



Agenda
Minnetonka Economic Development Authority
Monday, July 12, 2021
Following the regular meeting
Council Chambers

1. Call to Order
2. Roll Call: Coakley-Kirk-Schack-Carter- Calvert-Schaeppi-Wiersum
3. Approval of Agenda
4. Approval of Minutes:
 - A. June 14, 2021 EDA meeting
5. Business Items:
 - A. Wellington Apartments at 10901 Red Circle Drive

Recommendation: Adopt the resolution and authorize EDA and city officials to approve non-substantive changes to the contract for private development (4 votes)
6. Adjourn

Minutes
Minnetonka Economic Development Authority
Monday, June 14, 2021

1. Call to Order

Wiersum called the meeting to order at 10:41 p.m.

2. Roll Call

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

Commissioner Susan Carter was excused from the meeting.

3. Approval of Agenda

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

All voted "yes." Motion carried.

4. Approval of Minutes:

A. May 10, 2021 EDA meeting

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

All voted "yes." Motion carried.

5. Business Items:

A. Doran Apartments at 5959 Shady Oak Road

Community Development Director Julie Wischnack gave a presentation covering the proposed affordability for the building, the contract for private development, and the request for financial assistance.

Schack moved, Calvert seconded a motion to adopt EDA Res. 2021-008 and EDA Res. 2021-009.

All voted "yes." Motion carried.

B. Emergency Rental Assistance

Wischnack gave a presentation covering the previous issuance of rental assistance funds to ICA in 2021, statistics regarding ICA's disbursement of those rental assistance funds, and the staff recommendation to make a final distribution of \$25,000.

Calvert moved, Kirk seconded a motion to approve final distribution of COVID-19 rental assistance to Intercongregation Communities Association (ICA).

All voted “yes.” Motion carried.

6. Adjournment

Calvert moved, Kirk seconded a motion to adjourn the meeting at 10:53 p.m.

All voted “yes.” Motion carried.

Respectfully submitted,

Becky Koosman
City Clerk



**Economic Development
Authority Agenda Item #5A
Meeting of July 12, 2021**

Title: Wellington Apartments at 10901 Red Circle Drive

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

Financing request and contract for private development for Wellington Apartments located at 10901 Red Circle Drive.

Recommended Action

Adopt the resolution and authorize EDA and city officials to approve non-substantive changes to the contract for private development.

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: Implement programs and policies to diversify housing and increase affordable housing options.

Financial Consideration

- Is there a financial consideration? No Yes \$2,780,000
- Financing sources: Budgeted Budget Modification New Revenue Source
 Use of Reserves Other [Enter]

Statement: The funding sources is tax increment financing through the Opus TIF District.

Background

Wellington Management is pursuing redevelopment of the site located at 10901 Red Circle Drive. Shady Oak Office Center currently occupies the 4.68-acre site, which is owned and operated by Wellington Management. The developer intends to redevelop the site into multifamily housing as part of a two-phased approach. The developer has indicated the eastern portion of the site would be redeveloped first, followed by a second phase on the site's western portion.

Current Proposal



Proposal - June 2021

Wellington Management proposes a 223-unit multifamily building for phase 1 (the eastern portion of the site), with plans for a future phase 2 to include a 150-185 unit multifamily building on the western part. As proposed, phase 1 would consist of 223-units with a mix of studio, 1, 2, and 3-bedroom units. In phase 1, the developer proposes to include 10% of the units with rents restricted at or below 50% Area Median Income (AMI) and an additional 20% of the units with rents restricted at or below 80% AMI. The remaining units in phase 1 are anticipated to have rents at or below 80%-100% AMI (but will not be subject to the affordability covenant). The following unit mix is proposed:

Phase I – Draft Unit Affordability Matrix

Unit Type	Restricted - 50% AMI	Restricted - 80% AMI	Unrestricted 80% AMI & Market Rate	Total
Studio	8	20	9	37
1 BR	9	25	97	131
1 BR Den	3	0	6	9
2 BR	2	0	40	42
3 BR	1	0	3	4
Total	23	45	155	223

Financing Request

Following the [Mar. 11, 2021, EDAC](#) meeting, the developer expressed the need for additional financing related to rising construction costs and compliance of affordable units. The EDAC reviewed the revised request at its [June 10, 2021](#) meeting. The EDAC provided the following feedback on the request.

- In the first request, the developer was seeking an additional half-year of tax increment assistance due to rising lumber costs and materials costs—the total request of \$2.78M (instead of the previously discussed \$2.4M).
 - Ehlers reviewed this request and agreed that it is reasonable due to cost increases.
 - The majority of the commissioners concluded that the request for additional assistance was reasonable. One commissioner did not support the request for additional assistance.
 - Staff clarified that the lookback provision would prevent the developer from being overcompensated if construction costs are lower than anticipated after the project is constructed.
- The second portion of the request was for an additional \$350,000 to offset the developer's costs for compliance related to income qualification on the 80% AMI units (past the six-year term of the TIF note).
 - The developer has agreed to restrict the 80% AMI units with 80% rent restrictions for six years (through 2029)
 - The developer was seeking \$350,000 to cover the depressed market value, risk, and reporting requirements to extend the 80% rents at 100% AMI for the remaining 24 years.
 - Staff and Ehlers have reviewed and did not support the additional \$350,000 request.
 - The EDAC also did not support the request for additional assistance. The developer agreed to work with staff on reporting requirements.
- Feedback on the proposed unit mix:
 - Commissioners concurred that the unit mix was appropriate.
 - Commissioners discussed the possibility of having additional discussions on the three-bedroom units and information pertaining to that issue.
 - Staff encouraged commissioners to attend the July 19 meeting, “Navigating your Competitive Future” to pose the questions at that meeting.

Contract for Private Development

Developer

- The developer entity has not yet been formed, but it will be a Minnesota and a Delaware limited liability company directly or indirectly controlled by Stephen B. Wellington.

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 68 units affordable to households:
 - 23 units at or below 50% AMI
 - 45 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 \$908 and \$1,238 per month.
- 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 developer has indicated that it does not agree with this provision and has instead proposed that the city consider changing the language to "the lesser of (i) 90 days or (ii) five calendar days after a binding purchase agreement is fully executed."
 - Staff does not support this change, as the 90-day notice requirement is a provision in every EDA contract.
- The agreement, as has been included in previous documents, includes compliance with labor laws.

Assistance

Staff is recommending up to \$2,780,000 assistance with the financing of the affordable units. The funding source is the Opus TIF District. Financing terms are as follows:

- 6-year term, 3.75% interest rate on the TIF Note
 - The developer is not in agreement with the payment dates (Feb 1, 2024, through August 1, 2030) as indicated in the draft contract. The city's practice is to determine an end date when the increment will be generated to provide the recommended assistance. The developer is requesting to eliminate the end date on the TIF note.
 - This would prevent the city from collecting the remaining tax increment generated that is committed to future infrastructure projects in Opus.

- Staff does not support the developer's request to remove August 1, 2030, as the end date of the note.
- Minimum assessment agreement (establishes the minimum market value for the project for the purpose of determining the tax increment financing)
- Look back provision (allows the city to review the development assistance assumptions once the project is complete by reviewing the project's actual costs and return on investment once the project is occupied):
 - Total development cost after construction is completed
 - Return on investment following stabilization
 - Sale provisions
- Requires a 30-year term of affordability.

Julie Eddington, the city's EDA attorney, has prepared the attached contract for private development, which the EDA is requested to approve as submitted. 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.

Attachments:

Location Map
Letter from Wellington Management (April 9, 2021)
Memo from Ehlers (March 2, 2021)
Draft Concept Plans
Affordable Housing Policy
TIF Policy
2021 Income and Limits
History of Affordable Housing Production and Assistance
June 10, 2021, Unapproved EDAC Minutes
Contract for Private Development

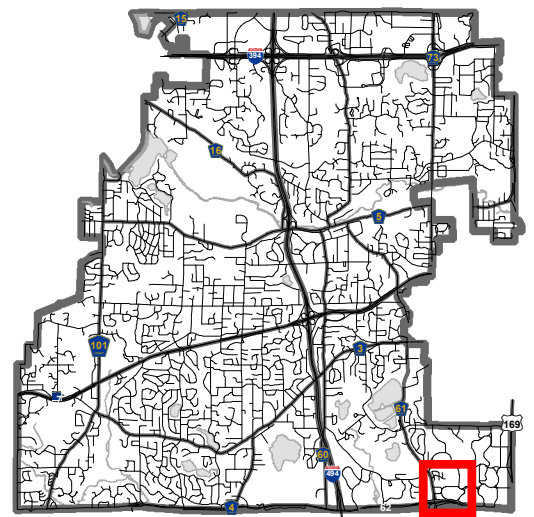
Additional Resources

[Opus Public Realm Design Guidelines](#)
[March 11, 2021 EDAC Meeting Minutes](#)
[Feb. 25, 2021 EDAC Meeting Minutes](#)
[Sept. 17, 2020 EDAC Meeting Minutes](#)
[Marquette Housing Study](#) (Aug.18, 2017)



Location Map

Project: Shady Oak Office Center
Address: 10901 Red Cir Dr





April 9, 2021

Loren Gordon, City Planner
City of Minnetonka
14600 Minnetonka Blvd.
Minnetonka, MN 55345

RE: 10901 Red Circle Drive

Project Description: The proposed project is located at 10901 Red Circle Dr and will include demolishing the existing office building and redeveloping the site with two multifamily, mixed-income buildings constructed in two phases. The 4.68-acre site is located immediately east of the commercial area along Shady Oak Road just north of Hwy 62. Wellington Management has owned and managed the office building since 2004. Based on the City's land use goals for Opus Park and the changing dynamics in how and where people choose to live, work, and play, Wellington believes the site will better serve the community as a multifamily housing project. The site is well positioned between two Southwest LRT stops, directly adjacent to the bike trail, and near a variety of retail amenities and significant employers. The project will help grow the Opus Park area from predominately office uses into a community where residents can live, work, and play all within a short walk, bike ride, or transit ride.

The design will include a pocket park and pollinator garden to connect the phase I and phase II buildings, adjacent to the bike trail on the northern edge of the site. There will also be a sidewalk connecting the bike trail to the walk-up units, a bike repair station on the northeast corner of the phase 1 building, and lighting, seating, and other landscaping improvements throughout the site. These enhancements will provide attractive and seamless connections for residents, bicyclists, and pedestrians interacting with the site and adjacent path.

The building will be a combination of brick, masonry, metal panel, and cement board siding. The design is intended to merge the look of an office structure with that of a residential structure creating a hybrid to fit into the overall context of the mixed-use Opus Park. Some of the massing, form, and color also took cues from the Optum building and the other commercial buildings nearby. The residential presence of the structure is enhanced with walk-up style units that create a residential feel, and also add vitality to the pedestrian walkways and trails. The walk-up units provide a strong connection to the trails and provide an openness to the building. The building has part four and part five-story segments around the perimeter. This height difference is accentuated by significant grade on the site which exposes an additional floor. The design on the north portion is intended to accentuate the change in height providing for a dynamic mix.

Affordability Mix

In September 2020, members of Wellington’s team met with the Minnetonka Planning Commission, Economic Development Advisory Committee (EDAC), and City Council to share plans and collect feedback for its Shady Oak office redevelopment. At that time Wellington planned to develop 335 units, including 20% of units affordable at 50% of area median income in a multi-phase development. The September 17, 2020 EDAC staff report concluded that the project required public assistance totaling \$5 million for the phase 1 building and \$3 million for the phase 2 building. Following the aforementioned public meetings, Wellington and City staff had several discussions related to the site plan, building massing and affordability mix in the context of other public infrastructure and development projects planned within Opus Park. As part of those discussions, Wellington was asked to consider including units affordable at both the 50% and 80% AMI levels. In response, Wellington is pleased to present an updated project summary and affordability details for phase one of the two-phase redevelopment.

In order to provide an additional buffer and greenspace between the bike trail and the building, Wellington has slightly reduced the building massing/density in phase 1 (eastern building) from 250 units to 223 units based on current floor plans and estimated units sizes. The western building (phase 2) will likely include 150 - 185 units. Both buildings will include a mixture of studio, 1-, 2-, and 3-bedroom units. Within the phase 1 building 10% of the units will have rents restricted at/below 50% of area median income and 20% of the units will have rents restricted at/below 80% of area median income. The remaining units will be unrestricted at market rate rents. However, a majority of the market-rate units are anticipated to have rents between 80 - 100% of AMI thereby providing a wide range of workforce housing options within Opus Park.

Gross Square Footages:

	RESIDENTIAL	COMMON AREA	PARKING	GROSS SF
-1 UNDERGROUND	0	0	66,690	66,690
FIRST FLOOR	33,255	11,515	0	44,770
SECOND	37,045	7,035	0	44,080
THIRD	40,365	5,275	0	45,640
FOURTH	40,015	5,285	0	45,300
FIFTH	9,650	3,370	0	13,020
TOTAL	160,330	32,480	66,690	259,500

Lot Area: 3.145 Acres

Lot Coverage: Impervious area = 2.258 Acres (71.8%). Building footprint = 66,690 sq.ft.

Setbacks: South property line = 18’, west property line=75’, north property line 11’- 5”, east property line 20’.

Height: The height of the building will be 5 stories on the north wing and 4 stories on the rest of the building. Because of the grade difference, the lower level is exposed at the northeast corner. The total height at this corner will be 70 feet above grade. The majority of the north wing is approximately 60’ above grade. The interior courtyard and southern end is approximately 50’ in height.

Unit Counts: The project consists of one, one bedroom den, two-bedroom, three bedroom, and studio units in the following totals:

1 Bedroom	143
1 Bedroom + Den	7
2 Bedroom	32
3 Bedroom	4
Studio	37
TOTAL	223

Building Materials: The materials will consist of architectural block, brick, fiber cement panels, wood printed metal panels, metal panels, and glazing.

Parking: Parking will be a mix of site parking and one level of underground parking.

TOTAL	Site	Compact
303	97	206

Bike Parking: Bike Parking will be provided in several locations. There will be bike loops provided at the back of the parking stalls for tenants to have long term storage. There will also be a bike room with some common area locking areas. There are also exterior bike racks at the northeast corner of the building near the bike trail. There are additional bike racks near the front entry door. Overall, there will be 20 exterior bike stalls, and 120 interior bike racks.

Requested Applications

- Master Development Plan
- Rezoning
- Preliminary Plat
- Final Plat

Please let me know if you have any questions regarding the application.

Sincerely,
COLLAGE ARCHITECTS



Pete Keely, A.I.A.
President

MEMORANDUM

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

FROM: Keith Dahl & Stacie Kvilvang - Ehlers

DATE: March 2, 2021

SUBJECT: Wellington Management – Analysis of Financial Request

In the fall of 2020, the City received a financial assistance request from Wellington Management (the “Developer”) seeking financial assistance in the amount of \$9.5 million of Tax Increment Financing (TIF). The Developer had proposed to construct a 250-unit apartment in phase I and 185-unit apartment in phase II. The apartment buildings would consist of studio, 1, 2, and 3-bedroom units with 20% of the units affordable at 50% of the area median income (AMI).

Since that time and several iterations later, the Developer submitted an updated proposal to construct a 223-unit apartment in phase I with 10% of the units affordable at 50% AMI and 20% of the units affordable at 80% AMI. Phase II has not been formalized yet as the Developer continues to review market conditions and investor appetites, but discussions with staff have been around a 185-unit apartment. However, in regard to phase I, the Developer requested \$2.8 million of TIF assistance for inclusion of affordable units above the City’s affordable housing policy. The project is anticipated to commence construction this summer and cost approximately \$52.2 million.

We completed a proforma analysis specifically on phase I and reviewed the Developer’s return on investment (ROI) to ensure that any public assistance in the project would not result in a ROI greater than what is typical within the industry. There are a few common measures used to calculate ROI, however the Developer is using a Cash-on-Cost (COC) rate of return and we’d expect their annual return to be around 6%.

Based on our review, we concluded assistance in the amount of \$2.4 million in the form of a Pay-As-You-Go TIF Note from 85% of the available tax increment over an anticipated 6-year term is supported for this project. In addition, we’d recommend including a minimum assessment agreement and a three-part lookback provision, specifically to review 1) total development cost after construction completion, 2) return on investment upon project stabilization, and 3) a sale should the Developer sell the project during the term of TIF assistance. These lookback provisions will ensure the project was not over subsidized based on several assumptions made in today’s market conditions.

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



Shady Oak

10901 Red Circle Drive
Minnetonka, MN



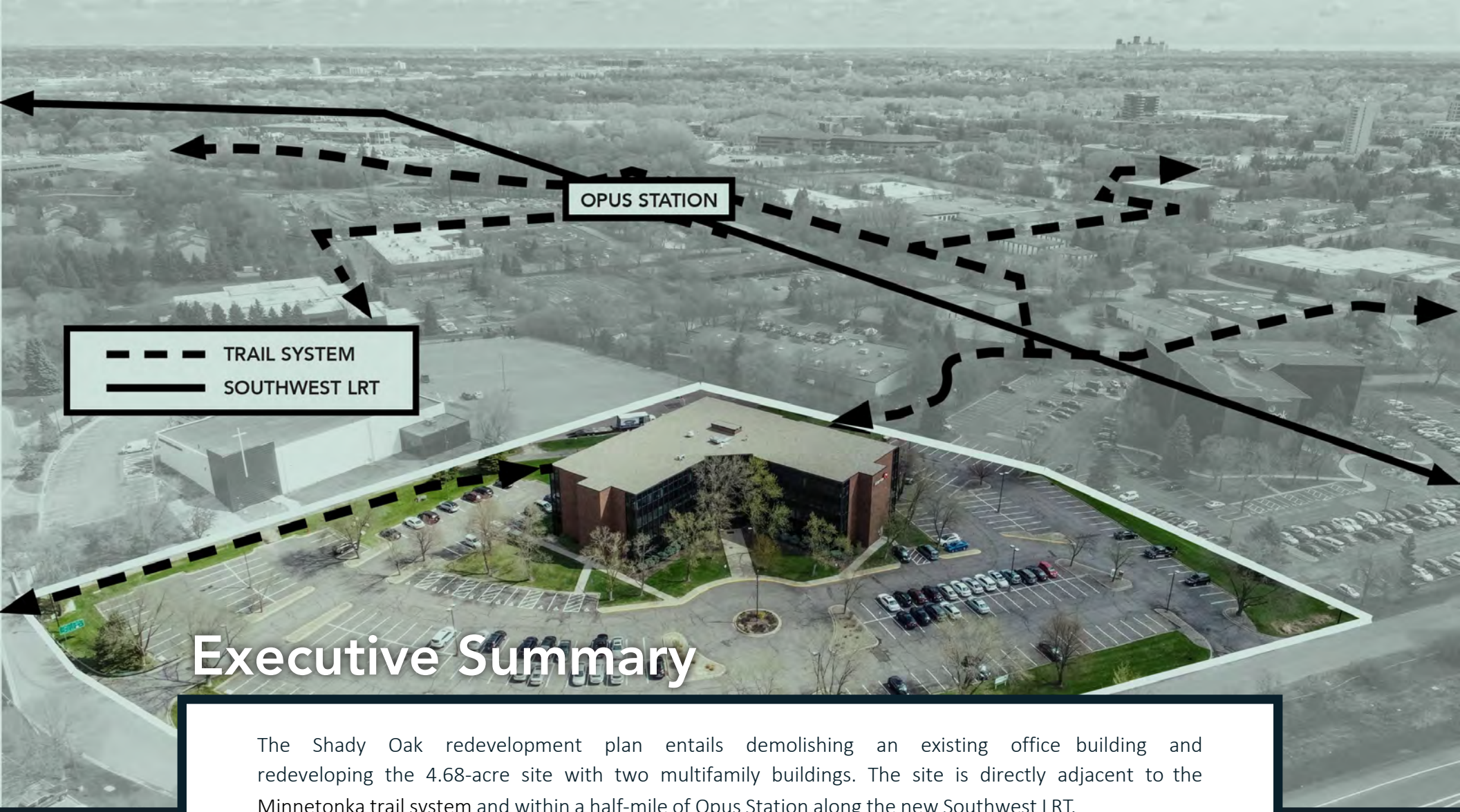


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SHADY OAK EAST

01.07.2021



OPUS STATION

--- TRAIL SYSTEM
— SOUTHWEST LRT

Executive Summary

The Shady Oak redevelopment plan entails demolishing an existing office building and redeveloping the 4.68-acre site with two multifamily buildings. The site is directly adjacent to the Minnetonka trail system and within a half-mile of Opus Station along the new Southwest LRT. The eastern building (Phase 1) will contain approximately 223 units, and the western building (Phase 2) will contain 150-185 units. Phase 1 will include a mixture of studio, 1-, 2- and 3-bedroom units. In Phase I, 10% of the units will be rent-restricted at/below 50% AMI and 20% at/below 80% AMI. The two buildings will be connected by a shared green space at the center of the site, and each building will include underground parking.

Building Amenities

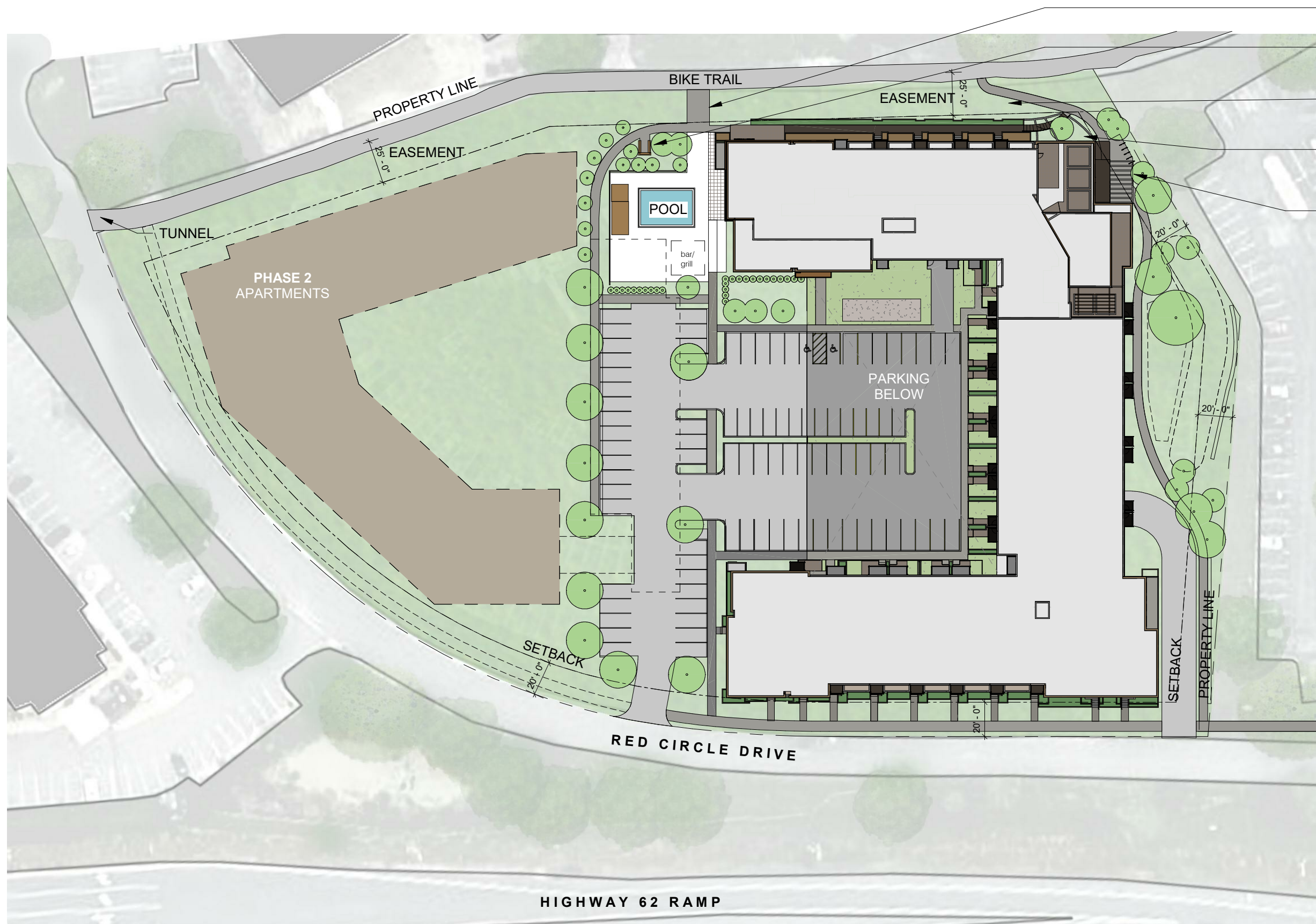


- > Outdoor plaza adjacent to bike trail and pocket park
- > Walk-up units
- > Rooftop deck and fire pit
- > Sauna
- > Pet wash & grooming area
- > Rain garden
- > Electric vehicle charging stations
- > Bike storage & repair station
- > Package room
- > Fitness room with virtual programming
- > Underground, heated garage



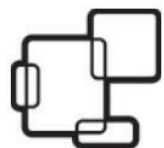
10901 RED CIRCLE DRIVE
MINNETONKA, MN

Existing Site



- BIKE ACCESS FROM TRAIL TO LEVEL 1
- PARK 1**
PUBLIC SPACE
- NATIVE PLANTINGS AT EASEMENT
- PARK 2 - TERRACES - PUBLIC PARK AREA**
- BIKE ACCESS FROM TRAIL TO BASEMENT LEVEL WITH BIKE PARKING AND FIXIT STATION

1 | SITE PLAN WITH POOL
1" = 60'-0"



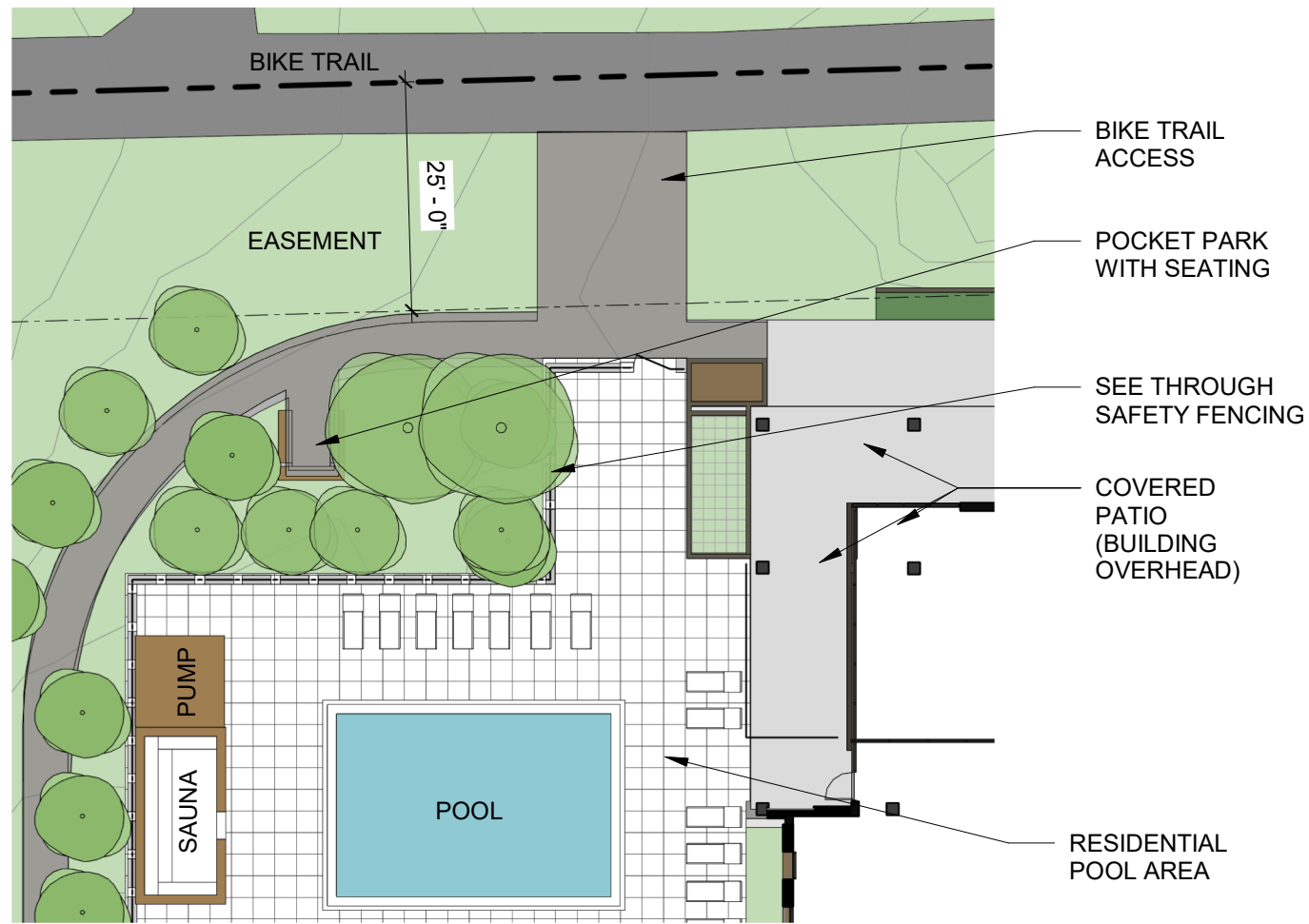
Collage | architects



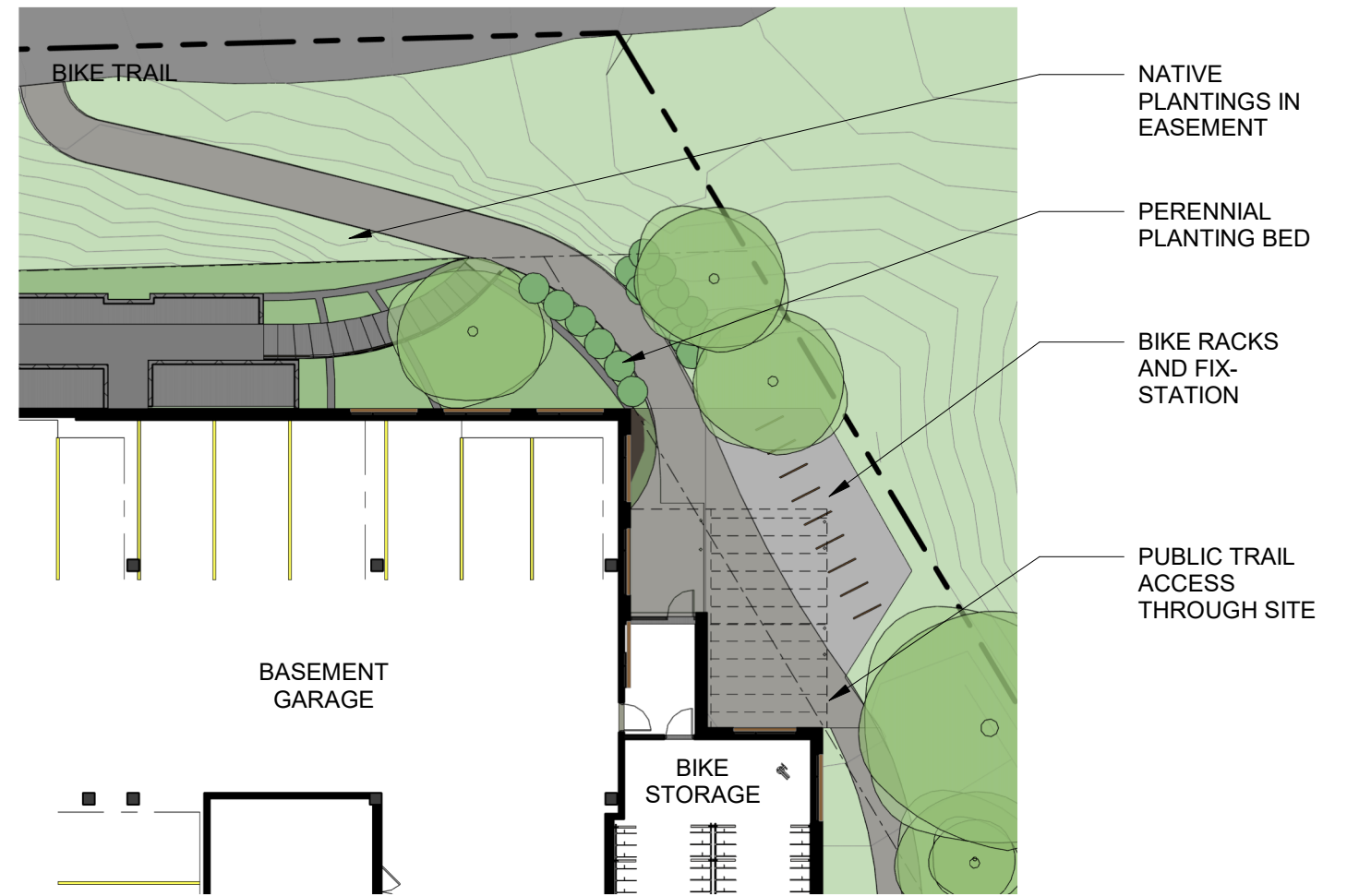
CITY SUBMITTAL | SITE PLAN WITH POOL

10901 RED CRICLE DR. | A1.0A

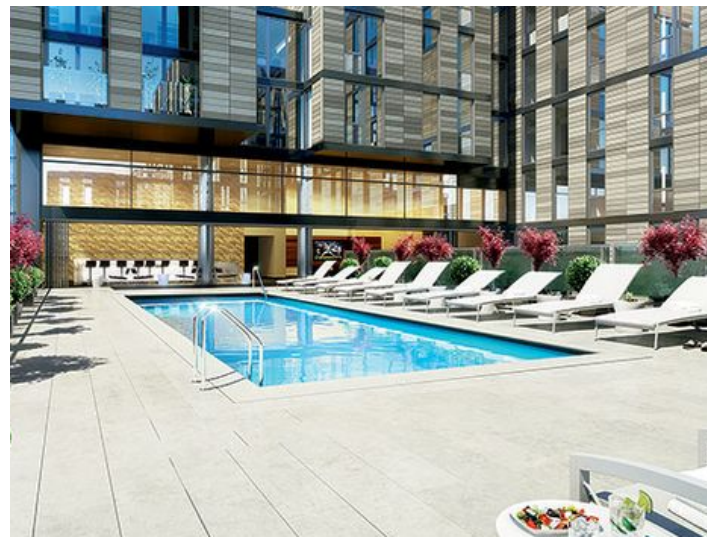
06/15/21



1 | NORTHWEST PARK AND POOL ENTRY
1" = 20'-0"



2 | NORTHEAST CORNER PARK
1" = 20'-0"



POOL ADJACENT TO BUILDING



SEE-THROUGH FENCING AROUND POOL



TERRACES AT EAST PARK AREA





WALK-UP UNITS ON NORTH SIDE

AREAS BY TYPE AND LEVEL

NAME	AREA*
-1 UNDER GROUND PARKING	66685 SF
1ST FLOOR	
1BR	18845 SF
1BR+D	1895 SF
2BR	7265 SF
3BR	1335 SF
AMENITY	1380 SF
CIRCULATION	4635 SF
COMMON AREA	5340 SF
STUDIO	3915 SF
2ND FLOOR	
1BR	22270 SF
1BR+D	1790 SF
2BR	7155 SF
3BR	1430 SF
AMENITY	1705 SF
CIRCULATION	4390 SF
COMMON AREA	765 SF
STUDIO	4400 SF
3RD FLOOR	
1BR	24575 SF
1BR+D	890 SF
2BR	8645 SF
3BR	1325 SF
CIRCULATION	4335 SF
COMMON AREA	770 SF
STUDIO	4930 SF
4TH FLOOR	
1BR	24280 SF
1BR+D	890 SF
2BR	8590 SF
3BR	1325 SF
CIRCULATION	4335 SF
COMMON AREA	770 SF
STUDIO	4930 SF
5TH FLOOR	
1BR	6660 SF
1BR+D	890 SF
2BR	2100 SF
AMENITY	1220 SF
CIRCULATION	1915 SF
COMMON AREA	180 SF

TOTAL FLOOR AREAS

LEVEL	AREA
-1 UNDER GROUND	66,690 SF
1ST FLOOR	44,770 SF
2ND FLOOR	44,080 SF
3RD FLOOR	45,640 SF
4TH FLOOR	45,300 SF
5TH FLOOR	13,020 SF
GRAND TOTAL	259,500 SF

UNIT COUNTS BY TYPE

UNIT TYPE	#
1BR	143
1BR+D	7
2BR	32
3BR	4
STUDIO	37
TOTAL UNITS: 223	

PARKING

PARKING LEVEL	#
-1 UNDER GROUND	206
SITE PARKING	97
TOTAL PARKING	: 303

Policy Number 13.2
Affordable Housing Policy

Purpose of Policy: This policy establishes general procedures and requirements to govern the City's commitment to affordable housing.

Introduction

The City of Minnetonka has a long history of promoting diversity in the type and size of housing units in Minnetonka, including the production of new affordable rental and ownership opportunities.

This Policy recognizes the city's commitment to provide affordable housing to households of a broad range of income levels in order to appeal to a diverse population and provide housing opportunities to those who live or work in the city. The goal of this policy is to ensure the continued commitment to a range of housing choices by requiring the inclusion of affordable housing for low and moderate-income households in new multifamily or for-sale developments.

The requirements in this policy further the Minnetonka Housing Action Plan and city's Housing Goals and Strategies identified in the 2040 Comprehensive Plan.

Applicability and Minimum Project Size

This policy applies to all new multifamily rental developments with 10 or more dwelling units and all new for-sale common interest or attached community developments, (condominiums, townhomes, co-ops) with at least 10 dwelling units. This includes existing properties or mixed-use developments that add 10 or more units.

Calculation of Units

The number of Affordable Dwelling Units (ADUs) required shall be based on the total number of dwelling units approved by the city. If the final calculation includes a fraction, the fraction of a unit shall be rounded up to the nearest whole number.

If an occupied property with existing dwelling units is expanded by 10 or more units, the number of required ADUs shall be based on the total number of units following completion of expansion.

Affordable Dwelling Unit (ADU)

General Requirements.

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

- In multi-family rental developments, at least 5% of the units shall be affordable to and occupied by households with an income at or below 50% of

the AMI.

- In attached for-sale common interest or attached community developments (condominiums, townhomes, co-ops), at least 10% of the units shall be affordable to and occupied by households with an income at or below 80% AMI.

For projects requesting a zoning change or comprehensive plan amendment without city assistance.

- In multi-family rental developments, at least 10% of the units shall be affordable to and occupied by households with incomes at or below 60% AMI, with a minimum of 5% at 50% AMI.
- In attached for-sale common interest or attached community developments (condominiums townhomes, co-ops), at least 10% of the units shall be affordable to and occupied by households with an income at or below 80% AMI.

For projects receiving city assistance.

- For multi-family rental developments, at least 20% of the units shall be affordable to and occupied by households with an income at or below 50% of the AMI; or at least 40% of the units shall be affordable to and occupied by households with an income at or below 60% AMI.
- In attached for-sale common interest or attached community developments (condominiums, townhomes, co-ops), at least 10% of the units shall be affordable to and occupied by households with an income at or below 80% AMI.

Calculation of AMI

For purposes of this policy, Area Median Income means the Area Median Income for the Twin Cities metropolitan area calculated annually by the Minnesota Housing Finance Agency for establishing rent limits for the Housing Tax Credit Program (multi-family ADU) and the Department of Housing and Urban Development (attached for-sale common interest or attached community developments, including: condominiums, townhomes, co-ops).

Rent Level Calculation (Multi- Family Rental Developments)

The monthly rental price for an ADU receiving city assistance shall include rent and utility costs and shall be based on fifty percent (50%) or sixty percent (60%) for the metropolitan area that includes Minnetonka adjusted for bedroom size and calculated annually by Minnesota Housing Financing Agency for establishing rent limits for the Housing Tax Credit Program. This does not apply to units not receiving city assistance.

For Sale Projects

The qualifying sale price for an owner-occupied dwelling unit shall include property taxes, homeowner's insurance, principal payment and interest, private mortgage insurance, monthly ground lease, association dues, and shall be based upon eighty (80%) AMI for the metropolitan area that includes Minnetonka adjusted for bedroom size and calculated annually by the Department of Housing and Urban Development.

Period of Affordability

In developments subject to this policy, the period of affordability for the ADUs shall be thirty (30) years.

Location, Standards, and Integration of ADUs

Distribution of affordable housing units. Unless otherwise specifically authorized by this policy, the ADUs shall be integrated within the development and distributed throughout the building(s). The ADUs shall be incorporated into the overall project unless expressly allowed to be located in a separate building or a different location approved by the city council.

Number of bedrooms in the affordable units. The ADUs shall have a number of bedrooms proportional to the market rate units. The mix of unit types shall be approved by the city.

Size and Design of ADUs. The size and design of ADUs shall be consistent and comparable with the market rate units in the rest of the project.

Exterior/Interior Appearance of ADUs. The exterior/interior materials and design of the ADUs in any development subject to these regulations shall be indistinguishable in style and quality with the market rate units in the development.

Non-Discrimination Based on Rent Subsidies

Developments covered by this policy must not discriminate against tenants who would pay their rent with federal, state or local public assistance, including tenant based federal, state or local subsidies, but not limited to rental assistance, rent supplements, and Housing Choice Vouchers.

Alternatives to On-Site Development of an ADU

The city recognizes that it may not be economically feasible or practical in all circumstances to provide ADUs in all development projects due to site constraints resulting in extraordinary costs of development. The city reserves the right to waive this policy if the developer requests a waiver and can provide evidence of extraordinary costs prohibiting the inclusion of ADUs. The city will review on a case-by-case basis to determine if the waiver is justifiable and granted.

Recorded Agreements, Conditions and Restrictions

A declaration of restrictive covenants shall be executed between the city, EDA and developer, in a form approved by the city's EDA attorney, which formally sets forth development approval and requirements to achieve affordable housing in accordance with this policy. The declaration shall identify:

- The location, number, type, and size of affordable units to be constructed;
- Sales and/or rental terms; occupancy requirements;
- A timetable for completion of the units; and
- Annual Tenant income and rent reporting requirements; and
- Restrictions to be placed on the units to ensure their affordability and any terms contained in the approval resolution by the city/EDA.

The applicant or owner shall execute all documents deemed necessary by the city manager, including, without limitation, restrictive covenants and other related instruments, to ensure affordability of the affordable housing unit within this policy.

The documents described above shall be recorded in the Hennepin County as appropriate.

Definitions

Affordable Dwelling Unit: A unit within a residential project subject to this policy that shall meet the income eligibility and rent affordability standards outlined in this policy.

Financial Assistance: Funds derived from the city or EDA, including but is not limited to fund from the following sources:

- City of Minnetonka
- Housing Redevelopment Authority (HRA) Funds
- Economic Development Authority (EDA) Funds
- Community Development Block Grant (CDBG)
- Reinvestment Assistant Program
- Revenue Bonds and/or Conduit Bonds
- Tax increment financing (TIF), TIF pooling, or tax abatement
- Land write downs
- Other government housing development sources

Adopted by Resolution 2019-060
Council Meeting of July 8, 2019

Policy Number 2.18
Tax Increment Financing and Tax Abatement

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

Introduction

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

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

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

TAX INCREMENT FINANCING

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

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

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

- Projects must be compatible with the Comprehensive Guide Plan (or acquire an amendment) and the development and redevelopment objectives of the city.
- Priority will be given to those projects which:
 - are within the “village areas” identified in the city’s most recently adopted Comprehensive Guide Plan;
 - are mixed use or residential in nature, and include affordable housing units which meet the city’s affordable housing standards;
 - contain amenities or improvements which benefit a larger area than the identified development;
 - improve blighted or dilapidated properties, provide cohesive development patterns, or improve land use transitions; or
 - maximize and leverage the use of other financial resources.

Costs Eligible for Tax Increment Financing Assistance

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

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

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

Forms of Assistance

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

Fiscal Disparities

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

TAX ABATEMENT

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

Projects Eligible for Tax Abatement Assistance

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

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

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

Fiscal Disparities

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

REVIEW PROCESS

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

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

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

2021 AFFORDABLE HOUSING INCOME DATA

2021 Income Limits Summary					
Household Size	30%	50%	60%	80%	120%
1	\$22,029	\$36,715	\$44,058	\$55,930	\$88,116
2	\$25,176	\$41,960	\$50,352	\$63,920	\$100,704
3	\$28,323	\$47,205	\$56,646	\$71,910	\$113,292
4	\$31,470	\$52,450	\$62,940	\$79,900	\$125,880
5	\$33,987	\$56,646	\$67,975	\$86,292	\$135,950
6	\$36,505	\$60,842	\$73,010	\$92,684	\$146,020
7	\$39,010	\$65,038	\$78,045	\$99,076	\$156,091
8	\$43,430	\$69,234	\$83,080	\$105,468	\$166,161
Twin Cities Median Family Income 2021				\$104,900	

Income limits are published on the US Department of Housing and Urban Development User Portal:
<https://www.huduser.gov/portal/datasets/il.html>

How much do residents pay for affordable housing?

Maximum Gross Rents by Bedroom Size				
AMI	Studio	1 bedroom	2 bedroom	3 bedroom
30%	\$551	\$590	\$708	\$818
50%	\$918	\$984	\$1,181	\$1,363
60%	\$1,102	\$1,181	\$1,417	\$1,636
80%	\$1,470	\$1,575	\$1,890	\$2,182

Maximum rent tables are published annually with Minnesota Housing:
<https://www.mnhousing.gov/sites/multifamily/limits>

Affordable rent based on sample occupations and their average salaries

Occupation	Average Salary	Affordable Rent
Chef / Head Cook	\$51,500	\$1,287
Elementary School Teacher	\$61,712	\$1,542
Electrician	\$69,035	\$1,725
Veterinarian	\$91,956	\$2,298

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
Linden Street (10400 Bren Rd)	28	247	\$553,000	30	\$658	10 @ 50% AMI
Doran (5959 Shady Oak)	53	303	\$280,000	30	\$176	5@50% 5@60% 5@80%AMI
Wellington Management	68	223	\$2,780,000 requested	30	\$1,362	10%@50% , 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 02/22/2021

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

June 10, 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, Steven Tyacke, and Charlie Yunker were present. Jay Hromatka and Melissa Johnston were 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 Stacie Kvilvang of Ehlers and Associates, and IT Assistants Gary Wicks and Joona Sundstrom.

3. Approval of EDAC April 29, 2021 Meeting Minutes

Tyacke motioned, Falk seconded the motion to approve the April 29, 2021 meeting minutes as submitted. Duginske Cibulka, Falk, Jacobsohn, Tyacke, and Yunker voted yes. Hromatka and Johnston were absent. Motion passed.

4. Wellington Management at 10901 Red Circle Drive

Gray gave the staff report. She requested commissioners review the financing request and make a recommendation to the city council.

In response to Jacobsohn's question regarding the applicant's request for \$350,000 for compliance efforts, Gray stated that income verification for the tenants of this proposal would not be as time consuming for Wellington Management as other projects it has worked on.

In response to Jacobson's question, Gray explained that tenants would be able to grow his or her income up to 140 percent of the qualifying rate before being required to pay rent at a higher affordable-housing rate or market-rate rent.

Falk asked what mechanism would be used to prevent overcompensation of the look-back provision of the additional tax-increment amount. Kvilvang explained that an open-book process would be used with the developer. Upon stabilization, the results would be looked at and the performa recreated. If the anticipated threshold would be exceeded,

then the city would have the opportunity to share a reduction in the amount of tax increment to provide an upside for the developer doing well and reduce the amount of public assistance.

In response to Calvert's question, Gray and Wischnack explained that if a tenants' income would increase by 140 percent, then the rent would be raised to a higher affordable-housing rate or market-rate rent depending on the amount of income. A tenant would not be required to physically move from the unit.

Casey Dziejewczynski, representing the applicant, stated that he appreciated working with Gray and Wischnack to calculate the anticipated amount of compliance costs. The applicant had requested the \$350,000 to cover the cost of 24 years of additional staff time used to verify the income restriction. He has worked with staff to reduce compliance costs with a one-year tenant recertification and deeper dive every five years to reduce the compliance costs. He hopes to have a well-integrated building of tenants with different income levels who will have the opportunity to increase their income. The applicant will no longer need the additional \$350,000 since staff has worked with him to decrease the compliance costs.

Steve Wellington, applicant, thanked staff and EDAC commissioners for collaborating with the developer. He also appreciated planning staff helping to define Minnetonka's vision for the area. He is comfortable proceeding with the affordable component. He received a commitment from a construction lender. He would feel better if the construction market and price of lumber would stabilize, but it appears that things are lining up appropriately to begin construction Sept. 1, 2021. He welcomed the commission's support.

Jacobsohn understood that the request for an additional \$2.78 million is due to the increase in construction costs. It sounds like there is a good relationship between staff and Wellington Management. If the city wants to have projects continue, then it will need to be flexible with its financial assistance.

Duginski Cibulka appreciates the reality of the price changes that are quite volatile at this time. She expected the increase in construction costs to be higher than requested by the applicant. She thought that the number and mix of affordable units relative to the market surveys was thoughtfully laid out and well done. Ehlers and Associates have done a nice job of evaluating the proposal very closely. The proposal is well thought out. The site will be an important component of the area with high visibility from Hwy 62. The proposal would create a visual gateway to the area of redevelopment and would connect nicely to where the SWLRT will be located. She is excited about the look, feel, and features of the project.

Falk agrees with commissioners. She calculated that the request would cover an additional 15 percent increase in construction costs, but increases in construction costs

are forecasted to increase by more than 20 to 22 percent. Mr. Dziejeczynski explained that a small contingency was included in the request when the construction costs were priced in January. The lumber, steel, and sheet rock increases have been increased exponentially. The increase in construction materials went up by \$2 million. The request would cover half of that. The applicant has tightened the screws on other components of the building while still making it an attractive project. As long as lumber does not increase in cost by another 200 percent, then the closing should work at this number. The project hopes to start construction in September.

Falk stated that the applicant's assessment is reasonable and considerate. She suggested that the applicant apply for energy-design assistance to help offset costs by doing more sustainable features. Mr. Dziejeczynski stated that Wellington Management applies for that assistance for every project and will definitely be doing so for this one.

Tyacke had a hard time understanding what has changed since the September presentation. A potential increase in the price of commodities could have been anticipated in September. Kvilvang stated that costs increased at an unprecedented rate. The proposal included a routine contingency increase amount for materials in the budget, but Ehlers and Associates feels that the applicant's request is reasonable.

Chair Yunker felt that the request for \$2.78 million in tax-increment-finance (TIF) assistance is reasonable. The request is not overly burdensome. The look-back provision would ensure that the amount would be reasonable. He recommended not approving the \$350,000 for compliance efforts.

Gray continued the staff report.

Tyacke noted that the market is diminishing for three-bedroom units. He supports the proposed mix of units.

Calvert explained that councilmembers want verifiable data to determine the best mix of unit types. She noted that often people cannot afford more than an affordable studio apartment even if more than one person would live there. She learned from ICA food shelf staff that families are in need of two-bedroom and three-bedroom affordable apartments. Councilmembers want to make it possible for young families to be able to afford to live in Minnetonka.

Falk agrees with Calvert. The Marquette study is well intentioned, but it is an example of correlation, not causation. She would like a study to see if families in Minnetonka are adequately housed or if, for example, there are five family members living in a two-bedroom apartment.

Jacobsohn was comfortable leaving it to the applicant to decide the mix of affordable-housing units. He wants to make the applicant aware of the city's goals and completed

studies, but did not want to dictate to the applicant the number of three-bedroom-affordable units. Many market shifts may occur as senior apartments and workforce housing units are completed near the SWLRT station.

Calvert agreed with Jacobsohn that the market will decide, but would like to collect data on why and how often a family of five or six lives in a one-bedroom or two-bedroom affordable apartment. Wischnack announced that councilmembers and EDAC and planning commissioners will be invited to participate in a panel discussion by the Urban Land Institute July 19, 2021 on the topic of "Navigating Your Competitive Future." It will provide a great opportunity to ask questions regarding affordable housing and market-rate developments.

Tyacke noted that the affordable-housing policy states that it is up to the developer to draw conclusions based on the data and determine the best mix of units. He felt it would be going beyond the scope of the policy to steer the developer into providing more three-bedroom units than shown as needed by the data.

Chair Yunker felt that the unit mix has been set for this project. There needs to be a broader discussion before three different bodies all chiming in on the mix of affordable units. He understood all of the challenges, but a lot of work has been put into getting the proposal to where it is right now. He favored trusting that the developer chose the best mix of affordable units for this project.

Chair Yunker summarized that a majority of commissioners agree to recommend approval of the mix of affordable units as proposed to the city council; recommend increasing the TIF note to \$2.78 million to the city council; and recommend denial of the request to provide \$350,000 for fund compliance efforts to the city council.

Tyacke opposed the recommendation to increase the TIF assistance amount to \$2.78 million to the city council.

Chair Yunker thanked the applicant and Kvilvang for attending the meeting.

5. Staff Report

- The SWLRT is hosting walking tours of projects along the line through June. The westbound lane on Green Circle Drive near Bren Road is closed through the 2021 construction season. Smetana Road from Feltl Road to Nolan Drive is closed until late summer. Work continues on the Minnetonka-Hopkins SWLRT bridge.
- Staff continues to work with Metro Transit quarterly. There are no planned route cuts through the summer. Discussions are ongoing to begin reinstating express service along the 394 corridor to downtown Minneapolis.

DRAFT
July 1, 2021

**CONTRACT
FOR
PRIVATE DEVELOPMENT**

between

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

and

[DEVELOPER]

Dated July __, 2021

This document was drafted by:
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DRAFT

CONTRACT FOR PRIVATE DEVELOPMENT

THIS CONTRACT FOR PRIVATE DEVELOPMENT, made on or as of the 14th 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 [DEVELOPER], a Delaware 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 Authority and City have undertaken a program to promote economic development and job opportunities, promote the development and redevelopment of land which is underutilized within the City, and facilitate the development of affordable housing, and in this connection created a development district known as Development District No. 1 (the “Project”) in the City; and

WHEREAS, by Resolution No. 93-9649, the City transferred control, authority and operation of the Project from the City to the Authority; and

WHEREAS, the City and the Authority have established the Opus Business Park Tax Increment Financing District (the “TIF District”), a renewal and renovation district within the Project, and adopted a financing plan (the “TIF Plan”) for the TIF District in order to facilitate redevelopment of certain property in the Project, all pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended (the “TIF Act”); and

WHEREAS, the Developer has proposed to construct a rental housing development with approximately 223 units as described further herein as the “Minimum Improvements” on certain property (the “Development Property”) located in the City; and

WHEREAS, in order to achieve the objectives of the development program for the Project and make the Minimum Improvements economically feasible for the Developer to construct, the Authority is prepared to reimburse the Developer for a portion of land acquisition costs, demolition costs, certain site improvement costs, and other costs related to the Minimum Improvements that may be reimbursed with tax increment; and

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

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

ARTICLE I

Definitions

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

“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 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.

“Available Tax Increment” means, on each Payment Date, the Tax Increment attributable to the Development Property and paid to the Authority by the County in the six (6) months preceding the Payment Date after first deducting therefrom fifteen percent (15%) of the Tax Increment to be used to reimburse the Authority for administrative expenses or other Tax Increment eligible expenditures. Available Tax Increment shall not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default under this Agreement; provided, however, that once an Event of Default is cured, any Available Tax Increment withheld shall be deemed Available Tax Increment for the next Payment Date.

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

“Certificate of Completion” means the certification provided to the Developer pursuant to Section 4.4 hereof and set forth in EXHIBIT D.

“City” means the City of Minnetonka, Minnesota.

“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 City may reasonably request to allow it to ascertain the nature and quality of the proposed construction work.

“County” means Hennepin County, Minnesota.

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

“Developer” means [DEVELOPER], a Delaware limited liability company, its successors and assigns.

“Development District” means Development District No. 1 in the City.

“Development Program” means the Development Program for the Development District approved and adopted by the Board of Commissioners of the Authority and the City Council of the City.

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

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

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

“Holder” means the owner of a Mortgage.

“Material Change” means a change in construction plans that materially adversely affects generation of tax increment or changes the number of units of rental housing.

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

“Minimum Assessment Agreement” means the Minimum Assessment Agreement described in Section 6.4 hereof and in substantially the form attached hereto as EXHIBIT F.

“Minimum Improvements” means the construction on the Development Property of a rental housing development with approximately 223 units, with 68 Rental Housing Units subject to the affordability requirements described in Section 4.5 hereof, and 207 enclosed parking spaces and 94 surface parking spaces.

“Minimum Market Value” means a minimum market value for real estate tax purposes of \$38,467,500 with respect to the Development Property and Minimum Improvements as of January 2, 2023 for taxes payable beginning in 2024 and \$51,290,000 on January 2, 2024 for taxes payable beginning in 2025 through the Maturity Date.

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

“Payment Date” means each February 1 and August 1 on which principal of and interest on the TIF Note is paid.

“Pro Forma” means the Developer’s Pro Forma attached hereto as EXHIBIT G.

“Public Redevelopment Costs” means costs related to the development of the Minimum Improvements and eligible to be reimbursed with Tax Increment, as illustrated in EXHIBIT G, including

but not limited to land acquisition costs, site improvement costs, infrastructure costs, and demolition and remediation costs.

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

“Stabilization” means within three (3) years after a Certificate of Occupancy is issued by the City for all Rental Housing Units or when the Minimum Improvements are at least ninety-five percent (95%) leased, whichever is earlier.

“State” means the State of Minnesota.

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

“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 district court, the tax court of the State, or the State Supreme Court.

“TIF Act” means Minnesota Statutes, Sections 469.174 through 469.1794, as amended.

“TIF District” means the Opus Business Park Tax Increment District, a renewal and renovation district within the Development District.

“TIF Note” means the Tax Increment Limited Revenue Note, substantially in the form attached hereto as EXHIBIT B, to be delivered by the Authority to the Developer pursuant to Section 3.3(a) hereof.

“TIF Plan” means the Tax Increment Financing Plan for the TIF District, as approved by the City Council of the City on April 26, 2021, as it may be amended and supplemented.

“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, pandemics, 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.

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ARTICLE II

Representations and Warranties

Section 2.1. Representations by the Authority. The Authority makes the following representations as the basis for the undertaking on its part herein contained:

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

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

(c) The Authority finds that the Minimum Improvements are necessary to alleviate a shortage of, and maintain existing supplies of, affordable, decent, safe, and sanitary housing in the City.

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

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

(f) No commissioner of the Board of Commissioners of the Authority or officer of the Authority has either a direct or indirect financial interest in this Agreement, nor will any commissioner or officer benefit financially from this Agreement within the meaning of Section 469.098 of the EDA Act.

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

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

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

(c) The Developer has received no notice or communication from any local, State or federal official that the activities of the Developer or the Authority in or on the Development Property may be or

will be in violation of any environmental law or regulation (other than those notices or communications of which the Authority is aware). The Developer is aware of no facts the existence of which would cause it to be in violation of or give any person a valid claim under any local, State, or federal environmental law, regulation, or review procedure.

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

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

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

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

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ARTICLE III

Property Acquisition; Financing

Section 3.1. Status of Development Property. The Developer intends to purchase the Development Property from an affiliate. The Authority has no obligation to purchase the Development Property.

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. Issuance of Pay-As-You-Go TIF Note.

(a) To reimburse the Developer for certain Public Redevelopment Costs, the Authority shall issue and deliver and the Developer shall purchase the TIF Note in the maximum principal amount of \$2,780,000 in substantially the form set forth in EXHIBIT B. The Authority and the Developer agree that the consideration from the Developer for the purchase of the TIF Note shall consist of the Developer's payment of the Public Redevelopment Costs in at least the principal amount of the TIF Note.

The Authority shall deliver the TIF Note upon receipt of the following:

- (i) the issuance of the permanent Certificate of Occupancy for the Minimum Improvements;
- (ii) the delivery by the Developer of an investment letter in substantially the form attached hereto as EXHIBIT C; and
- (iii) evidence reasonably satisfactory to the Authority that the Developer has paid the Public Redevelopment Costs in at least the principal amount of the TIF Note.

The principal of and interest on the TIF Note shall be payable each Payment Date solely with Available Tax Increment.

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

(c) The Authority acknowledges that the Developer may assign the TIF Note to a lender that provides part of the financing for the acquisition of the Development Property or the construction of the Minimum Improvements. Pursuant to the terms of the TIF Note, the TIF Note may be assigned if the assignee executes an investment letter in substantially the form set forth in EXHIBIT C.

Section 3.4. Look Back and Reduction of Tax Increment Assistance. The financial assistance to be provided to the Developer pursuant to this Agreement is based on certain assumptions regarding the projected costs and expenses associated with constructing the Minimum Improvements (as provided in the Pro Forma attached hereto as EXHIBIT G and the Public Redevelopment Costs). The Authority and the Developer agree that those assumptions will be reviewed at the time of completion of construction of the Minimum Improvements, and at the time of any sale or refinancing of the Minimum Improvements as follows:

(a) At the time of issuance of the permanent Certificate of Occupancy, if the aggregate amount of Public Redevelopment Costs incurred is less than \$2,780,000, the amount of the tax increment financing assistance for Public Redevelopment Costs will be reduced on a dollar for dollar basis in the amount of such deficiency and the principal amount of the TIF Note will be adjusted accordingly.

(b) Upon Stabilization, the amount of the tax increment assistance provided pursuant to this Agreement will be subject to adjustment based on a targeted cumulative cash on cost return of six percent (6%) from the date of the permanent Certificate of Occupancy. Within sixty (60) days of Stabilization, the Developer must deliver to the Authority's municipal advisor (the "Consultant") evidence of its annual cash on cost return. The cash on cost return shall be calculated by the Authority's Consultant based on the Developer's pro forma financial statement submitted to the Authority's Consultant (to be calculated in a manner comparable to the sample attached as EXHIBIT G (net operating income divided by the total development costs)).

If the cash on cost exceeds six percent (6%), then the principal amount of the TIF Note issued to the Developer will be reduced to an amount that shows a stabilized cash on cost return of six percent (6%) over the new term of the TIF Note, including a reduction to \$0.00. The Developer shall deliver the TIF Note in exchange for a new TIF Note in the adjusted principal amount upon the Authority's written request.

(c) If the Developer sells the Minimum Improvements to an unrelated third party or refinances (provided, however, the placement of permanent debt on the Minimum Improvements and the Development Property will not constitute a refinance giving rise to the review as described in this paragraph (c) during the first six (6) years after the issuance of a Certificate of Occupancy by the City, the Developer agrees to provide to the Authority's Consultant reasonable background documentation related to the Minimum Improvements income and expenses for the period from the date of the Certificate of Occupancy through such anticipated sale or refinance date (provided that the Developer and the Authority agree that the calculation will occur prior to the actual transfer). If the Consultant determines, based on such review, that the actual cash on cost exceeds six percent (6%) in any year, then the principal amount of the TIF Note issued to the Developer will be reduced to an amount that shows a stabilized cash on cost return of six percent (6%), including a reduction to \$0.00. Such reduction will be effective upon delivery

to Developer of a written notice stating the amount of such excess profit as determined by the Authority in accordance with this paragraph (c), accompanied by the Consultant's report.

Section 3.5. Termination of TIF District. At any time following the payment in full of the principal of and interest on TIF Note, the Authority may use the remaining Tax Increment for any other authorized uses set forth in the TIF Plan or may terminate the TIF District.

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

Section 3.8. 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.

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ARTICLE IV

Construction of Minimum Improvements

Section 4.1. Construction of Minimum Improvements. The Developer agrees that it will construct the Minimum Improvements on the Development Property substantially in accordance with the Construction Plans as approved pursuant to Section 4.2 hereof, and at all times prior to the Maturity Date, the Developer will operate and maintain, preserve, and keep the Minimum Improvements or cause such improvements to be maintained, preserved, and kept with the appurtenances and every part and parcel thereof, in good repair and condition. The Authority shall have no obligation to operate or maintain the Minimum Improvements.

Section 4.2. Construction Plans.

(a) Before commencement of construction of the Minimum Improvements (but, in the discretion of the Developer, after demolition of the existing improvements, environmental remediation and site preparation), the Developer shall submit the Construction Plans to the Authority. 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 Development Program; (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 uncured 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 shall relieve the Developer of the obligation to comply with the terms of this Agreement or of the Development Program, 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 shall 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, such Construction Plans shall be deemed approved unless rejected in writing by the Authority Representative, in whole or in part. Such rejections shall set forth in detail the reasons therefor, and shall be made within thirty (30) 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 shall submit new or corrected Construction Plans within thirty (30) 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 shall continue to apply until the Construction Plans have been approved by the Authority. The Authority Representative's approval shall not be unreasonably withheld, delayed or conditioned. Said approval shall 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 shall 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 such previously approved Construction Plans, the Authority Representative shall approve the proposed change and notify the Developer in writing of its approval. Such change in the Construction Plans shall, 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. Such rejection shall be made within thirty (30) days after receipt of the notice of such

change. The Authority's approval of any such change in the Construction Plans may be conditioned on amendment to provisions of this Agreement if such amendments will mitigate the materiality of such proposed changes.

Section 4.3. Commencement and Completion of Construction. Subject to Unavoidable Delays, the Developer will commence the construction of the Minimum Improvements by December 31, 2021, and substantially complete construction of the Minimum Improvements by December 31, 2023. Construction is considered to be commenced upon the beginning of physical improvements beyond grading. 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 development of the Minimum Improvements.

Section 4.4. Certificate of Completion.

(a) Promptly after completion of the Minimum Improvements in accordance with those provisions of this Agreement relating solely to the obligations of the Developer to construct the Minimum Improvements (including the dates for beginning and completion thereof), the Authority Representative will furnish the Developer with a Certificate of Completion shown in EXHIBIT D hereof; provided, however, that prior to the issuance of the Certificate of Completion, the Developer must provide the Authority with evidence satisfactory to the Authority Representative that all contractors, subcontractors, and project laborers have been paid.

(b) If the Authority Representative shall refuse or fail to provide any certification in accordance with the provisions of this Section 4.4, the Authority Representative 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 this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the opinion of the Authority, for the Developer to take or perform in order to obtain such certification.

(c) Regardless of whether a Certificate of Completion is issued by the Authority, the construction of the Minimum Improvements shall be deemed to be complete upon issuance of a certificate of occupancy by the City.

Section 4.5. Affordable Housing Covenants.

(a) The Developer expects that the Minimum Improvements will include a mix of studio, one-bedroom, one-bedroom plus den, two-bedroom, and three-bedroom units. As further described in the Declaration, the Developer shall cause (i) at least 23 of the Rental Housing Units to be available to individuals and their families earning at or below 50% of the area median income and also rent restricted to 30% of 50% of the area median income; and (ii) at least 45 of the Rental Housing Units to be available (1) for the first six years of the Qualified Project Period (as defined in the Declaration), to individuals and their families earning at or below 80% of the area median income and also rent restricted to 30% of 80% of area median income, and (2) for the remainder of the Qualified Project Period, to individuals and their families earning at or below 100% of the area median income and also rent restricted to 30% of 80% of area median income.

As of the date of execution of this Agreement, the Developer expects that the Rental Housing Units with both income and rent restrictions will include:

Type of Unit	Area Median Income	Number of Units
Studio	50%	8
One-Bedroom	50%	9
One-Bedroom Plus Den	50%	3
Two-Bedroom	50%	2
Three-Bedroom	50%	1

Type of Unit	Area Median Income	Number of Units
Studio	80%	20
One-Bedroom	80%	25

Such restrictions shall remain in effect through during the term of the Declaration. 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) 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 (2) times the rent to be paid for a unit).

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

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

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 forms attached to the Declaration. 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 annual affordable housing reports to the Authority for the term of the Declaration. If the Developer fails to provide the annual reporting required under this Section, the Authority may withhold payments of Available Tax Increment under the TIF Note.

Section 4.7. 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; provided, however, the parties understand and agree that the removal and replacement of the property manager shall be subject to the prior written consent of each holder of a mortgage and Developer's investment member.

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.

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 Maturity 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.

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

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

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

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ARTICLE VI

Tax Increment; Taxes

Section 6.1. Right to Collect Delinquent Taxes. The Developer acknowledges that the Authority is providing substantial aid and assistance in furtherance of the redevelopment through issuance of the TIF Note. The Developer understands that the Tax Increments pledged to payment of the TIF Note are derived from real estate taxes on the Development Property, which taxes must be promptly and timely paid. To that end, the Developer agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Development Property and the Minimum Improvements. The Developer acknowledges that this obligation creates a contractual right on behalf of the Authority to sue the Developer or its successors and assigns to collect delinquent real estate taxes and any penalty or interest thereon and to pay over the same as a tax payment to the county auditor. In any such suit, the Authority shall also be entitled to recover its costs, expenses and reasonable attorneys' fees.

Section 6.2. Reduction of Taxes. The Developer agrees that after the date of certification of the TIF District and prior to completion of the Minimum Improvements, it will not cause a reduction in the real property taxes paid in respect of the Development Property through (a) willful destruction of the Development Property or any part thereof (except for the demolition of structures required for construction of the Minimum Improvements); or (b) willful refusal to reconstruct damaged or destroyed property pursuant to Section 5.1 hereof.

The Developer also agrees that it will not, prior to the Maturity Date, (i) seek exemption from property tax for the Development Property; (ii) convey or transfer or allow conveyance or transfer of the Development Property to any entity that is exempt from payment of real property taxes under State law; or (iii) seek or agree to any reduction of the assessor's estimated market value to below the Minimum Market Value.

The Developer may, at any time following the issuance of the Certificate of Completion, seek through petition or other means to have the assessor's estimated market value for the Development Property reduced to not less than the Minimum Market Value. Such activity must be preceded by written notice from the Developer to the Authority indicating its intention to do so.

Upon receiving such notice, or otherwise learning of the Developer's intentions, the Authority may suspend or reduce payments due under the TIF Note except for the portion of such payments derived from Available Tax Increment that are based on the market value of the Development Property not challenged by the Developer until the actual amount of the reduction in market value is determined, whereupon the Authority will make the suspended payments less any amount that the Authority is required to repay the County as a result of any retroactive reduction in market value of the Development Property.

During the period that the payments are subject to suspension, the Authority may make partial payments on the TIF Note, from the amounts subject to suspension as described above, if it determines, in its sole and absolute discretion, that the amount retained will be sufficient to cover any repayment which the County may require. Upon resolution of the Developer's tax petition, any Available Tax Increment deferred and withheld under this Section shall be paid, without interest thereon, to the extent payable under the assessor's final determination of market value.

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

Section 6.3. Qualifications. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that upon a transfer of the Development Property to another person or entity, the Developer will remain obligated under Sections 6.1 and 6.2 hereof, unless the Developer is released from such obligations in accordance with the terms and conditions of Section 8.2(b) or 8.3 hereof.

Section 6.4. Minimum Assessment Agreement.

(a) At the time of execution of this Agreement and the Declaration, the Developer shall execute the Minimum Assessment Agreement pursuant to Minnesota Statutes, Section 469.177, subdivision 8, specifying an assessor's minimum market value for the Development Property with the Minimum Improvements constructed thereon.

(b) The Minimum Assessment Agreement shall be substantially in the form attached hereto as EXHIBIT F. Nothing in the Minimum Assessment Agreement shall limit the discretion of the assessor to assign a market value to the property in excess of such assessor's minimum market value nor prohibit the Developer from seeking through the exercise of legal or administrative remedies a reduction in such market value for property tax purposes; provided, however, that the Developer shall not seek a reduction of such market value below the assessor's minimum market value in any year so long as such Minimum Assessment Agreement shall remain in effect. The Minimum Assessment Agreement shall remain in effect for the period described therein.

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ARTICLE VII

Financing

Section 7.1. Mortgage Financing.

(a) Before commencement of construction of the Minimum Improvements but, in the discretion of the Developer, after demolition of the existing improvements, environmental remediation and site preparation), the Developer shall submit to the Authority evidence of one or more commitments for financing which, together with committed equity for such construction, is sufficient for payment 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) above, 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 thirty (30) 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 thirty (30) days after such rejection.

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

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

Section 7.4. Termination. Except for the provisions of Section 7.3, all the provisions of this Article VII shall terminate with respect to the Minimum Improvements, upon delivery of the Certificate of Completion for the Minimum Improvements. The Developer or any successor in interest to the Minimum Improvements or portion thereof, may sell or engage in financing or any other transaction creating a mortgage or encumbrance or lien on the Minimum Improvements or any portion thereof for which a Certificate of Completion has been obtained, without obtaining prior written approval of the Authority; provided that such sale, financing or other transaction creating a mortgage or encumbrance shall not be deemed as resulting in any subordination of the Authority's rights under this Agreement unless the Authority expressly consents to such a subordination. If a subordination agreement is required, the approval of such an agreement will not be unreasonably withheld by the Authority.

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ARTICLE VIII

Prohibitions Against Assignment and Transfer; Indemnification

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

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

(a) Except 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 direct or indirect transfer of any ownership interest in the Developer in accordance with the terms of the Developer's limited liability company/operating agreement of the Developer, or any direct or indirect member thereof. 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) In the event the Developer, upon transfer or assignment of the Development Property seeks to be released from its obligations under this Agreement, the Authority will be entitled to require, except as otherwise provided in this Agreement, as conditions to any release that:

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

(ii) Any proposed transferee, by instrument in writing satisfactory to the Authority and in form recordable among the land records, will, 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 and agreed to be subject to all the conditions and restrictions to which the Developer is subject; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property, or any part thereof, will not, for whatever reason, have assumed these obligations or so agreed, and will not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City and the Authority) deprive the Authority of any rights or remedies or controls with respect to the Development Property or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Development Property or any part thereof, or any interest therein, however consummated or occurring, and whether

voluntary or involuntary, will operate, legally or practically, to deprive or limit the Authority of or with respect to any rights or remedies on controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the Authority would have had, had there been no transfer or change. In the absence of specific written agreement by the Authority to the contrary, no transfer or approval by the Authority thereof will be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto.

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

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

After issuance of the Certificate of Completion for the Minimum Improvements, the Developer may transfer or assign the Development Property or the Developer's interest in this Agreement without the prior written consent of the City and the Authority. The Developer shall provide to the Authority and the City notice of any such transfer or assignment. Any transferee or assignee is bound by all the Developer's obligations hereunder. The Developer must submit to the Authority written evidence of any transfer or assignment, including the transferee or assignee's express assumption of the Developer's obligations under this Agreement. If the Developer fails to provide evidence of transfer and assumption, the Developer will remain bound by all its obligations under this Agreement.

Section 8.3. Release and Indemnification Covenants.

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

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

(c) The Authority and its governing body members, officers, agents, servants and employees thereof 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 Development Property or Minimum Improvements due to any act of negligence of any person, except if such damage or injury to persons or property is due to any action of negligence by the Authority or its government body members, officers, agents, servants and employees.

(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 governing body member, officer, agent, servant or employee of the Authority in the individual capacity thereof.

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ARTICLE IX

Events of Default

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

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

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

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

(b) cancel and rescind or terminate this Agreement, subject to the provisions of Section 9.3 hereof;

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

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

Section 9.3. Termination or Suspension of TIF Note. After the Authority has issued its Certificate of Completion for the Minimum Improvements, the Authority may exercise its rights under Section 9.2 hereof only for the following Events of Default:

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

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

(c) the Developer fails to comply with the Developer's obligations under the Declaration and the Minimum Assessment Agreement.

Section 9.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority or the Developer is intended to be exclusive of any other available remedy or remedies, but each and every 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 the notices already required in Sections 9.2 and 9.3 hereof.

Section 9.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, 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 9.6. 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.

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 this Agreement, nor shall any such member, commissioner, official, or employee participate in any decision relating to this 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 successor or on any obligations under the terms of this 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 this 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 Maturity 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 this 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 this 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, or delivered personally; and

(a) in the case of the Developer, is addressed to or delivered personally to the Developer at 1625 Energy Park Drive, Suite 100, St. Paul, Minnesota, Attn: Kim Donat and Casey Dziejewczynski; 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 and/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 executed 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 Maturity Date, except that termination of this Agreement does not terminate, limit or affect the rights of any party that arise before the Maturity Date. The Declaration shall remain effective until it terminates in accordance with the terms of the Declaration. Following the Maturity Date, upon the Developer's request, the City will execute a recordable document evidencing the termination of this Agreement and the release of the Developer's obligations hereunder.

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

IN WITNESS WHEREOF, the Authority has caused this Contract for Private Development to be duly executed in its name and behalf and the Developer has caused this Contract for Private Development to be duly executed in its name and behalf 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 the date and year first written above.

[DEVELOPER]

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Stephen B. Wellington, Jr., the _____ of [DEVELOPER], a Delaware limited liability company, on behalf of the Developer.

Notary Public

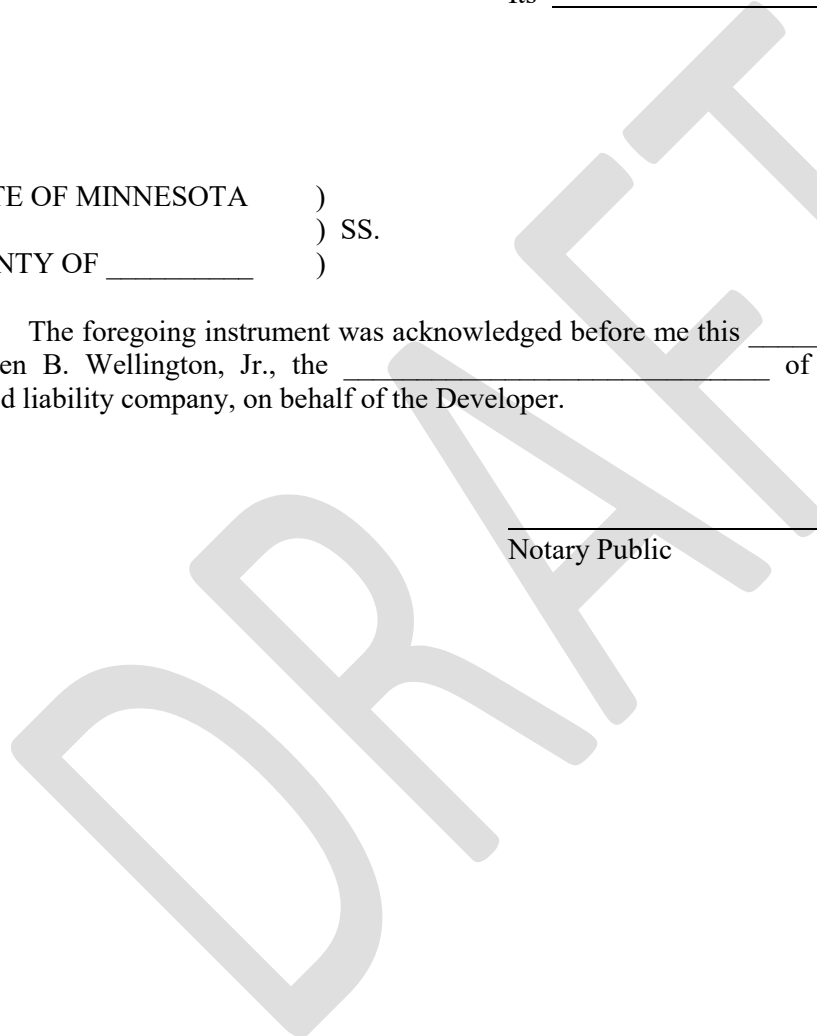


EXHIBIT A

DESCRIPTION OF DEVELOPMENT PROPERTY

Lot 1, Block 1, OPUS 2 ELEVENTH ADDITION, according to the recorded plat thereof, Hennepin County, Minnesota

[Replatting in Process]

DRAFT

EXHIBIT B
FORM OF TIF NOTE

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

No. R-1 [\$2,780,000]

TAX INCREMENT LIMITED REVENUE NOTE
SERIES _____

<u>Rate</u>	<u>Date of Original Issue</u>
3.75%	_____, 20__

The Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”), for value received, certifies that it is indebted and hereby promises to pay to [DEVELOPER], a Delaware limited liability company, or registered assigns (the “Owner”), the principal sum of [\$2,780,000], subject to the terms of Section 3.4 of the Agreement (hereinafter defined), and to pay interest thereon at the rate per annum set forth above, as and to the extent set forth herein. Capitalized terms used herein that are otherwise not defined shall have the meanings provided in the Contract for Private Development, dated July __, 2021 (the “Agreement”), between the Authority and the Owner.

1. Payments. Principal and interest (the “Payments”) shall be paid on August 1, 2024, and each February 1 and August 1 thereafter (each a “Payment Date”) to and including August 1, 2030, in the amounts and from the sources set forth in Section 3 herein. Payments shall be applied first to accrued interest, and then to unpaid principal.

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

2. Interest. Interest at the rate stated above shall accrue on the unpaid principal, commencing on the Date of Original Issue. Interest shall accrue on a simple basis and will not be added to principal. Interest shall be computed on the basis of a year of three hundred sixty (360) days and charged for actual days principal is unpaid.

3. Available Tax Increment. Payments on this Note are payable on each Payment Date in the amount of and solely payable from “Available Tax Increment,” which will mean, on each Payment Date, eighty-five percent (85%) of the Tax Increment attributable to the Development Property and paid to the Authority by the County in the six (6) months preceding the Payment Date. The principal of and interest on this Note shall be payable each Payment Date solely from Available Tax Increment. Available Tax Increment will not include any Tax Increment if, as of any Payment Date, there is an uncured Event of

Default under the Agreement; provided, however, that once an Event of Default is cured, any Available Tax Increment withheld shall be deemed Available Tax Increment for the next Payment Date.

The Authority shall have no obligation to pay principal of and interest on this Note on each Payment Date from any source other than Available Tax Increment, and the failure of the Authority to pay the entire amount of principal or interest on this Note on any Payment Date shall not constitute a default hereunder as long as the Authority pays principal and interest hereon to the extent of Available Tax Increment. The Authority shall have no obligation to pay unpaid balance of principal or accrued interest that may remain after the payment of Available Tax Increment from the last payment of Tax Increment the Authority is entitled to receive from the County with respect to the Development Property.

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

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

6. Nature of Obligation. This Note is issued to aid in financing certain public development costs and administrative costs of a redevelopment project undertaken by the Authority pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended, and is issued pursuant to an authorizing resolution (the "Resolution") duly adopted by the Board of Commissioners of the Authority on July __, 2021, and pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Sections 469.174 through 469.1794, as amended. This Note is a limited obligation of the Authority which is payable solely from Available Tax Increment pledged to the payment hereof under the Resolution. This Note and the interest hereon 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 Note or other costs incident hereto except out of Available Tax Increment, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof is pledged to the payment of the principal of or interest on this Note or other costs incident hereto.

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

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

8. Registration. This Note is issuable only as a fully registered note without coupons.

9. Transfer. As provided in the Resolution, and subject to certain limitations set forth therein, this Note is transferable upon the books of the Authority kept for that purpose at the principal office of the Executive Director of the Authority. Upon surrender for transfer of the TIF Note, including any assignment or exchange thereof, duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form reasonably satisfactory to the Executive Director, as registrar (the

“Registrar”), duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, and the payment by the Owner of any tax, fee, or governmental charge required to be paid by or to the Authority with respect to such transfer or exchange, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, a new Note of the same aggregate principal amount, bearing interest at the same rate and maturing on the same dates.

Notwithstanding the foregoing, the TIF Note shall not be transferred to any person other than an affiliate, or other related entity, of the Owner unless the Authority has been provided with an investment letter in a form substantially similar to the investment letter in Exhibit C attached to the Agreement or a certificate of the transferor, in a form satisfactory to the Executive Director of the Authority, that such transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws. The Registrar may close the books for registration of any transfer after the fifteenth day of the month preceding each Payment Date and until such Payment Date.

The Owner may assign the TIF Note to a lender that provides all or part of the financing for the acquisition of the Development Property or the construction of the Minimum Improvements. The Authority hereby consents to such assignment, conditioned upon receipt of an investment letter from such lender in substantially the form attached to the Agreement as Exhibit C, or other form reasonably acceptable to the Executive Director of the Authority. The Authority also agrees that future assignments of the TIF Note may be approved by the Executive Director of the Authority without action of the Board of Commissioners of the Authority, upon the receipt of an investment letter in substantially the form of Exhibit C of the Agreement or other investment letter reasonably acceptable to the Authority from such assignees.

This Note is issued pursuant to the Resolution and is entitled to the benefits thereof, which Resolution is incorporated herein by reference.

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

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

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

Executive Director

President

REGISTRATION PROVISIONS

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

Date of Registration

Registered Owner

Signature of Executive Director

[DEVELOPER]
Federal ID #

DRAFT

EXHIBIT C

FORM OF INVESTMENT LETTER

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

Re: \$_____ Tax Increment Limited Revenue Note, Series 20_____

The undersigned, as Owner of \$_____ in principal amount of the above-captioned Note (the “Note”) pursuant to a resolution adopted by the Board of Commissioners of the Authority on July __, 2021 (the “Resolution”), hereby represents to you and to Kennedy & Graven, Chartered, Minneapolis, Minnesota, development counsel, as follows:

1. We understand and acknowledge that the TIF Note is delivered to the Owner as of this date pursuant to the Resolution and the Contract for Private Development, dated July __, 2021 (the “Contract”), between the Authority and the Owner.

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

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

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

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

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

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

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

9. We represent to you that we are purchasing the TIF Note for our own accounts and not for resale or other distribution thereof, except to the extent otherwise provided in the TIF Note, the Resolution, or any other resolution adopted by the Authority.

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

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

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

[DEVELOPER]

By _____
Its _____

Dated: _____, 20____

EXHIBIT D

FORM OF CERTIFICATE OF COMPLETION

The undersigned hereby certifies that [DEVELOPER], a Delaware 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 July __, 2021 (the "Contract"), between the Economic Development Authority in and for the City of Minnetonka, Minnesota and the Developer, filed _____, 20__ in the Office of the [County Recorder] [Registrar of Titles] of Hennepin County as Document No. _____, with respect to construction of the Minimum Improvements in accordance with the Construction Plans, and that the Developer is released and forever discharged from its obligations to construct the Minimum Improvements under Articles III and IV of the Contract, but all other covenants under the Contract remain in full force and effect.

Dated: _____, 20__.

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

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____, 20__, by _____, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

Notary Public

This document was drafted by:

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

EXHIBIT E

FORM OF DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS, made as of the ____ day of _____, 2021 (the “Declaration”), is by [DEVELOPER], a Delaware limited liability company (the “Developer”), in favor 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 (the “Authority”).

RECITALS:

WHEREAS, the Authority entered into that certain Contract for Private Development, dated July __, 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 223 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 and Rental Restrictions. The term of the Occupancy Restrictions set forth in Section 3 hereof will commence on the date a certificate of occupancy is received from the City of Minnetonka, Minnesota (the “City”) for all Rental Housing Units on the Property. The period from commencement to termination is the “Qualified Project Period.”

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

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

2. Project Restrictions.

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

(i) All leases of Rental Housing Units to Qualifying Tenants (as defined in Section 3(a)(i) hereof) will 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 will be deemed substantial and material obligation of the lessee's tenancy, that the lessee will comply promptly with all requests for income and other information relevant to determining low or moderate income status from the Developer or the Authority, and that the lessee's failure or refusal to comply with a request for information with respect thereto will be deemed a violation of a substantial obligation of the lessee's tenancy.

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

3. Occupancy Restrictions.

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

(i) Qualifying Tenants. From the commencement of the Qualified Project Period, at least 68 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%) 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 23 of the Rental Housing Units shall be occupied or held vacant and available for occupancy by Qualifying Tenants with a combined adjusted income that does not exceed fifty percent (50%) of the Metro Area median income for the applicable calendar year; and (2) at least 45 of the Rental Housing Units to be available (A) for the first six years of the Qualified Project Period, to individuals and their families earning at or below 80% of the Metro Area median income for the applicable calendar year, and (B) for the remainder of the Qualified Project Period, to individuals and their families earning at or below 100% of the Metro Area median income for the applicable calendar year. For purposes of this definition, the occupants of a residential unit will not be deemed to be Qualifying Tenants if all the occupants of such residential unit at any time are "students," as defined in Section 151(c)(4) of the Internal Revenue Code of 1986, as amended (the "Code"), not entitled to an exemption under the Code. The determination of whether an individual or family is of low or moderate income will be made at the time the tenancy commences and on an ongoing basis thereafter, determined at least annually. If during their tenancy a Qualifying Tenant's income exceeds one hundred forty percent (140%) of the maximum income qualifying as low or moderate income for a family of its size, the next available unit (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.

(ii) Certification of Tenant Eligibility. As a condition to initial occupancy, each person who is intended to be a Qualifying Tenant will be required to sign and deliver to the Developer a Certification of Tenant Eligibility substantially in the form attached hereto as EXHIBIT B, or in any other form as may be approved by the Authority (the “Eligibility Certification”), in which the prospective Qualifying Tenant certifies as to qualifying as low or moderate income. If a Tenant continues to reside in the Project, the Qualifying Tenant must sign and deliver to the Developer an Eligibility Certification every five years. During the years the Tenant is not required to provide the Developer with an Eligibility Certification, the Tenant shall complete and deliver to the Developer a completed Income Self-Reporting Form substantially in the form attached hereto as EXHIBIT C. In addition, the person will be required to provide whatever other information, documents, or certifications are deemed necessary by the Authority to substantiate the Eligibility Certification, on an ongoing annual basis, and to verify that the tenant continues to be a Qualifying Tenant within the meaning of Section 3(a) hereof. Eligibility Certifications and Income Self-Reporting Forms 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 Units to any person who is intended to be a Qualifying Tenant will provide for termination of the lease and consent by the person to immediate eviction for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by the person with respect to the Eligibility Certification.

(iv) Annual Report. The Developer covenants and agrees that during the term of this Declaration, it will prepare and submit to the Authority on or before April 1 of each year, a certificate substantially in the form of EXHIBIT D hereto, executed by the Developer (a) identifying the tenancies and the dates of occupancy (or vacancy) for all Qualifying Tenants in the Project, including the percentage of the 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 the certificate; (b) describing all transfers or other changes in ownership of the Project or any interest therein; and (c) stating, that to the best knowledge of the person executing the certificate after due inquiry, all the Rental Housing Units were rented or available for rental on a continuous basis during the year to members of the general public and that the Developer was not otherwise in default under this Declaration during the year. The Developer shall also provide the rent rolls for the 68 affordable Rental Housing Units.

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

(b) Section 8 Housing. During the term of this Declaration, the Developer shall not adopt any policies 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 (2) times the rent to be paid for a unit).

4. Rent Restrictions.

(a) From the commencement of the Qualified Project Period, the 23 Rental Housing Units described in Section 3(a)(i) shall be rent restricted to 30% of 50% of the Metro Area median income, as published from time to time by Minnesota Housing for its Low-Income Housing Tax Credit Program. In addition, the Developer shall provide a utility allowance to the residents of these 23 Rental Housing Units.

(b) From the commencement of the Qualified Project Period, the 45 Rental Housing Units described in Section 3(a)(i) shall be rent restricted to 30% of 80% of the Metro Area median income, as published from time to time by the Minnesota Housing for its Low-Income Housing Tax Credit Program. The Developer shall not be required to provide a utility allowance to the residents of these 45 Rental Housing Units.

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

6. Notice of Sale. In consideration of the financial assistance provided to the Developer pursuant to Article IV of the Contract, the Developer agrees to provide the Authority with at least ninety (90) days' notice of any sale of the Project.

7. Non-Discrimination Pledge. The Developer 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.

8. Maintenance of Project. The Developer will operate and maintain, preserve, and keep the Project to be maintained, preserved, and kept with the appurtenances and every part and parcel thereof, in good repair and condition.

9. Enforcement.

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

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

(c) The Developer acknowledges that the primary purpose for requiring compliance by the Developer with the restrictions provided in this Declaration is to ensure compliance of the property with the housing affordability covenants set forth in Section 4.5 of the Contract, and by reason thereof, the

Developer, in consideration for assistance provided by the Authority under the Contract that makes possible the construction of the Project on the Property, hereby agrees and consents that the Authority will be entitled, for any breach of the provisions of this Declaration, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Developer of its obligations under this Declaration in a state court of competent jurisdiction. The Developer hereby further specifically acknowledges that the Authority cannot be adequately compensated by monetary damages in the event of any default hereunder.

(d) The Developer understands and acknowledges that, during the term of the Contract, 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.

10. Indemnification. The Developer hereby indemnifies, and agrees to defend and hold harmless the Authority and its members, officers, and agents 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 in any material respect.

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

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

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

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

To the Developer: 1625 Energy Park Drive
Suite 100
St. Paul, MN 55108
Attention: Kim Donat and Casey Dziejewczynski

14. Governing Law. This Declaration is governed by the laws of the State of Minnesota and, where applicable, the laws of the United States of America.

15. Attorneys' Fees. In case any action at law or in equity, including an action for declaratory relief, is brought against the Developer to enforce the provisions of this Declaration, the

Developer agrees to pay the reasonable attorneys' fees and other reasonable expenses paid or incurred by the Authority in connection with the action.

16. Declaration Binding. This Declaration and the covenants contained herein will run with the real property comprising the Project and will bind the Developer and its successors and assigns and all subsequent owners of the Project or any interest therein, and the benefits will inure to the Authority and its successors and assigns for the term of this Declaration as provided in Section 1(b) hereof. For the avoidance of doubt, if there is a Transfer and an Assumption Agreement acceptable to the Authority is provided to the Authority as required by Section 8 hereof, the prior owner of the Project will no longer be bound by this Declaration.

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

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

[DEVELOPER]

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Stephen B. Wellington, Jr., the _____ of [DEVELOPER], a Delaware 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, Minnesota 55402-1299
Telephone: 612-337-9300

This Declaration of Restrictive Covenants 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 OF PROPERTY

Lot 1, Block 1, OPUS 2 ELEVENTH ADDITION, according to the recorded plat thereof, Hennepin County, Minnesota

[Replatting in Process]

DRAFT

EXHIBIT B TO DECLARATION OF RESTRICTIVE COVENANTS

CERTIFICATION OF TENANT ELIGIBILITY

Project: _____, Minnetonka, Minnesota

Developer: [DEVELOPER]

Unit Type: _____ Studio _____ 1 BR _____ 1 BR Plus Den _____ 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

DRAFT

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%][80%][100%] of median income for the area in which the Project is located, as defined in the Declaration. [50%][80%][100%] 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%] [80%] [100%] 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 IT HAS NO KNOWLEDGE OF ANY FACTS WHICH WOULD CAUSE IT 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
INCOME SELF-REPORTING FORM

CONFIDENTIAL

CITY OF: Minnetonka

PROPERTY NAME: _____

ADDRESS: _____

BUILDING # _____

UNIT # _____

INCOME CERTIFICATION YEAR (2, 3, 4)* _____

*years 1 and 5 require full review

The below annual income levels by household size represent incomes that are at 80% of the Area Median Income for Hennepin County in 2021 as provided by the Minnesota Housing Finance Agency. Household income includes social security benefits.

2021 Income Certification

Residents Legal Name(s): 1. _____

2. _____

Combined household income is: (please check one option by household size and income as applicable)

- _____ One (1) person household is LESS than or equal to \$58,800
_____ Two (2) person household is LESS than or equal to \$67,200
_____ Three (3) person household is LESS than or equal to \$75,600

- _____ One (1) person household is MORE than \$58,800
_____ Two (2) person household is MORE than \$67,200
_____ Three (3) person household is MORE than \$75,600

I declare that this certification is correct and complete to the best of my knowledge and belief.

Resident's Signature (1)

Resident's Signature (2)

Print Name of Resident (1)

Print Name of Resident (2)

Date

Date

Resident's Responsible Party/POA Signature (if applicable) Date

Resident's Responsible Party/POA Name (if applicable – please print)

EXHIBIT D 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 [DEVELOPER], a Delaware 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 223. The total number of such units occupied is _____.

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

Studio Units:

1 BR Units:

1 BR Plus Den 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 for the 23 of the Rental Housing Units to be available to individuals and their families earning at or below 50% of the area median income and also rent restricted to 30% of 50% of the area median income, 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							

(E) The following residential units are considered to be occupied by Qualifying Tenants for the 45 of the Rental Housing Units to be available to individuals and their families earning at or below [FOR FIRST SIX YEARS OF QUALIFIED PROJECT PERIOD: 80%] [FOR REMAINDER OF QUALIFIED PROJECT PERIOD: 100%] of the area median income and also rent restricted to 30% of 80% of the area median income, 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							
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44							
45							

(F) 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) and (E) 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) and (E) 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.

(G) 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) and (E) 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.

(H) 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.

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

(J) 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.

(K) 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__.

[DEVELOPER]

By _____
Its _____

EXHIBIT F

FORM OF MINIMUM ASSESSMENT AGREEMENT

MINIMUM ASSESSMENT AGREEMENT

THIS MINIMUM ASSESSMENT AGREEMENT, made as of the ____ day of _____, 2021 (the “Minimum Assessment Agreement”), is between the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), and [DEVELOPER], a Delaware limited liability company (the “Developer”).

WITNESSETH

WHEREAS, the Authority and the Developer have entered into that certain Contract for Private Development, dated _____, 2021 (the “Contract”), regarding the acquisition by the Developer of the property legally described in EXHIBIT A attached hereto (the “Development Property”) and the construction thereon of approximately 223 units of multifamily housing (the “Minimum Improvements”); and

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

WHEREAS, the Authority and the City Assessor of the City of Minnetonka, Minnesota have reviewed the preliminary plans and specifications for the Minimum Improvements and have inspected such improvements;

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

1. All capitalized terms used herein and not otherwise defined have the definition given such terms in the Contract.

2. The minimum market value which shall be assessed for ad valorem tax purposes for the Development Property, together with the Minimum Improvements constructed thereon, shall not be less than \$38,467,500 as of January 2, 2023, based on seventy-five percent (75%) completion, until January 1, 2024.

3. The minimum market value which shall be assessed for ad valorem tax purposes for the Development Property, together with the Minimum Improvements constructed thereon, shall not be less than \$51,290,000 as of January 2, 2024, based on one hundred percent (100%) completion, and as of each January 2 thereafter until termination of this Minimum Assessment Agreement under Section 5 hereof.

4. The minimum market value herein established shall be of no further force and effect and this Minimum Assessment Agreement shall terminate on the Maturity Date. The Authority shall execute a certificate or affidavit upon the occurrence of a termination event referred to in this Section 5 indicating that this Minimum Assessment Agreement has terminated and shall supply such certificate to the Developer for recording.

5. This Minimum Assessment Agreement shall be promptly recorded by the Authority. The Developer shall pay all costs of recording.

6. Neither the preambles nor provisions of this Minimum Assessment Agreement are intended to, nor shall they be construed as, modifying the terms of the Contract.

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

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

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

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

11. This Minimum Assessment Agreement may not be amended nor any of its terms modified except by a writing authorized and executed by all parties hereto.

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

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

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

IN WITNESS WHEREOF, the Authority and the Developer have caused this Minimum Assessment Agreement to be executed in their respective corporate names by their duly authorized officers, all as of the date and year first written above.

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

By _____
Its President

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ 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

This document was drafted by:
Kennedy & Graven, Chartered (JAE)
150 South Fifth Street, Suite 700
Minneapolis, Minnesota 55402-1299
Telephone: 612-337-9300

Execution page of the Developer to the Minimum Assessment Agreement, dated as of the date and year first written above.

[DEVELOPER]

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Stephen B. Wellington, Jr., the _____ of [DEVELOPER], a Delaware limited liability company, on behalf of the Developer.

Notary Public

CERTIFICATION BY ASSESSOR

The undersigned, having reviewed the plans and specifications for the improvements to be constructed and the market value assigned to the land upon which the improvements are to be constructed, and being of the opinion that the minimum market value contained in the foregoing Agreement appears reasonable, hereby certify as follows: The undersigned Assessor being legally responsible for the assessment of the described property, hereby certifies that the market values assigned to such land and improvements are reasonable.

City Assessor for Minnetonka, Minnesota

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Colin Schmidt, the City Assessor, City of Minnetonka, Hennepin County, Minnesota.

Notary Public

EXHIBIT A TO MINIMUM ASSESSMENT AGREEMENT

LEGAL DESCRIPTION

Lot 1, Block 1, OPUS 2 ELEVENTH ADDITION, according to the recorded plat thereof, Hennepin County, Minnesota

[Replatting in Process]

DRAFT

EXHIBIT G

PRO FORMA



Wellington Redevelopment - Pha City of Minnetonka

Sources and Uses
223 Mixed-Income Apts

SOURCES					
Debt		Amount	Percent	Per Unit	
Debt A:	First Mortgage	38,464,490	74.0%	172,487	
		Subtotal	74.0%	172,487	
Other Sources					
Category	Sources	SSU Detail	Amount	Percent	Per Unit
Equity	Developer Cash		10,501,118	20.2%	47,090
Local_Grant	TIF Note		2,780,000	5.3%	12,466
MN_Public	Hennepin County TOD		250,000	0.5%	1,121
		Subtotal	13,531,118	26.0%	60,678
TOTAL SOURCES		51,995,608	100.0%	233,164	

USES				
		Amount	% of Cost	Per Unit
ACQUISITION COSTS		3,600,000	6.9%	16,143
	Land Cost*	3,600,000	6.9%	16,143
	n/a psf			
CONSTRUCTION COSTS		37,528,417	72.2%	168,289
	Residential Building	34,543,499	66.4%	154,904
	Demolition*	390,373	0.8%	1,751
	Contractor Fee	729,000	1.4%	3,269
	Construction Contingency	1,858,762	5.2%	8,335
	Erosion Control*	6,783	0.0%	30
	Excavation/Backfill*	218,588	0.4%	980
	Grading/Soil Export*	846,785	1.6%	3,797
	Foundation Drainage*	32,303	0.1%	145
	Storm Tank System*	283,930	0.5%	1,273
	Remaining Storm Sewer*	210,500	0.4%	944
	Watermain, Sanitary*	114,600	0.2%	514
PERMITS/FEES		2,653,375	5.1%	11,899
	Park Dedication	1,115,000	2.1%	5,000
	Permits/Inspection	289,093	0.6%	1,296
	Local SAC/WAC Connection Fees	657,627	1.3%	2,949
	Met Council Sewer Access Connection	554,155	1.1%	2,485
	Other	37,500	0.1%	168
PROFESSIONAL SERVICES		1,643,343	3.2%	7,369
	Appraisals	15,000	0.0%	67
	Architectural & Engineering Fees	951,800	1.8%	4,268
	Consultants	37,500	0.1%	168
	Cost Certification/Audit	5,000	0.0%	22
	Environmental Assessment Consultant	16,993	0.0%	76
	FF&E	450,000	0.9%	2,018
	Legal - Development	100,000	0.2%	448
	Market Research	7,050	0.0%	32
	Soft Cost Contingency	50,000	0.1%	224
	Survey	10,000	0.0%	45
FINANCING COSTS		2,438,767	4.7%	10,936
	Construction Period Interest	880,000	1.7%	3,946
	Holding Costs	200,000	0.4%	897
	Inspections - Lenders	25,000	0.0%	112
	Insurance - Builder's Risk	423,567	0.8%	1,899
	Lender Legal	50,000	0.1%	224
	Loan Origination Fees	401,500	0.8%	1,800
	Mortgage Registration Tax	91,200	0.2%	409
	Title & Recording	25,000	0.0%	112
	WMI Finance Fee	342,500	0.7%	1,536
DEVELOPER FEE		1,600,000	3.1%	7,175
	Developer Fee	1,600,000	3.1%	7,175
CASH ACCOUNTS/ESCROWS/RESERVES		825,000	1.6%	3,700
	Debt Service Reserves	700,000	1.3%	3,139
	Management Startup/Leasing	125,000	0.2%	561
TOTAL USES		51,995,608	100%	233,164
* Public Redevelopment Costs		5,703,862		

7/1/2021



Wellington Redevelopment - Phase I
City of Minnetonka
Operating Pro Forma
223 Mixed-Income Apts

Residential Income							
Rental Unit Income		Monthly Rent	Unit Count	Annual Revenue	Size Sq. Ft.	Rent/ Sq. Ft.	Income Afford.
Studio	Affordable	\$852	8	\$81,792	477	\$1.79	50% AMI
1BR	Affordable	\$908	9	\$98,064	665	\$1.37	50% AMI
1BR+Den	Affordable	\$908	3	\$32,688	899	\$1.01	50% AMI
2BR	Affordable	\$1,081	2	\$25,944	1,059	\$1.02	50% AMI
3BR	Affordable	\$1,238	1	\$14,856	1,328	\$0.93	50% AMI
Studio	Market Rate	\$1,191	24	\$343,008	477	\$2.50	80% AMI
1BR	Market Rate	\$1,529	136	\$2,495,328	665	\$2.30	80% AMI
1BR+Den	Market Rate	\$1,978	2	\$47,472	899	\$2.20	Mk. Rate
2BR	Market Rate	\$2,224	35	\$934,080	1,059	\$2.10	Mk. Rate
3BR	Market Rate	\$2,761	3	\$99,396	1,328	\$2.08	Mk. Rate
Gross Potential Rent		347,719	223	\$4,172,628	160,679	\$2.16	
<i>Mkt Rate Only: \$2.26</i>							
<i>Aff Only: \$1.32</i>							
Other Residential Income		# of Stalls (if available)		Annual Revenue		\$ Per Stall Per Month	
Underground Parking		204		\$183,600		\$75	
Surface Parking		63		\$18,900		\$25	
Utility Fee				\$70,000			
Other Income				\$111,500			
Total Other Income				\$384,000			
Total Residential Income				\$4,556,628			
Residential Vacancy		Percent		Annual Loss			
Total Residential Income		5.0%		(\$227,831)			
Total Vacancy				(\$227,831)			
Effective Gross Income (EGI)				\$4,328,797			
Expenses							
Apartment Operating Costs				Amount		Per Unit	
Administrative				\$78,050		\$350	
Payroll				\$267,600		\$1,200	
Marketing				\$55,750		\$250	
Utilities				\$133,800		\$600	
Insurance				\$66,900		\$300	
Maintenance				\$223,000		\$1,000	
Total Operating Costs				\$825,100		\$3,700	
Apartment Management, Taxes, & Reserves				Amount		Per Unit	
Management Fees				2.99% of EGI \$129,389		\$580	
Property Taxes				\$775,969		\$3,480	
Replacement Reserves				\$55,750		\$250	
Total Management and Other Costs				\$961,108		\$4,310	
Total Expenses				\$1,786,208		\$8,010	
Net Operating Income (NOI)				\$2,542,589			

7/1/2021



Wellington Redevelopment - Phase I
 City of Minnetonka
 223 Mixed Income Apts
 Multi-Year Operating Proforma

	2022		2023		Stabilized											
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	
Income																
Rental Income																
Gross Potential Rent	2.5%	4,070,857	4,172,828	4,278,844	4,383,867	4,493,484	4,605,801	4,720,946	4,838,969	4,959,943	5,083,942					
Less: 5.0% Stabilized Vacancy		(203,543)	(208,631)	(213,847)	(219,193)	(224,673)	(230,290)	(236,047)	(241,948)	(247,997)	(254,197)					
Less: Additional Pre-stabilization Vacancy		(3,863,399)	(1,822,518)													
Total Rental Income		3,915	2,141,479	4,063,097	4,164,674	4,268,791	4,375,511	4,484,898	4,597,021	4,711,946	4,829,745					
Other Residential Income																
Underground Parking	Vacancy Rate: 5.0%	179,122	183,000	188,190	192,895	197,717	202,660	207,727	212,920	218,243	223,699					
Surface Parking	5.0%	18,439	18,900	19,373	19,857	20,353	20,862	21,384	21,918	22,466	23,028					
Utility Fee	5.0%	68,293	70,000	71,750	73,544	75,382	77,267	79,199	81,179	83,208	85,288					
Other Income	5.0%	108,780	111,500	114,288	117,145	120,073	123,075	126,152	129,306	132,538	135,852					
Less: Vacancy		(18,732)	(19,200)	(19,880)	(20,172)	(20,676)	(21,193)	(21,723)	(22,268)	(22,823)	(23,393)					
Less: Additional Pre-stabilization Vacancy		(355,183)	(169,441)													
Total Other Residential Income		(3,281)	195,359	373,920	383,268	392,850	402,671	412,738	423,056	433,633	444,473					
Effective Gross Income (EGI)		634	2,336,838	4,437,017	4,547,942	4,661,640	4,778,181	4,897,636	5,020,077	5,145,579	5,274,218					
Expenses																
Rental Unit Expenses																
Operating Expenses	Custom Inflation	825,100	825,100	845,728	866,871	888,542	910,756	933,525	956,863	980,785	1,005,304					
Management Fee: 3.0% of EGI		69,649	69,649	132,624	135,939	139,338	142,821	146,392	150,052	153,803	157,648					
Property Taxes		775,969	775,969	795,388	815,252	835,634	856,525	877,938	899,886	922,383	945,443					
Reserves: \$250 PUPY		55,750	55,750	55,750	55,750	55,750	55,750	55,750	55,750	55,750	55,750					
Modified Rental Expense During Stabilization		(1,789,208)														
Total Rental Unit Expenses		(59,540)	1,726,668	1,829,469	1,873,812	1,919,264	1,965,852	2,013,604	2,062,551	2,112,721	2,164,145					
Total Expenses		(59,540)	1,726,668	1,829,469	1,873,812	1,919,264	1,965,852	2,013,604	2,062,551	2,112,721	2,164,145					
NET OPERATING INCOME		60,174	610,170	2,607,547	2,674,130	2,742,377	2,812,330	2,884,032	2,957,526	3,032,858	3,110,073					
Tax Increment Financing Revenue	Inflation: 9%	0	0	204,906	484,022	558,231	558,231	558,231	558,231	279,116	0					
ADJUSTED NET OPERATING INCOME		60,174	610,170	2,812,453	3,158,151	3,300,608	3,370,561	3,442,263	3,515,757	3,311,974	3,110,073					
Debt Service																
Debt A: First Mortgage	30 yr amortization @ 3.05%	831,505	1,484,678	2,072,673	2,072,673	2,072,673	2,072,673	2,072,673	2,072,673	2,072,673	2,072,673					
Total Debt Service		831,505	1,464,676	2,072,673	2,072,673	2,072,673	2,072,673	2,072,673	2,072,673	2,072,673	2,072,673					
Debt Coverage																
Debt Coverage w/o Tax Increment Financing	7% Debt A	7%	42%	136%	152%	159%	163%	166%	170%	160%	150%					
NET CASH FLOW		(771,331)	(854,506)	739,780	1,085,478	1,227,935	1,297,888	1,369,590	1,443,084	1,239,301	1,037,400					
Working Capital Reserve Draw =	1,625,837	Yes	771,331	854,506	0	0	0	0	0	0	0					
NET CASH FLOW AVAILABLE FOR DISTRIBUTION		0	0	739,780	1,085,478	1,227,935	1,297,888	1,369,590	1,443,084	1,239,301	1,037,400					
Returns Analysis																
Net Cash to Developer		0	0	739,780	1,085,478	1,227,935	1,297,888	1,369,590	1,443,084	1,239,301	1,037,400					
Cash on Cost Annual Return																
Cash on Cash Average Annual Return	0.1%	1.2%	5.4%	6.1%	6.3%	6.5%	6.6%	6.8%	6.4%	6.0%						
Cash on Cost Annual Return (w/o TIF assistance)	0.1%	1.2%	3.3%	4.2%	4.8%	5.1%	5.4%	5.6%	5.7%	5.7%						
Cash on Cost Average Annual Return (w/o TIF assistance)	0.1%	1.2%	3.1%	3.8%	4.2%	4.4%	4.6%	4.7%	4.9%	5.0%						

Notes:

1. If developer requests completion of lookback prior to stabilization and EDA agrees to complete both parties acknowledge that 95% occupancy will be assumed based upon current lease up schedule, but in no event will the income be less than the proforma in Exhibit G. In addition, operating expenses will be the lesser of the actual or what is shown in Exhibit G and the same inflation assumptions on income and expenses will be used.

7/1/2021



EDA Resolution No. 2021-_____

Resolution approving a contract for private development with Red Oak Drive LLC and the issuance of a tax increment revenue note

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

Section 1. Background.

- 1.01. The Authority was created pursuant to Minnesota Statutes, Sections 469.090 through 469.1082, as amended, and was authorized to transact business and exercise its powers by a resolution adopted by the City Council of the City of Minnetonka, Minnesota (the "City").
- 1.02. The Authority and the City have undertaken a program to promote economic development and job opportunities, promote the development and redevelopment of land which is underutilized within the City, and facilitate the development of affordable housing.
- 1.03. The City and the Authority have approved a tax increment financing plan for the Opus Business Park Tax Increment Financing District (the "TIF District"), a renewal and renovation district within Development District No. 1 in the City.
- 1.04. The developer entity has not yet been formed yet but will be either a Minnesota and a Delaware limited liability company directly or indirectly controlled by Stephen B. Wellington (the "Developer"). The Developer proposes to develop approximately 223 units of rental housing, including units with income and rent restrictions (the "Minimum Improvements"), on property within the TIF District. To make the Minimum Improvements economically feasible, the Authority proposes to issue a tax increment revenue note to the Developer in the maximum principal amount of \$2,780,000 (the "TIF Note"). The TIF Note will be payable from tax increment generated from property within the TIF District.
- 1.05. 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 issuance of the TIF Note by the Authority to reimburse the Developer for certain costs related to the Minimum Improvements.
- 1.06. 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 of the Contract.

- 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.

Section 3. The TIF Note.

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

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

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

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

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

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

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

- (d) When the TIF Note is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such TIF Note or separate instrument of transfer is legally authorized. The Registrar shall incur no liability for its refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.
- (e) The Authority and the Registrar may treat the person in whose name the TIF Note is at any time registered in the bond register as the absolute owner of the TIF Note, whether the TIF Note shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of such TIF Note and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability of the Authority upon such TIF Note to the extent of the sum or sums so paid.
- (f) For every transfer or exchange of the TIF Note, the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee, or other governmental charge required to be paid with respect to such transfer or exchange.
- (g) In case the TIF Note shall become mutilated or be lost, stolen, or destroyed, the Registrar shall deliver a new TIF Note of like amount, maturity dates and tenor in exchange and substitution for and upon cancellation of such mutilated TIF Note or in lieu of and in substitution for such TIF Note lost, stolen, or destroyed, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case the TIF Note lost, stolen, or destroyed, upon filing with the Registrar of evidence satisfactory to it that such TIF Note was lost, stolen, or destroyed, and of the ownership thereof, and upon furnishing to the Registrar of an appropriate bond or indemnity in form, substance, and amount satisfactory to it, in which both the Authority and the Registrar shall be named as obligees. The TIF Note so surrendered to the Registrar shall be cancelled by it and evidence of such cancellation shall be given to the Authority. If the mutilated, lost, stolen, or destroyed TIF Note has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue a new TIF Note prior to payment.
- 3.05. The TIF Note shall be prepared under the direction of the Executive Director and shall be executed on behalf of the Authority by the signatures of its President and Executive Director. In case any officer whose signature shall appear on the TIF Note shall cease to be such officer before the delivery of the TIF Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. When the TIF Note has been so executed, it shall be delivered by the Executive Director to the Developer in accordance with the Contract.
- Section 4. Security Provisions of the TIF Note.
- 4.01. The Authority hereby pledges to the payment of the principal of the TIF Note all Available Tax Increment (as defined in the Contract). Available Tax Increment shall be applied to payment of the principal of and interest on the TIF Note in accordance with the terms of the form of TIF Note.

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

Section 5. Miscellaneous.

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

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on July 12, 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 July 12, 2021.

Becky Koosman, Secretary