obtained, and the Authority having approved, financing as described in Article VII hereof;

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

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

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

Section 3.4. Interfund Loan. The Interfund Loan is derived from funds from the Authority's Development Fund. The Authority shall reimburse itself for the principal of and interest on the Interfund Loan pursuant to the terms of the Interfund Loan Resolution.

Section 3.5. Payment of Administrative Costs. The Authority acknowledges that the Developer has deposited \$5,000 with the Authority. The Authority will use such deposit to pay "Administrative Costs," which term means out-of-pocket costs incurred by the Authority together with staff costs of the Authority, all attributable to or incurred in connection with the negotiation and preparation of this Agreement and other documents and agreements in connection with the development of the Development Property. At the Developer's request, but no more often than monthly, the Authority will provide the Developer with a written report including invoices, time sheets or other comparable evidence of expenditures for Administrative Costs and the outstanding balance of funds deposited. If at any time the Authority determines that the deposit is insufficient to pay Administrative Costs, the Developer is obligated to pay such shortfall within fifteen (15) days after receipt of a written notice from the Authority containing evidence of the unpaid costs. If any balance of funds deposited remains upon the issuance of the Certificate of Completion pursuant to Section 4.4 hereof, the Authority shall promptly return such balance to the Developer; provided that Developer remains obligated to pay subsequent Administrative Costs related to any amendments to this Agreement requested by the Developer. Upon termination of this Agreement in accordance with its terms, the Developer remains obligated under this section for Administrative Costs incurred through the effective date of termination.

Section 3.7. Exemption from Business Subsidy Act. The parties agree and understand that all financial assistance provided by the Authority under this Agreement represents assistance for housing, and accordingly is not subject to the Business Subsidy Act.

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

## ARTICLE IV

### **Construction of Minimum Improvements**

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

#### Section 4.2. Construction Plans.

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

(b) If the Developer desires to make any Material Change in the Construction Plans after their approval by the Authority, the Developer must submit the proposed change to the Authority for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2 with respect to the previously approved Construction Plans, the Authority will approve the proposed change and notify the Developer in writing of its approval. Any change in the Construction Plans will, in any event, be deemed approved by the Authority unless rejected, in whole or in part, by written notice by the Authority to the Developer, setting forth in detail the reasons therefor. Any rejection must be made within twenty (20) days after receipt of the notice of such change prior to the

commencement of construction and within ten (10) days after commencement of construction. The Authority's approval of any Material Change in the Construction Plans will not be unreasonably withheld.

Section 4.3. Commencement and Completion of Construction.

(a) Subject to Unavoidable Delays, the Minimum Improvements must be constructed in accordance with the following schedule: the Developer shall commence construction on or before December 31, 2021 and complete construction on or before December 31, 2023. Construction is considered to be commenced upon the beginning of physical improvements on the Development Property beyond grading.

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

Section 4.4. Certificate of Completion.

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

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

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

Section 4.5. Affordable Housing Covenants.

(a) The Developer expects that the Minimum Improvements will include a mix of studio, alcove plus one-bedroom, two-bedroom, and three-bedroom units. As further described in the Declaration, the Developer shall cause (i) at least 18 of the Rental Housing Units to be available to individuals and their families at or below fifty percent (50%) of the area median income; (ii) at least 17 of the Rental Housing Units to be available to individuals and their families at or below sixty percent (60%) of the area median income; and (iii) at least 18 of the units to be available to individuals and their families at or below eighty percent (80%) of the area median income. As of the date of execution of this Agreement, the Developer expects that the Rental Housing Units will be affordable as set forth in the tables below:

Type of Unit	Area Median Income	Number of Units
Studio	50%	1
Alcove Plus One-Bedroom	50%	13
Two-Bedroom	50%	3
Three-Bedroom	50%	1

Type of Unit	Area Median Income	Number of Units
Studio	60%	1
Alcove Plus One-Bedroom	60%	12
Two-Bedroom	60%	3
Three-Bedroom	60%	1

Type of Unit	Area Median Income	Number of Units
Studio	80%	2
Alcove Plus One-Bedroom	80%	12
Two-Bedroom	80%	3
Three-Bedroom	80%	1

Such restrictions shall remain in effect for the thirty (30) year period described in the Declaration. On or before the Closing Date, the Developer shall deliver the executed Declaration to the Authority in recordable form.

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

(c) The Developer may charge fees for additional services provided to tenants in the affordable Rental Housing Units, including but not limited to garage parking stalls. The Developer agrees that fees related to each garage parking stall will not exceed ten percent (10%) of the base rent permitted by the then published area median income rental rates.

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

the Developer shall not adopt policies that have the effect of making it difficult for tenants holding certificates/vouchers under Section 8 of the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq., or its successor, to rent units within the Minimum Improvements (for example, policies that require income of more than two times the rent to be paid for a unit).

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

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

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

Section 4.7. Records. The Authority, the legislative auditor, and the State auditor's office, through any authorized representatives, shall have the right after reasonable notice to inspect, examine and copy all books and records of the Developer relating to the construction of the Minimum Improvements. The Developer shall maintain such records and provide such rights of inspection for a period of six (6) years after issuance of the Certificate of Completion for the Minimum Improvements.

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

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

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

(c) If a third Violation occurs regarding the same tenancy within twelve (12) continuous months after the first Violation, the City police department will notify the Developer and the property manager of the third Violation. Within ten (10) days after receiving such notice, the Developer or the property manager shall commence termination of the tenancy of all occupants of that unit. The Developer shall not enter into a new lease agreement with the evicted tenant(s) for at least one (1) year after the effective date of the eviction.



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

(e) If the Developer and property manager fail to respond to the written notice under paragraph (d) above, or at least two (2) additional Violations occur within the next twelve (12) month period after the date of the notice under paragraph (d) above, then the Authority may direct the Developer to terminate the management agreement with the existing property manager and to replace that entity with a replacement property manager selected by the Developer but approved by the Authority. The parties agree and understand that appointment of any replacement manager may also be subject to consent by the Holder of one (1) or more of the Other Loans on the Development Property.

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

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

## ARTICLE V

### Insurance

#### Section 5.1. Insurance.

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

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

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

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

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

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

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

(iii) Such other insurance, including workers' compensation insurance respecting all employees of the Developer, if any, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure.

(c) All insurance required in this Article V shall be taken out and maintained in responsible insurance companies selected by the Developer that are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Developer will deposit annually with the Authority a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V each policy shall contain a provision that the insurer shall not cancel nor modify it in such a way as to reduce the coverage provided below the amounts required herein without giving written notice to the Developer and the Authority at least thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, the Developer may

maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Developer shall deposit with the Authority a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

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

(e) The Developer shall complete the repair, reconstruction and restoration of the Minimum Improvements, regardless of whether the net proceeds of insurance received by the Developer for such purposes are sufficient to pay for the same. Any net proceeds remaining after completion of such repairs, construction, and restoration shall be the property of the Developer.

Section 5.2. Subordination. Notwithstanding anything to the contrary herein, the rights of the Authority and the obligations of the Developer with respect to the receipt and application of any insurance proceeds shall, in all respects, be subordinate and subject to the rights of any Holder under a Mortgage allowed pursuant to Article VII hereof.

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

## ARTICLE VI

### Tax Increment; Taxes

Section 6.1. Right to Collect Delinquent Taxes. The Developer acknowledges that the Authority is providing substantial aid and assistance in furtherance of the redevelopment described in this Agreement. The Developer understands that, the purpose of the assistance under this Agreement is to increase the property tax base of the City. To that end, the Developer agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Development Property and the Minimum Improvements. The Developer acknowledges that this obligation creates a contractual right on behalf of the Authority through the Termination Date to sue the Developer or its successors and assigns to collect delinquent real estate taxes and any penalty or interest thereon and to pay over the same as a tax payment to the County auditor. In any such suit, the Authority shall also be entitled to recover its costs, expenses and reasonable attorneys' fees. Notwithstanding the foregoing, nothing in this Agreement in any way limits or prevents the Developer from contesting the assessor's proposed market values for the Development Property or the Minimum Improvements.

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

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

## ARTICLE VII

### Financing

#### Section 7.1. Financing.

(a) Before the Closing Date, the Developer shall submit to the Authority evidence of commitments for other financing (including without limitation grants or Other Loans) which, together with committed equity for such construction, is sufficient for acquisition of the Development Property construction of the Minimum Improvements. Such commitments may be submitted as short-term financing, long-term mortgage financing, a bridge loan with a long-term take-out financing commitment, or any combination of the foregoing.

(b) If the Authority finds that the financing is sufficiently committed and adequate in amount to pay the costs specified in paragraph (a) then the Authority shall notify the Developer in writing of its approval. Such approval shall not be unreasonably withheld and either approval or rejection shall be given within twenty (20) days from the date when the Authority is provided the evidence of financing. A failure by the Authority to respond to such evidence of financing shall be deemed to constitute an approval hereunder. If the Authority rejects the evidence of financing as inadequate, it shall do so in writing specifying the basis for the rejection. In any event the Developer shall submit adequate evidence of financing within ten (10) days after such rejection or such longer period as is reasonably necessary to secure additional financing.

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

## ARTICLE VIII

### **Prohibitions Against Assignment and Transfer; Indemnification**

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

Section 8.2. Prohibition Against Transfer of Property and Assignment of Agreement. The Developer represents and agrees that until the Termination Date:

(a) Except as specifically described in this Agreement, the Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same, to any person or entity (collectively, a "Transfer"), without the prior written approval of the Board of Commissioners of the Authority. The term "Transfer" does not include (i) encumbrances made or granted by way of security for, and only for, the purpose of obtaining construction, interim or permanent financing necessary to enable the Developer or any successor in interest to the Development Property or to construct the Minimum Improvements or component thereof; (ii) any lease, license, easement or similar arrangement entered into in the ordinary course of business related to operation of the Minimum Improvements; or (iii) a transfer of any ownership interest in the Developer in accordance with the terms of the Developer's partnership agreement. The Developer may not effect a Transfer of the Development Property to an Affiliate without approval by the Authority and complying with paragraph (b) below.

(b) If the Developer seeks to effect a Transfer, the Authority shall be entitled to require as conditions to such Transfer that:

(1) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the Authority, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer as to the portion of the Development Property to be transferred; and

(2) Any proposed transferee, by instrument in writing satisfactory to the Authority and in form recordable in the public land records of the County, shall, for itself and its successors and assigns, and expressly for the benefit of the Authority, have expressly assumed all of the obligations of the Developer under this Agreement as to the portion of the Development Property to be transferred and agreed to be subject to all the conditions and restrictions to which the Developer is subject as to such portion; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, and shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Authority) deprive the Authority of any rights or remedies or controls with respect to the Development Property, the Minimum Improvements or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Development Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally, or

practically, to deprive or limit the authority of the Authority or with respect to any rights or remedies on controls provided in or resulting from this Agreement with respect to the Development Property that the Authority would have had, had there been no such transfer or change. In the absence of specific written agreement by the Authority to the contrary, no such transfer or approval by the Authority thereof shall be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the Development Property, from any of its obligations with respect thereto; and

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

(c) If the conditions described in paragraph (b) above are satisfied, then the Transfer will be approved and the Developer shall be released from their obligations under this Agreement, as to the portion of the Development Property that is transferred, assigned, or otherwise conveyed, unless the parties mutually agree otherwise. Notwithstanding anything to the contrary herein, any Transfer that releases the Developer from its obligations under this Agreement (or any portion thereof) shall be approved by the Board of Commissioners of the Authority, which approval shall not be unreasonably withheld, conditioned, or delayed. If the Developer remains fully bound under this Agreement notwithstanding the Transfer, as documented in the transfer instrument, the Transfer may be approved by the Authority Representative. The provisions of this paragraph (c) apply to all subsequent transfers.

### Section 8.3. Release and Indemnification Covenants.

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

(b) Except for willful or negligent misrepresentation, misconduct or negligence of the Indemnified Parties (as hereafter defined), and except for any breach by any of the Indemnified Parties of their obligations under this Agreement, the Developer agrees to protect and defend the Authority and its members, commissioners, officers, agents, servants and employees (the "Indemnified Parties"), now or forever, and further agrees to hold the Indemnified Parties harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Minimum Improvements.

(c) Except for any negligence of the Indemnified Parties, and except for any breach by any of the Indemnified Parties of their obligations under this Agreement, the Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Minimum Improvements due to any act of negligence of any person.

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

## ARTICLE IX

### Events of Default

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

(a) The Developer or the Authority fails to observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement or the Declaration; or

(b) The Developer:

(i) files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or State law;

(ii) makes an assignment for benefit of its creditors;

(iii) fails to pay real estate taxes on the Development Property or the Minimum Improvements as they become due;

(iv) admits in writing its inability to pay its debts generally as they become due;

(v) is adjudicated as bankrupt or insolvent;

(vi) fails to comply with the Declaration; or

(vii) fails to comply with labor laws.

Section 9.2. Remedies on Default.

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

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



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

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

Section 9.4. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 9.5. Attorneys' Fees. Whenever any Event of Default occurs and if the Authority employs attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer under this Agreement, and the Authority prevails in the action, the Developer agrees that it will, within ten (10) days of written demand by the Authority, pay to the Authority the reasonable fees of the attorneys and the other expenses so incurred by the Authority.

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

## ARTICLE X

### Additional Provisions

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

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

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

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

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

Section 10.6. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, overnight mail, or delivered personally; and

(a) in the case of the Developer, is addressed to or delivered personally to the Developer at 7803 Glenroy Road, Suite 200, Bloomington, Minnesota 55439, Attn: Ryan Johnson, Chief Financial Officer; and

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

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

Section 10.7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 10.8. Recording. The Authority may record this Agreement and any amendments thereto with the County Recorder or Registrar of Titles of the County, as the case may be. The Developer shall pay all costs for recording.

Section 10.9. Amendment. This Agreement may be amended only by written agreement approved by the Authority and the Developer.

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

Section 10.11. Termination. This Agreement terminates on the Termination Date, except that termination of the Agreement does not terminate, limit or affect the rights of any party that arise before the Termination Date.

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

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

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

By \_\_\_\_\_  
Its President

By \_\_\_\_\_  
Its Executive Director

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by Brad Wiersum, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by Geralyn Barone, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

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

**SHADY OAK APARTMENTS, LLC**

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, the \_\_\_\_\_ of Shady Oak Apartments, LLC, a Minnesota limited liability company, on behalf of the Developer.

\_\_\_\_\_  
Notary Public

## EXHIBIT A

### DESCRIPTION OF DEVELOPMENT PROPERTY

#### 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.

Being registered land as evidenced by Certificate of Title No. 1332265.

---

**EXHIBIT B**

**CERTIFICATE OF COMPLETION**

The undersigned hereby certifies that Shady Oak Apartments, LLC, a Minnesota limited liability company (the "Developer"), has fully complied with its obligations under Articles III and IV of that document titled Contract for Private Development, dated June 14, 2021 (the "Contract"), between the Economic Development Authority in and for the City of Minnetonka, Minnesota and the Developer, with respect to construction of the Minimum Improvements in accordance with the Construction Plans, and that the Developer is released and forever discharged from its obligations to construct the Minimum Improvements under Articles III and IV of the Contract, but all other covenants under the Contract remain in full force and effect.

Dated: \_\_\_\_\_, 20\_\_.

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

By \_\_\_\_\_  
Its Executive Director

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN     )

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

\_\_\_\_\_  
Notary Public

This document was drafted by:

KENNEDY & GRAVEN, CHARTERED (JAE)  
150 South Fifth Street, Suite 700  
Minneapolis, Minnesota 55402  
Telephone: (612) 337-9300

## EXHIBIT C

### DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (the “Declaration”) dated \_\_\_\_\_, 2021, by SHADY OAK APARTMENTS, LLC, a Minnesota limited liability company (the “Developer”), is given to the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”).

#### RECITALS

WHEREAS, the Authority entered into that certain Contract for Private Development, dated June 14, 2021, filed \_\_\_\_\_, 20\_\_\_\_ in the Office of the [County Recorder] [Registrar of Titles] of Hennepin County as Document No. \_\_\_\_\_ (the “Contract”), between the Authority and the Developer; and

WHEREAS, pursuant to the Contract, the Developer is obligated to cause construction of a multifamily apartment building (the “Project”) with approximately 350 rental housing units (the “Rental Housing Units”) on the property described in EXHIBIT A attached hereto (the “Property”), and to cause compliance with certain affordability covenants described in Section 4.5 of the Contract; and

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

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

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

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

1. Term of Restrictions.

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

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



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

2. Project Restrictions.

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

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

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

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

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

3. Occupancy Restrictions.

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

(i) Qualifying Tenants. From the commencement of the Qualified Project Period, at least 53 of the Rental Housing Units shall be occupied (or treated as occupied as provided herein) or held vacant and available for occupancy by Qualifying Tenants. Qualifying Tenants shall mean one or more occupants of a unit who are determined from time to time by the Developer to have combined adjusted income that does not exceed fifty percent (50%), sixty percent (60%), or eighty percent (80%) of the Minneapolis-St. Paul metropolitan statistical area (the "Metro Area") median income for the applicable calendar year, subject to the following: (1) at least 18 of the Rental Housing Units shall be occupied or held vacant and available for occupancy by Qualifying Tenants with a combined adjusted income that does not exceed fifty percent (50%) of the Metro Area median income for the applicable calendar year; (2) at least 17 of the Rental Housing Units shall be occupied or held vacant and available for occupancy by Qualifying Tenants with a combined adjusted income of sixty percent (60%) of the Metro Area median income for the applicable calendar year; and (3) at least 18 of the Rental Housing Units shall be occupied or held vacant and available for occupancy by Qualifying Tenants with a combined adjusted income of eighty percent (80%) of the Metro Area median income for the applicable calendar year. For purposes of this definition, the occupants of a residential unit shall not be deemed to be Qualifying Tenants if all the occupants of such residential unit at any time are "students," as defined in Section 151(c)(4) of the Internal Revenue Code of 1986, as amended (the "Code"), not entitled to an exemption under the Code. The determination of whether an individual or family is of low or moderate income shall be made at the time the tenancy commences and on an ongoing basis thereafter, determined at least annually. If during their tenancy a Qualifying Tenant's income exceeds one hundred forty percent (140%) of the maximum income qualifying as low or

moderate income for a family of its size, the next available unit (determined in accordance with the Code and applicable regulations) (the “Next Available Unit Rule”) must be leased to a Qualifying Tenant or held vacant and available for occupancy by a Qualifying Tenant. If the Next Available Unit Rule is violated, the Rental Housing Unit will not continue to be treated as a Qualifying Unit. The annual recertification and Next Available Unit Rule requirements of this paragraph 3(a)(i) shall not apply to a given year if, during such year, no Rental Housing Unit is occupied by a new resident whose income exceeds the applicable income limit for Low Income Tenants.

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

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

(iv) Annual Report. The Developer covenants and agrees that during the term of this Declaration, it will prepare and submit to the Authority on or before April 1 of each year, a certificate substantially in the form of EXHIBIT C attached hereto, executed by the Developer, (a) identifying the tenancies and the dates of occupancy (or vacancy) for all Qualifying Tenants, including the percentage of the Rental Housing Units which were occupied by Qualifying Tenants (or held vacant and available for occupancy by Qualifying Tenants) at all times during the year preceding the date of such certificate; (b) describing all transfers or other changes in ownership of the Minimum Improvements or any interest therein; and (c) stating, that to the best knowledge of the person executing such certificate after due inquiry, all such units were rented or available for rental on a continuous basis during such year to members of the general public and that the Developer was not otherwise in default under this Declaration during such year.

(v) Notice of Non-Compliance. The Developer will promptly notify the Authority if at any time during the term of this Declaration the Rental Housing Units are not occupied or available for occupancy as required by the terms of this Declaration.

(b) Section 8 Housing. During the term of this Declaration, the Developer shall not adopt any policies that specifically prohibit or exclude rental to tenants holding certificates/vouchers under Section 8 of the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq., or its successor, because of such prospective tenant’s status as such a certificate/voucher holder. Additionally, the Developer shall not adopt policies that have the effect of making it difficult for tenants holding certificates/vouchers under Section 8 of the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq., or its successor, to rent units within the Project (for example, policies that require income of more than two times the rent to be paid for a unit).

4. [Intentionally omitted.]

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

6. [Intentionally omitted.]

7. Enforcement.

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

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

(c) The Developer acknowledges that the primary purpose for requiring compliance by the Developer with the restrictions provided in this Declaration is to ensure compliance of the property with the housing affordability covenants set forth in Section 4.5 of the Contract, and by reason thereof, the Developer, in consideration for assistance provided by the Authority under the Contract that makes possible the construction of the Minimum Improvements on the Property, hereby agrees and consents that the Authority shall be entitled, upon any breach of the provisions of this Declaration and the Developer's failure to cure such breach within the cure periods described in Section 9.1 of the Contract, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Developer of its obligations under this Declaration in a state court of competent jurisdiction. The Developer hereby further specifically acknowledges that the Authority cannot be adequately compensated by monetary damages in the event of any default hereunder.

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

8. Indemnification. The Developer hereby indemnifies, and agrees to defend and hold harmless, the Authority from and against all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses), causes of action, suits, allegations, claims, demands, and judgments of any nature arising from the consequences of a legal or administrative proceeding or action brought against them, or any of them, on account of any failure by the Developer to comply with the terms of this Declaration, or on account of any representation or warranty of the Developer contained herein being untrue.

9. Agent of the Authority. The Authority shall have the right to appoint an agent to carry out any of its duties and obligations hereunder, and shall inform the Developer of any such agency appointment by written notice.

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

11. Notices. All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing. The Developer and the Authority may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, or other communications shall be sent. The initial addresses for notices and other communications are as follows:

To the Authority: Economic Development Authority in and for the  
City of Minnetonka  
14600 Minnetonka Blvd.  
Minnetonka, MN 55345  
Attention: Community Development Director

To the Developer: Shady Oak Apartments, LLC  
7803 Glenroy Road, Suite 200  
Bloomington, MN 55439  
Attention: Chief Financial Officer

12. Governing Law. This Declaration shall be governed by the laws of the State of Minnesota and, where applicable, the laws of the United States of America.

13. Attorneys' Fees. In case any action at law or in equity, including an action for declaratory relief, is brought against the Developer to enforce the provisions of this Declaration, the Developer agrees to pay the reasonable attorneys' fees and other reasonable expenses paid or incurred by the Authority in connection with such action.

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

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

IN WITNESS WHEREOF, the Developer has caused this Declaration of Restrictive Covenants to be signed by its respective duly authorized representatives, as of the day and year first written above.

**SHADY OAK APARTMENTS, LLC**

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, the \_\_\_\_\_ of Shady Oak Apartments, LLC, a Minnesota limited liability company, on behalf of the Developer.

\_\_\_\_\_  
Notary Public

This document was drafted by:  
  
KENNEDY & GRAVEN, CHARTERED (JAE)  
150 South Fifth Street, Suite 700  
Minneapolis, MN 55402

This Declaration is acknowledged and consented to by:

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

By \_\_\_\_\_  
Its President

By \_\_\_\_\_  
Its Executive Director

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by Brad Wiersum, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by GERALYN BARONE, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

EXHIBIT A TO DECLARATION OF RESTRICTIVE COVENANTS

LEGAL DESCRIPTION

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.

Being registered land as evidenced by Certificate of Title No. 1332265.

---

EXHIBIT B TO DECLARATION OF RESTRICTIVE COVENANTS

CERTIFICATION OF TENANT ELIGIBILITY

Project: \_\_\_\_\_, Minnetonka, Minnesota

Developer: Shady Oak Apartments, LLC

Unit Type: \_\_\_\_\_ Studio \_\_\_\_\_ Alcove Plus 1 BR \_\_\_\_\_ 2 BR \_\_\_\_\_ 3 BR

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

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

Income Computation

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

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

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



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

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

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

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

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

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

Yes \_\_\_\_\_

No \_\_\_\_\_

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

Yes \_\_\_\_\_

No \_\_\_\_\_

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

\_\_\_\_\_  
Head of Household

\_\_\_\_\_  
Spouse

FOR COMPLETION BY OWNER  
(OR ITS MANAGER) ONLY

1. Calculation of Eligible Tenant Income:

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

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

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

2. The amount entered in 1(c) is less than or equal to [50%] [60%] [80%] of median income for the area in which the Project is located, as defined in the Declaration. [50%] [60%] [80%] is necessary for status as a "Qualifying Tenant" under Section 3(a) of the Declaration.

3. Rent:

(a) The rent for the unit is \$ \_\_\_\_\_.

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

4. Number of apartment unit assigned: \_\_\_\_\_.

5. This apartment unit was \_\_\_\_ was not \_\_\_\_ last occupied for a period of at least 31 consecutive days by persons whose aggregate anticipated annual income as certified in the above manner upon their initial occupancy of the apartment unit was less than or equal to [50%] [60%] [80%] of Median Income in the area.

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

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

NAME OF OWNER, a \_\_\_\_\_

By \_\_\_\_\_  
Its \_\_\_\_\_

EXHIBIT C TO DECLARATION OF RESTRICTIVE COVENANTS

CERTIFICATE OF  
CONTINUING PROGRAM COMPLIANCE

Date: \_\_\_\_\_, \_\_\_\_\_.

The following information with respect to the project located at \_\_\_\_\_, Minnetonka, Minnesota (the "Project"), is being provided by Shady Oak Apartments, LLC, a Minnesota limited liability company (the "Developer"), to the Economic Development Authority in and for the City of Minnetonka, Minnesota (the "Authority"), pursuant to that certain Declaration of Restrictive Covenants, dated \_\_\_\_\_, 2021 (the "Declaration"), with respect to the Project:

(A) The total number of residential units which are available for occupancy is 350. The total number of such units occupied is \_\_\_\_\_.

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

Studio Units:

Alcove Plus 1 BR Units:

2 BR Units:

3 BR Units:

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

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

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

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

(E) The Developer has obtained a “Certification of Tenant Eligibility,” in the form provided as EXHIBIT B to the Declaration, from each Tenant named in (D) above, and each such Certificate is being maintained by the Developer in its records with respect to the Project. Attached hereto is the most recent “Certification of Tenant Eligibility” for each Tenant named in (D) above who signed such a Certification since \_\_\_\_\_, \_\_\_\_\_, the date on which the last “Certificate of Continuing Program Compliance” was filed with the Authority by the Developer.

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

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

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

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

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

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

**SHADY OAK APARTMENTS, LLC**

By \_\_\_\_\_  
Its \_\_\_\_\_

Name of Project	Number of Affordable Units	Number of Market Rate Units	Total Assistance (for affordable units)	Years of Affordability	Assistance per Unit, per Year	Affordability Level
<b>KA/AEON</b>	<b>75</b>	<b>294</b>	<b>\$8.13M requested</b>	<b>30</b>	<b>\$3,613</b>	<b>30%, 50%,80%</b>
Linden Street (10400 Bren Rd)	28	247	\$553,000	30	\$1,315	10% at 50% AMI
Doran (5959 Shady Oak)	54	302	\$280,000	30	\$491	5%@50%, 5%@60%, 5%@80%
Wellington Management	68	155	\$2,400,000	30	\$1,716	10%@50% AMI, 20% @80% AMI
United Properties (The Pointe )	19	167	\$400,000	30	\$701	9@ 50% AMI, 9@ 60% AMI
Dominium	482	0	\$7,809,000	30	\$540	60% AMI
Homes Within Reach (2004-2020 grant years)	59	0	\$2,981,435	99	\$510	80% AMI
The Ridge	52	0	\$1,050,000	30	\$673	60% AMI
Shady Oak Crossing	52	23	\$1,900,000	30	\$2,753	60%AMI
West Ridge Market (Crown Ridge, Boulevard Gardens, Gables, West Ridge)	185	0	\$8,514,000	30	\$1,534	Crown Ridge—60% AMI Boulevard Gardens—60% AMI Gables—initially 80% AMI, now no income limit West Ridge—50% AMI
Beacon Hill (apartments)	62	48	\$2,484,000	25	\$1,602	50% AMI
Ridgebury	56	163	\$3,243,000	30	\$1,930	Initially--80% AMI, Now no income limit
Glen Lake (St. Therese, Exchange)	43	119	\$4,800,000	30	\$3,721	60% AMI
Cedar Point Townhomes	9	143	\$512,000	15	\$3,792	50% AMI
Tonka on the Creek (Overlook)	20	80	\$2,283,000	30	\$3,805	50% AMI
At Home - The Chase at 9 Mile	21	106	\$2,500,000	30	\$3,968	50% AMI
Applewood Pointe	9	80	\$1,290,000	Initial Sale/Ongoing maximum %	\$4,777	80% AMI
Doran (Birke)	35 (20% of units)	175	\$4,800,000	30	\$4,571	50% AMI

updated 04/09/2021

## EDA Resolution No. 2021-

### Resolution authorizing interfund loan for advance of certain costs in connection with a grant in the principal amount of \$280,000 for a multifamily housing development

---

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

#### Section 1. Recitals.

- 1.01. The City of Minnetonka, Minnesota (the "City") and the Authority intend to establish the Opus Business Park Tax Increment Financing District (the "TIF District"), a renewal and renovation district, within Development District No. 1 in the City, pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended (the "TIF Act").
- 1.02. The Authority may incur certain costs related to the TIF District, which costs may be financed on a temporary basis from available Authority funds.
- 1.03. Under Section 469.178, subdivision 7 of the TIF Act, the Authority is authorized to advance or loan money from any fund from which such advances may be legally made in order to finance expenditures that are eligible to be paid with tax increments under the TIF Act.
- 1.04. The Authority proposes to enter into a Contract for Private Development (the "Agreement") with Shady Oak Apartments, LLC, a Minnesota limited liability company (the "Developer"), pursuant to which the Developer will agree to develop an approximately 356-unit multifamily housing rental development, including parking (the "Minimum Improvements").
- 1.05. To make the Minimum Improvements economically feasible, the Authority has proposed to provide a grant to the Developer in the principal amount of \$280,000 (the "Authority Grant") for certain redevelopment costs related to the Minimum Improvements, including but not limited to land acquisition, demolition, underground parking, excavation/grading, and utilities costs.
- 1.06. The Authority will use funds within the Authority's Development Fund to make the Authority Grant to the Developer.
- 1.07. The Authority intends to reimburse itself for the Authority Grant from tax increments derived from property within the TIF District (the "Interfund Loan") in accordance with the terms of this resolution.

#### Section 2. Interfund Loan.

- 2.01. The Authority shall reimburse itself for the Authority Grant in the amount of up to \$280,000, together with interest at the rate stated below. Interest accrues on the principal amount from the date of each advance. The maximum rate of interest permitted to be charged is limited to the greater of the rates specified under



Minnesota Statutes, Section 270C.40 and Section 549.09 as of the date the loan or advance is authorized, unless the written agreement states that the maximum interest rate will fluctuate as the interest rates specified under Minnesota Statutes, Section 270C.40 or Section 549.09 are from time to time adjusted. The interest rate shall be 4.0% and will not fluctuate.

- 2.02. Principal and interest (the "Payments") on this Interfund Loan shall be paid semiannually on each February 1 and August 1 (each a "Payment Date"), commencing on the first Payment Date on which the Authority has Available Tax Increment (defined below), or on any other dates determined by the Executive Director of the Authority, through the date of last receipt of tax increment from the TIF District.
- 2.03. Payments on this Interfund Loan are payable solely from "Available Tax Increment," which shall mean, on each Payment Date, tax increment available after other obligations have been paid, or as determined by the Executive Director of the Authority, generated in the preceding six (6) months with respect to the property within the TIF District and remitted to the Authority by Hennepin County, Minnesota, all in accordance with the TIF Act. Payments on this Interfund Loan may be subordinated to any outstanding or future bonds or notes issued by the Authority and secured in whole or in part with Available Tax Increment. This Interfund Loan shall be paid prior to any pay-as-you-go notes or contracts secured in whole or in part with Available Tax Increment, and any other outstanding or future interfund loans secured in whole or in part with Available Tax Increment; provided, however, that this Interfund Loan shall be repaid with Available Tax Increment on a parity basis with the interfund loan approved by the City Council of the City and the Board on March 8, 2021 in the principal amount of up to \$1,000,000 relating to the payment of certain costs associated with the creation of the TIF District, and interfund loan approved by the Board on March 8, 2021 in the principal amount of \$553,000 relating to a grant to be provided by the Authority to Minnetonka Multifamily 1 LLC for a multifamily housing development.
- 2.04. The principal sum and all accrued interest payable under this Interfund Loan are prepayable in whole or in part at any time by the Authority without premium or penalty. No partial prepayment shall affect the amount or timing of any other regular payment otherwise required to be made under this Interfund Loan.
- 2.05. This Interfund Loan is evidence of an internal borrowing by the Authority in accordance with Section 469.178, subdivision 7 of the TIF Act, and is a limited obligation payable solely from Available Tax Increment pledged to the payment hereof under this resolution. This Interfund Loan and the interest hereon shall not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the Authority. Neither the State of Minnesota nor any political subdivision thereof shall be obligated to pay the principal of or interest on this Interfund Loan or other costs incident hereto except out of Available Tax Increment, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof is pledged to the payment of the principal of or interest on this Interfund Loan or other costs incident hereto. The Authority shall have no obligation to pay any principal amount of this Interfund Loan or accrued interest thereon, which may remain unpaid after the final Payment Date.

- 2.06. The Authority may at any time make a determination to forgive the outstanding principal amount and accrued interest on this Interfund Loan to the extent permissible under law.
- 2.07. The Authority may from time to time amend the terms of this resolution to the extent permitted by law, including without limitation amendment to the payment schedule and the interest rate; provided, however, that the interest rate may not be increased above the maximum specified in Section 469.178, subdivision 7 of the TIF Act.
- 2.08. This resolution is effective upon the adoption of a tax increment financing plan for the TIF District and the execution in full of the Agreement.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota on June 14, 2021.

\_\_\_\_\_  
Brad Wiersum, President

ATTEST:

\_\_\_\_\_  
Becky Koosman, Secretary

**Action on this resolution:**

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

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, at a duly authorized meeting held on June 14, 2021.

\_\_\_\_\_  
Becky Koosman, Secretary

## EDA Resolution No. 2021-

### Resolution approving a contract for private development with Shady Oak Apartments, LLC

---

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

#### Section 1. Background.

- 1.01. The Authority was created pursuant to Minnesota Statutes, Sections 469.090 through 469.1082, as amended, and was authorized to transact business and exercise its powers by a resolution adopted by the City Council of the City of Minnetonka, Minnesota (the "City").
- 1.02. The Authority and the City have undertaken a program to promote economic development and job opportunities, promote the development and redevelopment of land which is underutilized within the City, and facilitate the development of affordable housing.
- 1.03. Shady Oak Apartments, LLC, a Minnesota limited liability company (the "Developer"), proposes to develop approximately 350 units of rental housing, including units with income restrictions (the "Minimum Improvements"). To make the Minimum Improvements economically feasible, the Authority proposes to provide a grant to the Developer in an amount of up to \$280,000 (the "Authority Grant") from the Authority's Development Fund.
- 1.04. The Authority has caused to be prepared a Contract for Private Development (the "Contract") between the Authority and the Developer, which sets forth the terms of the construction by the Developer of the Minimum Improvements and the provision by the Authority of the Authority Grant to assist in financing the Minimum Improvements.
- 1.05. The Board has reviewed the Contract and finds that the execution thereof by the Authority and performance of the Authority's obligations thereunder are in the best interest of the City and its residents.

#### Section 2. Approval.

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

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on June 14, 2021.

---

Brad Wiersum, President

Attest:

---

Becky Koosman, Secretary

**Action on this resolution:**

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, at a meeting held on June 14, 2021.

---

Becky Koosman, Secretary



**Economic Development Authority  
Agenda Item 5B  
Meeting of June 14, 2021**

**Title:** Emergency Rental Assistance

**Report From:** Alisha Gray, Economic Development and Housing Manager,  
EDFP

**Submitted through:** Geralyn Barone, Executive Director  
Julie Wischnack, AICP, Community Development Director

---

**Action Requested:**  Motion     Informational     Public Hearing  
**Form of Action:**     Resolution     Ordinance     Contract/Agreement     Other     N/A  
**Votes needed:**     4 votes     5 votes     N/A     Other

---

**Summary Statement**

In 2021, the EDA approved the disbursement of \$25,000 in emergency COVID-19 rental assistance. Staff is requesting that the EDA approve the final disbursement of \$25,000.

**Recommended Action**

Approve the final distribution of COVID-19 rental assistance to ICA, in the amount of \$25,000

**Strategic Profile Relatability**

Financial Strength & Operational Excellence     Safe & Healthy Community  
 Sustainability & Natural Resources     Livable & Well-Planned Development  
 Infrastructure & Asset Management     Community Inclusiveness  
 N/A

Statement: This effort supports affordable housing efforts.

**Financial Consideration**

Is there a financial consideration?     No     Yes \$25,000  
Financing sources:     Budgeted     Budget Modification     New Revenue Source  
 Use of Reserves     Other [Enter]

Statement: The remaining \$25,000 in funding was committed, but has not yet been disbursed to ICA.

## **Background**

On April 20, 2020, the city council approved a temporary Affordable Housing Trust Fund. It authorized \$150,000 in funding for a temporary rental housing assistance program to prevent the displacement of households impacted by COVID-19. As noted below, in November the council allocated an additional \$50,000 for this same purpose. The city partnered with ICA to distribute the funds to Minnetonka households. In summary, the total \$200,000 will be provided to ICA, however some dollars are provided to administer the program.

As of June 1, 2021, ICA has disbursed \$156,858 in assistance to 118 households and has approximately \$8,000 remaining to provide assistance through June. Staff is requesting that the Economic Development Authority approve the disbursement of the remaining \$25,000 to assist Minnetonka households through the end of 2021. The following information summarizes the households served by the emergency rental assistance.

- 118 households assisted with an average household size of 2.5 persons
- Average assistance is \$1,329
- Demographic information (self-reported by applicants)
  - Caucasian/Other – 33%
  - Asian/Other – 25%
  - Black/Other – 25%
  - Hispanic/Other – 25%
  - Native American/Other – 2%
- 78 applicants reported a female head of household

## **Emergency Rental Assistance 2021**

[On Nov. 23, 2020](#), the city council adopted an ordinance establishing a permanent Affordable Housing Trust Fund. The city council also approved an additional \$50,000 in HRA funding for emergency rental assistance in 2021.

[On Jan. 25, 2021](#), the EDA approved the distribution of the first \$25,000 of emergency rental assistance. Staff is proposing that the city council allocate the remaining \$25,000 of the approved \$50,000 to ICA to continue emergency rental assistance through Dec. 31, 2021.

## **Attachments**

Agreement for Professional Services  
Emergency Rental Assistance Guidelines

## AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made as of January 26, 2021 between the Economic Development Authority in and for the City of Minnetonka, 14600 Minnetonka Boulevard, Minnetonka, Minnesota 55345 ("EDA") and Intercongregation Communities Association, Inc. ("Consultant") whose business address is 12990 St. David Road, Minnetonka, Minnesota 55305.

The purpose of this agreement is to set forth terms and conditions for the provision of certain services by the Consultant for the EDA.

The EDA and the Consultant agree as follows:

1. **Consultant's Services.** The Consultant agrees to provide professional services consisting of administration and oversight of an Emergency Rental Housing Assistance Program (the "Program") as described in Exhibits A and B, attached and made a part of this Agreement ("the Work"). If there is any conflict between the language of this document and the language of Exhibit A, the language of this document prevails.
2. **Project Manager and Staffing.** The Consultant has designated its Executive Director as the Consultant's point of contact regarding this Agreement. He will oversee and supervise other staff members as necessary to facilitate the completion of the Work in accordance with the terms of this Agreement. The Consultant may not remove or replace the designated point of contact without the EDA's prior approval.
3. **Time for Performance of Services.** The Consultant must perform the Work by June 30, 2021 or within such other time period as the parties may agree to in writing. If Consultant is delayed in performance due to any cause beyond its reasonable control, such as strikes, riots, fires, acts of God, governmental actions, actions of a third party, or actions or inactions of EDA, the time for performance will be extended by the period of time lost by reason of the delay.
4. **Program Funds.** Within 14 days after execution of this Agreement, EDA will pay Consultant the sum of \$25,000 (the "Program Funds") through the Affordable Housing Trust Fund established by the City of Minnetonka and administered by the EDA, which funds must be used exclusively for providing temporary rental assistance to Minnetonka residents in accordance with the Program guidelines. EDA has the right, in its sole discretion, to terminate the Program at any time and to notify Consultant in writing of the Program termination. The EDA may make the termination of the Program effective immediately, and Consultant may not process any new applications after the effective date of Program termination but may continue to process payments for applications approved prior to the effective date of Program termination. The EDA's notice of termination of the Program will operate as termination of this Agreement as provided in section 11 of this Agreement. Within 14 days after termination of the Agreement based upon this section 4, Consultant must return any remaining Program Funds that have not been allocated to an approved application.
5. **Reports.** Consultant must maintain records of the receipt and expenditures of all Program Funds; such records are to be maintained in accordance with Community Development Block Grant requirements. Consultant shall provide monthly reports to EDA regarding the number of applications received in the preceding month, the number of applications

approved, the identities of applicants on behalf of whom payments were made from Program Funds, the amounts paid on behalf of each approved applicant, and the remaining balance of uncommitted Program Funds.

6. **Compensation for Services.** EDA agrees to pay the Consultant at a rate of \$25 per staff hour to review and process applications received from Minnetonka residents for the Program, up to a maximum of \$825. The hourly rate paid is inclusive of all out-of-pocket or overhead costs that Consultant may incur, including but not limited to postage and copies, and Consultant is solely responsible for all overhead and out-of-pocket expenses incurred in connection with the performance of this Agreement.
7. **Method of Payment.** The Consultant must submit itemized invoices for services provided to the EDA on a monthly basis, unless otherwise provided in the attached Exhibit A. Consultant is encouraged, but not required, to submit invoices electronically by emailing a copy of the invoice and any supporting documentation, in a PDF format, to [payables@minnetonkamn.gov](mailto:payables@minnetonkamn.gov). Invoices submitted will be paid in the same manner as other claims made to the EDA. Consultant may request that the EDA make electronic (ACH) payments to Consultant, by contacting the EDA's accounts payable officer.

For work reimbursed on an hourly basis, the Consultant must indicate for each employee, his or her name, job title, the number of hours worked, rate of pay, a computation of amounts due for each employee, and the total amount due. By making the claim for payment, the Consultant declares that the account, claim or demand is just and correct and that no part of it has been paid.

8. **Audit Disclosure.** Under Minn. Stat. § 16C.05, subd. 5, the Consultant's books, records, documents, and accounting procedures and practices relevant to this Agreement, including books and records of any approved subcontractors, are subject to examination by the EDA and/or the State Auditor or Legislative Auditor, as appropriate for a minimum of six years after the termination of this Agreement.
9. **Document Ownership.** All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Consultant will become the property of the EDA upon termination of this Agreement, but Consultant may retain copies of such documents as records of the services provided. Except to the extent that Minnesota Statutes Chapter 466 limits the EDA's liability, the EDA agrees to defend and indemnify the Consultant for any claims or losses resulting from the EDA's use of the documents in a manner not approved by the Consultant or not contemplated by the parties at the time of the preparation.
10. **Term.** The initial term of this Agreement is from January 26, 2021 through June 30, 2021, the date of signature by the parties notwithstanding. At the EDA's sole discretion, the EDA may extend the term of this Agreement for an additional six month term ending December 31, 2021 by providing notice of the extension to Consultant and an additional contribution of \$25,000 (for a total of \$50,000) in Program Funds under paragraph 4. In the event of an extension, the maximum compensation under paragraph 6 shall be increased by \$825 (for a total of \$1,650), but all other terms and conditions of this Agreement will remain unchanged. This Agreement may be further extended upon the written mutual consent of the parties for such additional period as they deem appropriate, and upon the terms and conditions as stated in this Agreement.



11. **Termination.** This Agreement may be terminated by either party by seven days' advance written notice delivered to the other party at the address written above. Upon termination under this provision if there is no fault of the Consultant, the Consultant will be paid for services rendered until the effective date of termination. If however, the EDA terminates the Agreement because the Consultant has failed to perform in accordance with this Agreement, no further payment will be made to the Consultant, and the EDA may retain another Consultant to undertake or complete the Work.
12. **Subcontractor.** The Consultant may not enter into subcontracts for services provided in this Agreement except as noted in Exhibit A, without the express written consent of the EDA. The Consultant agrees to pay any subcontractor within ten days of the Consultant's receipt of payment from the EDA for undisputed services provided by the subcontractor. The Consultant must pay interest of 1.5% per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For any unpaid balance of less than \$100, the Consultant must pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Consultant must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action. This paragraph is inserted in this Agreement pursuant to Minn. Stat. §471.425, Subd. 4a.
13. **Independent Contractor.** At all times and for all purposes under this Agreement, the Consultant is an independent contractor and not an employee of the EDA. No statement in this Agreement may be construed to find the Consultant an employee of the EDA.
14. **Assignment.** Neither party may assign this Agreement without the written consent of the other party.
15. **Services Outside Contract.** The EDA will not honor claims for services furnished by the Consultant unless this Agreement specifically provides for those services.
16. **Worker's Compensation.** This paragraph is inserted in this Agreement pursuant to Minn. Stat. § 176.182. Consultant certifies that Consultant is in compliance with Minn. Stat. chapter 176, pertaining to workers' compensation insurance coverage. Prior to executing this Agreement, Consultant agrees to provide EDA with evidence of Consultant's compliance with the workers' compensation insurance coverage required by Minn. Stat. §176.181, subd. 2, in the form of either a certificate of insurance or written order of the Commissioner of Commerce permitting self-insurance ("Evidence of Insurance"). Consultant warrants that it will maintain the required workers' compensation insurance coverage at all times during the performance of this Agreement and that the Evidence of Insurance provided to the EDA is current and in force and effect.
17. **Severability.** The provisions of this Agreement are severable. If any portion is held by a court of competent jurisdiction to be contrary to law, that decision will not affect the remaining provisions of the Agreement.
18. **Entire Agreement.** The entire agreement of the parties is contained in this Agreement. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter of this Agreement as well as any previous agreements

presently in effect between the parties relating to the same subject matter. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement will be valid only when expressed in writing and signed by the parties, unless otherwise provided in this Agreement.

19. **Compliance with Laws and Regulations.** In providing services under this Agreement, the Consultant must abide by all statutes, ordinances, rules, and regulations pertaining to the provision of services to be provided. Any violation constitutes a material breach of this Agreement and entitles the EDA to immediately terminate this Agreement.
20. **Government Data.** Contractor acknowledges that, to the extent this Agreement requires Contractor to perform a government function, all of the data created, collected, received, stored, used, maintained or disseminated by Contractor in performing government functions is subject to the requirements of the Minnesota Government Data Practices Act (Minn. Stat. ch. 13, the "MGDPA"), and that Contractor must comply with the MGDPA as if Contractor were a government entity, including the remedies in Minn. Stat. §13.08. Contractor agrees to promptly notify EDA of any request for data that Contractor receives related to this Agreement.
21. **Equal Opportunity.** During the performance of this contract, the Consultant must not discriminate against any employee or applicant for employment, or participant in a program provided under this Agreement, by reason of any characteristic or classification protected by state or federal law. The Consultant must post in places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. The Consultant must incorporate the foregoing requirements of this paragraph in all of its subcontracts for program work, and will require all of its subcontractors for such work to incorporate such requirements in all subcontracts for program work.
22. **Waiver.** Any waiver by either party of a breach of any provisions of this Agreement will not affect, in any respect, the validity of the remainder of this Agreement.
23. **Governing Law.** This Agreement will be controlled by the laws of the State of Minnesota, without regard to conflict of law provisions.
24. **Disputes.** In an effort to resolve any conflicts that arise during or following the completion of the services described in this Agreement, the dispute will first be submitted to non-binding mediation unless the parties mutually agree otherwise. The cost of mediation will be shared equally by the parties. If the parties are unable to resolve the dispute through mediation, the parties may pursue all remedies available under law.

*[remainder of this page left blank intentionally]*

**Signature Page – EDA**


ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA:

DocuSigned by:  
*Geralyn Barone*  
By: \_\_\_\_\_  
Geralyn Barone, Executive Director

APPROVED AS TO FORM AND LEGALITY:  
Corrine A. Heine, City Attorney (2021)  
14600 Minnetonka Boulevard  
Minnetonka, MN 55345

**Signature Page - Consultant**

INTERCONGREGATION COMMUNITIES ASSOCIATION, INC.

DocuSigned by:  
By:   
3C478963D5B84A7...  
Daniel Narr  
Its: Executive Director

## Exhibit A

Description of work: Consultant will administer the Minnetonka Emergency Rental Assistance Program as detailed in the Program Guidelines attached as Exhibit B. The parties acknowledge that, outside the scope of this Agreement, Consultant separately administers programs that provide funds for residents of the city of Minnetonka. Consultant agrees that Program Funds may not be used to substitute, replace or diminish the funds provided to Minnetonka residents through those separate programs; it is the intent of this Agreement that Program Funds are to be an additional source of financial assistance for Minnetonka resident above and beyond what would otherwise be available from any other programs that Consultant may administer.

Consultant must maintain records of the receipt and expenditures of all Program Funds; such records are to be maintained in accordance with Community Development Block Grant requirements. ICA shall provide monthly reporting to the City of Minnetonka with information on the clients served and the fund balance.



## **Minnetonka Emergency Rental Assistance Program Guidelines (For households impacted by COVID-19)**

### **Purpose**

The Minnetonka City Council approved temporary funding to establish an emergency rental housing assistance program for Minnetonka residents. The purpose of the program is to prevent the displacement of households impacted by COVID-19.

The emergency funds will be distributed by [Intercongregation Communities Association \(ICA\)](#), a local organization that has partnered with the city for more than 15 years to provide food shelf services, employment and emergency rent assistance to Minnetonka residents.

### **Eligibility**

Minnetonka residents earning up to 120 percent of the area median income may apply for assistance.

- Eligible household income limits\* include:
  - One person: up to \$84,000
  - Two people: up to \$96,000
  - Three people: up to \$108,000
  - Four people: up to \$120,000

*\* 2019 Hennepin County Housing and Urban Development income limits*

- Qualified households may receive a one-time payment of up to \$1,500 to assist with rent and utility expenses.
- Households must provide evidence of financial hardship related to COVID-19. Examples include medical bills, bank statements, letters of job termination or late rent notices.
- Households must provide evidence of job loss or lost wages due to COVID-19.
- Households must provide evidence of an application for unemployment benefits and/or emergency assistance through Hennepin County.
- Before receiving consideration for this program, households currently receiving ongoing housing assistance, such as Section 8, or public housing assistance must first be denied assistance or rent reduction from the existing program.

### **Ineligible Applicants**

Assistance will not be provided to households that:

- Do not meet eligibility requirements.
- Have previously received Minnetonka Emergency Rental Assistance Program funds from the city.

## **Application and Review Process**

Emergency Rental Housing Assistance application information will be available on the City of Minnetonka website at [minnetonkamn.gov/coronavirus](http://minnetonkamn.gov/coronavirus), and applications will be distributed by ICA.

ICA case management staff and volunteers will assist residents requesting emergency assistance via email or phone. In some instances, ICA case managers will complete intake questionnaires over the phone to determine resident eligibility.

During the application process, ICA's case management staff will:

- Request documentation from applicants that support the request for emergency rental housing assistance due to COVID-19 related impacts.
- Contact applicants to discuss current household budgets for rent, healthcare, transportation, food, utilities and more.
- Assist families with prioritizing budgets and provide information on other available resources.
- Help households determine how much assistance is necessary to ensure the current or following month's rent is paid.

Rental assistance is provided directly to the landlord/property manager.

## **How to apply?**

Contact ICA to learn more about the program and apply for assistance.

- General Questions: 952-938-0729