

Addenda
Economic Development Authority Meeting
Meeting of July 12, 2021

ITEM 5A – Wellington Apartments at 10901 Red Circle Drive

Attached is an updated Contract for Private Development with Wellington Management. Edits were made to the language in sections 3.4b and 3.4C.



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TO: Economic Development Authority

FROM: Julie Wischnack, AICP, Community Development Director
Alisha Gray, EDFP, Economic Development and Housing Manager

DATE: July 12, 2021

SUBJECT: Change Memo for July 12, 2021, EDA Meeting

Item 5A – Wellington Apartments at 10901 Red Circle Drive

The attached change memo includes an updated Contract for Private Development with Wellington Management. The edits include the following language:

- 3.4b - Clarifies that the lookback provision is calculated based up on the cumulative cash on cost return of 6% (based on the developer's questions about this section).
- 3.4c – Clarifies that if the developer sells the project within 6 years, payments on the TIF note will cease.

Additionally, the developer communicated that they are not in support of the following language:

- Section 6.3 - Developer does not agree with the EDA's ability to approve a transfer to another owner.
 - This is standard language and is not acceptable to the EDA to change this language.

DRAFT
July 1~~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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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.

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

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 cumulative 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 within 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. payments on the TIF Note shall cease.~~

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.

~~1. ———~~

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.

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

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.

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~~3.~~(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.

~~4.~~

~~5.~~ (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.

~~6.~~

In the event the foregoing conditions are satisfied then the Developer will be released from its obligation under this Agreement. Upon the Developer's request, the Authority will execute a recordable document evidencing such release of the transferring Developer's obligations hereunder.

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]

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 # _____

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 85 hereof, the prior owner of the Project will no longer be bound by this Declaration.

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

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]

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

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							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
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26							
27							
28							
29							
30							
31							
32							
33							
34							
35							
36							
37							
38							
39							
40							
41							
42							
43							
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 ~~54~~ 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]

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		Amount	Percent	Per Unit	
Category	Sources	S&U Detail			
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
 233 Mixed Income Apts
Multi-Year Operating Proforma

Income	2022	2023	Stabilized		2025	2026	2027	2028	2029	2030	2031
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 10
Rental Income											
Gross Potential Rent	4,070,857	4,172,828	4,276,944	4,383,867	4,493,464	4,605,801	4,720,946	4,838,969	4,959,943	5,083,942	
Less: 5.0% Stabilized Vacancy	(203,543)	(206,631)	(213,847)	(219,193)	(224,673)	(230,290)	(236,047)	(241,948)	(247,997)	(254,197)	
Less: Additional Pre-stabilization Vacancy	(3,863,399)	(1,822,516)									
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	179,122	183,600	188,190	192,895	197,717	202,660	207,727	212,920	218,243	223,699	
Surface Parking	18,439	18,900	19,373	19,857	20,353	20,862	21,384	21,918	22,466	23,028	
Utility Fee	68,253	70,000	71,750	73,544	75,382	77,267	79,199	81,179	83,208	85,288	
Other Income	106,780	111,500	114,288	117,145	120,073	123,075	126,152	129,306	132,538	135,852	
Less: Vacancy	(18,732)	(19,200)	(19,680)	(20,172)	(20,676)	(21,193)	(21,723)	(22,266)	(22,823)	(23,393)	
Less: Additional Pre-stabilization Vacancy	(259,123)	(159,441)									
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	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	69,849	69,849	132,624	135,939	139,338	142,821	146,392	150,052	153,803	157,648	
Property Taxes	775,969	775,969	795,368	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	(1,786,208)										
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	69,174	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	0	0	204,906	464,022	555,231	558,231	559,231	559,231	559,231	559,231	0
ADJUSTED NET OPERATING INCOME	69,174	610,170	2,812,453	3,138,151	3,300,608	3,370,561	3,443,263	3,516,757	3,592,089	3,669,304	
Debt Service											
Debt A: First Mortgage	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	
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	7%	42%	138%	152%	159%	163%	166%	169%	170%	160%	150%
Debt Coverage w/o Tax Increment Financing	7%	42%	128%	129%	132%	136%	139%	143%	148%	150%	
NET CASH FLOW	(771,331)	(854,506)	739,780	1,065,478	1,227,935	1,297,888	1,369,590	1,443,084	1,518,317	1,594,429	
Working Capital Reserve Draw =	(1,625,037)	771,331	854,506	0	0	0	0	0	0	0	
NET CASH FLOW AVAILABLE FOR DISTRIBUTION	0	0	739,780	1,065,478	1,227,935	1,297,888	1,369,590	1,443,084	1,518,317	1,594,429	
Returns Analysis											
Net Cash to Developer	0	0	739,780	1,065,478	1,227,935	1,297,888	1,369,590	1,443,084	1,518,317	1,594,429	
Cash on Cost Annual Return	0.1%	1.2%	5.4%	6.1%	6.3%	6.5%	6.6%	6.8%	6.4%	6.0%	
Cash on Cash Average Annual Return	0.1%	1.2%	3.3%	4.2%	4.8%	5.1%	5.4%	5.6%	5.7%	5.7%	
Cash on Cost Annual Return (w/o TIF assistance)	0.1%	1.2%	5.0%	5.1%	5.3%	5.4%	5.5%	5.7%	5.8%	6.0%	
Cash on Cash 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.

Document comparison by Workshare 10.0 on Monday, July 12, 2021 9:44:06 AM

Input:	
Document 1 ID	PowerDocs://DOCSOPEN/712870/7
Description	DOCSOPEN-#712870-v7-Wellington_Contract_for_Private_Development_2021
Document 2 ID	PowerDocs://DOCSOPEN/712870/8
Description	DOCSOPEN-#712870-v8-Wellington_Contract_for_Private_Development_2021
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	18
Deletions	23
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	41