



**Agenda**  
**Minnetonka Economic Development Authority**  
**Monday, Dec. 6, 2021**  
**Following the 6:30 p.m. regular meeting**  
**Council Chambers**

1. Call to Order
2. Roll Call: Schaeppi-Coakley-Kirk-Schack-Carter- Calvert-Wiersum
3. Approval of Agenda
4. Approval of Minutes:
  - A. Sept.13, 2021 meeting minutes
5. Business Items:
  - A. 2022 HRA Tax Levy and Budget  
Recommendation: Adopt the resolution (4 votes)
  - B. Resolution adopting the 2022 EDA meeting schedule  
Recommendation: Adopt the resolution (4 votes)
  - C. Cliffs Settlement Agreement  
Recommendation: Adopt the resolution (4 votes)
6. Adjourn

**Minutes**  
**Minnetonka Economic Development Authority**  
**Monday, Sept. 13, 2021**

**1. Call to Order**

Wiersum called the meeting to order at 10:45 p.m.

**2. Roll Call**

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

Commissioner Kissy Coakley was excused from the meeting.

**3. Approval of Agenda**

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

All voted "yes". Motion carried.

**4. Approval of Minutes:**

**A. August 23, 2021 EDA meeting**

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

All voted "yes". Motion carried.

**5. Business Items:**

**A. Appoint Mike Funk as Acting Executive Director to the Economic Development Authority**

Kirk moved, Calvert seconded a motion to adopt EDA Res. 2021-013 appointing Mike Funk as Acting Executive Director.

All voted "yes". Motion carried.

**B. Items related to the Birke at 11700 Wayzata Blvd**

Community Development Director Julie Wischnack stated actions requested are the same as those taken by the council at the preceding meeting.

Schack moved, Kirk seconded a motion to adopt EDA Res. 2021-014 approving a collateral assignment of contract for private development.

All voted "yes". Motion carried.

**C. Items related to the Affordable Housing Trust Fund**

Wischnack gave a report on the item, noting staff will return to the council with suggestions for how to use the funds.

Calvert moved, Kirk seconded a motion to adopt EDA Res. 2021-015 transferring pooled tax increment, EDA Res. 2021-016 amending EDA Res. 2021-004, and EDA Res. 2021-017 amending EDA Res. 2021-008.

All voted "yes". Motion carried.

#### **D. 2022 Preliminary HRA Levy**

Wischnack noted that the section of the HRA levy document pertaining to the \$125,000 for affordable housing will be amended once decisions are made on how to use those funds.

Kirk moved, Calvert seconded a motion to adopt EDA Res. 2021-018 setting a preliminary HRA levy.

All voted "yes". Motion carried.

#### **6. Adjournment**

Calvert moved, Schack seconded a motion to adjourn the meeting at 10:52 p.m.

All voted "yes". Motion carried.

Respectfully submitted,

Becky Koosman  
City Clerk



**Economic Development  
Authority Agenda Item #5A  
Meeting of Dec. 6, 2021**

**Title:** 2022 HRA Tax Levy and Budget  
**Report From:** Alisha Gray, Economic Development and Housing Manager  
**Submitted through:** Mike Funk, Acting Executive Director  
Julie Wischnack, AICP, Community Development Director

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

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**Summary Statement**

This resolution establishes the 2022 HRA tax levy and budget.

**Recommended Action**

Motion to adopt the resolution.

**Strategic Profile Relatability**

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

Statement: N/A

**Financial Consideration**

Is there a financial consideration?  No  Yes \$325,000  
Financing sources:  Budgeted  Budget Modification  New Revenue Source  
 Use of Reserves  Other [Enter]

Statement: Staff recommends an HRA levy of \$325,000 in 2022.

**Background**

The city's first levy for housing and redevelopment began in 2009. State law limits levies, and the maximum rate is 0.0185 percent of a city's taxable market value. This equals approximately \$2 million for Minnetonka in 2022.

### **EDAC Discussion**

The Economic Development Advisory Commission (EDAC) has reviewed the HRA budget and levy at its [July 8](#) and [Nov. 4](#) meetings and continues to support the HRA levy at \$325,000. Their recommendation included the following: SW Light Rail (\$75,000); Housing Programs (\$100,000); Business Outreach (\$25,000) and Homes Within Reach (\$125,000).

At the [Nov. 4](#) meeting, EDAC commissioners recommended that staff explore expanding the down-payment assistance program to reach additional first-time homebuyers. The information was presented at the [Nov. 15](#) council study session. There was no consensus at the Nov. 15 meeting to move forward with the expanded programming. In 2022, staff will present additional housing programming ideas for consideration utilizing the affordable housing trust fund and/or other sources of funding.

### **Council Discussion**

On [June 21](#) and [Nov. 15](#), the city council reviewed the 2022 HRA budget and levy recommendations during its study sessions. They recommended the 2022 HRA levy increase by \$25,000 for a total levy of \$325,000. At the November study session, the city council indicated the use of funds should be: SW Light Rail (\$75,000); Housing Programs (\$100,000); Business Outreach (\$25,000); and Homes Within Reach (\$125,000).

Staff recommends the EDA approve the 2022 tax levy (\$325,000) as follows:

- SW Light Rail (\$75,000);
- Housing Programs (\$100,000);
- Business Outreach (\$25,000);
- Homes Within Reach (\$125,000).

**EDA Resolution No. 2021-**  
**Resolution Setting a 2022 HRA Tax Levy and Budget**

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Be it resolved by the Economic Development Authority of the city of Minnetonka, Minnesota, as follows:

Section 1. Background.

- 1.01. On May 2, 1988, by Resolution 88-8637, and amended on May 9, 1994, by Resolution 94-9715, the city council established the Economic Development Authority (EDA) of the City of Minnetonka, and effective June 15, 1988, transferred to the EDA the control, authority, and operation of all projects and programs of the city's Housing and Redevelopment Authority (HRA). On Mar. 8, 2010, the city council became the appointed EDA.
- 1.02. Minnesota Statutes 469.033, Subdivision 6, authorizes housing and redevelopment authorities the power to levy a tax upon all taxable property within its district to finance housing and redevelopment programs subject to the consent of the city council.
- 1.03. The law and council resolutions further require the EDA to file a budget in accordance with the budget procedure of the city in the same manner as required of executive departments of the city and all actions of the authority to be approved by the city council.
- 1.04. State law requires the city to certify to the county a preliminary HRA tax levy by Sept. 30, 2021, and a final HRA budget and levy to be adopted, approved, and certified to the county by Dec. 28, 2021.
- 1.05. On Sept. 13, 2021, the EDA approved a preliminary 2022 HRA tax levy of \$325,000.

Section 2. Findings.

- 2.01. The EDA finds that an annual budget and tax levy of \$325,000 for levy in 2021, collectible in 2022, will fund housing and redevelopment activities of the authority in 2022.

Section 3. Authorization.

- 3.01. The 2022 HRA budget and tax levy are hereby approved.

- 3.02. The city council is requested to consent and approve by resolution the 2021 HRA budget and tax levy and to direct the City Clerk to transmit a certified copy of the resolution to the Hennepin County Director of Property Tax and Public Records.

Adopted by the Economic Development Authority of the City of Minnetonka, Minnesota, at a duly authorized meeting held on Dec. 6, 2021.

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Brad Wiersum, President

Attest:

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Becky Koosman, Secretary

Action on this resolution:

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the EDA of the City of Minnetonka, Minnesota, at a duly authorized meeting held on Dec. 6, 2021

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Becky Koosman, Secretary



**Economic Development Authority  
Agenda Item #5B  
Meeting of Dec. 6, 2021**

**Title:** Resolution Adopting the 2022 EDA Meeting Schedule  
**Report From:** Alisha Gray, Economic Development and Housing Manager  
**Submitted through:** Mike Funk, Acting Executive Director  
Julie Wischnack, AICP, Community Development Director

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

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**Summary Statement**

Resolution adopting the 2022 EDA meeting schedule.

**Recommended Action**

Motion to adopt the resolution.

**Strategic Profile Relatability**

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

Statement: N/A

**Financial Consideration**

Is there a financial consideration?  No  Yes [Enter estimated or exact dollar amount]  
Financing sources:  Budgeted  Budget Modification  New Revenue Source  
 Use of Reserves  Other [Enter]

Statement: N/A

**Background**

On Feb. 8, 2021, the Economic Development Authority (EDA) adopted amended Bylaws. The Bylaws state that the EDA schedule shall be adopted each year by resolution, and officers shall



be appointed. Staff proposes that the EDA adopt the 2022 meeting calendar that coincides with the regularly scheduled council meetings, as outlined in the Bylaws.

*Regular Meetings*

- The meetings will coincide with the regularly scheduled city council meetings. The EDA meeting will immediately follow the adjournment of the city council meeting scheduled that same day.
  - The EDA president may cancel a meeting because of insufficient agenda items.
- The president or any three commissioners may call special and emergency meetings.
- The 2022 EDA meeting schedule calendar is attached.

**BYLAWS OF THE  
ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA**

**ARTICLE I – THE AUTHORITY**

Section 1.1. Name of Authority. Pursuant to the enabling resolution, as amended, adopted by the city council of the City of Minnetonka, Resolution Nos. 88-8637, 94-9715 and 2010-023, the name of the economic development authority is the “Economic Development Authority in and for the City of Minnetonka” (the “Authority”).

Section 1.2. Enabling Resolution. The Minnetonka City Council created the Authority by adoption of Resolution No. 88-8637, which, as amended by Resolution Nos. 94-9715 and 2020-023, governs the powers and operations of the Authority.

Section 1.3. Office of Authority. The offices of the Authority shall be at city hall, 14600 Minnetonka Boulevard, in the City of Minnetonka, Minnesota.

Section 1.4. Official Newspaper. The official newspaper shall be the official newspaper designated by the city council as its official newspaper each year.

Section 1.5. Seal. The Authority shall have an official seal, which shall be maintained by the Authority secretary.

**ARTICLE II – BOARD**

Section 2.1. Number and Appointment of Commissioners. The Authority shall consist of a governing body of seven commissioners (the “Board”). The commissioners shall be the members of the city council. The terms of the commissioners shall coincide with their terms of office as members of the city council. The enabling resolution requires that the city council and board membership shall be at all times the same, a duly elected and sworn member of the city council may not resign his or her membership on the Board unless also vacating membership on the city council.

Section 2.2. Vacancies. A vacancy is created in the membership of the Authority when a commissioner ends his or her city council membership. A vacancy must be filled for the balance of the unexpired term, in the manner in which the original appointment was made.

**ARTICLE III – OFFICERS AND EMPLOYEES**

Section 3.1. Officers. The officers of the Authority shall be a president, vice-president, secretary, treasurer, and assistant treasurer, each of whom shall have the usual duties and powers of such offices, the duties and powers given to them by the board from time to time, and those duties and powers prescribed by Minnesota law or these bylaws. The president, vice-president, and treasurer must be commissioners. No commissioner may be both president and vice-president simultaneously.

Section 3.2. President. The commissioner who holds the office of mayor of the city shall be elected the president. The president shall preside at all meetings of the board. At each meeting of the board, but subject to the notice provisions otherwise provided by law or these

bylaws, the president shall submit such recommendations and information as he or she may consider proper concerning the business, affairs, and policies of the Authority.

Section 3.3. Vice-President. The commissioner who is the acting mayor of the city shall be elected the vice-president. The vice-president shall perform the duties of the president in the absence or incapacity of the president. In case of the resignation or death of the president, the vice-president shall perform the duties of the president until such time as the vacancy in that office is filled.

Section 3.4. President Pro Tem. In the event of the absence or incapacity of both the president and the vice-president at any meeting, the board may appoint any remaining commissioner as president pro tem to preside at such meeting.

Section 3.5. Secretary. The city clerk of the City of Minnetonka shall serve as secretary. The secretary will keep an accurate account of meetings and proceedings of meetings, send written notices and agendas of all meetings to members, keep a policy file of all EDA records and documents, and notify the city council in writing of all EDA conclusions and recommendations.

Section 3.6. Treasurer. The treasurer shall have the care and custody of all funds of the Authority and shall deposit the same in the name of the Authority in such national or state bank or banks in Minnesota as the board may select. The treasurer shall sign all Authority orders and checks for the payment of money and shall pay out and disburse such moneys under the direction of the board. The treasurer shall keep regular books of accounts showing receipts and expenditures and shall render to the board, at least annually (or more often when requested), an account of such transactions and also of the financial condition of the Authority by filing a detailed financial statement with the secretary. The treasurer is responsible for the acts of the assistant treasurer and must give bond as required by law.

Section 3.7. Assistant Treasurer. The assistant treasurer shall be the finance director of the City of Minnetonka, shall act at the direction of the treasurer and shall have all the powers and duties of the treasurer if the treasurer is absent or incapacitated. The assistant treasurer is authorized to perform all of the treasurer's duties set forth in Minnesota Statutes, § 469.096 and in Section 3.6 of these bylaws.

Section 3.8. Executive Director. The city manager of the City of Minnetonka shall be the chief executive officer of the Authority and shall have general supervision over the administration of the Authority's business and affairs, subject to the direction of the Authority. He or she shall have authority to make contracts as provided in Section 4.8 of these bylaws and shall have such additional responsibilities and authority as the board may from time to time by resolution prescribe. In the absence or disability of the executive director, the person designated as acting city manager shall serve as the acting executive director.

Section 3.9. Additional Employees. The Authority may from time to time employ such personnel as it deems necessary to exercise its powers, duties, and functions, including but not limited to a chief engineer, other technical experts and agents, and other employees. The selection and compensation of such personnel shall be determined by the executive director, in accordance with the EDA's approved budget.

Section 3.10. Additional Duties. The officers of the Authority shall perform such other duties and functions as may from time to time be required by the Authority or the bylaws or rules and regulations of the Authority.

## ARTICLE IV – FINANCIAL MATTERS

Section 4.1. Fiscal Year. The fiscal year of the Authority shall be the same as the fiscal year of the city.

Section 4.2. Accounting System and Audits; Books and Records. The financial records and financial statements of the Authority shall be prepared, audited, filed, and published or posted in the manner required for the financial statements of the city. The books and records of the Authority shall be public records maintained in accordance with state law and with such rules, regulations, and ordinances adopted by the city for maintaining public records.

Section 4.3. Public Money; Checks. All Authority money is public money. An Authority check must be signed by the president and executive director. The check must state the name of the payee and the nature of the claim for which the check was issued.

Section 4.4. Reports to the City. Annually, at a time and in a form fixed by the city council, the Authority shall make a written report to the city council giving a detailed account of its activities and of its receipts and expenditures during the preceding calendar year, together with additional matters and recommendations the Authority deems advisable for the economic development of the city.

Section 4.5. Financial Statement. Annually, or more often, the Authority shall examine the treasurer's detailed financial statement, together with the Treasurer's vouchers, filed with the secretary. The financial statement must show all receipts and disbursements, their nature, the money on hand, the purposes to which the money on hand is to be applied, the Authority's credits and assets, and the Authority's outstanding liabilities in a form required for the city's financial statements. If the Authority finds that the statement and vouchers are correct, it shall approve them by resolution and enter the resolution in its records.

Section 4.6. Budget to the City. The Authority shall annually, at a time fixed by the city, send its budget to the city council. The budget must include a detailed written estimate of the amount of money that the Authority needed by the Authority from the city and from tax levies authorized by Minnesota Statutes, §§ 469.033, subdivision 6 and 469.107 in order for the Authority to conduct business during the next fiscal year. The city council may approve, reject or modify the budget submitted by the Authority.

Section 4.7. Employees, Services, Supplies, and Contracts. The Authority shall have all of the power and do all of the things permitted by Minnesota Statutes, § 469.097, as amended, including but not limited to employing an executive director, a chief engineer, technical experts and other employees as it may require; contracting for the services of consultants, agents, public accountants, legal services, and such other persons or services as it may need to perform its duties and exercise its powers; purchasing supplies and materials; and using City facilities, offices, and staff, including the city engineer and city attorney, in the exercise of its powers and the performance of its duties.

Section 4.8. Execution of Contracts. The Authority may make and enter into contracts pursuant to Minnesota Statutes, § 469.101, as amended, and other applicable law. Except as

expressly provided by this Section 4.8, all contracts, notes, and other written agreements or instruments to which the Authority is a party or by which the Authority may be bound must be executed by the president and executive director. Subject to the provisions of EDA Resolution No. 2021-\_\_ and except as otherwise required by law, the executive director is authorized to make contracts and purchases on behalf of the Authority without approval of the board, when the amount of the purchase or contract does not exceed \$175,000.

## ARTICLE V – MEETINGS

Section 5.1. Open Meeting. All meetings of the board, whether as a whole or in committee, shall be held in accordance with the Minnesota Open Meeting Law, Minnesota Statutes, Chapter 13D.

Section 5.2. Annual Meeting. The annual meeting of the Authority shall be held on the first regular meeting in January of each year, at which the board shall elect the vice president and treasurer and designate other officers in accordance with these bylaws.

Section 5.3. Regular Meetings. The board will hold meetings in the council chambers of the community center, 14600 Minnetonka Boulevard, Minnetonka, Minnesota, according to a schedule adopted annually by resolution no later than the first official meeting held in each year. The schedule of regular board meetings must coincide with the schedule of regular meetings of the city council, but there may be fewer regular board meetings in any month than there are regular city council meetings. No meeting will be held on a legal holiday. The starting time for regular meetings of the board shall be immediately following the adjournment of the city council meeting scheduled for that same day.

Section 5.4. Special Meetings. Special meetings of the Authority may be called by the president or any two commissioners of the Authority for the purpose of transacting any business designated in the call. The call for a special meeting must be delivered in person or electronically to each member at least three days prior to the time of the proposed meeting.

Section 5.5. Emergency Meetings. Emergency meetings may be called by the president or any three commissioners of the Authority upon at least four hours' notice to each member of the board either in writing or by telephone.

Section 5.6. Cancellation of Meetings. The mayor may cancel a meeting because of insufficient agenda items, lack of a quorum, inclement weather or other similar reasons. Except for inclement weather and emergencies, commissioners must be notified of the cancellation by electronic message or by telephone, at least four hours in advance of the time that the meeting was scheduled to occur.

Section 5.7. Quorum. The powers of the Authority shall be vested in the commissioners thereof in office from time to time. Four commissioners shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes, but a smaller number may adjourn from time to time until a quorum is obtained.

Section 5.8. Order of Business. At the regular meetings of the Authority the following shall be the order of business:

1. Roll Call.
2. Approval of the Minutes of the Previous Meeting.

3. Reports of the Executive Director.
4. Unfinished Business.
5. New Business.
6. Adjournment.

All resolutions shall be in writing.

Section 5.9. Rules of Order. In the absence of a bylaw to govern a point or procedure, the City Council Rules of Procedure, as amended, should be used as a guide.

Section 5.10. Adjournment of Meetings. Unless otherwise agreed by at least a majority of the board, all meetings of the board must be adjourned by 12 midnight. A motion to set a different, specific time at which to adjourn, is not debatable and not subject to amendment except by unanimous vote of all members present.

#### ARTICLE VI – CODE OF ETHICS

Section 6.1. Commissioners shall abide by the code of ethics established in Section 105 of the Minnetonka City Code as amended from time to time. Additionally, no commission shall act as a representative for any housing or development proposal that comes before the Authority or the city council.

#### ARTICLE V – AMENDMENTS

Section 1. Amendments to Bylaws. These bylaws may be amended by a majority vote of the members of the board at any regular or special meeting of the board, provided the amendment was personally or electronically delivered to the commissioners at least four days before the meeting.

Adopted: \_Feb. 8, 2021

EDA Resolution 2021-001

## SCHEDULE OF MEETINGS

### 2022 EDA Meetings

January 10

January 24

February 7

February 28

March 7

March 21

April 11

April 25

May 9

May 23

June 13

June 27

July 18

August 1

August 22

September 12

October 3

October 24

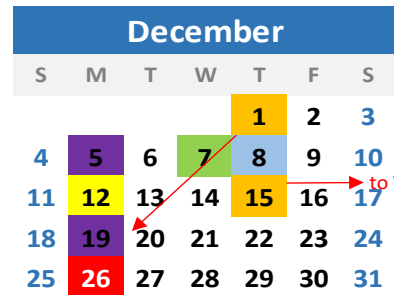
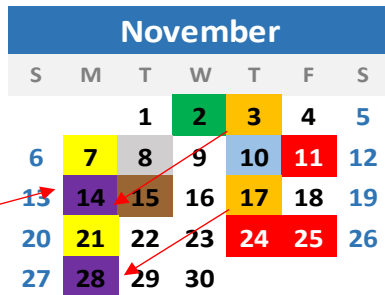
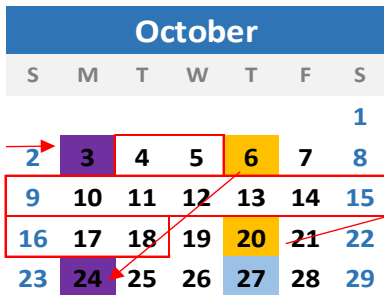
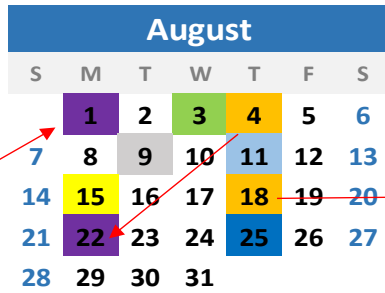
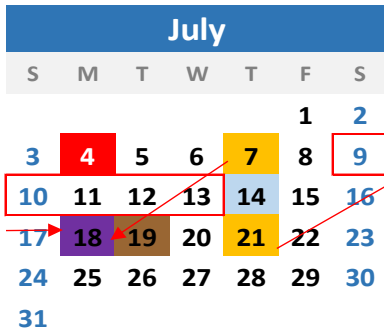
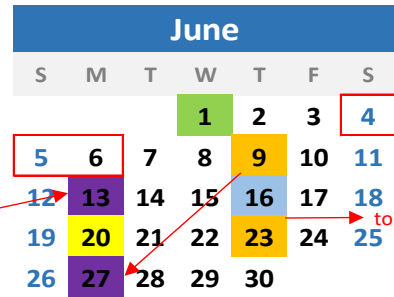
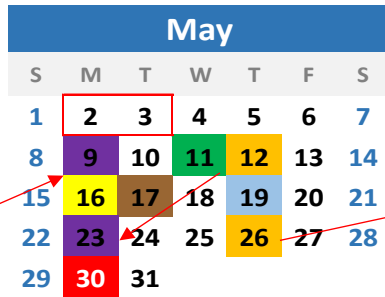
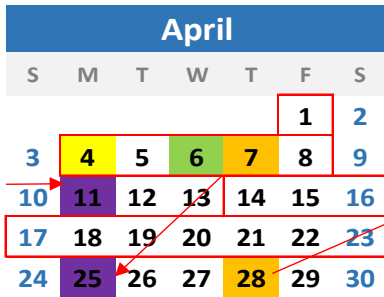
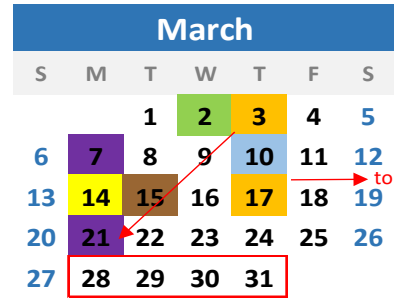
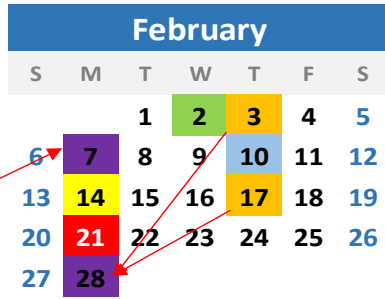
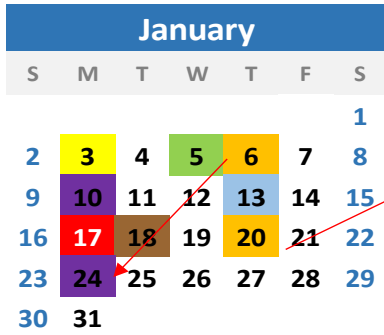
November 14

November 28

December 5

December 19

# 2022



Passover	04/15 - 04/23	Rosh Hashanah	09/25 - 09/27	Hopkins Spring Break	03/28 - 04/01
Holy Week	04/14 - 04/17	Yom Kippur	10/04 - 10/05	Minnetonka Spring Break	03/28 - 04/01
Easter	04/17 -	Sukkot	10/09 - 10/16	Wayzata Spring Break	04/01 - 04/08
Eid-al-Fitr	05/02 - 05/03	Shemini Atzeret	10/16 - 10/18		
Shavout	06/04 - 06/06	Simchat Torah			
Eid-al-Adha	07/09 - 07/13				

- CC/EDA Mtg
- CC Study Session
- PC Mtg
- EDAC Mtg
- Joint EDAC/PC Mtg
- PB Mtg
- Joint PB/CC Mtg
- SC Mtg
- City Hall Closed
- Election Day



## Resolution No. 2021-

### Resolution adopting the 2022 meeting schedule for the Minnetonka Economic Development Authority

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Be it resolved by the Economic Development Authority (EDA) of the City of Minnetonka, Minnesota, as follows:

#### Section 1. Background.

- 1.01. Section 5.03 of the EDA Bylaws states that the EDA will meet at the times each month established by resolution.

#### Section 2. EDA Action.

- 2.01. The Minnetonka City Council establishes a schedule of meetings for 2022 on the dates specified in the list attached to this resolution.
- 2.02. The EDA Bylaws state that the schedule of regular board meetings must coincide with the scheduled regular meetings of the city council.
- 2.03. The time and location of meetings are as follows:
- a. Regular meetings of the EDA will begin immediately following the adjournment of the regular city council meeting that is scheduled for 6:30 p.m. on the same day and will be held in the city council chambers at the city hall/community center, 14600 Minnetonka Boulevard, Minnetonka, Minnesota. A list of the regular meeting dates for the commission is attached to this resolution.
  - b. Special meetings of the EDA may be called by the president or any two commissioners of the EDA for the purpose of transacting any business designated in the call. The call for a special meeting must be delivered in person or electronically to each member at least three days prior to the time of the proposed meeting.
  - c. Emergency meetings may be called by the president or any three commissioners of the EDA upon at least four hours notice to each member of the board either in writing or by telephone.
  - d. The president may cancel a meeting because of insufficient agenda items, lack of a quorum, inclement weather, or other similar reasons. Except for inclement weather and emergencies, commissioners must be notified of the cancellation by electronic message or by telephone, at least four hours in advance of the time that the meeting was scheduled to occur.

Adopted by the Economic Development Authority of the City of Minnetonka, Minnesota, on Dec. 6, 2021.

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Brad Wiersum,  
Executive Director

Attest:

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Becky Koosman, Secretary

**Action on this resolution:**

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Economic Development Authority of the City of Minnetonka, Minnesota, at a meeting held on Dec. 6, 2021.

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Becky Koosman, Secretary

## **SCHEDULE OF MEETINGS**

### 2022 Regular EDA Meetings

January 10  
January 24  
February 7  
February 28  
March 7  
March 21  
April 11  
April 25  
May 9  
May 23  
June 13  
June 27  
July 18  
August 1  
August 22  
September 12  
October 3  
October 24  
November 14  
November 28  
December 5  
December 19



**Economic Development Authority  
Agenda Item #5C  
Meeting of Dec. 6, 2021**

**Title:** Cliffs Settlement Agreement  
**Report From:** Alisha Gray, Economic Development and Housing Manager  
**Submitted through:** Mike Funk, Acting Executive Director  
Julie Wischnack, AICP, Community Development Director

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

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**Summary Statement**

Settlement agreement and release with the Cliffs Apartments located at 12300 Marion Lane West.

**Recommended Action**

Motion to adopt the resolution approving a settlement agreement and release with the Cliffs, LLC.

**Strategic Profile Relatability**

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

Statement: N/A

**Financial Consideration**

- Is there a financial consideration?     No     Yes [Enter estimated or exact dollar amount]  
Financing sources:     Budgeted     Budget Modification     New Revenue Source  
 Use of Reserves     Other - Repayment of \$2,100,000

Statement: Repayment of loan from the Cliffs issued in 1985.

## **Background**

In 1980, Peter Harrington and Charles Belgrade approached the city to develop a two-phase apartment project with approximately 458 units of affordable housing. The project sought tax increment financing from the Housing and Redevelopment Authority (now the Economic Development Authority) and a land write-down for both project phases.

In 1985, the city of Minnetonka and the Housing and Redevelopment Authority (HRA) entered into the contract for private development and approved the tax increment financing for the project. The tax increment assisted the project with the necessary road improvements needed to support housing development and the cost of purchasing the land. The HRA agreed to purchase the land directly and agreed to participate in a land-write down (equity contribution) for each phase of the development, totaling \$2,100,000 for the two phases. The total cost of the land acquisition was \$3,900,000. The development contract anticipated that the equity contribution would be fully repayable when the developer sold the property or within 15 years. There was also a provision in the contract that required an equity payment calculated based upon the property's appraised value at the time of sale or within 15 years. Essentially, it provided an additional payment to the EDA based upon a formula that utilized the net proceeds from a sale or the property's appraised value in 2000. A more detailed description of the equity payment is provided in the attached memo from Julie Eddington, Kennedy & Graven.

City staff became aware of the agreement and conditions of the repayment when the ownership of the Cliffs requested a release of temporary easement and assessment agreement in 2021. Staff reviewed the development agreement and discovered that the Cliffs had not repaid the initial \$2,100,000 equity contribution or equity payment the HRA contributed to the project, as the Cliffs remained under the same ownership since the project was constructed.

Staff informed the ownership of the Cliffs they must repay the EDA. The developer has agreed to repay the initial equity contribution of \$2,100,000 to the EDA as noted in the development agreement in exchange for terminating the equity participation agreements. Staff did not pursue requesting the developer to repay the equity payment as the property had never sold and the complication of determining the property's appraised value based upon 2000 property valuations. Requiring the Cliffs to repay the \$2,100,000, the city will recoup the initial contribution dedicated to the write-down for the acquisition of the property that can be utilized for future affordable housing initiatives.

### Attachments:

- Julie Eddington Memo
- Settlement Agreement and Release
- Termination of Equity Participation Agreement
- 1985 Equity Participation Agreement (Cliffs I and Cliffs II)



Offices in  
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kennedy-graven.com  
Affirmative Action, Equal Opportunity Employer

## MEMORANDUM

TO: Alisha Gray

FROM: Julie Eddington

DATE: November 17, 2021

RE: Cliffs Settlement Statement

---

In the early 1980s, Peter Harrington and Charles Belgarde (the “Developer”) approached the Minnetonka HRA (the “HRA”) and the City of Minnetonka (the “City”) with a proposal to develop an approximately 458 unit affordable housing development in two phases (the “Project”), for which it requested tax increment assistance and a land write-down for both phases of the Project.

In April 1984, the City of Minnetonka and its Housing and Redevelopment Authority (now the Economic Development Authority) approved a tax increment district and entered into a Contract for Private Development, between the City, the HRA, and the Developer for the property upon which the Project was constructed.

There were two major issues to solve with respect to the proposed development. One issue was the significant costs of roads and other infrastructure that would need to be constructed to support the development. The City agreed to construct the necessary infrastructure for the Project and paid for the majority of the infrastructure needed for the Project with the proceeds of tax increment bonds. The Developer paid ten percent of the costs of the infrastructure. The other major issue was the high cost of purchasing the land in order to move forward with the Project. The Developer obtained purchase agreements for all the properties needed for the Project. The cost of purchasing the land for each phase of the development was \$1,950,000. The Developer proposed that the Ridgecliff Properties (formed by the Developer) would sell the property subject to the purchase agreements directly to the HRA and the HRA would write-down the cost of the land and sell the property to the Developer for \$900,000. The \$1,050,000 land write-down for each phase of the Project was an equity contribution by the HRA to the Project. The HRA provided the same land write-down for the second phase of the Development.

The Developer formed the Cliffs Limited Partnership (“Cliffs I”) to develop the first phase of the Project and formed the Cliffs II Limited Partnership (“Cliffs II”) to develop the second phase of the Project. Cliffs I entered into an Equity Participation Agreement with the HRA on May 1,

1985. Cliffs II entered into an Equity Participation Agreement with the HRA on December 9, 1985.

The Equity Participation Agreements are similar in nature and require the following:

- When the Developer sells the property, it is required to pay the HRA (now EDA) its Equity Contribution and its Equity Payment.
- The Equity Payment is in addition to the Equity Contribution and is determined by the following formula –
  - Equity Contribution, less all amounts of Equity Contribution previously paid (due to partial sales) per 3.5(02) of the agreement divided by the Development Costs (defined in Article 2 of the Equity Participation Agreements)
- The proceeds of a sale are distributed based on the following priority:
  - Reimburse Developer for Mortgage Loan (no longer outstanding)
  - Reimburse Developer for cost of sales and marketing
  - Reimburse Developer for costs of all capital improvements
  - To HRA for Equity Contribution
  - To Developer for Equity Contribution
  - To HRA for Equity Payment
  - Balance to Developer

There has been no sale of the property since the Developer purchased the property.

The Equity Participation Agreements were entered into in 1985 and over time were forgotten. The Cliffs has agreed to pay the EDA the original amount of the Equity Contribution in exchange for the EDA entering into a Settlement Statement with The Cliffs to terminate the two Equity Participation Agreements.

EDA staff is recommending that the EDA Board enter into the Settlement Statement. The EDA would like to use the returned funds to help develop affordable housing in the City of Minnetonka.

Please contact me at your convenience with any questions regarding the foregoing.

KENNEDY & GRAVEN, CHARTERED



Julie Eddington

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement (“Agreement”) is entered into on November \_\_\_\_, 2021 (the “Effective Date”) by and between The Cliffs LLC, a Minnesota limited liability company, successor in interest to the Cliffs Limited Partnership (“Cliffs I”), Cliffs II Limited Partnership (“Cliffs II,” and collectively with Cliffs I, “The Cliffs”), and the Economic Development Authority in and for the City of Minnetonka, a political subdivision of the State of Minnesota, as successor in interest to the Housing and Redevelopment Authority in and for the City of Minnetonka (the “EDA”). Each of The Cliffs and the EDA may be referred to herein as a “Party” and collectively as the “Parties.”

WHEREAS, Cliffs I and the EDA entered into that certain Equity Participation Agreement dated May 1, 1985 and Cliffs II and the EDA entered into that certain Equity Participation Agreement dated December 9, 1985 (each, an “Equity Participation Agreement,” together, the “Equity Participation Agreements”); and

WHEREAS, as provided in the Equity Participation Agreements, the Minnetonka Housing and Redevelopment Authority provided The Cliffs equity in the amount of \$2,100,000 to purchase land for The Cliffs’ development with the understanding the equity payment would be repaid to the Housing and Redevelopment Authority; and

WHEREAS, the Parties desire to terminate the Equity Participation Agreements and provide a mutual release of all claims, liabilities, and obligations arising out of the Equity Participation Agreements as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows.

1. Recitals. The Parties agree that the recitals are accurate and they are hereby incorporated into and made part of this Agreement.

2. Termination of Equity Participation Agreements. The Parties agree that, effective upon the payment of the Settlement Amount (as defined below), the Equity Participation Agreements will be deemed terminated in all respects and no Party shall have any further obligations thereunder. Promptly following payment of the Settlement Amount, the EDA shall cause terminations of each of the Equity Participation Agreements to be executed in the forms substantially set forth as Exhibit A hereto and delivered to The Cliffs to record in the office of the Registrar of Titles in and for Hennepin County, Minnesota.

3. Cancellation of Outstanding Amounts; Settlement Amount. In connection with the termination of the Equity Participation Agreements and as settlement and full satisfaction of the Parties obligation thereunder, The Cliffs shall pay to the EDA an aggregate amount equal to \$2,100,000, the amount of the Equity Contribution provided to The Cliffs (the “Settlement Amount”). The Cliffs will pay the Settlement Amount to the EDA within five business days after the date on which this Agreement is fully executed, by wire transfer of immediately available funds in the Settlement Amount to the account or accounts designated by the EDA in writing.



4. Mutual Release.

(a) Effective upon payment of the Settlement Amount, and based on the mutual promises in this Agreement and other good and valuable consideration (including payment of the Settlement Amount and cancellation of the Outstanding Amounts), the sufficiency and receipt of which are hereby acknowledged, the EDA, on behalf of itself and its officers, directors, managers, members, agents, affiliates, representatives, successors and assigns, does hereby release and forever discharge The Cliffs and its officers, directors, shareholders, employees, agents, affiliates, representatives, successors, and assigns, from any and all claims, debts, demands, liabilities, obligations, actions, or rights of any and every kind or nature, known or unknown, absolute or contingent, whether in law, equity, or otherwise arising out of or relating to the Equity Participation Agreements.

(b) Specifically in consideration of the EDA's releases in Section 4(a), and based on the mutual promises in this Agreement and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, The Cliffs, on behalf of itself and its officers, directors, shareholders, agents, affiliates, representatives, successors, and assigns, does hereby release and forever discharge the EDA and its officers, employees, agents, affiliates, representatives, successors and assigns, from any and all claims, debts, demands, liabilities, obligations, actions, or rights of any and every kind or nature, known or unknown, absolute or contingent, whether in law, equity, or otherwise arising out of or relating to the Equity Participation Agreements.

5. Entire Agreement. This Agreement constitutes the entire agreement of the Parties and supersedes all previous negotiations, commitments or writings. No representation, additional promise or agreement not set out in this Agreement has been made as consideration for this Agreement and the signing hereof has not been induced by any such representation, additional promise or agreement.

6. Representations and Warranties. Each party signing this Agreement represents and warrants that he or she has authority to sign this Agreement and to bind all parties for which he or she is releasing claims or making obligations.

7. Choice of Law and Venue. This Agreement will be governed and interpreted in accordance with the laws of the State of Minnesota. All proceedings arising out of or relating to this Agreement, including any proceeding by any party to enforce rights arising out of this Agreement, shall be venued exclusively in the state and federal courts for Hennepin County, Minnesota.

8. Attorneys' Fees. The prevailing party in any dispute arising out of this Agreement shall be entitled to their reasonable attorneys' fees and costs.

9. Denial of Liability. It is expressly understood by the Parties hereto that this Agreement is a compromise and settlement of disputed claims and that it is not an admission of liability by any party, nor should it be so construed.

10. Public Document. This Agreement will be considered by the EDA Board at an open meeting of the EDA Board and this Agreement will be in the EDA Board packet, which is available to the public.

11. Counterparts. This Agreement may be executed in counterparts, all of which when taken together constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

12. Modification: No alteration, amendment, waiver, cancellation or any other change in term or condition of this Agreement will be valid or binding on either party unless the same will have been mutually assented to in writing by all Parties.

13. Waiver: The failure of any party to enforce at any time the provisions of this Agreement, or the failure to require at any time performance by the other party of any of the provisions of this Agreement, will in no way constitute a present or future waiver of such provisions, nor in any way affect the ability of any party to enforce each and every such provision thereafter. No waiver will be effective or binding unless in writing and signed by the party making the waiver.

14. Representation by Counsel: The Parties acknowledge that they are represented by counsel, that they have read and understand the entire Agreement, and that they desire to be bound by the Agreement. The Parties further acknowledge that no party herein has made any representations or warranties regarding the tax implications of the provisions of this Agreement and the Parties have had the opportunity to consult with their own legal and tax advisors prior to executing this Agreement.

15. Joint Preparation: The rule of contract construction that provides that ambiguities are resolved against the drafter will not apply to any provision of this Agreement. This Agreement was drafted with full and equal participation from the Parties and their counsel, and no provision herein may be construed against or in favor of any party because of the relevant bargaining positions, strengths, or sophistication thereof or which party drafted any such provision.

16. Successors and Assigns: This Agreement is binding upon, and inures to the benefit of, the Parties and their respective successors, heirs, and assigns.

*\*\*\* Signature page follows \*\*\**

IN WITNESS WHEREOF, the Parties hereto, each by persons duly authorized, have caused this Agreement to be executed as of the Effective Date.

THE CLIFFS LLC

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By:

Its:

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

---

By: Brad Wiersum

Its: President

---

By: Mike Funk

Its Acting Executive Director

**Exhibit A**

**Terminations of Equity Participation Agreement**

*See attached.*

## **TERMINATION OF EQUITY PARTICIPATION AGREEMENT**

**THIS TERMINATION OF EQUITY PARTICIPATION AGREEMENT** (the “**Termination**”) is made and entered into as of this \_\_\_\_\_ day of November, 2021, by and between Economic Development Authority in and for the City of Minnetonka, a political subdivision of the State of Minnesota, as successor in interest to the Housing and Redevelopment Authority in and for the City of Minnetonka (the “**EDA**”) and The Cliffs LLC, a Minnesota limited liability company (the “**Owner**”).

### **RECITALS**

A. The EDA and Owner, as successor in interest to The Cliffs Limited Partnership, entered into that certain Equity Participation Agreement dated May 1, 1985 and recorded February 24, 1988 as Document No. 1910621 in the office of the Registrar of Titles in and for Hennepin County, Minnesota (the “**Equity Participation Agreement**”) in connection with the real property located in Minnetonka, Hennepin County, Minnesota, legally described on attached **Exhibit A** (the “**Property**”).

B. By its terms, the Equity Participation Agreement has terminated and is no longer in force or effect. The EDA and Owner desire to enter into this Termination to evidence the termination of the Equity Participation Agreement.

### **PROVISIONS**

1. The Equity Participation Agreement is hereby terminated effective as of November \_\_\_\_, 2021 (the “**Termination Date**”).

2. This Termination shall be in full force and effect from and after the Termination Date and shall be binding upon and inure to the benefit to the parties hereto and their respective successors and assigns.





**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

Lot 1, Block 1, The Cliffs First Addition, Hennepin County, Minnesota.



## **TERMINATION OF EQUITY PARTICIPATION AGREEMENT**

**THIS TERMINATION OF EQUITY PARTICIPATION AGREEMENT** (the “**Termination**”) is made and entered into as of this \_\_\_\_\_ day of November, 2021, by and between Economic Development Authority in and for the City of Minnetonka, a political subdivision of the State of Minnesota, as successor in interest to the Housing and Redevelopment Authority in and for the City of Minnetonka (the “**EDA**”) and The Cliffs LLC, a Minnesota limited liability company (the “**Owner**”).

### **RECITALS**

A. The EDA and Owner, as successor in interest to The Cliffs II Limited Partnership, entered into that certain Equity Participation Agreement dated December 9, 1985 and recorded February 24, 1988 as Document No. 1910622 in the office of the Registrar of Titles in and for Hennepin County, Minnesota (the “**Equity Participation Agreement**”) in connection with the real property located in Minnetonka, Hennepin County, Minnesota, legally described on attached **Exhibit A** (the “**Property**”).

B. By its terms, the Equity Participation Agreement has terminated and is no longer in force or effect. The EDA and Owner desire to enter into this Termination to evidence the termination of the Equity Participation Agreement.

### **PROVISIONS**

1. The Equity Participation Agreement is hereby terminated effective as of November \_\_\_\_, 2021 (the “**Termination Date**”).

2. This Termination shall be in full force and effect from and after the Termination Date and shall be binding upon and inure to the benefit to the parties hereto and their respective successors and assigns.





**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

Lot 1, Block 1, The Cliffs Second Addition, Hennepin County, Minnesota.

1910621

1910621

Exempt from Registration Tax  
Dept. of Property Tax and Public Records  
Hennepin County  
By Ann S. Johnson  
DEPUTY

EQUITY PARTICIPATION AGREEMENT

THIS AGREEMENT is made this 1<sup>st</sup> day of May, 1985,  
between ~~THE HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE~~  
CITY OF MINNETONKA, a public body corporate and politic under  
the laws of the State of Minnesota (the Authority) and THE  
CLIFFS LIMITED PARTNERSHIP, a limited partnership under the  
laws of the State of Minnesota (Developer).

Preliminary Statement of Facts

On the date hereof, the Authority conveyed to Developer fee title to certain real property located in the City of Minnetonka, County of Hennepin, State of Minnesota (the Land) legally described on Exhibit A attached hereto and incorporated herein by reference. Authority sold the Land to Developer pursuant to the terms and conditions of the Contract for Private Redevelopment of Land dated as of May 1, 1985 (the Redevelopment Contract), by and among the City of Minnetonka, Minnesota (the City), Authority, and Developer, providing for, among other things, the redevelopment by Developer of the Land and the construction of multiple-family rental housing units thereon (Developer's Improvements). The Land and Developer's Improvements thereon are hereinafter referred to as the Property. (As used herein, all capitalized terms shall have the meaning ascribed to them in the Redevelopment Contract unless otherwise defined herein.)

The Authority purchased the Land pursuant to the Warranty Deed dated May 1, 1985, filed August 2, 1985, in the office of the Hennepin County Recorder/Registrar of Titles, as Document No. 1562895. The Authority conveyed the Land to Developer for Nine Hundred Thousand Dollars (\$900,000) after writing down the purchase price by One Million Fifty Thousand

T-667342

Dollars (~~\$1,050,000~~). The amount of the write down of the purchase price (~~\$ 1,050,000~~) is deemed to be the Authority's Equity Contribution (the Equity Contribution) in the Property. In connection with the redevelopment of the Property pursuant to the Redevelopment Contract, the Authority agreed to issue its Tax Increment Revenue Bonds in an amount equal to the Equity Contribution.

It is the desire of the parties hereto that the Authority share with Developer in the appreciation of the value of the Property pursuant to the terms, conditions, and definitions set forth below.

NOW, THEREFORE, in consideration of the foregoing and in consideration of the Property and the Authority's Equity Contribution in the Property, the parties hereto agree as follows:

---

#### ARTICLE 1

#### DEFINITIONS

In this Agreement, unless a different meaning clearly appears from the context:

(01) "Agreement" means this Agreement, as the same may be from time to time modified, amended, or supplemented, in writing by the parties hereto.

(02) "Authority" means the Housing and Redevelopment Authority in and for the City and any successor entity thereto.

(03) "Capital Improvements" means improvements to the Property capitalized for federal income tax purposes under the Internal Revenue Code of 1954, as amended to the date hereof.

(04) "City" means the City of Minnetonka, Minnesota.

(05) "Developer" means The Cliffs Limited Partnership.

(06) "Developer's Equity Contribution" means the aggregate amount of all sums over and above the Mortgaged Loan paid by Developer or on Developer's behalf for development of the Property, but not including any developer's or contractor's fee paid to Developer.

(07) "Developer's Improvements" means the multiple-family rental housing units to be constructed on the Land.

(08) "Development Costs" means those costs set forth in Article 2 of this Agreement.

(09) "Equity Contribution" means the amount of the writedown of the purchase price of the Land upon sale of the Land from the Authority to Developer, in the amount of \$ 1,050,000.

(10) "Equity Payment" means the portion of Net Sale Proceeds, if any, to be paid to the Authority and calculated in accordance with the provisions set forth in Article 3 of this Agreement.

(11) "Housing Revenue Bonds" means the bonds or obligations issued by the City to finance a portion of the cost of acquiring the Land and the construction of Developer's Improvements thereon.

(12) "Installment Sale" means receipt of the Net Sale Proceeds as a result of a Sale, received by Developer in installments rather than in a lump sum of cash at the time of the closing of the Sale.

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(13) "Land" means the real property located in the City, Hennepin County, Minnesota, legally described on Exhibit A attached hereto and incorporated herein by reference.

(14) "Mortgage Loan" means the amount of the Housing Revenue Bonds or original mortgage loan used to finance a portion of the cost of acquiring the Land and the construction of Developer's Improvements thereon.

(15) "Net Sale Proceeds" means an amount equal to the gross sales price received by Developer for its interest in the Property pursuant to a Sale, less the items set forth in Section 3.2 in this Agreement.

(16) "Partial Sale" means a Sale of a substantial part, but less than all, of the Property.

(17) "Property" means the Land and Developer's Improvements constructed thereon.

(18) "Redevelopment Contract" means that certain Contract for Private Redevelopment of Land dated as of May 1, 1985, by and among the City, the Authority, and Developer, providing for, among other things, the redevelopment by Developer of the Land and the construction of Developer's Improvements thereon.

(19) "Sale" means the sale or exchange by Developer of all or any substantial part of its interest in the Property and Developer's Improvements thereon. "Substantial part" means at least one building and the portion of the Land on which it is situated.

(20) "Trade" means a transaction in which Developer receives other real property in exchange for all or part of the gross sales price of the Property.

## ARTICLE 2.

### DEVELOPMENT COSTS DEFINED

For purposes of this Agreement, the development costs of the Property (the Development Costs) shall be the sum of the following:

- (01) The amount of the Mortgage Loan;
- (02) The aggregate amount of all sums over and above the Mortgage Loan paid by Developer or on Developer's behalf for development of the Property (Developer's Equity Contribution). Developer's Equity Contribution will not include ~~any developer's or contractor's fee paid to~~ Developer; and
- (03) The Equity Contribution.

## ARTICLE 3.

### AUTHORITY EQUITY PARTICIPATION

3.1) The Authority Equity Payment - Subject to the provisions of Sections 3.4 through 3.8 below, if Developer sells or exchanges all or any substantial part of its interest in the Property and Developer's Improvements (a Sale), Developer shall pay to the Authority the amount of its Equity Contribution, to the extent Sale proceeds are available pursuant to Section 3.4 below, plus a portion of Net Sales Proceeds, if any (the Equity Payment) calculated pursuant to the formulas and definitions set forth in Article 1 and 2 and in Sections 3.2 and 3.3 hereof. Substantial part means at least one building and the portion of the Land on which it is situated. Developer shall have no liability or obligation to pay the Authority its Equity Payment or any Equity Payment if Net Sale Proceeds are insufficient, pursuant to priority of distributions as set forth in Section 3.4, to make such payments. All payments due to the Authority hereunder shall be paid on the date of closing of the sale, transfer, or conveyance.

3.2) Net Sale Proceeds Defined - The "Net Sale Proceeds" shall be an amount equal to the gross sales price received by Developer for its interest in the Property sold less the following:

- (01) The unpaid principal balance of the Mortgage Loan at the time of the Sale;



(02) Customary and ordinary costs of sales and marketing as follows:

- (a) Real estate commissions, costs of marketing, costs of brochures, advertising and the salaries and commissions of third parties employed by Developer to market and sell the condominium units, abstracting fees, state deed taxes, recording costs, legal fees, closing costs and all other costs and expenses associated with a Sale; and
- (b) If applicable, the costs of converting the portion of the Property subject to the Sale to a Condominium and the costs of formation of the Condominium.
- (c) In lieu of the foregoing, if Developer, pursuant to ~~Section 3.9 hereof, shall be required to pay~~ to the Authority the Equity Contribution and Equity Payment prior to a Sale, an allowance for customary and ordinary costs of sale equal to ten percent (10%) of the Appraised Value of the Property, as determined pursuant to Section 3.5(02)(a) hereof, shall be deducted in calculating Net Sale Proceeds.

(03) The cost of all Capital Improvements made by Developer, or any successor or assignee of Developer permitted pursuant to Section 3.8 hereof, for the benefit of the Property, whether paid in cash or financed through loans. Capital Improvements means improvements capitalized for federal income tax purposes under the Internal Revenue Code of 1954, as amended to the date hereof.

(04) The Equity Contribution, less amounts previously paid thereon.

(05) Developer's Equity Contribution.

3.3) Formula for Determining Equity Payment - The Equity payment shall be determined as follows:

$$\text{Equity Payment} = \frac{\text{The Equity Contribution less all amounts of Equity Contribution previously paid pursuant to Partial Sales in accordance with Section 3.5(02) hereof}}{\text{Development Costs}} \times \text{Net Sales Proceeds}$$

3.4) Priority of Distributions of Proceeds of Sale - The gross sales proceeds received by Developer as a result of a Sale shall be utilized and distributed in the following order of priority:

(01) To reimburse Developer in the sum of the unpaid principal balance of the Mortgage Loan at the time of the Sale;

(02) To reimburse Developer for all customary and ordinary costs of sales and marketing, as set forth in Section 3.2(02) hereof;

(03) To reimburse Developer for the costs of all Capital Improvements determined pursuant to Section 3.2(03) hereof;

(04) To the Authority for the Equity Contribution;

(05) To Developer for Developer's Equity Contribution;

(06) To the Authority to the Equity Payment; and

(07) To Developer, the balance, if any.

---

3.5) Installment Sale - If the Net Sale Proceeds as a result of a Sale are to be received by Developer in installments rather than in a lump sum of cash (an Installment Sale), then the cash installment payments, including any interest thereon, as received, after payment of the amounts set forth in Sections 3.4(01), (02), (03), (04), and (05) above, shall be shared proportionately by and between the Authority and Developer so that the Authority shall receive its Equity Payment in installments. In such event, the Authority shall receive a percentage of each of the installments received by Developer, such percentage to be determined as follows:

Authority's Share =	<u>Equity Payment</u>
of each	Net Sales Proceeds available for
installment	distribution after payment of amounts
	set forth in Sections 3.4(01), (02),
	(03), (04), and (05) above.

(01) Notwithstanding the foregoing, Developer shall pay to the Authority its entire Equity Contribution within seven (7) years of the date of closing of an Installment Sale.

(02) A Sale of a substantial part, but less than all, of the Property (a Partial Sale) shall be treated in the same manner as an Installment Sale, provided that all deductions made in determining Net Sale Proceeds pursuant to Section 3.2 hereof not readily allocable solely to the Partial Sale, and portion of the Property sold thereunder, shall be as allocated by Developer, in the reasonable exercise of its discretion, and further provided that the Equity Contribution shall be allocated according to a percentage determined by dividing the number of housing units of Developer's Improvements sold under the Partial Sale by the total number of housing units in Developer's Improvements at the time of the Sale.

3.6) A transaction in which Developer receives other real property in exchange for all or part of the gross sales price of the Property (the Trade) shall be treated as a Sale or Partial Sale, as applicable. The Authority, at its option, may accept the valuation of the Property set forth in the agreement governing the Trade or may, at its option, request an appraisal, whereupon the appraisal provisions of Section 3.9(02) shall be used to determine the Appraised Value, which shall be the gross sales price of the Property subject to the Trade.

3.7) Limitation on Sale - This Agreement shall be limited only to the cash proceeds received by Developer upon a Sale and shall not apply to ordinary and customary noncash credits, adjustments or proceeds received by or accruing to Developer in conjunction with the Sale, including, but not limited to, such items as prorations of taxes, rents, and utilities.

~~3.8) Excluded Sales - The provisions of Section 3.1~~  
notwithstanding, the first conveyance by the Developer, within four (4) years from the date hereof, of all or a portion of the Property to one or more corporations, general or limited partnerships, or other entities in which Developer or its general partners shall retain an equity interest shall not be deemed a Sale; provided, however, that such successor corporations, partnerships, or other entities shall assume Developer's obligations hereunder. Thereafter, the transfer of limited partnership interests or shares of stock shall not be deemed a Sale so long as Developer, or its general partners on the date hereof, retain the same equity interest as they hold four (4) years from the date hereof. A refinancing shall not be deemed a Sale so long as eighty-five percent (85%) of the proceeds therefrom are used to repay the Mortgage Loan or other loans made for Capital Improvements, or to make Capital Improvements to the Property.

3.9) Notwithstanding anything in this Agreement to the contrary, Developer shall, except in the case of an Installment Sale pursuant to Section 3.5, pay to the Authority its entire Equity Contribution and Equity Payment no later than fifteen (15) years from the date hereof, unless this provision is waived in writing by the Authority on or before such date.

(01) If the Authority has not been so repaid within fifteen (15) years from the date hereof (unless a Sale is scheduled to close within six (6) months of said date), Developer shall, at the Authority's request, institute the appraisal procedures set forth in Section 3.9(03). The Appraised Value of the Property shall be deemed to be the gross sales price and the provisions of Article 3 shall then be applied to determine the amount of Equity Contribution and Equity Payment to be made to the Authority .

(02) Within twenty (20) days of the Authority's request for an appraisal, one (1) licensed, independent M.A.I. Real Estate Appraiser shall be selected by the Authority and one (1) licensed, independent M.A.I. Real Estate Appraiser shall be selected by Developer and the two (2) Appraisers so selected shall choose a third licensed, independent M.A.I. Real Estate Appraiser to be agreed upon by them. If for any reason the Authority or Developer fails to select its Appraiser within said time period (or if the Appraisers chosen by the parties fail to select a third party within said time period), the other party or either party in the case of failure to select a third appraiser may apply to the Chief Judge of the District Court in Hennepin County, Minnesota, for appointment of said appraiser or appraisers. Each appraiser shall, independently of the other two (2) appraisers, appraise the Property and the Appraised Value shall be determined by averaging the three (3) appraisals. The appraisals shall be completed within thirty (30) days ~~of the Authority's request for an appraisal and for~~ purposes of this Agreement, the three (3) averaged appraisals shall constitute the Appraised Value of the Property. The cost of the appraisals shall be paid by Developer and shall constitute a closing cost incurred by Developer pursuant to Section 3.2(02) hereof.

(03) The provisions of this Section 3.9 shall not apply if Developer has sold the Property at an Installment Sale and the Authority is receiving payment of the Equity Payment in installments pursuant to Section 3.5 hereof.

#### ARTICLE 4.

##### INDEMNIFICATION

The parties hereto acknowledge that this Agreement vests no incidents or rights of ownership in the fee title to the Property in the name of the Authority and that the Authority is not liable to Developer nor any other third party for the discharge or the completion of any duties or responsibilities imposed upon the fee owner of the Property. Developer shall indemnify and hold the Authority harmless for all costs, charges and expenses, including reasonable attorneys' fees incurred or paid by the Authority in any threatened, pending, or completed action, proceeding or dispute relating to the Property in which the Authority is or might be made a party or appears as a party or which affects or might affect this Agreement.

#### ARTICLE 5.

##### NO LIEN

The parties acknowledge that this Agreement does not constitute a lien, claim, or charge against the Property or

rents or other income generated by the Property, and is payable only out of Net Sale Proceeds as set forth in Article 3 hereof. If all or a portion of the Property is sold, the purchaser shall assume no obligations or responsibilities hereunder with respect to that portion of the Property so sold. If a mortgage on the Property is foreclosed, or if the Property is conveyed to the holder of the mortgage in lieu of foreclosure, the holder of the mortgage, and its successors and assigns, shall assume no obligations or responsibilities hereunder. Developer shall provide the Authority with copies of all purchase agreements or similar documents executed in connection with the sale of all or a portion of the Property promptly after execution thereof, and not less than fifteen (15) days prior to the date of any closing thereunder. Upon payment to the Authority, the Authority shall deliver a certificate acknowledging receipt of payment in and substance acceptable to Developer. Such certificate shall be in recordable form and shall evidence that all payments (or, if only part of the ~~Property and Developer's Improvements are sold, such part of~~ the payments and the portion of the Property to which they are allocable) required to be made to the Authority have in fact been made.

#### ARTICLE 6.

##### DISPOSITION OF AUTHORITY EQUITY PAYMENT

The Authority represents that the purpose of this Agreement is to enable the Authority, through the Authority Equity Payment, to recover all or a portion of the funds that the Authority has made available to the redevelopment project of which the Developer's Improvements are a part. The Authority has determined that the recovery of funds is in the best interests of the Authority, the City, and its citizens and that the recovery of funds will assist the City and the Authority in meeting their respective development, redevelopment, and housing goals in the future. To that end, it is the intention of the Authority to apply the Authority Equity Payment, when and if received, to the payment of public redevelopment costs of such redevelopment projects, housing projects, economic development projects, and any similar projects then authorized by law or for such other purposes as tax increments from such projects may now or in the future be lawfully expended, which in the judgment of the City Council and the Authority will achieve goals similar to those set out herein and in the Development Program and Tax Increment Financing Plan for the project of which Developer's Improvements form a part.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.



THE AUTHORITY:  
THE HOUSING AND REDEVELOPMENT  
AUTHORITY IN AND FOR THE CITY  
OF MINNETONKA

By: J. L. Wannarka  
Its: CHAIR

And: Ronald S. Rankin  
Its: EXEC. DIRECTOR

DEVELOPER:  
THE CLIFFS LIMITED  
PARTNERSHIP

By: D. Peter Harrington  
Its: General Partner

STATE OF MINNESOTA  
SS.  
COUNTY OF HENNEPIN

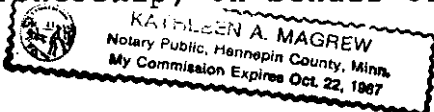
The foregoing instrument was acknowledged before me this day of May, 1985, by J. L. Wannarka and Ronald S. Rankin, the Chair and Executive Director respectively, of the Housing and Redevelopment Authority in and for the City of Minnetonka, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the public body.



Kathleen A. Magrew  
Notary Public

STATE OF MINNESOTA  
SS.  
COUNTY OF HENNEPIN

The foregoing instrument was acknowledged before me this day of May, 1985, by D. Peter Harrington, the general partner of The Cliffs Limited Partnership, a Minnesota limited partnership, on behalf of the partnership.



Kathleen A. Magrew  
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Larkin, Hoffman, Daly & Lindgren, Ltd.  
1500 Northwestern Financial Center  
7900 Xerxes Avenue South  
Minneapolis, Minnesota 55431  
(612) 835-3800

EXHIBIT A  
to the certain  
EQUITY PARTICIPATION AGREEMENT  
by and among  
THE CITY OF MINNETONKA (City)  
and  
THE HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR  
THE CITY OF MINNETONKA (Authority)  
and  
THE CLIFFS LIMITED PARTNERSHIP (Developer)

Description of the Land:

~~Lot 1, Block 1, The Cliffs First Addition~~  
Hennepin County, Minnesota.

1910621

REGISTERED VOL. ~~2239~~ PAGE ~~6623~~

667342

SC

9C

OFFICE OF THE REGISTRAR  
OF TITLES  
HENNEPIN COUNTY, MINNESOTA  
CERTIFIED FILED ON

FEB 24 1988

9 am

BY *[Signature]*  
REGISTRAR OF TITLES  
DEPUTY

10 50



1910622

1910622

EQUITY PARTICIPATION AGREEMENT

THIS AGREEMENT is made this 9<sup>th</sup> day of December, 1985, between THE HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, a public body corporate and politic under the laws of the State of Minnesota (the Authority) and THE CLIFFS II LIMITED PARTNERSHIP, a limited partnership under the laws of the State of Minnesota (Developer).

Preliminary Statement of Facts

On the date hereof, the Authority conveyed to Developer fee title to certain real property located in the City of Minnetonka, County of Hennepin, State of Minnesota (the Land) legally described on Exhibit A attached hereto and incorporated herein by reference. Authority sold the Land to Developer pursuant to the terms and conditions of the Contract for Private Redevelopment of Land dated as of May 1, 1985 (the Redevelopment Contract), by and among the City of Minnetonka, Minnesota (the City), Authority, and Developer, providing for, among other things, the redevelopment by Developer of the Land and the construction of multiple-family rental housing units thereon (Developer's Improvements). The Land and Developer's Improvements thereon are hereinafter referred to as the Property. (As used herein, all capitalized terms shall have the meaning ascribed to them in the Redevelopment Contract unless otherwise defined herein.)

The Authority purchased the Land pursuant to the Quitclaim Deed dated December 9, 1985, filed January 27, 1986, in the office of the Hennepin County Recorder/Registrar of Titles, as Document No. 1700215. The Authority conveyed the Land to Developer for Nine Hundred Thousand Dollars (\$900,000) after writing down the purchase price by One Million Fifty Thousand Dollars (\$1,050,000). The amount of the write down of the purchase price (One Million Fifty Thousand Dollars (\$1,050,000)) is deemed to be the Authority's Equity Contribution (the Equity Contribution) in the Property. In connection with the redevelopment of the Property pursuant to the Redevelopment Contract, the Authority agreed to issue its Tax Increment Revenue Bonds in an amount equal to the Equity Contribution.

It is the desire of the parties hereto that the Authority share with Developer in the appreciation of the value of the Property pursuant to the terms, conditions, and definitions set forth below.

Exempt from Registration Tax  
Dept. of Property Tax and Public Records  
Hennepin County  
By Ann F. Wilson  
DEPUTY

T-688027

NOW, THEREFORE, in consideration of the foregoing and in consideration of the Property and the Authority's Equity Contribution in the Property, the parties hereto agree as follows:

ARTICLE 1.

DEFINITIONS

In this Agreement, unless a different meaning clearly appears from the context:

(01) "Agreement" means this Agreement, as the same may be from time to time modified, amended, or supplemented, in writing by the parties hereto.

(02) "Authority" means the Housing and Redevelopment Authority in and for the City and any successor entity thereto.

(03) "Capital Improvements" means improvements to the Property capitalized for federal income tax purposes under the Internal Revenue Code of 1954, as amended to the date hereof.

(04) "City" means the City of Minnetonka, Minnesota.

(05) "Developer" means The Cliffs II Limited Partnership.

(06) "Developer's Equity Contribution" means the aggregate amount of all sums over and above the Mortgaged Loan paid by Developer or on Developer's behalf for development of the Property, but not including any developer's or contractor's fee paid to Developer.

(07) "Developer's Improvements" means the multiple-family rental housing units to be constructed on the Land.

(08) "Development Costs" means those costs set forth in Article 2 of this Agreement.

(09) "Equity Contribution" means the amount of the writedown of the purchase price of the Land upon sale of the Land from the Authority to Developer, in the amount of One Million Fifty Thousand Dollars (\$1,050,000).

(10) "Equity Payment" means the portion of Net Sale Proceeds, if any, to be paid to the Authority and calculated in accordance with the provisions set forth in Article 3 of this Agreement.

(11) "Housing Revenue Bonds" means the bonds or obligations issued by the City to finance a portion of the cost of acquiring the Land and the construction of Developer's Improvements thereon.

(12) "Installment Sale" means receipt of the Net Sale Proceeds as a result of a Sale, received by Developer in installments rather than in a lump sum of cash at the time of the closing of the Sale.

(13) "Land" means the real property located in the City, Hennepin County, Minnesota, legally described on Exhibit A attached hereto and incorporated herein by reference.

(14) "Mortgage Loan" means the amount of the Housing Revenue Bonds or original mortgage loan used to finance a portion of the cost of acquiring the Land and the construction of Developer's Improvements thereon.

(15) "Net Sale Proceeds" means an amount equal to the gross sales price received by Developer for its interest in the Property pursuant to a Sale, less the items set forth in Section 3.2 in this Agreement.

(16) "Partial Sale" means a Sale of a substantial part, but less than all, of the Property.

(17) "Property" means the Land and Developer's Improvements constructed thereon.

(18) "Redevelopment Contract" means that certain Contract for Private Redevelopment of Land dated as of May 1, 1985, by and among the City, the Authority, and Developer, providing for, among other things, the redevelopment by Developer of the Land and the construction of Developer's Improvements thereon.

(19) "Sale" means the sale or exchange by Developer of all or any substantial part of its interest in the Property and Developer's Improvements thereon. "Substantial part" means at least one building and the portion of the Land on which it is situated.

(20) "Trade" means a transaction in which Developer receives other real property in exchange for all or part of the gross sales price of the Property.

## ARTICLE 2.

### DEVELOPMENT COSTS DEFINED

For purposes of this Agreement, the development costs of the Property (the Development Costs) shall be the sum of the following:

(01) The amount of the Mortgage Loan;

(02) The aggregate amount of all sums over and above the Mortgage Loan paid by Developer or on Developer's behalf

for development of the Property (Developer's Equity Contribution). Developer's Equity Contribution will not include any developer's or contractor's fee paid to Developer; and

(03) The Equity Contribution.

### ARTICLE 3.

#### AUTHORITY EQUITY PARTICIPATION

3.1) The Authority Equity Payment - Subject to the provisions of Sections 3.4 through 3.8 below, if Developer sells or exchanges all or any substantial part of its interest in the Property and Developer's Improvements (a Sale), Developer shall pay to the Authority the amount of its Equity Contribution, to the extent Sale proceeds are available pursuant to Section 3.4 below, plus a portion of Net Sales Proceeds, if any (the Equity Payment) calculated pursuant to the formulas and definitions set forth in Article 1 and 2 and in Sections 3.2 and 3.3 hereof. Substantial part means at least one building and the portion of the Land on which it is situated. Developer shall have no liability or obligation to pay the Authority its Equity Payment or any Equity Payment if Net Sale Proceeds are insufficient, pursuant to priority of distributions as set forth in Section 3.4, to make such payments. All payments due to the Authority hereunder shall be paid on the date of closing of the sale, transfer, or conveyance.

3.2) Net Sale Proceeds Defined - The "Net Sale Proceeds" shall be an amount equal to the gross sales price received by Developer for its interest in the Property sold less the following:

(01) The unpaid principal balance of the Mortgage Loan at the time of the Sale;

(02) Customary and ordinary costs of sales and marketing as follows:

- (a) Real estate commissions, costs of marketing, costs of brochures, advertising and the salaries and commissions of third parties employed by Developer to market and sell the condominium units, abstracting fees, state deed taxes, recording costs, legal fees, closing costs and all other costs and expenses associated with a Sale; and
- (b) If applicable, the costs of converting the portion of the Property subject to the Sale to a Condominium and the costs of formation of the Condominium.

(c) In lieu of the foregoing, if Developer, pursuant to Section 3.9 hereof, shall be required to pay to the Authority the Equity Contribution and Equity Payment prior to a Sale, an allowance for customary and ordinary costs of sale equal to ten percent (10%) of the Appraised Value of the Property, as determined pursuant to Section 3.5(02)(a) hereof, shall be deducted in calculating Net Sale Proceeds.

(03) The cost of all Capital Improvements made by Developer, or any successor or assignee of Developer permitted pursuant to Section 3.8 hereof, for the benefit of the Property, whether paid in cash or financed through loans. Capital Improvements means improvements capitalized for federal income tax purposes under the Internal Revenue Code of 1954, as amended to the date hereof.

(04) The Equity Contribution, less amounts previously paid thereon.

(05) Developer's Equity Contribution.

3.3) Formula for Determining Equity Payment - The Equity payment shall be determined as follows:

$$\text{Equity Payment} = \frac{\text{The Equity Contribution less all amounts of Equity Contribution previously paid pursuant to Partial Sales in accordance with Section 3.5(02) hereof}}{\text{Development Costs}} \times \text{Net Sales Proceeds}$$

3.4) Priority of Distributions of Proceeds of Sale - The gross sales proceeds received by Developer as a result of a Sale shall be utilized and distributed in the following order of priority:

(01) To reimburse Developer in the sum of the unpaid principal balance of the Mortgage Loan at the time of the Sale;

(02) To reimburse Developer for all customary and ordinary costs of sales and marketing, as set forth in Section 3.2(02) hereof;

(03) To reimburse Developer for the costs of all Capital Improvements determined pursuant to Section 3.2(03) hereof;

(04) To the Authority for the Equity Contribution;

(05) To Developer for Developer's Equity Contribution;

(06) To the Authority to the Equity Payment; and

(07) To Developer, the balance, if any.

3.5) Installment Sale - If the Net Sale Proceeds as a result of a Sale are to be received by Developer in installments rather than in a lump sum of cash (an Installment Sale), then the cash installment payments, including any interest thereon, as received, after payment of the amounts set forth in Sections 3.4(01), (02), (03), (04), and (05) above, shall be shared proportionately by and between the Authority and Developer so that the Authority shall receive its Equity Payment in installments. In such event, the Authority shall receive a percentage of each of the installments received by Developer, such percentage to be determined as follows:

Authority's Share =	<u>Equity Payment</u>
of each	Net Sales Proceeds available for
installment	distribution after payment of amounts
	set forth in Sections 3.4(01), (02),
	(03), (04), and (05) above.

(01) Notwithstanding the foregoing, Developer shall pay to the Authority its entire Equity Contribution within seven (7) years of the date of closing of an Installment Sale.

(02) A Sale of a substantial part, but less than all, of the Property (a Partial Sale) shall be treated in the same manner as an Installment Sale, provided that all deductions made in determining Net Sale Proceeds pursuant to Section 3.2 hereof not readily allocable solely to the Partial Sale, and portion of the Property sold thereunder, shall be as allocated by Developer, in the reasonable exercise of its discretion, and further provided that the Equity Contribution shall be allocated according to a percentage determined by dividing the number of housing units of Developer's Improvements sold under the Partial Sale by the total number of housing units in Developer's Improvements at the time of the Sale.

3.6) A transaction in which Developer receives other real property in exchange for all or part of the gross sales price of the Property (the Trade) shall be treated as a Sale or Partial Sale, as applicable. The Authority, at its option, may accept the valuation of the Property set forth in the agreement governing the Trade or may, at its option, request an appraisal, whereupon the appraisal provisions of Section 3.9(02) shall be used to determine the Appraised Value, which shall be the gross sales price of the Property subject to the Trade.

3.7) Limitation on Sale - This Agreement shall be limited only to the cash proceeds received by Developer upon a Sale and shall not apply to ordinary and customary noncash credits,

adjustments or proceeds received by or accruing to Developer in conjunction with the Sale, including, but not limited to, such items as prorations of taxes, rents, and utilities.

3.8) Excluded Sales - The provisions of Section 3.1 notwithstanding, the first conveyance by the Developer, within four (4) years from the date hereof, of all or a portion of the Property to one or more corporations, general or limited partnerships, or other entities in which Developer or its general partners shall retain an equity interest shall not be deemed a Sale; provided, however, that such successor corporations, partnerships, or other entities shall assume Developer's obligations hereunder. Thereafter, the transfer of limited partnership interests or shares of stock shall not be deemed a Sale so long as Developer, or its general partners on the date hereof, retain the same equity interest as they hold four (4) years from the date hereof. A refinancing shall not be deemed a Sale so long as eighty-five percent (85%) of the proceeds therefrom are used to repay the Mortgage Loan or other loans made for Capital Improvements, or to make Capital Improvements to the Property.

3.9) Notwithstanding anything in this Agreement to the contrary, Developer shall, except in the case of an Installment Sale pursuant to Section 3.5, pay to the Authority its entire Equity Contribution and Equity Payment no later than fifteen (15) years from the date hereof, unless this provision is waived in writing by the Authority on or before such date.

(01) If the Authority has not been so repaid within fifteen (15) years from the date hereof (unless a Sale is scheduled to close within six (6) months of said date), Developer shall, at the Authority's request, institute the appraisal procedures set forth in Section 3.9(03). The Appraised Value of the Property shall be deemed to be the gross sales price and the provisions of Article 3 shall then be applied to determine the amount of Equity Contribution and Equity Payment to be made to the Authority .

(02) Within twenty (20) days of the Authority's request for an appraisal, one (1) licensed, independent M.A.I. Real Estate Appraiser shall be selected by the Authority and one (1) licensed, independent M.A.I. Real Estate Appraiser shall be selected by Developer and the two (2) Appraisers so selected shall choose a third licensed, independent M.A.I. Real Estate Appraiser to be agreed upon by them. If for any reason the Authority or Developer fails to select its Appraiser within said time period (or if the Appraisers chosen by the parties fail to select a third party within said time period), the other party or either party in the case of failure to select a third appraiser may apply to the Chief Judge of the District Court in Hennepin County, Minnesota, for appointment of said appraiser or appraisers. Each appraiser shall, independently of the other two (2)

appraisers, appraise the Property and the Appraised Value shall be determined by averaging the three (3) appraisals. The appraisals shall be completed within thirty (30) days of the Authority's request for an appraisal and for purposes of this Agreement, the three (3) averaged appraisals shall constitute the Appraised Value of the Property. The cost of the appraisals shall be paid by Developer and shall constitute a closing cost incurred by Developer pursuant to Section 3.2(02) hereof.

(03) The provisions of this Section 3.9 shall not apply if Developer has sold the Property at an Installment Sale and the Authority is receiving payment of the Equity Payment in installments pursuant to Section 3.5 hereof.

#### ARTICLE 4.

##### INDEMNIFICATION

The parties hereto acknowledge that this Agreement vests no incidents or rights of ownership in the fee title to the Property in the name of the Authority and that the Authority is not liable to Developer nor any other third party for the discharge or the completion of any duties or responsibilities imposed upon the fee owner of the Property. Developer shall indemnify and hold the Authority harmless for all costs, charges and expenses, including reasonable attorneys' fees incurred or paid by the Authority in any threatened, pending, or completed action, proceeding or dispute relating to the Property in which the Authority is or might be made a party or appears as a party or which affects or might affect this Agreement.

#### ARTICLE 5.

##### NO LIEN

The parties acknowledge that this Agreement does not constitute a lien, claim, or charge against the Property or rents or other income generated by the Property, and is payable only out of Net-Sale Proceeds as set forth in Article 3 hereof. If all or a portion of the Property is sold, the purchaser shall assume no obligations or responsibilities hereunder with respect to that portion of the Property so sold. If a mortgage on the Property is foreclosed, or if the Property is conveyed to the holder of the mortgage in lieu of foreclosure, the holder of the mortgage, and its successors and assigns, shall assume no obligations or responsibilities hereunder. Developer shall provide the Authority with copies of all purchase agreements or similar documents executed in connection with the sale of all or a portion of the Property promptly after execution thereof, and not less than fifteen (15) days prior to the date of any closing thereunder. Upon payment to the Authority, the Authority shall deliver a certificate



acknowledging receipt of payment in and substance acceptable to Developer. Such certificate shall be in recordable form and shall evidence that all payments (or, if only part of the Property and Developer's Improvements are sold, such part of the payments and the portion of the Property to which they are allocable) required to be made to the Authority have in fact been made.


ARTICLE 6.

DISPOSITION OF AUTHORITY EQUITY PAYMENT

The Authority represents that the purpose of this Agreement is to enable the Authority, through the Authority Equity Payment, to recover all or a portion of the funds that the Authority has made available to the redevelopment project of which the Developer's Improvements are a part. The Authority has determined that the recovery of funds is in the best interests of the Authority, the City, and its citizens and that the recovery of funds will assist the City and the Authority in meeting their respective development, redevelopment, and housing goals in the future. To that end, it is the intention of the Authority to apply the Authority Equity Payment, when and if received, to the payment of public redevelopment costs of such redevelopment projects, housing projects, economic development projects, and any similar projects then authorized by law or for such other purposes as tax increments from such projects may now or in the future be lawfully expended, which in the judgment of the City Council and the Authority will achieve goals similar to those set out herein and in the Development Program and Tax Increment Financing Plan for the project of which Developer's Improvements form a part.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

THE AUTHORITY:  
THE HOUSING AND REDEVELOPMENT  
AUTHORITY IN AND FOR THE CITY  
OF MINNETONKA

By:   
Its: Executive Director

And:   
Its: Chairman

DEVELOPER:  
THE CLIFFS II LIMITED  
PARTNERSHIP

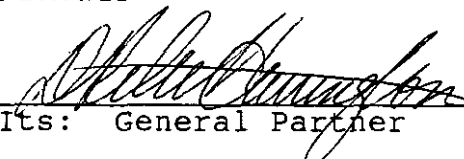
By:   
Its: General Partner



EXHIBIT A

Lot 1, Block 1, THE CLIFFS  
SECOND ADDITION, Hennepin  
County, Minnesota

1910622

REGISTERED VOL. 2308 PAGE 688027

688027

OFFICE OF THE REGISTRAR  
OF TITLES  
HENNEPIN COUNTY, MINNESOTA  
CERTIFIED FILED ON

QC

FEB 24 1988

qam

BY *[Signature]*  
REGISTRAR OF TITLES  
DEPUTY

10<sup>50</sup>

1988-02-24

## EDA Resolution No. 2021-

### Resolution approving a settlement agreement and release with The Cliffs LLC

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

#### Section 1. Background.

- 1.01. The Authority, as successor in interest to the Housing and Redevelopment Authority in and for the City of Minnetonka, entered into an Equity Participation Agreement, dated May 1, 1985, with Cliffs Limited Partnership, and an Equity Participation Agreement, dated December 9, 1985 (together, the "Equity Participation Agreements"), with Cliffs II Limited Partnership.
- 1.02. Pursuant to the Equity Participation Agreements, the Authority agreed to provide Cliffs Limited Partnership and Cliffs II Limited Partnership equity in the amount of \$2,100,000 to purchase land for development with the understanding that the equity would be repaid.
- 1.03. The parties to the Equity Participation Agreements have determined to terminate the Equity Participation Agreements and provide a mutual release of all claims, liabilities, and obligations arising out of the Equity Participation Agreements.
- 1.04. There has been presented before the Board a form of Settlement Agreement and Release (the "Settlement Agreement") between the Authority and The Cliffs LLC, a Minnesota limited liability company and the successor in interest to Cliffs Limited Partnership and Cliffs II Limited Partnership, which sets forth the terms of the termination of the Equity Participation Agreements and the release of the claims, liabilities, and obligations of the parties thereto.

#### Section 2. Approvals.

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

Section 3. Effective Date.

3.01. This resolution shall be effective upon adoption.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on Dec. 6, 2021.

---

Brad Wiersum, President

Attest:

---

Becky Koosman, Secretary

**Action on this resolution:**

Motion for adoption:

Seconded by:

Voted in favor of:

Voted against:

Abstained:

Absent:

Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, at a meeting held on Dec. 6, 2021.

---

Becky Koosman, Secretary