



**AGENDA**  
**CITY OF MINNETONKA**  
**ECONOMIC DEVELOPMENT ADVISORY COMMISSION**  
April 27, 2023  
6:00 p.m.

Council Chambers – Minnetonka Community Center (open to public)

1. Call to Order
2. Roll Call

Charlie Yunker  
Maram Falk  
Melissa Johnston  
Ann Duginske Cibulka

Steven Tyacke  
Jay Hromatka  
Lee Jacobsohn

3. Approval of Jan. 26, 2023 Minutes

**BUSINESS ITEMS**

4. Marsh II – Doran Financing Request

Review and provide a recommendation.

5. 2024-2028 EIP

Review and provide feedback.

6. Staff Report

7. Other Business

The next scheduled EDAC meeting will be held on **May 11, 2023 at 6:00 p.m.**

8. Adjourn

If you have questions about any of the agenda items, please contact:  
Alisha Gray, EDFP, Economic Development and Housing Manager (952) 939-8285  
Julie Wischnack, AICP, Community Development Director, (952) 939-8282

**Unapproved  
Minnetonka  
Economic Development Advisory Commission  
Minutes**

**Jan. 26, 2023**

**1. Call to Order**

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

**2. Roll Call**

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

Staff present: Economic Development and Housing Manager Alisha Gray and Community Development Coordinator Rob Hanson.

Financial consultant Stacie Kvilvang of Ehlers and Associates was present.

Councilmember Deb Calvert was present.

**3. Approval of the EDAC Sept. 8, 2022 Meeting Minutes**

Hromatka moved, Tyacke seconded, a motion to approve the Sept. 8, 2022 meeting minutes. Duginske Cibulka, Falk, Hromatka, Tyacke, and Yunker voted in favor of passing the motion. Jacobsohn and Johnston were absent. Motion carried.

**4. Marsh II - Doran Financing Request**

Chair Yunker introduced the item and called for the staff report.

Gray provided the staff report.

Tony Kuechle, president of development with Doran Companies, was available for questions by phone.

Hromatka stated that it would be helpful to have up-to-date information on what increment districts already exist in Minnetonka when considering newly proposed increment districts.

Hromatka asked if the rating agencies ask about the city's use of increment districts. Gray confirmed that the existing increment districts are a factor used by rating agencies. That information may be found in the Tax Increment Finance (TIF) Management Report, which is updated every two years.

Stacie Kvilvang, the financial consultant with Ehlers and Associates, explained that:

- Rating agencies like to see that cities are reinvesting and redeveloping, so proposals that utilize TIF help maintain the city's AAA rating.
- It is not a detriment to a city to have TIF districts. There are cities that have many more than Minnetonka. TIF districts are viewed as a positive when used to reinvest and reinvigorate the tax base.
- The affordable housing policy requires affordable units to be included in multi-family housing, so the assistance makes it possible for the proposal to move forward and meet affordability requirements.

Hromatka asked why the city would provide assistance for site improvements instead of the property owner decreasing the sale price of the property by that amount. Kvilvang explained that the cost of providing affordability for 30 years and extraordinary costs for cleanup that every other site does not have been taken into consideration. The overall development performance and return matrix also need to be within the market and industry standard for assistance to be provided.

In response to Tyacke's question, Gray explained that the housing study shows that there is a demand for 5,000 additional units in Minnetonka over the next five years and a very high demand for affordable housing.

Tony Kuechle, president of development with Doran Companies, stated that:

- Birke continues to perform really well with 95 percent occupancy.
- Minnetonka has a vacancy rate of 2.4 percent.

Duginske Cibulka asked if there were other financial gaps that would prevent the project from being feasible. Mr. Kuechle described a way that may allow the project to decrease costs. Kvilvang explained that negotiations would happen on the final number as the project progresses.

Falk asked if the assistance for soil-condition improvements would be a condition of affordability. Gray answered affirmatively.

Hromatka moved, seconded by Duginske Cibulka, to recommend that the city council approve the finance request for the Marsh II to provide up to \$4.6 million in tax increment over a 12-year term, require a 30-year period of affordability, establish a look-back provision in the development agreement; and continue discussions to provide a transitional housing unit.

Duginske Cibulka, Falk, Hromatka, Tyacke, and Yunker voted in favor of passing the motion. Jacobsohn and Johnston were absent. Motion carried.

## 5. Cedar Hills Townhomes – DevCo Financing Request

Gray provided the staff report.

Hromatka noted that the assistance would be for deferred maintenance. He asked for information on the underwriting criteria and history of DevCo.

Michael Volz, vice president of finance at DevCo, applicant, stated that:

- DevCo started operating in the early 1990s in the state of Washington developing new, residential construction using four percent low-income-housing-tax credits and tax-exempt bonds.
- DevCo currently has 85,000 units including new construction occurring in the state of Washington.
- His job is to help expand their services on a national level. He has handled many properties like this one that were built in the 1980s with section eight contracts that are in need of renovating.
- In exchange for making extended affordability on the four-percent-tax credit side, an allocation of those credits are sold to investors to raise the equity.

In response to Hromatka's question, Gray confirmed that the conduit tax-exempt bond does not interfere with the city's bank-qualified-tax-exempt debt.

Duginske Cibulka asked for the purpose of DevCo's \$2 million. Mr. Volz answered that interior renovations would include improvements to cabinets, countertops, walls, and flooring. Exterior improvements would be made to the roof, decks, and areas around the garages.

In response to Tyacke's question, Mr. Volz explained that the vast majority of units would be renovated with the residents in place. The contractor specializes in doing work around the tenants' schedules. In some cases, a tenant may need to be relocated for a week or two to make accessibility improvements. There would be no long-term relocations.

Falk asked who would receive the energy efficiency and sustainability rebates. Mr. Volz was unsure if the improvements would qualify for rebates. Gray stated that she would meet with another staff member who coordinates the sustainability initiatives to find out more information on available rebates before the item is reviewed by the city council.

Duginske Cibulka asked if an exit strategy had been defined. Mr. Volz answered that the initial compliance period would be 15 years. The credits would be delivered over ten years to the investor. There would be limited refinancing or capital events done within that time frame. It may be possible to refinance year 11 or 12 after the credits have been delivered fully to the investor to recapitalize and do a similar transaction again.

In response to Hromatka's questions, Gray explained that the affordable housing financing trust (AHFT) was originally established to provide temporary rental assistance during the pandemic. It was turned into a permanent-trust fund, and TIF pooling dollars were moved into the fund, which now has a balance of approximately \$5 million. This

proposal is requesting to utilize \$1 million of the trust. The city council will have a study session on Feb. 6, 2023 to consider utilizing \$300,000 of the trust for the Pathways to Homeownership program that provides down-payment assistance to qualified buyers.

Chair Yunker recalled the discussion to utilize the trust fund for other things besides rental assistance. This is an opportunity to utilize the fund to help achieve affordability and sustainability goals in a nice, creative way using a deferred loan.

Hromatka asked if the city would get a second mortgage to secure the loan. Gray explained that the city would have a second mortgage and a developer's agreement that would secure the 30-year term on the affordable units.

In response to Falk's question, Gray stated that she would do more research on possible rebates for making improvements to energy efficiency.

Calvert explained that the state legislature passed legislation allowing Minnetonka to be one of a handful of cities to create an affordable-housing-trust fund that may use its funds for more than rental assistance and provide affordable housing. The time is now to address the climate crisis and greenhouse gases. The proposal would make a big impact on the community and aid in meeting the city's greenhouse gas-reduction goals of 41 percent over ten years.

Hromatka commended the staff for coming up with the idea for the housing trust and utilizing a portion of the funds for making an improvement to affordable housing in Minnetonka.

Hromatka moved, seconded by Duginske Cibulka, to recommend that the city council approve the finance request for Cedar Hills Townhomes to provide up to \$1,011,830 pending final underwriting review; prepare a formal contract with the applicant; and utilize available rebates for improving energy efficiency.

Duginske Cibulka, Falk, Hromatka, Tyacke, and Yunker voted in favor of passing the motion. Jacobsohn and Johnston were absent. Motion carried.

## 6. Staff Report

Hanson and Gray provided the staff report:

- The Metropolitan Council reports civil construction is 70 percent complete on the SWLRT. All of the roads and trails are anticipated to be open by the end of 2023. The SWLRT is anticipated to begin operation by the end of 2027.
- Regional Metro Transit ridership is slowly rebounding for local routes, but express routes are recovering more slowly. It is rolling out a public engagement plan called Network. Now that aims to define what routes should be prioritized in restoring service.

- Development updates on The Pointe, Minnetonka Station, Doran, The Townline Apartments (Wellington), Greystar Development, Abdo Market House, Marsh Run II, Mills Church project, Ridgedale Park project, a possible affordable ownership product on city-owned properties on Rowland Road and Baker Road, The Marsh and Buhl Investments.
- Open to Business serves as a navigator of Minnetonka business consulting services. Consulting service demand remains high.
- Staff is hosting a half-day contractors' exposition on Thursday, Feb. 2, 2023.
- The fall issue of Thrive was emailed to 1,515 subscribers and mailed to over 1,200 addresses in November 2022, and the winter 2023 issue is in development.
- Provided an update on the business-work plan. The compliance loan program has gone live. There will be a luncheon highlighting businesses, and the mayor will award an outstanding-business award. Creating an emergency-assistance fund is being worked on.
- The His House Foundation helped four households in Minnetonka experiencing an emergency.
- There is still mortgage assistance available at HomeHelpMN.
- Rental assistance has been provided to 205 households and still has funds to be utilized.
- The city council will host a study session on Feb. 6, 2023 to receive an update on the pathways and housing programs.

**7. Other Business**

The next EDAC meeting is scheduled to be held on Feb. 23, 2023.

**8. Adjournment**

The meeting was adjourned at 7:08 p.m.



**Economic Development Advisory Commission  
Agenda Item #4  
Meeting of Apr. 27, 2023**

**Title:** Marsh II - Doran Financing Request  
**Report From:** Alisha Gray, EDFP, Economic Development and Housing Manager  
**Submitted through:** Julie Wischnack, AICP, Community Development Director

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**Action Requested:**  Motion  Informational  Recommendation  
**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**

Doran Development is seeking financing assistance to provide affordable housing units at 11816 Wayzata Blvd, currently known as Offices of Marsh Run.

**Recommended Action**

Review the contract for private development and provide a recommendation.

**Strategic Profile Relatability**

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

Statement: This item supports the production of affordable housing.

**Financial Consideration**

- Is there a financial consideration?  No  Yes \$4.6 million  
Financing sources:  Budgeted  Budget Modification  New Revenue Source  
 Use of Reserves  Other

Statement: The proposed funding source is a new tax increment financing redevelopment district.

**Background**

Doran Development has submitted a concept plan to redevelop the property at 11816 Wayzata Blvd. The 4.33-acre property contains a 31,104 sq. ft. two-story office building with associated parking and a stormwater management pond. Doran contemplates redevelopment of the property with the following:

- A 6-story, market-rate apartment building with 197 units. The building would include interior and outdoor amenity spaces for residents, such as:
  - Fitness room, business center, pool and patio area, grill station, and entertainment suites.
- An underground parking garage with approximately 279 parking spaces and surface parking with about 23 parking spaces



Image 2 – Proposed exterior

**Current Proposal**

The proposed project would include a six-story apartment building with 197 units (40 affordable units). The units would be a mix of studio, one, two, and three-bedroom units. The developer is proposing to provide 20 affordable units at 60% AM and 20 affordable units at 80% AMI, with the following unit mix:

# of Units	Type	Rent Type	Rent
2	Studio (673sf)	Market	\$1,675
		60% AMI	\$1,233
12	1-BR (765sf)	Market	\$1,825
		60% AMI	\$1,320
6	2BR (1,179sf)	Market	\$2,700
		60% AMI	\$1,584
2	Studio (673sf)	Market	\$1,675
		80% AMI	\$1,644
10	1-BR (765sf)	Market	\$1,825
		80% AMI	\$1,761
6	2BR (1,179sf)	Market	\$2,700
		80% AMI	\$2,112
2	3BR (1745sf)	Market	\$3,850
		80% AMI	\$2,440

Market-rate rents on the remaining 157 units range from approximately \$1,675 to \$3,850 per month.



### **Contract for Private Development**

#### *Construction Commencement and Completion*

- Construction commencing by Dec. 31, 2023

#### *Affordability Compliance*

- The developer will make 40 units (20% of the total unit mix) affordable to households:
  - 20 units at or below 60% AMI (defining unit mix in the contract)
  - 20 units at or below 80% AMI (defining unit mix in the contract)
  - The city's policy requires a minimum of 30 years of affordability
- One unit will be reserved as a transitional housing unit. HisHouse (the city's contracted homelessness intervention provider) will enter into a lease with Doran for the unit.
- The rent on the affordable units is anticipated to be between \$1,223 and \$2,440 per month (depending on the unit size) and based on projected income limits for the year of occupancy.
- Parking rates would not exceed \$100 per month initially, then will not exceed ten percent of the base rent permitted in subsequent years.
- Language prohibiting practices that discriminate against Section 8 voucher holders or indirectly prohibit tenants from renting a unit (requiring a tenant to have more than two times the applicable rent to qualify for an affordable unit).
- 

#### *Property Management Covenant*

- Outlines the process for disorderly conduct violations at the property.

#### *Financial Assistance*

Ehler's analysis found that the affordable units created a gap of \$3.8 million. In addition, poor soil conditions requiring demolition, dewatering, and geo-piers/piling created an additional gap of \$800,000. The proposed source of financing to fill the \$4.6 million gap is the establishment of a new tax increment financing redevelopment district. Shane Rudlang and Stacie Kvilvang from Ehlers reviewed this request and prepared the attached memo that includes an analysis of the request and a recommendation.

The assistance requested from the developer would result in a per-unit cost of approximately \$3,833 per year over a 30-year affordability period based on total assistance of \$4.6 million. The per-unit assistance on previously approved housing redevelopment projects ranges from \$500 per unit/per year to \$4,571 per unit/per year.

#### *Lookback Provision*

Upon stabilization, the amount of the tax increment assistance provided pursuant to this agreement will be subject to adjustment based on a cumulative return on the cost of 6.2% from the date of the permanent certificate of occupancy. Within sixty (60) days of stabilization, the developer must deliver to the authority's consultant evidence of its cumulative return on cost return.

If the return on cost exceeds 6.2%, then the principal amount of the TIF Note issued to the redeveloper will be reduced to an amount that shows a stabilized return on cost return of 6.2% over the new term of the TIF Note, including a reduction to \$0.00. The redeveloper shall deliver the TIF Note in exchange for a new TIF Note in the adjusted principal amount upon the authority's written request.

A representative from Ehlers, the city's financial consultant, will be present at the meeting to answer any questions.

### **Project Schedule**

- May 22, 2023 City Council/EDA

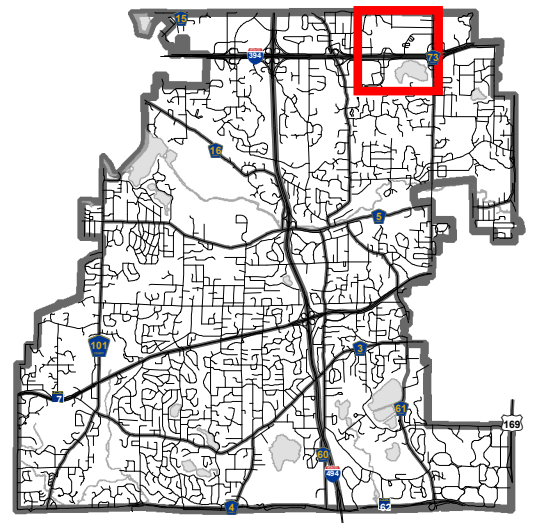
### **Attachments**

- Location Map
- Doran Memo
- Ehlers Memo
- Draft Contract for Private Development
- Affordable Housing Production Summary
- [Affordable Housing Policy](#)



**Location Map**

Project: Marsh Run II redevelopment  
 Address: 11816 Wayzata Blvd



# DORAN

DEVELOPMENT

January 17, 2023

City of Minnetonka  
Planning Department  
Attention: Alisha Gray  
14600 Minnetonka Blvd  
Minnetonka, MN 55345

Dear Ms. Gray,

Doran RE Partners, LLC would like to submit a formal application for Tax Increment Financing (TIF) to support a proposed redevelopment located at 11816 Wayzata Blvd. In October 2022, the Doran Development team had an initial meeting with City staff to discuss goals for redevelopment of the existing three-story office building and associated parking. The discussion included suitable uses for redevelopment, site layout considerations, and challenges with redevelopment given the sites current condition. After initial staff feedback, the Development Team produced plans and hosted a neighborhood meeting on November 29, 2022. Feedback from neighbors was taken into consideration when further developing concept plans that were submitted to the City Planning Department on December 16, 2022. The concept plans for redevelopment include a six-story, 197-unit apartment building with two levels of podium enclosing parking (one level below grade) and five levels of wood frame construction.

To make the Development economically feasible, Doran is requesting the city consider providing \$4.6 million in redevelopment TIF for a term of 12 years. The proposed project income is assuming 80% of the units to be priced at market rates with the other 20% of the units to be affordable (40 total units). 10% of the units will be affordable to households earning up to 60% of the Area Median Income (AMI) and the other 10% of the units affordable to households earning up to 80% AMI. The affordability limits on these units are proposed to remain for at least 30 years. The affordability mix was strategically targeted to provide housing that meets what the development team believes the affordability gaps are in this specific area.

The total development costs for the project are estimated to be \$68.5 million. The costs are based on current construction conditions, land acquisition and site preparation costs. Residential income modeled for the project assumes market rates based on current in-place rents from the adjacent Birke Apartments, along with the affordability limits on 20% of the units. Due to extraordinary costs associated with redevelopment and decreased rental income from the affordable units, there project model shows insufficient cash flow to provide a sufficient rate of return, pay operating expenses, and service the debt. Therefore, Doran has modeled a TIF request that would make this redevelopment feasible.

# DORAN

DEVELOPMENT

We look forward to continued conversations regarding the requested TIF assistance. Please let me know if you have any questions or concerns.

Sincerely,



Jacquell Hajder  
Director of Development  
Doran Development, LLC  
952-641-9423  
[Jacquell.Hajder@dorancompanies.com](mailto:Jacquell.Hajder@dorancompanies.com)

## MEMORANDUM

TO: Julie Wischnack – Community Development Director  
 Alisha Gray – Economic Development and Housing Manager  
 FROM: Stacie Kvilvang & Schane Rudlang - Ehlers  
 DATE: January 17, 2023  
 SUBJECT: Marsh Run II - Doran Development Analysis of Financial Request

The City of Minnetonka (the “City”) received a financial assistance request from Doran Companies (the “Developer”) seeking tax increment financing (TIF) for their proposed redevelopment of 11816 Wayzata Blvd. The Developer has proposed to construct a 197-unit, mixed-income, multi-family apartment consisting of studio, 1, 2, and 3-bedroom units. Construction would commence in Q3 of 2023 and is anticipated to cost approximately \$67.3 million or \$341,000 per unit. The Developer cited a financial gap in their financial projections for the project (“proforma”) and requested 15 years of TIF at a present value they estimated at \$8.25 million (2% inflation figured in).

### Affordability and Unit Mix

As currently proposed, the developer plans to include 20% of the units affordable at 60% Area Median Income (AMI) and 80% AMI as shown in the tables below:

Unit Mix				
	Market	60% AMI	80% AMI	Total
Studio	32	2	2	36
1-BR	86	12	10	108
2-BR	31	6	6	43
3-BR	8		2	10
<b>Total</b>	<b>157</b>	<b>20</b>	<b>20</b>	<b>197</b>

Affordability By Unit Type			
Type	# of Units	# affordable	% Affordable
Studio	36	4	11%
1-BR	108	22	20%
2-BR	43	12	28%
3-BR	10	2	20%
<b>Total</b>	<b>197</b>	<b>40</b>	<b>20%</b>

### Financial Analysis – Affordability and Extraordinary Costs

Providing affordable and workforce housing has a cost that can be quantified. We calculated the differential between market rate rents and rents for the 60% AMI and 80% AMI units. We amortized this over 30 years (per the City’s policy on term for affordability) and discounted it at 5% which is the Developers anticipated rate of permanent financing. This equates to a present value cost of \$3.8 million as further noted in the table below:

Affordability Costs		Years: 30	
Units	Total	Per Unit	Per Year
40	\$3,816,672	\$95,417	\$3,181

In addition, the project has \$800,000 in extraordinary costs as shown in the table on the following page:

Extraordinary Costs			
Project Cost	Amount	% of Cost	Per Unit
Demolition	\$200,000	0.4%	
Dewatering	\$100,000	0.2%	
Geopiers/Piles	\$500,000	0.9%	
<b>TOTAL</b>	<b>\$800,000</b>	<b>1.5%</b>	<b>\$20,000</b>

Added together, the cost to provide the affordable and workforce housing units and extraordinary costs is \$4.6 million.

Based on previous policy discussion and similar recent projects, we understand that the City is willing to consider TIF, provided that the amount of assistance does not exceed what is necessary to make the project financially feasible. Ehlers sized the need for TIF assistance by taking the aforementioned issues into consideration as well as analyzing the Developer’s project budget and projections, generally known as a pro forma. We reviewed the project based on industry standards for construction, land, and project costs; rental rates; operating expenses; developer fees; underwriting and financing criteria; and, cash flow / return on investment. The table below depicts the Developer’s proposed sources and uses for the project.

SOURCES			
	Amount	Pct.	Per Unit
First Mortgage	41,501,905	62%	210,580
TIF Note	4,600,000	7%	23,340
Equity	21,167,145	31%	107,402
<b>TOTAL SOURCES</b>	<b>67,269,050</b>	<b>100%</b>	<b>341,323</b>

USES			
	Amount	Pct.	Per Unit
Acquisition Costs	5,122,000	8%	25,989
Construction Costs	49,982,341	74%	253,610
Contractor Fee	1,370,699	2%	6,955
Environmental Abatement/Soil Correction	1,250,000	2%	6,342
Professional Services	3,693,000	5%	18,738
Financing Costs	3,847,260	6%	19,521
Developer Fee	2,003,750	3%	10,167
<b>TOTAL USES</b>	<b>67,269,050</b>	<b>100%</b>	<b>341,323</b>

The analysis shows that \$4.6 million in TIF assistance results in financial returns that makes the project financially feasible and the returns are within market industry standards.

### Recommendation

Based on our review, we’ve concluded that the development would not reasonably be expected to proceed without \$4.6 million in TIF assistance over 12 years. We recommend that a term sheet and development agreement include a lookback as with past projects to ensure that the actual financial returns on the project are not in excess of normal market returns.

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

**Draft**  
**April 18, 2023**

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**CONTRACT  
FOR  
PRIVATE REDEVELOPMENT**

**between**

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

**and**

**[REDEVELOPER]**

Dated: \_\_\_\_\_, 2023

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This document was drafted by:  
KENNEDY & GRAVEN, CHARTERED (JAE)  
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Telephone: 612-337-9300



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DRAFT

## CONTRACT FOR PRIVATE REDEVELOPMENT

THIS CONTRACT FOR PRIVATE REDEVELOPMENT, made as of the \_\_\_\_ day of \_\_\_\_\_, 2023 (the “Agreement”), between the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), and [REDEVELOPER], a \_\_\_\_\_ (the “Redeveloper”).

WITNESSETH:

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

WHEREAS, the Authority and the City have undertaken a program to promote economic development and job opportunities, promote the development and redevelopment of land which is underutilized within the City, and facilitate the development of affordable housing, and in this connection created a development project known as Development District No. 1 (the “Development District”) in the City, pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended; and

WHEREAS, the City and the Authority have established the Marsh Run II Tax Increment Financing District (the “TIF District”), a redevelopment district within the Development District, and adopted a financing plan (the “TIF Plan”) for the TIF District in order to facilitate development of certain property in the Development District and promote the development of affordable housing within the City, all pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended; and

WHEREAS, the Redeveloper proposes to acquire certain property described in EXHIBIT A attached hereto (the “Redevelopment Property”) within the TIF District and construct a mixed-income apartment complex with approximately 197 units, including 40 affordable units (20 units at 60% area median income and 20 units at 80% area median income), including a parking garage and surface parking; and

WHEREAS, in order to make the Minimum Improvements economically feasible for the Redeveloper to construct, the Authority is prepared to reimburse the Redeveloper for a portion of the land acquisition costs and certain site improvement costs related to the Minimum Improvements; and

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

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

## ARTICLE I

### Definitions

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

“Administrative Costs” means the costs described in Section 3.5 hereof.

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

“Assessor” means the assessor of the City.

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

“Authority’s Consultant” means the Authority’s municipal advisor.

“Authority Representative” means the Executive Director of the Authority.

“Available Tax Increment,” means, on each Payment Date, ninety percent (90%) of the Tax Increment attributable to the Redevelopment Property and paid to the Authority by the County in the six (6) months preceding the Payment Date. Available Tax Increment will not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default under this Agreement; provided, however, once an Event of Default is cured, any Tax Increment previously withheld shall be deemed Available Tax Increment on the next Payment Date.

“Board” means the Board of Commissioners of the Authority.

“Certificate of Completion” means the certification provided to the Redeveloper pursuant to Section 4.4 hereof.

“City” means the City of Minnetonka, Minnesota, a home rule city, municipal corporation, and political subdivision organized and existing under its Charter and the constitution and laws of the State.

“City Representative” means the City Manager or person designated in writing by the City Manager to act as the City Representative of the City.

“Construction Plans” means the plans, specifications, drawings and related documents on the construction work to be performed by the Redeveloper on the Redevelopment Property, including the Minimum Improvements, which (a) must be as detailed as the plans, specifications, drawings and related documents which are submitted to the appropriate building officials of the City; and (b) must include at least the following: (1) site plan; (2) foundation plan; (3) floor plan for each floor; (4) cross-sections of each floor plan (length and width); (5) elevations (all sides, including a building materials schedule); (6) landscape and grading plan; and (7) other plans or supplements to the foregoing plans as the City may reasonably request to allow it to ascertain the nature and quality of the proposed construction work.

“County” means Hennepin County, Minnesota.

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

“Development District” means the real property located within the boundaries of the Development District No. 1.

“Development District Plan” means the Amended and Restated Development Plan for the Development District approved and adopted by the Board of the Authority and the City Council of the City.

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

“Event of Default” means an action by the Redeveloper or the Authority, as applicable, listed in Article IX hereof.

“Holder” means the owner of a Mortgage.

“HRA Act” means Minnesota Statutes, Sections 469.001 through 469.047, as amended.

“Material Change” means a change in the Construction Plans that adversely affects generation of tax increment or changes the number of units of rental housing. Any increase in units or a decrease of more than five units will be considered a Material Change. A decrease in units of five or less units will not be considered a Material Change.

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

“Minimum Assessment Agreement” means the Minimum Assessment Agreement establishing a Minimum Market Value of the Redevelopment Property and the Minimum Improvements substantially in the form attached hereto as EXHIBIT G.

“Minimum Improvements” means the development on the Redevelopment Property, which will include (i) a six-story, approximately 197-unit apartment building subject to the affordability requirements and bedroom configurations described in Section 4.5 hereof; and (ii) approximately 264 underground parking spaces and approximately 40 surface parking spaces.

“Minimum Market Value” means a minimum market value for real estate tax purposes with respect to the Development Property and the Minimum Improvements of \$53,700,000 on January 2, 2026 for taxes payable beginning in 2027 through the Maturity Date.

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

“Net Proceeds” means the gross proceeds from an insurance claim remaining after payment of all expenses (including attorneys’ fees and any expenses of the Redeveloper) incurred in the collection of such gross proceeds.

“Qualified Costs” has the meaning given such term in Section 3.4(a) hereof.

“Qualified Improvements” means the improvements to be constructed by the Redeveloper described in Section 3.4(a) hereof.

“Redeveloper” means [REDEVELOPER], a Minnesota \_\_\_\_\_, or its permitted successors and assigns.

“Redevelopment Property” means the real property described in EXHIBIT A attached hereto.

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

“Stabilization” means the Minimum Improvements are at least ninety-five percent (95%) leased.

“State” means the State of Minnesota.

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

“Tax Increment Act” or “TIF Act” means the Tax Increment Financing Act, Minnesota Statutes, Sections 469.174 through 469.1794, as amended.

“Tax Increment District” or “TIF District” means the Marsh Run II Tax Increment Financing District, a redevelopment district within the Development District.

“Tax Increment Plan” or “TIF Plan” means the Tax Increment Financing Plan, as approved by the City Council of the City on May 1, 2023, and as it may be amended from time to time.

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

“TIF Note” means a Tax Increment Revenue Note, substantially in the form attached hereto as EXHIBIT B, to be delivered by the Authority to the Redeveloper pursuant to Section 3.4 hereof, and any obligation issued to refund the TIF Note.

“Transitional Unit” means the unit within the Minimum Improvements that is described in Section 4.6.

“Unavoidable Delays” means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of strikes, lockouts or other labor troubles, prolonged adverse weather or acts of God, fire or other casualty to the Minimum Improvements, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, State or local governmental unit (other than the Authority in properly exercising its rights under this Agreement) which directly result in delays, unavailability or shortage of supply of construction materials or construction labor, other than by reason of non-payment of the costs for such supplies or labor. Unavoidable Delays shall not include delays experienced by the Redeveloper in obtaining permits or governmental approvals necessary to enable construction of the Minimum Improvements by the dates such construction is required by Section 4.3 hereof.

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## ARTICLE II

### Representations and Warranties

Section 2.1. Representations by the Authority. The Authority makes the following representations:

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

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

(c) The Authority finds that the Minimum Improvements are necessary to alleviate a shortage of, and maintain existing supplies of, decent, safe, and sanitary housing for persons of low or moderate income and their families.

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

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

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

(a) The Redeveloper is a \_\_\_\_\_ duly organized and in good standing under the laws of the State [of \_\_\_\_\_ and authorized to do business within the State], is duly authorized to transact business within the State, and has the power to enter into this Agreement.

(b) The Redeveloper will construct, operate and maintain the Minimum Improvements in accordance with the terms of this Agreement, the Development District Plan and all local, State and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations) that are applicable to the Redevelopment Property and all improvements constructed thereon.

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



or will be in violation of any environmental law or regulation. As of the date of this Agreement, the Redeveloper is not aware of any facts that would cause the Redeveloper to be in violation of or give any person a valid claim under any local, State or federal environmental law, regulation or review procedure.

(d) The Redeveloper will construct the Minimum Improvements in accordance with all local, State or federal laws or regulations that are in effect at the time of construction.

(e) The Redeveloper will use commercially reasonable efforts to obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, State and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed. The Redeveloper did not obtain a building permit for any portion of the Minimum Improvements before May 1, 2023, the date of approval of the TIF Plan for the TIF District.

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

(g) The proposed development by the Redeveloper hereunder would not occur but for the tax increment financing assistance and other assistance being provided by the Authority hereunder.

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

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## ARTICLE III

### Tax Increment Assistance

Section 3.1. Status of Redevelopment Property. The Redeveloper has entered into a purchase contract for the acquisition of the Redevelopment Property. The Authority has no obligation to acquire any portion of the Redevelopment Property.

#### Section 3.2. Environmental Conditions.

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

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

Section 3.3. Reimbursement of Certain Redeveloper Costs. The Authority is authorized to acquire real property and convey real property to private entities at a price determined by the Authority in order to facilitate development of the property. The Authority has determined that, in order to make development of the Minimum Improvements and the Qualified Improvements financially feasible, it is necessary to reduce the cost of acquisition of the Redevelopment Property and certain site improvements necessary for the Minimum Improvements. The Authority has also determined that, in light of potential liability that could be incurred by the Authority if the Authority takes title to the Redevelopment Property, it is in the best interest of the Authority for the Redeveloper to acquire the Redevelopment Property directly. The Authority will reimburse the Redeveloper for a portion of the actual cost of acquiring the Redevelopment Property and the actual cost of the Qualified Improvements in accordance with the terms of this Agreement.

#### Section 3.4. Issuance of Pay-As-You-Go Note.

(a) In consideration of the Redeveloper constructing the Minimum Improvements and the Qualified Improvements and to finance the reimbursement of the land acquisition, site preparation costs, and any other expenditures eligible to be reimbursed with Tax Increment incurred by the Redeveloper, the Authority will issue and the Redeveloper will purchase the TIF Note in the principal amount of up to \$4,600,000 in substantially the form set forth in the EXHIBIT B attached hereto. The interest on the TIF Note shall be 5.00% or the redeveloper's actual rate of financing, whichever is less. The Authority and the Redeveloper agree that the consideration from the Redeveloper for the purchase of the TIF Note will consist of the Redeveloper's payment of a portion of the costs of land acquisition, demolition, site preparation, remediation, underground parking, and any other improvements that are constructed within

the TIF District and are eligible for reimbursement with tax increment (collectively, the “Qualified Costs”), which are incurred by the Redeveloper in at least the principal amount of the TIF Note. The Redeveloper will be reimbursed for such costs in the following maximum amounts:

<b>Type of Cost</b>	<b>Maximum Amount</b>
Demolition	\$200,000
Dewatering	\$100,000
Geopiers	\$500,000
Underground Parking	\$3,800,000
<b>Total</b>	<b>\$4,600,000</b>

The Authority shall issue the TIF Note within forty-five (45) days of receiving from the Redeveloper satisfactory evidence of Qualified Costs and upon satisfaction of the following conditions:

- (i) the Redeveloper has submitted Construction Plans to the Authority and obtained approval for the Construction Plans by the Authority (the Authority has approved the Construction Plans);
- (ii) the Redeveloper has submitted and obtained Authority approval of financing in accordance with Section 7.1 hereof; and
- (iii) the Redeveloper has delivered to the Authority an investment letter in substantially the form set forth in EXHIBIT C attached hereto or another form reasonably satisfactory to the Authority.

The TIF Note shall not be delivered to the Redeveloper if the Redeveloper has not delivered the executed Declaration and Minimum Assessment Agreement to the Authority in recordable form.

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

(c) The Authority acknowledges that the Redeveloper may assign the TIF Note to a lender that provides the financing for the acquisition of the Redevelopment Property or the construction of the Minimum Improvements. The Authority consents to this type of assignment, conditioned upon receipt of an investment letter from the lender in a form reasonably acceptable to the Authority. If the Authority is required to execute any documents related to an assignment of the TIF Note, such documents must be approved by the Board of the Authority.

Section 3.5. Payment of Administrative Costs. The Authority acknowledges that the Redeveloper has deposited with the Authority \$25,000. The Authority will use such deposit to pay “Administrative Costs,” which term means third-party, out-of-pocket costs incurred by the Authority, attributable to or incurred in connection with the negotiation and preparation of this Agreement, the TIF Plan, and other documents and agreements in connection with the development of the Redevelopment Property. At the Redeveloper’s request, but no more often than monthly, the Authority will provide the Redeveloper with a written report including invoices, time sheets or other comparable evidence of expenditures for Administrative Costs and the outstanding balance of funds deposited. If at any time the

Authority determines that the deposit is insufficient to pay Administrative Costs, the Redeveloper is obligated to pay such shortfall within thirty (30) days after receipt of a written notice from the Authority containing evidence of the unpaid costs. If any balance of funds deposited remains upon the issuance of the Certificate of Completion pursuant to Section 4.4 hereof, the Authority shall promptly return such balance to the Redeveloper; provided that Redeveloper remains obligated to pay subsequent Administrative Costs related to any amendments to this Agreement requested by the Redeveloper. Upon termination of this Agreement in accordance with its terms, the Redeveloper remains obligated under this section for Administrative Costs incurred through the effective date of termination.

Section 3.6. Records. Prior to the Maturity Date, the Authority and its representatives will have the right at all reasonable times during normal business hours after reasonable notice to inspect and examine all books and records of Redeveloper relating to the development and construction of the Minimum Improvements and the costs for which the Redeveloper has been reimbursed with Tax Increment.

Section 3.7. Purpose of Assistance. The parties agree and understand that the purpose of the Authority's financial assistance to the Redeveloper is to facilitate development of housing and is not a "business subsidy" within the meaning of Minnesota Statutes, Sections 116J.993 to 116J.995, as amended.

Section 3.8. Look Back and Reduction of Tax Increment Assistance. The financial assistance to be provided to the Redeveloper pursuant to this Agreement is based on certain assumptions regarding the projected costs and expenses associated with constructing the Minimum Improvements (as provided in the Pro Forma attached hereto as EXHIBIT H and the Qualified Costs). The Authority and the Redeveloper agree that those assumptions will be reviewed at the time of completion of construction of the Minimum Improvements, and at the time of any sale or refinancing of the Minimum Improvements as follows:

(a) At the time of issuance of the permanent certificate of occupancy, if the aggregate amount of Qualified Costs incurred is less than \$4,600,000, the amount of the tax increment financing assistance for Qualified Costs will be reduced on a dollar for dollar basis in the amount of such deficiency and the principal amount of the TIF Note will be adjusted accordingly.

(b) Upon Stabilization, the amount of the tax increment assistance provided pursuant to this Agreement will be subject to adjustment based on a cumulative return on cost of 6.2% from the date of the permanent certificate of occupancy. Within sixty (60) days of Stabilization, the Redeveloper must deliver to the Authority's Consultant evidence of its cumulative return on cost return. The return on cost return shall be calculated by the Authority's Consultant based on the Redeveloper's pro forma financial statement submitted to the Authority's Consultant (to be calculated in a manner comparable to the sample attached as EXHIBIT H (annual net operating income including tax increment divided by the total development costs)).

If the return on cost exceeds 6.2%, then the principal amount of the TIF Note issued to the Redeveloper will be reduced to an amount that shows a stabilized return on cost return of 6.2% over the new term of the TIF Note, including a reduction to \$0.00. The Redeveloper shall deliver the TIF Note in exchange for a new TIF Note in the adjusted principal amount upon the Authority's written request.

(c) If the Redeveloper sells the Minimum Improvements to an unrelated third party or refinances (provided, however, the placement of permanent debt on the Minimum Improvements and the Redevelopment Property will not constitute a refinance giving rise to the review as described in this subsection (c)) during the first ten (10) years after the issuance of a certificate of occupancy by the City, the Redeveloper agrees to provide to the Authority's Consultant reasonable background documentation

related to the Minimum Improvements income and expenses for the period from the date certificate of occupancy through such anticipated sale or refinance date (provided that the Redeveloper and the Authority agree that the calculation will occur prior to the actual transfer). If the Authority's Consultant determines, based on such review, that the actual cash flows realized by the Redeveloper have exceeded a cumulative return on cost of 6.2%, then the TIF Note shall be reduced by 50% of the excess amount of such actual cash flows, including a reduction to \$0.00. Such reduction will be effective upon delivery to Redeveloper of a written notice stating the amount of such excess profit as determined by the Authority in accordance with this paragraph (c), accompanied by the Authority's Consultant's report.

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## ARTICLE IV

### Construction and Maintenance of Minimum Improvements

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

#### Section 4.2. Construction Plans.

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

The Construction Plans were approved by the City Council on \_\_\_\_\_ 20\_\_ and are hereby approved by the Authority.

(b) If the Redeveloper desires to make any Material Change in the Construction Plans after their approval by the Authority, the Redeveloper must submit the proposed change to the Authority for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2 with respect to the previously approved Construction Plans, the Authority will approve

the proposed change and notify the Redeveloper in writing of its approval. Any change in the Construction Plans will, in any event, be deemed approved by the Authority unless rejected, in whole or in part, by written notice by the Authority to the Redeveloper, setting forth in detail the reasons therefor. Any rejection must be made within twenty (20) days after receipt of the notice of such change. The Authority's approval of any Material Change in the Construction Plans will not be unreasonably withheld.

Section 4.3. Commencement and Completion of Construction.

(a) Subject to Unavoidable Delays and the vacation of existing tenants from the Redevelopment Property, the Redeveloper must commence construction of the Minimum Improvements by December 31, 2023 and will substantially complete construction of the Minimum Improvements by December 31, 2025. Construction is considered to be commenced upon the beginning of grading on the site.

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

Section 4.4. Certificate of Completion.

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

(b) The Certificate of Completion provided for in this Section 4.4 will be in the form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Redevelopment Property. If the Authority refuses or fails to provide any certification in accordance with the provisions of this Section 4.4, the Authority will, within fifteen (15) days after written request by the Redeveloper, provide the Redeveloper with a written statement, indicating in adequate detail in what respects the Redeveloper has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Authority, for the Redeveloper to take or perform in order to obtain the certification.

(c) The construction of the Minimum Improvements will be considered substantially complete when the Redeveloper has received a final (or temporary with conditions reasonably acceptable to the Authority) certificate of occupancy from the City for all Rental Housing Units.

Section 4.5. Affordability Covenants. The Redeveloper agrees that the Minimum Improvements are subject to the following affordability covenants:

(a) As of the date hereof, the Redeveloper expects that the Minimum Improvements will include the mix of Rental Housing Units found in EXHIBIT F attached hereto. As of the date of execution of this Agreement, the Redeveloper expects that the Rental Housing Units with income restrictions will include the following:

<u>Type of Unit</u>	<u>Area Median Income</u>	<u>Number of Units</u>
Alcove	60%	2
One-Bedroom	60%	12
Two-Bedroom	60%	6

<u>Type of Unit</u>	<u>Area Median Income</u>	<u>Number of Units</u>
Alcove	80%	2
One-Bedroom	80%	10
Two-Bedroom	80%	6
Three-Bedroom	80%	2

Such restrictions shall remain in effect for the thirty (30) year period described in the Declaration. The Redeveloper shall deliver the executed Declaration to the Authority in recordable form.

(b) The Redeveloper intends to rent parking spaces to tenants of the Minimum Improvements for approximately \$100 per parking space per month initially. The Redeveloper agrees that fees related to each garage parking stall for the affordable Rental Housing Units will not exceed ten percent (10%) of the base rent permitted by the then published area median income rental rates. The Redeveloper intends to charge for other applicable fees such as pet fees and storage fees as well as separate utilities. The Redeveloper agrees that any fees or utility charges which are separate from base rent charged to Qualifying Tenants shall not differ in any way from those charged to non-Qualifying Tenants.

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

(d) The Redeveloper will promptly notify the Authority if at any time during the term of the Declaration the number of Rental Housing Units in the Minimum Improvements occupied by Qualifying Tenants (as defined in the Declaration) or held vacant and available for occupancy by Qualifying Tenants pursuant to the Declaration is less than the number required by the terms of the Declaration.

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



(f) The Authority and its representatives will have the right at all reasonable times during normal business hours while the covenants in this Section are in effect, after reasonable notice to inspect and examine all books and records of the Redeveloper and its successors and assigns relating to the covenants described in this Section and in the Declaration.

(g) Pursuant to Section 4.7, the Redeveloper must submit evidence of tenant incomes, showing that the Minimum Improvements meet the income requirements set forth in the Declaration. The Authority will review the submitted evidence related to the income restrictions required by Section 469.1761 of the TIF Act on an annual basis to determine that the TIF District remains a housing district under the TIF Act.

(h) If the Authority determines, based on the reports submitted by the Redeveloper or if the Authority receives notice from the State Department of Revenue, the State Auditor, any Tax Official or any court of competent jurisdiction that the TIF District does not qualify as a “housing district” due to action or inaction of the Redeveloper, this type of event will be deemed an Event of Default of the Redeveloper under this Agreement; provided, however, that the Authority and the City may not exercise any remedy under this Agreement so long as the determination is being contested and has not been finally adjudicated. In addition to any remedies available to the Authority and the City under Article IX hereof, the Redeveloper will indemnify, defend and hold harmless the Authority and the City for any damages or costs resulting therefrom.

Section 4.6. Transitional Unit. The Redeveloper has agreed to provide one fully furnished three bedroom unit within the Minimum Improvements that will be reserved for temporary housing for persons or families experiencing homelessness. His House Foundation, a nonprofit organized under Section 501(c)(3) of the Internal Revenue Code, has agreed to draft a master lease for the transitional unit and manage leasing the Transitional Unit. At any time that His House Foundation can no longer manage the Transitional Unit, the Authority will find another organization to manage the Transitional Unit. If His House is no longer able to manage the Transitional Unit, the Authority will seek another provider. If the Authority cannot find a new entity to manage the Transitional Unit and the Authority is unable to manage the Transitional Unit, the Authority will agree to waive the requirements of this Section 4.6 and return the unit to the control of the Redeveloper.

Section 4.7. Affordable Housing Reporting. At least annually, no later than April 1 of each year commencing on the April 1 first following the issuance of the Certificate of Completion for the Minimum Improvements, the Redeveloper shall provide a report to the Authority evidencing that the Redeveloper complied with the income affordability covenants set forth in Section 4.5 hereof during the previous calendar year. The income affordability reporting shall be on the form entitled “Tenant Income Certification” from the Minnesota Housing Finance Agency (MHFA HTC Form 14 or any similar form). The Authority may require the Redeveloper to provide additional information reasonably necessary to assess the accuracy of such certification. Unless earlier excused by the Authority, the Redeveloper shall send affordable housing reports to the Authority until the Declaration terminates.

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

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

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

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

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

(e) If the Redeveloper and property manager fail to respond to the written notice under paragraph (d) above, or at least two (2) additional Violations occur with respect to the same tenancy within the next twelve (12) month period after the date of the notice under paragraph (d) above, then the Authority may direct the Redeveloper to terminate the management agreement with the existing property manager and to replace that entity with a replacement property manager selected by the Redeveloper but approved by the Authority.

Section 4.9. Fees. The Redeveloper must pay all water and sewer hook-up fees, SAC, WAC, and REC fees, Engineering Inspection Fees and park dedication fees in accordance with applicable City policies and ordinances. Based on the size of the Minimum Improvements, it is anticipated that the Redeveloper will owe approximately \$985,000 in park dedication fees (assuming that the Minimum Improvements include 197 Rental Housing Units). The park dedication fee is calculated at a rate of \$5,000 per unit.

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## ARTICLE V

### Insurance

#### Section 5.1. Insurance.

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

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

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

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

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

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

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

(iii) Other insurance, including workers' compensation insurance respecting all employees, if any, of the Redeveloper, in an amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Redeveloper may be self-insured with respect to all or any part of its liability for workers' compensation.

(c) All insurance required in this Article V must be taken out and maintained in responsible insurance companies selected by the Redeveloper which are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Redeveloper will deposit annually with the Authority policies evidencing all the insurance, or a certificate or certificates or binders of the respective insurers stating that the insurance is in force and effect. Unless otherwise provided in this Article V each

policy must contain a provision that the insurer will not cancel nor modify it in such a way as to reduce the coverage provided below the amounts required herein without giving written notice to the Redeveloper and the Authority at least thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, the Redeveloper may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Redeveloper will deposit with the Authority a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

(d) The Redeveloper agrees to notify the Authority immediately in the case of damage exceeding \$100,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. In the event this type of damage or destruction occurs, the Redeveloper will forthwith repair, reconstruct and restore the Minimum Improvements to substantially the same or an improved condition or value as it existed prior to the event causing the damage and, to the extent necessary to accomplish the repair, reconstruction and restoration, the Redeveloper will apply the Net Proceeds of any insurance relating to the damage received by the Redeveloper to the payment or reimbursement of the costs thereof.

The Redeveloper will complete the repair, reconstruction and restoration of the Minimum Improvements, whether or not the Net Proceeds of insurance received by the Redeveloper is sufficient to pay for the same. Any Net Proceeds remaining after completion of the repairs, construction and restoration will be the property of the Redeveloper.

(e) Notwithstanding anything to the contrary contained in this Agreement, in the event of damage to the Minimum Improvements in excess of \$100,000 and the Redeveloper fails to complete any repair, reconstruction or restoration of the Minimum Improvements within twenty-four (24) months from the date of damage (or another timeline agreed to by the Redeveloper and the Authority), the Authority may, at its option, terminate the TIF Note as provided in Section 9.3(b) hereof. If the Authority terminates the TIF Note, the termination will constitute the Authority's sole remedy under this Agreement as a result of the Redeveloper's failure to repair, reconstruct or restore the Minimum Improvements. Thereafter, the Authority will have no further obligations to make any payments under the TIF Note.

(f) The Redeveloper and the Authority agree that all of the insurance provisions set forth in this Article V will terminate upon the Maturity Date.

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

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## ARTICLE VI

### Tax Increment; Taxes; Minimum Assessment Agreement

Section 6.1. Right to Collect Delinquent Taxes. The Redeveloper acknowledges that the Authority is providing substantial aid and assistance in furtherance of the redevelopment through issuance of the TIF Note. The Redeveloper understands that the Tax Increments pledged to payment of the TIF Note are derived from real estate taxes on the Redevelopment Property, which taxes must be promptly and timely paid. To that end, the Redeveloper agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Redevelopment Property and the Minimum Improvements. The Redeveloper acknowledges that this obligation creates a contractual right on behalf of the Authority to sue the Redeveloper or its successors and assigns to collect delinquent real estate taxes and any penalty or interest thereon and to pay over the same as a tax payment to the county auditor. In this type of suit, the Authority will also be entitled to recover its costs, expenses and reasonable attorney fees. Nothing in this Agreement in any way limits or prevents the Redeveloper from contesting the assessor's proposed market values for the Redevelopment Property or the Minimum Improvements, but the Redeveloper recognizes that the action may affect the amount of Available Tax Increment.

#### Section 6.2. Minimum Assessment Agreement.

(a) At the time of execution of this Agreement, the Authority and the Redeveloper shall execute the Minimum Assessment Agreement for the Redevelopment Property and Minimum Improvements. The Assessment Agreement shall specify the Minimum Market Value, notwithstanding any failure to start or complete the Minimum Improvements on the Redevelopment Property by the Maturity Date or any failure to reconstruct the Minimum Improvements after damage or destruction before the Maturity Date.

(b) Nothing in the Minimum Assessment Agreement shall limit the discretion of the Assessor to assign a market value to the Minimum Improvements or the Redevelopment Property in excess of the Minimum Market Value or prohibit the Redeveloper from seeking through the exercise of legal or administrative remedies a reduction in the market value established pursuant to subsection (a) above; provided, however, that the Redeveloper shall not seek a reduction of such market value below the Minimum Market Value set forth in the Minimum Assessment Agreement in any year so long as such Minimum Assessment Agreement shall remain in effect. The Minimum Assessment Agreement shall remain in effect until the Maturity Date; provided that, if at any time before the Maturity Date, the Minimum Assessment Agreement is found to be terminated or unenforceable by any Tax Official or court of competent jurisdiction, the Minimum Market Value described in this Section 6.2 shall remain an obligation of the Redeveloper or its successors and assigns (whether or not such value is binding on the Assessor), it being the intent of the parties that the obligation of the Redeveloper to maintain, and not seek reduction of, the Minimum Market Value specified in this Section 6.2 is an obligation under this Agreement as well as under the Minimum Assessment Agreement, and is enforceable by the Authority against the Redeveloper, its successors and assigns, in accordance with the terms of this Agreement and the Minimum Assessment Agreement. Notwithstanding anything contained in this Agreement or the Minimum Assessment Agreement to the contrary, the Redeveloper shall not be precluded from contesting the Minimum Market Value if the Minimum Improvements or the Redevelopment Property, or any substantial portion thereof, is acquired by a public entity through eminent domain prior to the Maturity Date.

Section 6.3. Reduction of Taxes. The Redeveloper agrees that prior to completion of the Minimum Improvements, it will not cause a reduction in the real property taxes paid in respect of the Redevelopment Property through: (a) willful destruction of the Redevelopment Property or any part thereof (except for any demolition required for the construction of the Minimum Improvements); or (b) willful refusal to reconstruct damaged or destroyed property pursuant to Section 5.1 hereof.

The Redeveloper also agrees that it will not, prior to the Maturity Date, apply for a deferral of property tax on the Redevelopment Property pursuant to any law, or transfer or permit transfer of the Redevelopment Property to any entity whose ownership or operation of the Redevelopment Property would result in the Redevelopment Property being exempt from real estate taxes under State law (other than any portion thereof dedicated or conveyed to the Authority in accordance with this Agreement).

The Redeveloper may, at any time following the issuance of the Certificate of Completion, seek through petition or other means to have the estimated market value for the Redevelopment Property reduced. Prior to seeking a reduction in the estimated market value, the Redeveloper must provide the Authority with written notice indicating its intention to do so. The Redeveloper acknowledges and understands that this type of action will result in less Tax Increment being disbursed by the Authority for payment of the principal of and interest on the TIF Note.

Upon receiving notice from the Redeveloper of its intentions to cause the reduction of the estimated market value of the Redevelopment Property, or otherwise learning of the Redeveloper's intentions, the Authority may suspend or reduce payments due under the TIF Note, until the actual amount of the reduction in market value is determined, whereupon the Authority will make the suspended payments less any amount that the Authority is required to repay the County as a result any retroactive reduction in market value of the Redevelopment Property. During the period that the payments are subject to suspension, the Authority will make partial payments on the TIF Note, from the amounts subject to suspension, if it determines, in its reasonable discretion, that the amount retained will be sufficient to cover any repayment which the County may require.

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

Section 6.4. Qualifications. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that upon transfer of the Redevelopment Property to another person or entity, the Redeveloper will no longer be obligated under Sections 6.1 and 6.2 hereof, unless the transfer is made in violation of the provisions of Section 8.2 hereof.

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## ARTICLE VII

### Financing

#### Section 7.1. Mortgage Financing.

(a) Before commencement of construction of the Minimum Improvements, the Redeveloper must submit to the Authority evidence of one or more commitments for financing which, together with committed equity for the construction, is sufficient for payment of the cost of the Minimum Improvements. The commitments may be submitted as short-term financing, long-term mortgage financing, a bridge loan with a long-term take-out financing commitment, mezzanine financing, or any combination of the foregoing.

(b) If the Authority finds that the financing is sufficiently committed and adequate in amount to pay the costs specified in subdivision (a) above, then the Authority will notify the Redeveloper in writing of its approval. The approval will not be unreasonably withheld and either approval or rejection will be given within ten (10) days from the date when the Authority is provided the evidence of financing. A failure by the Authority to respond to the evidence of financing will be deemed to constitute an approval hereunder. If the Authority rejects the evidence of financing as inadequate, it will do so in writing specifying the basis for the rejection. In any event the Redeveloper will submit adequate evidence of financing within ten (10) days after any rejection.

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

Section 7.3. Modification; Subordination. In order to facilitate the Redeveloper obtaining financing for the development of the Minimum Improvements, the Authority agrees to subordinate its rights under this Agreement to the Holder of any Mortgage securing construction or permanent financing or any subsequent financing, under terms and conditions reasonably acceptable to the Authority. If the Authority is required to execute any documents related to the subordination of the Authority's rights under this Agreement, such documents must be approved by the Board of the Authority.

Section 7.4. Assignment to Lender. In order to facilitate the Redeveloper obtaining financing for the development of the Minimum Improvements, the Authority agrees to consent to the Redeveloper making a collateral assignment of this Agreement to the lender or lenders securing construction or permanent financing or any subsequent financing, under terms and conditions reasonably acceptable to the Authority. If the Authority is required to execute any collateral assignment agreement, such documents must be approved by the Board of the Authority.

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## ARTICLE VIII

### Prohibitions Against Assignment and Transfer; Indemnification

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

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

(a) Except only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Redeveloper or any successor in interest to the Redevelopment Property, or any part thereof, to perform its obligations with respect to making the Minimum Improvements under this Agreement, and any other purpose authorized by this Agreement, the Redeveloper has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to the Agreement or the Redevelopment Property or any part thereof or any interest therein, or any contract or agreement to do any of the same (except a lease to a residential occupant), without the prior written approval of the Authority unless the Redeveloper remains liable and bound by this Agreement in which event the Authority's approval is not required. Any transfer of this type will be subject to the provisions of this Agreement.

(b) In the event the Redeveloper, upon transfer or assignment of the Redevelopment Property seeks to be released from its obligations under this Agreement, the Authority will be entitled to require, except as otherwise provided in this Agreement, as conditions to any release that:

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

(ii) Any proposed transferee, by instrument in writing satisfactory to the Authority and in form recordable among the land records, will, for itself and its successors and assigns, and expressly for the benefit of the Authority, have expressly assumed all of the obligations of the Redeveloper under this Agreement and agreed to be subject to all the conditions and restrictions to which the Redeveloper is subject; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Redevelopment Property, or any part thereof, will not, for whatever reason, have assumed these obligations or so agreed, and will not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Authority) deprive the Authority of any rights or remedies or controls with respect to the Redevelopment Property or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Redevelopment Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, will operate, legally or practically, to deprive or limit the Authority of or with respect to any rights or remedies on controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the Authority would have had, had there been no transfer or change.



In the absence of specific written agreement by the Authority to the contrary, no transfer or approval by the Authority thereof will be deemed to relieve the Redeveloper, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto.

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

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

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

#### Section 8.3. Release and Indemnification Covenants.

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

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

(c) The Authority and its governing body members, officers, agents, servants and employees thereof will not be liable for any damage or injury to the persons or property of the Redeveloper or its officers, agents, servants or employees or any other person who may be about the Redevelopment Property or Minimum Improvements due to any act of negligence of any person.

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

## ARTICLE IX

### Events of Default

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

- (a) Failure by the Redeveloper or the Authority to observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement.
- (b) The Redeveloper:
  - (i) files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or State law;
  - (ii) makes an assignment for benefit of its creditors;
  - (iii) admits in writing its inability to pay its debts generally as they become due; or
  - (iv) is adjudicated as bankrupt or insolvent.
- (c) Prior to the Maturity Date, the Redeveloper appeals or challenges the Minimum Market Value of the Redevelopment Property or the Minimum Improvements under this Agreement or the Minimum Assessment Agreement, except as otherwise permitted in Article VI hereof.
- (d) The Redeveloper fails to comply with the requirements of the Declaration.

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

- (a) Suspend its performance under this Agreement until it receives assurances that the defaulting party will cure its default and continue its performance under this Agreement.
- (b) For any Event of Default described in Section 9.1(b), cancel and rescind or terminate this Agreement.
- (c) Upon an Event of Default by the Redeveloper, the Authority may suspend payments under the TIF Note or terminate the TIF Note and the TIF District, subject to the provisions of Section 9.3 hereof.

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

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

(a) The Redeveloper fails to pay real estate taxes or assessments on the Redevelopment Property or any part thereof when due, and the taxes or assessments have not been paid, or provision satisfactory to the Authority made for their payment; provided that, upon the Redeveloper's failure to pay real estate taxes or assessments on the Redevelopment Property or any part thereof when due, if uncured after thirty (30) days' written notice to the Redeveloper of the failure, the Authority may only suspend payments under the TIF Note until the Redeveloper complies with said obligations; if the Redeveloper fails to comply with said obligations for a period of eighteen (18) months, the Authority may terminate the TIF Note and the TIF District;

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

(c) the Redeveloper fails to comply with the income restrictions or to deliver annual income reports as provided in Section 4.7 hereof and the Declaration; provided that, upon the Redeveloper's failure to provide annual reports, if uncured after thirty (30) days' written notice to the Redeveloper of the failure, the Authority may only suspend payments under the TIF Note until the Redeveloper delivers said reports; if the Redeveloper fails to deliver income reports for a period of six (6) months following the date the reports are due after written notice to the Redeveloper of the failure, the Authority may terminate the TIF Note and the TIF District.

Section 9.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority or the Redeveloper is intended to be exclusive of any other available remedy or remedies, but each and every remedy will be cumulative and will be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default will impair any right or power or will be construed to be a waiver thereof, but any right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it, it will not be necessary to give notice, other than the notices already required in Sections 9.2 and 9.3 hereof.

Section 9.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, the waiver will be limited to the particular breach so waived and will not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 9.6. Attorneys' Fees. Whenever any Event of Default occurs and if the Authority employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Redeveloper under this Agreement, and the Authority prevails in the action, the Redeveloper agrees that it will, within ten days of written demand by the Authority, pay to the Authority the reasonable fees of the attorneys and the other expenses so incurred by the Authority.

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## ARTICLE X

### Additional Provisions

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

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

Section 10.3. Restrictions on Use. The Redeveloper agrees that, prior to the Maturity Date, the Redeveloper, and its successors and assigns, will use the Redevelopment Property solely for the development of residential rental housing in accordance with the terms of this Agreement, and will not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Redevelopment Property or any improvements erected or to be erected thereon, or any part thereof.

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

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

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

(a) in the case of the Redeveloper, is addressed to or delivered personally to the Redeveloper at 7803 Glenroy Road, Suite 200, Bloomington, Minnesota 55439, Attention: Legal Department;

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

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

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

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

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

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

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

Section 10.12. Dates. If the final day of a period or a date of performance under this Agreement falls on a Saturday, Sunday, or legal holiday, then the final day of any such period or any such date of performance will be deemed to fall on the next day which is not a Saturday, Sunday, or legal holiday.

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

IN WITNESS WHEREOF, the Authority and the Redeveloper have caused this Contract for Private Redevelopment to be duly executed in their respective name and behalf, all as of the date first above written.

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

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

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

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by Brad Wiersum, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

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

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by Michael Funk, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

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





**EXHIBIT A**

**DESCRIPTION OF REDEVELOPMENT PROPERTY**

Lots 9, 10, 11, 12 and 13, Block 3, Boulevard Gardens, Hennepin County, Minnesota, except the South 10 feet of said Lots 9, 10, 11, 12 and 13 and except that part of said Lots 11, 12 and 13 that is designated and delineated as Parcel 10C on the Minnesota Department of Transportation Right-of-Way plat No 27-37.

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**EXHIBIT B**

**FORM OF TIF NOTE**

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

No. R-1 \$ \_\_\_\_\_

TAX INCREMENT REVENUE NOTE  
SERIES 20\_\_\_\_

Rate Date  
of Original Issue  
[5.00% or the redeveloper’s actual rate of financing, whichever is less] \_\_\_\_\_, 20\_\_

The Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”), for value received, certifies that it is indebted and hereby promises to pay to [REDEVELOPER], a \_\_\_\_\_, or registered assigns (the “Owner”), the principal sum of \$ \_\_\_\_\_ and to pay interest thereon at the rate of \_\_\_\_\_% per annum, as and to the extent set forth herein.

1. Payments. Principal and interest (the “Payments”) will be paid on August 1, 2025, and each February 1 and August 1 thereafter, to and including February 1, 2037 (the “Payment Dates”), in the amounts and from the sources set forth in Section 3 herein. Payments will be applied first to accrued interest, and then to unpaid principal.

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

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

3. Available Tax Increment. Payments on this Note are payable on each Payment Date in the amount of and solely payable from Available Tax Increment. “Available Tax Increment” means, on each Payment Date, ninety percent (90%) of the Tax Increment attributable to the Redevelopment Property and paid to the Authority by Hennepin County, Minnesota in the six (6) months preceding the Payment Date, all as the terms are defined in the Contract for Private Redevelopment, dated \_\_\_\_\_, 2023 (the “Agreement”), between the Authority and the Owner. Available Tax Increment will not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default (as defined in the Agreement) under the Agreement; provided, however, once an Event of Default

is cured, any Tax Increment previously withheld shall be deemed Available Tax Increment on the next Payment Date.

The Authority will have no obligation to pay principal of and interest on this Note on each Payment Date from any source other than Available Tax Increment, and the failure of the Authority to pay the entire amount of principal or interest on this Note on any Payment Date will not constitute a default hereunder as long as the Authority pays principal and interest hereon to the extent of Available Tax Increment. The Authority will have no obligation to pay unpaid balance of principal or accrued interest that may remain after the final Payment on February 1, 2037.

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

5. Termination. At the Authority's option, this Note will terminate and the Authority's obligation to make any payments under this Note will be discharged upon the occurrence of an Event of Default on the part of the Redeveloper as defined in Section 9.1 of the Agreement, but only if the Event of Default has not been cured in accordance with Section 9.2 of the Agreement.

6. Nature of Obligation. This Note is one of an issue in the total principal amount of \$ \_\_\_\_\_ all issued to aid in financing certain public development costs and administrative costs of a Development District undertaken by the Authority pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended, and is issued pursuant to an authorizing resolution (the "Resolution") duly adopted by the Board of Commissioners of the Authority on \_\_\_\_\_, 2023, and pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Sections 469.174 through 469.1794, as amended. This Note is a limited obligation of the Authority which is payable solely from Available Tax Increment pledged to the payment hereof under the Resolution. This Note and the interest hereon will not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the Authority. Neither the State of Minnesota, nor any political subdivision thereof will be obligated to pay the principal of or interest on this Note or other costs incident hereto except out of Available Tax Increment, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof is pledged to the payment of the principal of or interest on this Note or other costs incident hereto.

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

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

8. Registration and Transfer. This Note is issuable only as a fully registered note without coupons. As provided in the Resolution, and subject to certain limitations set forth therein, this Note is transferable upon the books of the Authority kept for that purpose at the principal office of the Community Development Director of the City of Minnetonka, Minnesota, by the Owner hereof in person or by the Owner's attorney duly authorized in writing, upon surrender of this Note together with a written instrument of transfer satisfactory to the Authority, duly executed by the Owner. Upon the transfer or exchange and the payment by the Owner of any tax, fee, or governmental charge required to be paid by the Authority with respect to the transfer or exchange, there will be issued in the name of the transferee a

new Note of the same aggregate principal amount, bearing interest at the same rate and maturing on the same dates.

This Note will not be transferred to any person other than an affiliate, or other related entity, of the Owner unless the Authority has been provided with an investment letter in a form substantially similar to the investment letter submitted by the Owner or a certificate of the transferor, in a form satisfactory to the Authority, that the transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws.

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

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

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

\_\_\_\_\_  
Executive Director

\_\_\_\_\_  
President

**REGISTRATION PROVISIONS**

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

Date of Registration

Registered Owner

Signature of Executive Director

[REDEVELOPER]  
Federal ID # \_\_\_\_\_

**EXHIBIT C**

**FORM OF INVESTMENT LETTER**

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

Date: \_\_\_\_\_, 20\_\_

Re: Tax Increment Revenue Note, Series 20\_\_, in the original aggregate principal amount of  
\$ \_\_\_\_\_

The undersigned, as owner (the “Owner”) of \$ \_\_\_\_\_ in principal amount of the  
above-captioned Note (the “Note”) pursuant to a resolution of the Authority adopted on  
\_\_\_\_\_, 2023 (the “Resolution”), hereby represents to you as follows:

1. We understand and acknowledge that the TIF Note is delivered to the Owner as of this  
date pursuant to the Resolution and the Contract for Private Redevelopment, dated \_\_\_\_\_,  
2023 (the “Contract”), between the Authority and the Owner.

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

3. We understand that the TIF Note accrues interest as provided in the TIF Note.

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

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

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

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

8. We have been informed that the TIF Note (i) is not being registered or otherwise  
qualified for sale under the “Blue Sky” laws and regulations of any state, or under federal securities laws

or regulations, (ii) will not be listed on any stock or other securities exchange, and (iii) will carry no rating from any rating service.

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

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

11. The Owner's federal tax identification number is \_\_\_\_\_.

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

**[REDEVELOPER]**

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

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## EXHIBIT D

### FORM OF DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS, dated \_\_\_\_\_, 2023 (the “Declaration”), is by [REDEVELOPER], a \_\_\_\_\_ (the “Redeveloper”), in favor of the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”).

#### RECITALS

WHEREAS, the Authority and the Redeveloper entered into that certain Contract for Private Redevelopment of even date herewith (the “Contract”); and

WHEREAS, pursuant to the Contract, the Redeveloper is obligated to cause construction of approximately 197 units of rental housing (the “Project”) on the property described in EXHIBIT A attached hereto (the “Property”), and to cause compliance with certain affordability covenants described in Section 4.5 of the Contract; and

WHEREAS, in consideration of the financial assistance provided to the Redeveloper by the Authority for the Project, Section 4.5 of the Contract requires that the Redeveloper cause to be executed an instrument in recordable form substantially reflecting the covenants set forth in Section 4.5 of the Contract; and

WHEREAS, the Redeveloper intends, declares, and covenants that the restrictive covenants set forth herein shall be and are covenants running with the Property during the Qualified Project Period (as defined herein) and binding upon all subsequent owners of the Property for such period, and are not merely personal covenants of the Redeveloper; and

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

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

1. Term of Restrictions.

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

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

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

2. Project Restrictions.

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

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

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

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

(ii) The Redeveloper shall permit during normal business hours and upon reasonable notice, any duly authorized representative of the Authority to inspect the books and records of the Redeveloper pertaining to the income of Qualifying Tenants residing in the Project.

3. Occupancy Restrictions.

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

(i) Qualifying Tenants. From the commencement of the Qualified Project Period, at least 40 of the housing units (the "Rental Housing Units") shall be occupied (or treated as occupied as provided herein) or held vacant and available for occupancy by Qualifying Tenants. Qualifying Tenants shall mean one or more occupants of a unit who are determined from time to time by the Redeveloper to have combined adjusted income that does not exceed sixty percent (60%) or eighty percent (80%) of the Minneapolis-St. Paul metropolitan statistical area (the "Metro Area") median income for the applicable calendar year, subject to the following: (1) at least 20 of the Rental Housing Units shall be occupied or held vacant and available for occupancy by Qualifying Tenants with a combined adjusted income that does not exceed sixty percent (60%) of the Metro Area median income for the applicable calendar year; and (2) at least 20 of the Rental Housing Units shall be occupied or held vacant and available for occupancy by Qualifying Tenants with a combined adjusted income that does not exceed eighty percent (80%) of the Metro Area median income for the applicable calendar year. For purposes of this definition, the occupants of a residential unit will not be deemed to be Qualifying Tenants if all the occupants of such residential unit at any time are "students," as defined in Section 151(c)(4) of the Internal Revenue Code of 1986, as amended (the "Code"), not entitled to an exemption under the Code. The determination of whether an individual or family are Qualifying Tenants shall be made at the time the tenancy commences and on an ongoing basis thereafter, determined annually. If during their tenancy a Qualifying Tenant's income exceeds one hundred forty percent (140%) of the maximum income qualifying as low or moderate income for a family of its size, the next available unit (determined in accordance with the Code and applicable regulations) (the "Next Available Unit Rule") must be leased to a Qualifying Tenant or held vacant and available for occupancy by a Qualifying Tenant. If the Next Available Unit Rule is violated, the Next Available Unit will not continue to be treated as a Qualifying Unit. The annual recertification and Next Available Unit Rule requirements of this paragraph shall not apply to a given year if,



during such year, no residential unit in the Project is occupied by a new resident whose income exceeds the applicable income limit for Qualifying Tenants.

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

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

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

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

(b) Rental Housing Units Rents. The maximum gross rent, exclusive of utilities, parking, pet, storage, and similar fees, for the Rental Housing Units occupied by Qualifying Tenants, shall be equal to or less than the maximum gross rents published by the Minnesota Housing Finance Agency for that year for Hennepin County for low-income housing tax credit projects.

(c) Section 8 Housing. During the term of this Declaration, the Redeveloper shall not adopt any policies that the Redeveloper knows or should know will prohibit or in any way exclude rental to tenants holding certificates/vouchers under Section 8 of the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq., or its successor because of such prospective tenant’s status as such a certificate/voucher holder. Additionally, the Redeveloper shall not adopt policies that the Redeveloper knows or should know will have the effect of making it difficult for tenants holding certificates/vouchers under Section 8 of the United States Housing Act of 1937, as amended, codified as

42 U.S.C. Sections 1401 et seq., or its successor, to rent units within the Minimum Improvements (for example, policies that require income of more than two times the rent to be paid for a unit).

4. Notice of Sale. In consideration for the tax increment assistance provided for the Project, the Redeveloper agrees to provide the Authority with at least ninety (90) days' notice of any proposed sale of the Minimum Improvements.

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

6. [Reserved].

7. Enforcement.

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

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

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

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

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

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

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

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

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

To the Redeveloper: [REDEVELOPER]  
7803 Glenroy Road, Suite 200  
Bloomington, MN 55439  
Attention: Legal Department

with a copy to: [REDEVELOPER'S ATTORNEY]  
[ADDRESS]  
Attention: \_\_\_\_\_

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

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

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

Drafted by:

Kennedy & Graven Chartered (JAE)  
150 South Fifth Street, Suite 700

DRAFT



This Declaration is acknowledged and consented to by:

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

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

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

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023,  
by Brad Wiersum, the President of the Economic Development Authority in and for the City of  
Minnetonka, Minnesota, on behalf of the Authority.

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

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023,  
by Michael Funk, the Executive Director of the Economic Development Authority in and for the City of  
Minnetonka, Minnesota, on behalf of the Authority.

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

EXHIBIT A  
to Declaration of Restrictive Covenants

LEGAL DESCRIPTION

Lots 9, 10, 11, 12 and 13, Block 3, Boulevard Gardens, Hennepin County, Minnesota, except the South 10 feet of said Lots 9, 10, 11, 12 and 13 and except that part of said Lots 11, 12 and 13 that is designated and delineated as Parcel 10C on the Minnesota Department of Transportation Right-of-Way plat No 27-37.

DRAFT

EXHIBIT B  
to Declaration of Restrictive Covenants

Certification of Tenant Eligibility

Project: 11816 Wayzata Boulevard

Redeveloper: [REDEVELOPER]

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

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

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

Income Computation

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

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

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



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

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

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

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

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

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

Yes \_\_\_\_\_ No \_\_\_\_\_

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

Yes \_\_\_\_\_ No \_\_\_\_\_

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

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

\_\_\_\_\_  
Spouse

FOR COMPLETION BY OWNER  
(OR ITS MANAGER) ONLY

1. Calculation of Eligible Tenant Income:

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

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

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

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

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

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

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

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

**[REDEVELOPER]**

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

EXHIBIT C  
to Declaration of Restrictive Covenants

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

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

The following information with respect to the Project located at 11816 Wayzata Boulevard, Minnetonka, Minnesota (the "Project"), is being provided by [REDEVELOPER] (the "Redeveloper") to the Economic Development Authority in and for the City of Minnetonka, Minnesota (the "Authority"), pursuant to that certain Declaration of Restrictive Covenants, dated \_\_\_\_\_, 2023 (the "Declaration"), with respect to the Project:

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

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

Alcove Units:

1 BR Units:

2 BR Units:

3 BR Units:

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

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

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

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

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

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

(G) The information provided in this “Certificate of Continuing Program Compliance” is accurate and complete, and the Redeveloper has no actual knowledge that any of the information provided herein, or in any “Certification of Tenant Eligibility” obtained from the Tenants named herein, is inaccurate or incomplete in any respect.

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

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

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

**[REDEVELOPER]**

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

DRAFT

**EXHIBIT E**

**CERTIFICATE OF COMPLETION**

The undersigned hereby certifies that [REDEVELOPER], a \_\_\_\_\_ (the "Redeveloper"), has fully complied with its obligations under Article IV of the Contract for Private Redevelopment, dated \_\_\_\_\_, 2023 (the "Agreement"), between the Economic Development Authority in and for the City of Minnetonka, Minnesota and the Redeveloper, filed on \_\_\_\_\_, 20\_\_ in the Office of the [County Recorder] [Registrar of Titles] of Hennepin County, Minnesota as Document No. \_\_\_\_\_, with respect to construction of the Minimum Improvements in accordance with Article IV of the Agreement, and that the Redeveloper is released and forever discharged from its obligations with respect to construction of the Minimum Improvements under Article IV of the Agreement.

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

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

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

COUNTY OF HENNEPIN )  
 ) SS.

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

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

This document drafted by:  
  
Kennedy & Graven, Chartered (JAE)  
150 South Fifth Street, Suite 700  
Minneapolis, Minnesota 55402

**EXHIBIT F**

**RENTAL HOUSING UNITS BY UNIT TYPE**

<b><u>Unit Type</u></b>	<b><u>Number of Units in Minimum Improvements</u></b>
Alcoves:	31 units
One Bedroom	113 units
Two Bedroom	44 units
Three Bedroom	9 units

DRAFT

**EXHIBIT G**

**FORM OF MINIMUM ASSESSMENT AGREEMENT**

**MINIMUM ASSESSMENT AGREEMENT**

**and**

**ASSESSOR'S CERTIFICATION**

**between**

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

**[REDEVELOPER],**

**and**

**CITY ASSESSOR FOR THE CITY OF MINNETONKA, MINNESOTA**

This Document was drafted by:

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



## MINIMUM ASSESSMENT AGREEMENT

THIS MINIMUM ASSESSMENT AGREEMENT, dated as of this \_\_\_\_ day of \_\_\_\_\_, 2023 (the “Minimum Assessment Agreement”), is between the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), and [REDEVELOPER], a \_\_\_\_\_, its successors and assigns (the “Owner”).

### WITNESSETH:

WHEREAS, the Authority and the Owner have entered into a Contract for Private Redevelopment of even date herewith (the “Agreement”) concerning the property legally described on EXHIBIT A attached hereto (the “Redevelopment Property”); and

WHEREAS, pursuant to the Agreement, the Owner will construct on the Redevelopment Property a mixed-income apartment complex with approximately 197 units, including underground parking and surface parking (the “Minimum Improvements”); and

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

WHEREAS, the Authority and the City Assessor for the City of Minnetonka, Minnesota have reviewed the plans for the Minimum Improvements which the Owner has agreed to construct on the Redevelopment Property pursuant to the Agreement; and

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

1. The minimum market value which shall be assessed for ad valorem tax purposes for the Redevelopment Property, together with the Minimum Improvements constructed thereon, shall not be less than \$53,700,000 on January 2, 2026 for taxes payable beginning in 2027 through the Maturity Date, notwithstanding the progress of construction by such date, and as of each January 2 thereafter until termination of this Minimum Assessment Agreement under Section 3 hereof.

2. The Minimum Market Value herein established shall be of no further force and effect and this Minimum Assessment Agreement shall terminate on the Maturity Date (as defined in the Agreement). Following an event that terminates this Minimum Assessment Agreement, upon request by the Owner, the Authority shall execute a certificate in recordable form that terminates this Minimum Assessment Agreement and provide such certificate to the Owner for recording.

3. This Minimum Assessment Agreement shall be promptly recorded by the Owner with a copy of Minnesota Statutes, Section 469.177, subdivision 8 set forth in EXHIBIT B attached hereto. The Owner shall pay all costs of recording this Minimum Assessment Agreement.

4. Neither the preambles nor the provisions of this Minimum Assessment Agreement are intended to, nor shall they be construed as, modifying the terms of the Agreement. Unless the context indicates clearly to the contrary, the terms used in this Minimum Assessment Agreement shall have the same meaning as the terms used in the Agreement.

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

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

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

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

9. Except as provided in Section 8 hereof, this Minimum Assessment Agreement may not be amended nor any of its terms modified except by a writing authorized and executed by all parties hereto.

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

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

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

IN WITNESS WHEREOF, the Authority and the Owner have executed this Minimum Assessment Agreement as of the date and year first written above.

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

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

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

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by Brad Wiersum, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

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

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by Michael Funk, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

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





EXHIBIT A  
to Minimum Assessment Agreement

LEGAL DESCRIPTION

The Redevelopment Property is legally described as follows:

Lots 9, 10, 11, 12 and 13, Block 3, Boulevard Gardens, Hennepin County, Minnesota, except the South 10 feet of said Lots 9, 10, 11, 12 and 13 and except that part of said Lots 11, 12 and 13 that is designated and delineated as Parcel 10C on the Minnesota Department of Transportation Right-of-Way plat No 27-37.

DRAFT

EXHIBIT B  
to Minimum Assessment Agreement

Section 469.177, subd. 8. Assessment Agreements. An authority may enter into a written assessment agreement with any person establishing a minimum market value of land, existing improvements, or improvements to be constructed in a district, if the property is owned or will be owned by the person. The minimum market value established by an assessment agreement may be fixed, or increase or decrease in later years from the initial minimum market value. If an agreement is fully executed before July 1 of an assessment year, the market value as provided under the agreement must be used by the county or local assessor as the taxable market value of the property for that assessment. Agreements executed on or after July 1 of an assessment year become effective for assessment purposes in the following assessment year. An assessment agreement terminates on the earliest of the date on which conditions in the assessment agreement for termination are satisfied, the Maturity Date specified in the agreement, or the date when tax increment is no longer paid to the authority under section 469.176, subdivision 1. The assessment agreement shall be presented to the county assessor, or city assessor having the powers of the county assessor, of the jurisdiction in which the tax increment financing district and the property that is the subject of the agreement is located. The assessor shall review the plans and specifications for the improvements to be constructed, review the market value previously assigned to the land upon which the improvements are to be constructed and, so long as the minimum market value contained in the assessment agreement appears, in the judgment of the assessor, to be a reasonable estimate, shall execute the following certification upon the agreement:

The undersigned assessor, being legally responsible for the assessment of the above described property, certifies that the market values assigned to the land and improvements are reasonable.

The assessment agreement shall be filed for record and recorded in the office of the county recorder or the registrar of titles of each county where the real estate or any part thereof is situated. After the agreement becomes effective for assessment purposes, the assessor shall value the property under Section 273.11, except that the market value assigned shall not be less than the minimum market value established by the assessment agreement. The assessor may assign a market value to the property in excess of the minimum market value established by the assessment agreement. The owner of the property may seek, through the exercise of administrative and legal remedies, a reduction in market value for property tax purposes, but no city assessor, county assessor, county auditor, board of review, board of equalization, commissioner of revenue, or court of this state shall grant a reduction of the market value below the minimum market value established by the assessment agreement during the term of the agreement filed of record regardless of actual market values which may result from incomplete construction of improvements, destruction, or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording an assessment agreement constitutes notice of the agreement to anyone who acquires any interest in the land or improvements that is subject to the assessment agreement, and the agreement is binding upon them.

An assessment agreement may be modified or terminated by mutual consent of the current parties to the agreement. Modification or termination of an assessment agreement must be approved by the governing body of the municipality. If the estimated market value for the property for the most recently available assessment is less than the minimum market value established by the assessment agreement for that or any later year and if bond counsel does not conclude that termination of the agreement is necessary to preserve the tax exempt status of outstanding bonds or refunding bonds to be issued, the modification or termination of the assessment agreement also must be approved by the governing bodies of the county and the school district. A document modifying or terminating an agreement, including records of the municipality, county, and school district approval, must be filed for record. The assessor's review and certification is not required if the document terminates an agreement. A change to an agreement not fully

executed before July 1 of an assessment year is not effective for assessment purposes for that assessment year. If an assessment agreement has been modified or prematurely terminated, a person may seek a reduction in market value or tax through the exercise of any administrative or legal remedy. The remedy may not provide for reduction of the market value below the minimum provided under a modified assessment agreement that remains in effect. In no event may a reduction be sought for a year other than the current taxes payable year.

DRAFT



**EXHIBIT H**

**REDEVELOPER'S PRO FORMA**

[Redeveloper's pro forma is on file with the Authority]

DRAFT

MN140-242 (JAE)  
852003v5

## Minnetonka Affordable Housing Production Summary

Name of Project	Number of Affordable Units	Number of Market Rate Units	Total Assistance (for affordable units)	Years of Affordability	Assistance per Unit, per Year	Affordability Level
<b>Doran (Marsh II)</b>	<b>40 units (20% of units)</b>	<b>157</b>	<b>\$4.6M (\$3.8M for afford. and \$800k site improv.)</b>	<b>30</b>	<b>\$3,833</b>	<b>10% at 60% AMI and 10% at 80% AMI</b>
Doran (Birke)	35 (20% of units)	175	\$4,800,000	30	\$4,571	50% AMI
Linden Street (10400 Bren Rd)	28	247	\$553,000	30	\$1,315	10% at 50% AMI
Doran (5959 Shady Oak)	54	302	\$280,000	30	\$491	5%@50%, 5%@60%, 5%@80%
Wellington Management	68	155	\$2,400,000	30	\$1,716	10%@50% AMI, 20% @80% AMI
United Properties (The Pointe )	19	167	\$400,000	30	\$701	9@ 50% AMI, 9@ 60% AMI
Dominium	482	0	\$7,809,000	30	\$540	60% AMI
Homes Within Reach (2004-2020 grant years)	59	0	\$2,981,435	99	\$510	80% AMI
The Ridge	52	0	\$1,050,000	30	\$673	60% AMI
Shady Oak Crossing	52	23	\$1,900,000	30	\$2,753	60%AMI
West Ridge Market (Crown Ridge, Boulevard Gardens, Gables, West Ridge)	185	0	\$8,514,000	30	\$1,534	<i>Crown Ridge—60% AMI Boulevard Gardens—60% AMI Gables—initially 80% AMI, now no income limit West Ridge—50% AMI</i>
Beacon Hill (apartments)	62	48	\$2,484,000	25	\$1,602	50% AMI
Ridgebury	56	163	\$3,243,000	30	\$1,930	Initially--80% AMI, Now no income limit
Glen Lake (St. Therese, Exchange)	43	119	\$4,800,000	30	\$3,721	60% AMI
Cedar Point Townhomes	9	143	\$512,000	15	\$3,792	50% AMI
Tonka on the Creek (Overlook)	20	80	\$2,283,000	30	\$3,805	50% AMI
At Home - The Chase at 9 Mile	21	106	\$2,500,000	30	\$3,968	50% AMI
Applewood Pointe	9	80	\$1,290,000	Initial Sale/Ongoing maximum %	\$4,777	80% AMI

updated 01/18/2023



**Economic Development Advisory Commission  
Item #5  
Meeting of April 27, 2023**

**Title:** 2024-2028 EIP  
**Report From:** Alisha Gray, Economic Development and Housing Manager  
**Submitted through:** Julie Wischnack, AICP, Community Development Director

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**Action Requested:**  Motion  Informational  Recommendation  Vote  
**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**

Staff will present recommendations on updates to program and economic development strategies each year ahead of the city's budget discussions.

**Recommended Action**

Review and provide feedback for the 2024-2028 Economic Improvement Program (EIP).

The schedule for approval is as follows:

- April 27 EDAC — Review the existing 2023-2027 EIP and provide feedback for 2024-2028.
- June 12 City Council Study Session — Review draft 2024-2028 EIP and provide feedback.
- July 13 EDAC — Finalize the full EIP document and make a recommendation to the city council.
- September 18 City Council meeting — Review and approve EIP.

**Strategic Profile Relatability**

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

**Financial Consideration**

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

Every year, the EDAC reviews the Economic Improvement Program (EIP). Staff developed the EIP to consolidate programming relating to economic development, housing, transportation, and development tools into one resource. The document grew out of a conversation to combine programs and strategies into one document, which allowed for a future projection of investment and potential funding sources. The document contains metrics for programming and ten-year projections for revenues to fund specific programs.

The city council will be reviewing a draft of the document at the June 12 study session, and the EDAC will review the final draft on July 13th before council adoption, which is scheduled for Sept. 18, 2023.

### **EIP Review**

The existing [2023-2027 EIP](#) is a reference for discussion to help prepare commissioners to identify any changes or priorities for the 2024-2028 document.

Components of the 2023-2027 EIP include:

- EIP Policy page (Chapter 1). Defines what funding categories the different programs will fall under and details the funding principles.
- EIP Program Pages (Chapters 2 through 7). Each of the city's existing and potential future economic development efforts has its own program page. The program page will detail the program description, purpose, goals, budget impacts, schedule, and key measures. Additionally, it will outline the funds needed to develop or sustain the program over a period of years.
- Funding Sources and Expenditure Projections Pages (Chapter 8). A series of funding sources, expenditures, and TIF district fund balance sheets are included.
- Affordable Housing Goals Page (Chapter 9). This section focuses on how the city's progress towards meeting the affordable housing goals through these programs.

Feedback from the EDAC will be incorporated into the first draft of the document, which will be reviewed by the council on June 12. The EDAC will review again on July 12 and make a final recommendation to the council for the Sept. 18, 2023 meeting.

### **Supplemental Information**

[2023-2027 EIP \(current\)](#)

[Minnetonka Strategic Profile and Dashboard](#)

Legislative Summaries

- [Omnibus housing bills summary](#)
- [League of MN Cities legislative updates](#)



**Economic Development Advisory Commission  
Item #6  
Meeting of April 27, 2023**

**Title:** Staff Report

**Report From:** Alisha Gray, EDFP, Economic Development and Housing Manager  
Rob Hanson, EDFP, Economic Development Coordinator  
Kendyl Larson, Housing Coordinator

**Submitted through:** Julie Wischnack, AICP, Community Development Director

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**Action Requested:**  Motion  Informational  Recommendation  Vote  
**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**

Staff updates on community transit, economic development, and housing matters.

**Recommended Action**

Receive the report; no formal action is required.

**Strategic Profile Relatability**

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

**Transit Updates**

*Green Line Extension (Southwest LRT)*

The 2023 Construction season is set to begin. Several long-term road closures are planned to begin in April.

- Bren Road E is expected to close for 2-3 months for road and trail construction.
- Crews continue to work on the Minnetonka-Hopkins LRT bridge.
- There is a planned lane closure on Yellow Circle Drive near the LRT Highway 62 tunnel site on April 3 for approximately eight weeks for systems work.

*Network Now*

Metro Transit is conducting a [survey](#) gathering feedback on the near-term future of the regional transit system. This effort is called Network Now. The project aims to:

- Review customer and community feedback from recent input and surveys.
- Ask about our framework for making decisions, what our region needs and values, and work together to develop our network vision.
- Review the service changes that have been made since 2020 and how those changes will be addressed.
- Establish what our transit network should be today, given changes to travel patterns since 2020.
- Confirm any facilities changes needed in our transit network.
- Prioritize services to be added as resources allow.

**Development Updates**

<b>Projects</b>	<b>Location</b>	<b>Status</b>
<b><i>Housing</i></b>		
<a href="#">The Pointe (Amira Minnetonka)</a>	801 Carlson Pkwy	Under Construction – Opening Spring 2023
<a href="#">Minnetonka Station</a>	Opus	Under Construction
<a href="#">Doran (Shady Oak)</a>	5959 Shady Oak Rd	Under Construction
<a href="#">The Townline Apartments (Wellington)</a>	10901 Red Circle Dr	Under Construction – Opening Spring 2023
<a href="#">Greystar Development</a>	10701 Bren Road	Proposed Concept
<a href="#">Marsh Run II</a>	11816 Wayzata Blvd	Proposed Concept
<a href="#">City-owned Properties</a>	Rowland/Baker	Council Update 5/1 – RFP
<b><i>Misc. Projects</i></b>		
<a href="#">Ridgedale Area Park Project</a>	Ridgedale Dr	Under Construction
<a href="#">The Marsh</a>	15000 Minnetonka Blvd	Opening in May
<b><i>Business Projects</i></b>		
Ridgedale Mall Openings <ul style="list-style-type: none"> <li>• NorthFace – Open</li> <li>• Warby Parker – Open</li> <li>• Jaxen Grey – Open</li> <li>• The Social – Inspections</li> </ul>	Ridgedale Area	

**Business Updates**

*Elevate Business / Open to Business*

The city recently formalized an agreement with Hennepin County to participate in the Elevate Business consulting platform to provide free business consulting services for Minnetonka residents and entrepreneurs. Elevate features more than 20 diverse professional business advisors and specialized consultants who can provide more than 25 hours of free consulting.

Through this agreement, Hennepin County and the city have subcontracted with Open to Business to continue serving as the first point of contact for businesses and as a business

navigator for the Elevate Business platform. This arrangement will allow businesses opportunities to collaborate with consultants that fit their needs.

*Regional Workforce Advisory Board Meeting*

Staff is participating on the Minneapolis Regional Chamber Workforce Advisory Board. The board will meet on Tuesday, May 9<sup>th</sup>, and will be meeting educators from ten school districts and two colleges. The meeting will feature highlights about their school's Career and Technical education programs.

**Thrive Newsletter**

The [Winter 2023 Issue of Thrive](#) Minnetonka was mailed at the beginning of November. This issue featured a message from Mayor Wiersum to the business community and highlighted the work of the Minnesota Black Chamber of Commerce.

Each issue is mailed to 1,208 unique addresses and is sent out electronically to 1,515 email subscribers.

*Business Workplan Update – **Bold items are recent updates.***

<b>Activity / Topic</b>	<b>Status</b>
Employer Benefit: Down Payment Assistance/Rent	Future
<b>Encourage Business Education Network Partnerships</b>	<b>Underway – Staff to participate with the MPLS Chamber workforce advisory board.</b>
Encourage Business Participation in Local High School Career Programs	Future
Technical Assistance for the Creation of Career Pathway Programs	Underway
Police/Community Development Quarterly Business Meetings	Underway
Commercial Code Compliance Loan Program	Complete
CPTED Certification for city staff	Complete
Construction Technical Assistance Marketing Program	Research
Recurring meeting with Xcel Intragovernmental Liaison Staff	Future
Neighborhood Meetings for County/DOT Road Projects	Future
Partner with MPLS Chamber to host business mixers/hiring fairs	Future
<b>Mayor's Outstanding Business Award</b>	<b>Underway – State of the City to feature Minnetonka Businesses and recognition from the Mayor</b>
Update of city business development webpages	Complete

Obtaining and maintaining up-to-date local economic data	Complete
Business Registration Form	Future
<b>Emergency Assistance Fund</b>	<b>Underway</b>
Review contract procurement procedures to encourage DBE contract awards	Underway
List culturally relevant business development centers on the website	Complete

## Housing Updates

### *His House Foundation*

On July 27, 2022, an agreement between His House Foundation and the City of Minnetonka was signed to establish a two-year pilot program to help 24 homeless Minnetonka households. The Emergency Homelessness Response Assistance Program provides temporary relief for households experiencing a housing emergency and are experiencing homelessness. The program finances casework, temporary housing, and first-month rent deposits. His House Foundation will help local homeless residents with intensive case management, temporary housing in extended-stay hotels, and assistance with long-term housing solutions.

The program officially started in September 2022, and His House Foundation has assisted 4 Minnetonka households experiencing an emergency homeless situation. Approximately \$19,780 has been used to support the four households, with roughly \$180,220 remaining in the program funds.

### *Mortgage Assistance*

HomeHelpMN is accepting applications for mortgage assistance until funds are exhausted. Homeowners with incomes at 100% AMI or under, have fallen behind on their mortgage, or have incurred other housing-related expenses are eligible for the funding. Details of the program include:

- Eligible expenses include mortgage payments, contract for deed payments, manufactured housing loans, property taxes, property insurance, homeowner or condo fees, and manufactured home lot rent.
- Homeowners may be eligible for up to \$50,000.
- Have past-due expenses in one of the eligible categories

HomeHelpMN has received applications for over 10,600 households as of April 10, 2023, with the request for funds representing approximately 92% of the available funds. Only about 71% of the funds available have been dispersed. View the [Program Dashboard](#) to get more information on applicants.



*Emergency Rental Assistance*

ICA and Minnetonka continue to offer emergency rental assistance for Minnetonka residents financially impacted by the COVID-19 pandemic in 2020. The city council approved \$300,000 in funding for the program. As of January 2023, 205 households received \$273,769.63 in direct rental assistance through the city's emergency rental assistance program. The average assistance per household was \$1,329. There is a balance of \$27,595 of assistance remaining, and the city approved and has allocated an additional \$50,000 for 2023.

State Legislative Update

There are several housing-related bills in the legislature this year, including an Omnibus Housing Bill. Staff is keeping monitoring the discussion for future funding. [The League of MN Cities](#) summary provides an overview of the proposed legislation.