13C  Public hearing related to tax increment financing for Marsh Run and update on development

Attached is correspondence received from the applicant after the packet was distributed.
Please include in an addendum for tonight.

From: McCool, Brian <bmccool@fredlaw.com>
Sent: Monday, February 25, 2019 4:10 PM
To: Brad Wiersum <bwiersum@eminnetonka.com>; Deborah Calvert <dcalvert@eminnetonka.com>; Bob Ellingson <bellingson@eminnetonka.com>; Rebecca Schack <rschack@eminnetonka.com>; Mike Happe <mhappe@eminnetonka.com>; Tim Bergstedt <tbergstedt@eminnetonka.com>
Cc: Corrine Heine <cheine@eminnetonka.com>; Eddington, Julie A. <J.Eddington@Kennedy-Graven.com>; Geralyn Barone <gbarone@eminnetonka.com>; ‘anne.behrendt@dorancompanies.com’ <anne.behrendt@dorancompanies.com>; Ryan Johnson <ryan.johnson@dorancompanies.com>; Tony Kuechle <tony.kuechle@dorancompanies.com>; Dan West (dan.west@dorancompanies.com)
Subject: Marsh Run Project

Please see attached.

Thank you.

Brian S. McCool
Fredrikson & Byron, P.A.
Suite 4000
200 South Sixth Street
Minneapolis, MN 55402-1425
bmccool@fredlaw.com
Direct Dial: 612.492.7309
Main Phone: 612.492.7000
Fax: 612.492.7077

**This is a transmission from the law firm of Fredrikson & Byron, P.A. and may contain information which is privileged, confidential, and protected by the attorney-client or attorney work product privileges. If you are not the addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this transmission in error, please destroy it and notify us immediately at our telephone number (612) 492-7000. The contact information in this transmission is only for the purpose of contacting the sender and does not constitute the signature of the sender, nor does it indicate the acceptance or agreement of the sender or any other party.**
February 25, 2019

VIA EMAIL

The Honorable Mayor Wiersum and
Members of the City Council
14600 Minnetonka Blvd.
Minnetonka, MN 55345

Re: Marsh Run Project

Dear Mayor Wiersum and Council Members Bergstedt, Calvert, Ellingson, Happe, and Schack:

Fredrikson & Byron, P.A. represents Marsh Development, LLC, which is the Manager of DC-OV Minnetonka, LLC (the "Developer"), in connection with the proposed Marsh Run multi-family housing project in the City of Minnetonka (the "Project"). We are writing concerning Item No. 13C on the agenda for tonight’s City Council meeting and Item No. 5A on the agenda for tonight’s EDA meeting, which both relate to the Development. We respectfully request that the City Council and EDA decline to accept City/EDA Staff’s recommendations with respect to each of these agenda items.

On December 17, 2018, the City Council and the EDA approved the Contract for Private Development for the Project (the “Development Contract”). The City Council resolution (No. 2018-158) and EDA resolution (No. 2018-009) approving the Development Contract expressly “authorized and directed” the Mayor and City Manager, on behalf of the City, and the EDA President and Executive Director, on behalf of the EDA, to execute and deliver the approved contract following such meeting. The resolutions also authorized City/EDA Staff to make non-material changes to the Development Contract before it was executed.

Subsequent to the December 17, 2018 meeting, the Developer and City/EDA Staff have had ongoing discussions regarding potential revisions to the approved form of the Development Contract. A significant portion of these discussions have been devoted to addressing material changes to the Development Contract that City/EDA Staff first proposed be included in the contract after the December 17 meeting. Unfortunately, through these discussions it became apparent to the Developer that the parties were not going to be able to reach agreement on the terms of a revised Development Contract because certain terms City/EDA Staff were now insisting be included in the Development Contract are unworkable for the Developer and the Project.
Because of this apparent impasse in the parties’ discussions about revisions to the Development Contract, on February 15, 2019, the Developer notified City/EDA Staff that the Developer wanted to proceed with executing the version of the Development Contract that was approved on December 17, 2018. The Developer submitted an updated version of the Development Contract to City/EDA Staff on February 15, and stated that the Developer was prepared to execute this contract immediately. A copy of the Developer’s February 15, 2019 correspondence submitted to the City/EDA Staff is enclosed for your reference. City/EDA Staff rejected the Developer’s attempt to wrap this up, and instead responded that they were “not interested” in executing the version of the contract that the Developer submitted on February 15.

Notably, the revised draft of the Development Contract that City/EDA Staff refused to have executed only contained two substantive changes from what the City Council and EDA approved on December 17, 2018. Neither of these were material. First, the name of the Developer was updated to reflect the name of the single-purpose entity that will own the Project. City/EDA Staff have not expressed any concern regarding this change.

Second, the Developer deleted from the Development Contract references to the Developer being restricted in the amount of rent it may charge tenants that are occupying the affordable units in the Project. It was not discussed or approved at the meeting on December 17, 2018, that the Project would be rent restricted — that was simply never the intent of the parties. Indeed, as the EDA’s consultant, Stacie Kvilvang, confirmed to the Developer and City/EDA Staff on November 19, 2018, this Project is only income restricted. A copy of Ms. Kvilvang’s email was included in our February 15, 2019 correspondence and is enclosed herewith. As such, the inclusion of references in the Development Contract to rent restrictions for the Project was simply an error and it would not be a material change to delete those references.

Notwithstanding the foregoing, City/EDA Staff have refused to move forward with the Developer in executing the revised form of the Development Contract that was submitted on February 15, 2019. Because the Developer believes City/EDA Staff are not justified in this refusal to execute the contract, which is a necessary step to move the Project forward, on February 19, 2019, we sent a letter to the City’s and EDA’s counsel and demanded that the City and EDA instruct Staff to keep working with the Developer on attempting to reach agreement on the form of the Development Contract. The Developer respectfully requests that the City Council and EDA decline to follow this recommendation. It is clear at this point that City/EDA Staff and the Developer are not going to break their impasse — City/EDA Staff continue to seek to add terms to the Development Contract that the Developer is unable and unwilling to accept. The Developer fails to see how punting this out further will be productive for any of the parties involved.
February 25, 2019
Page 3

In a final effort to avoid to wrap up the Development Contract, on Friday, February 22, 2018, the Developer proposed a compromise solution to City/EDA Staff. Namely, although such restriction had never been contemplated to be part of the Project, the Developer proposed that the Development Contract be modified to incorporate a restriction on the base rent that the Developer could charge for the affordable units within the Project. The Developer hoped that this compromise solution would be acceptable because, as outlined in Ms. Eddington’s memo, dated February 21, 2019, which was included in the packets for this evening’s meetings, City/EDA Staff apparently believe that the Developer needs to provide additional concessions, such as a look-back provision relating to the tax increment financing being provided for the Project, because the Project is not rent restricted (even though it has never been agreed that the Project would be rent restricted).

Disappointingly, we were notified earlier this afternoon that City/EDA Staff are unwilling to support the Developer’s proposed compromise solution. Further, no other alternative were offered or suggested, so City/EDA Staff seem to maintaining the same “take it or leave it” posture as existed prior to February 15. This only reinforces the Developer’s belief that further efforts to negotiate terms for the Development Contract will not be successful.

The Developer is excited about this Project and is eager to move it forward. However, any further delays in obtaining approval of the Development Contract will jeopardize the Developer’s financing and timeline for the Project. No further delays are necessary at this stage because the City Council and EDA have already approved the Development Contract. Accordingly, the Developer requests that the City Council and EDA both take formal action this evening to instruct City/EDA Staff to move forward with executing the Development Contract approved on December 17, 2018, as modified by the Developer on February 15, 2019.

The Developer formally requests that the foregoing correspondence and enclosures herewith be included as part of the record relating to the applications for the Project. We have copied the City Manager on this correspondence to ensure that these items are distributed as appropriate and included in such public record.
February 25, 2019

Thank you in advance for your thoughtful consideration of this matter.

Regards,

Brian S. McCool
Attorney at Law
Direct Dial: 612.492.7309
Email: bmccool@fredlaw.com

BSMDJK
Enclosures

cc: Geralyn Barone, City Manager (via email; w/ enclosures)
Corrine Heine, Esq., City Attorney (via email; w/ enclosures)
Julie Eddington, Esq., EDA Attorney (via email; w/ enclosures)
Marsh Development, LLC (via email; w/ enclosures)

66046488.1
FEBRUARY 15 CORRESPONDENCE
Julie –

As you know, on December 17, 2018, the EDA and the City Council approved the Contract for Private Development that was submitted to the EDA and City Council at that time. Notably, the EDA Resolution (No. 2018-009) and City Council Resolution (No. 2018-158) that approved the contract on December 17 both allowed for changes to be made to the contract that “do not materially change the substance thereof.”

Attached are clean and redlined versions of the approved Contract for Private Development that incorporate a limited number of non-material changes we have made to the form of the contract that was approved by the EDA and City Council on December 17. Apart from making clean-up changes to properly identify the Developer and to fill in blanks, etc., the only other changes we made were to delete references throughout the document to rent restrictions for this project. Because this project is within a housing TIF district (and is not a tax credit deal), there are no rent restrictions applicable to such project. Stacie Kvivang’s email to Ryan Johnson on November 19, 2018 (copy attached) confirmed that this is the case and was the parties’ intent. As such, the inclusion of references to rent restrictions in the draft of this agreement submitted to the EDA and City Council was an error and the deletion of such references is not “material.”

My clients are prepared to execute the attached version of the Contract for Private Development and wrap this up asap. Please confirm that City Staff concurs that these proposed changes are non-material so we can proceed to collecting signatures. If City Staff does not concur that such changes are non-material, we request that this version of the contract be placed on the EDA’s and City Council’s agendas for February 25, 2019, so that the proposed changes shown in the attached redline may be approved.

Thank you,

Brian

**This is a transmission from the law firm of Fredrikson & Byron, P.A. and may contain information which is privileged, confidential, and protected by the attorney-client or attorney work product privileges. If you are not the addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you have received this transmission in error, please destroy it and notify us immediately at our telephone number (612) 492-7000. The contact information in this transmission is only for the purpose of**
contacting the sender and does not constitute the signature of the sender, nor does it indicate the acceptance or agreement of the sender or any other party.**
In a housing TIF District the units are ONLY income restricted.
1. Rents ARE NOT restricted
2. There are NO restrictions on private payment for utilities 3. There are NO restrictions on payment for anything 4. There is no cap on rent growth

The only reporting to the city on an annual basis is on income to show 20% of the units are occupied by persons at or below 50% of the AMI.

Stacie Kvilvang | Senior Municipal Advisor
O: (651) 697-8506 | M: (612) 801-7732 | ehlers-inc.com

This e-mail and any attachments may contain information which is privileged or confidential. If you are not the intended recipient, note that any disclosure, copying, distribution or use of the contents of this message is prohibited. If you have received this e-mail in error, please destroy it and notify us immediately by return e-mail or at our telephone number, 800-552-1171. Any views or opinions presented in this e-mail are solely those of the author and may not represent the views or opinions of Ehlers Companies. To view our complete disclaimer, please visit http://www.ehlers-inc.com/terms/#email

---

Ryan-

Each project is different depending on the funding sources. Typically, I refer to MHFA for the income/rent information for the year that the project was put into service (for TIF and Tax Credit projects). The contract would require that the income and rent information is provided on an annual basis prior to disbursement of any assistance to ensure the requirements are being met. Please work with Stacie to determine the rent growth limits for those units and any utility allowances or optional upgrades (storage unit) etc.

Best,

Alisha Gray | Economic Development and Housing Manager City of Minnetonka | eminnetonka.com

14600 Minnetonka Blvd. | Minnetonka, MN 55345
Office: 952-939-8285 | agray@eminnetonka.com
Alisha,
I’m being told by Ehlers that we are non “income restricted” on our affordable rents at Marsh Run.
Is there a guideline for Minnetonka that you can provide me that identifies what we are responsible for regarding affordable rental pricing, what can/cannot be charged, and how those rents or other charges are mandated in the future?
I have been told that it’s not like a LIHTC mandate and so current rents and rent growth for those units may be different than what I’m projecting.

Ryan Johnson
612-964-3797
CONTRACT

FOR

PRIVATE DEVELOPMENT

between

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

CITY OF MINNETONKA, MINNESOTA,

and

MARSH DEVELOPMENT DC-OV MINNETONKA, LLC

Dated: _____________, 20___

Dated: February __, 2019

This document was drafted by:
KENNEDY & GRAVEN, CHARTERED (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota  55402
Telephone:  612-337-9300
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>PREAMBLE</td>
</tr>
</tbody>
</table>

## ARTICLE I
### Definitions

| Section 1.1. | Definitions | ......................................................................................................................... | 2 |

## ARTICLE II
### Representations and Warranties

| Section 2.1. | Representations by the Authority | ......................................................................................................................... | 5 |
| Section 2.2. | Representations by the City | ......................................................................................................................... | 5 |
| Section 2.3. | Representations and Warranties by the Developer | ......................................................................................................................... | 6 |

## ARTICLE III
### Tax Increment Assistance

| Section 3.1. | Status of Development Property | ......................................................................................................................... | 8 |
| Section 3.2. | Environmental Conditions | ......................................................................................................................... | 8 |
| Section 3.3. | Reimbursement of Certain Developer Costs | ......................................................................................................................... | 8 |
| Section 3.4. | Issuance of Pay-As-You-Go Note | ......................................................................................................................... | 8 |
| Section 3.5. | Payment of Administrative Costs | ......................................................................................................................... | 9 |
| Section 3.6. | Records | ......................................................................................................................... | 9 |
| Section 3.7. | Purpose of Assistance | ......................................................................................................................... | 10 |

## ARTICLE IV
### Construction and Maintenance of Minimum Improvements and Public Improvements

| Section 4.1. | Construction of Minimum Improvements | ......................................................................................................................... | 11 |
| Section 4.2. | Construction Plans | ......................................................................................................................... | 11 |
| Section 4.3. | Commencement and Completion of Construction | ......................................................................................................................... | 12 |
| Section 4.4. | Certificate of Completion | ......................................................................................................................... | 12 |
| Section 4.5. | Affordability Covenants; Qualification of the TIF District | ......................................................................................................................... | 12 |
| Section 4.6. | Affordable Housing Reporting | ......................................................................................................................... | 13 |
| Section 4.7. | Property Management Covenant | ......................................................................................................................... | 14 |
| Section 4.8. | Construction of Site Improvements | ......................................................................................................................... | 14 |
| Section 4.9 | Site Improvements | ......................................................................................................................... | 15 |
| Section 4.10 | Fees | ......................................................................................................................... | 15 |

## ARTICLE V
### Insurance

| Section 5.1. | Insurance | ......................................................................................................................... | 16 |
| Section 5.2. | Subordination | ......................................................................................................................... | 17 |
ARTICLE VI
Tax Increment; Taxes; Minimum Assessment Agreement
Section 6.1. Right to Collect Delinquent Taxes ................................................................. 18
Section 6.2. Minimum Assessment Agreement ................................................................. 18
Section 6.3. Reduction of Taxes ....................................................................................... 19
Section 6.4. Property Tax Classification ........................................................................... 19
Section 6.5. Qualifications ............................................................................................... 19

ARTICLE VII
Financing
Section 7.1. Mortgage Financing ...................................................................................... 20
Section 7.2. Authority’s Option to Cure Default on Mortgage ........................................... 20
Section 7.3. Modification; Subordination ........................................................................ 20

ARTICLE VIII
Prohibitions Against Assignment and Transfer; Indemnification
Section 8.1. Representation as to Development ............................................................... 21
Section 8.2. Prohibition Against Developer’s Transfer of Property and Assignment of Agreement ................................................................................................................. 21
Section 8.3. Release and Indemnification Covenants ....................................................... 22

ARTICLE IX
Events of Default
Section 9.1. Events of Default Defined ........................................................................... 23
Section 9.2. Remedies on Default .................................................................................... 23
Section 9.3. Termination or Suspension of TIF Note ....................................................... 24
Section 9.4. No Remedy Exclusive ................................................................................ 24
Section 9.5. No Additional Waiver Implied by One Waiver ........................................... 24
Section 9.6. Attorneys’ Fees ......................................................................................... 24

ARTICLE X
Additional Provisions
Section 10.1. Conflict of Interests; Authority Representatives Not Individually Liable ................................................................. 25
Section 10.2. Equal Employment Opportunity ................................................................ 25
Section 10.3. Restrictions on Use ................................................................................... 25
Section 10.4. Provisions Not Merged With Deed ............................................................. 25
Section 10.5. Titles of Articles and Sections .................................................................... 25
Section 10.6. Notices and Demands ................................................................................ 25
Section 10.7. Counterparts ............................................................................................. 26
Section 10.8. Recording .................................................................................................. 26
Section 10.9. Amendment .............................................................................................. 26
Section 10.10. Authority and City Approvals................................................................. 26
Section 10.11. Termination ............................................................................................. 26

TESTIMONIUM ............................................................................................................. S-1
SIGNATURES ............................................................................................................. S-1
<table>
<thead>
<tr>
<th>EXHIBIT</th>
<th>DESCRIPTION</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>DESCRIPTION OF DEVELOPMENT PROPERTY</td>
<td>A-1</td>
</tr>
<tr>
<td>B</td>
<td>FORM OF TIF NOTE</td>
<td>B-1</td>
</tr>
<tr>
<td>C</td>
<td>FORM OF INVESTMENT LETTER</td>
<td>C-1</td>
</tr>
<tr>
<td>D</td>
<td>FORM OF DECLARATION OF RESTRICTIVE COVENANTS</td>
<td>D-1</td>
</tr>
<tr>
<td>E</td>
<td>CERTIFICATE OF COMPLETION</td>
<td>E-1</td>
</tr>
<tr>
<td>F</td>
<td>RENTAL HOUSING UNITS BY UNIT TYPE</td>
<td>F-1</td>
</tr>
<tr>
<td>G</td>
<td>FORM OF MINIMUM ASSESSMENT AGREEMENT</td>
<td>G-1</td>
</tr>
<tr>
<td>H</td>
<td>SITE IMPROVEMENTS IMPROVEMENTS</td>
<td>H-1</td>
</tr>
</tbody>
</table>
CONTRACT FOR PRIVATE DEVELOPMENT

THIS CONTRACT FOR PRIVATE DEVELOPMENT, made as of the ________ day of ____________, 20____ (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”), the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “City”), and MARSH DEVELOPMENTDC-OV_MINNETONKA, LLC, a Minnesota limited liability company (the “Developer”).

WITNESSETH:

WHEREAS, the Authority was created pursuant to Minnesota Statutes, Sections 469.090 through 469.1082, as amended, and was authorized to transact business and exercise its powers by a resolution of the City Council of the City; 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 redevelopment project known as Redevelopment ProjectDevelopment District No. _____1 (hereinafter referred to as the “Redevelopment Project”) in the City, pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended; and

WHEREAS, the City and the Authority have established within the Redevelopment Project the ____________________Marsh Run Tax Increment Financing District (the “TIF District”) and adopted a financing plan (the “TIF Plan”) for the TIF District in order to facilitate development of certain property in the Redevelopment Project 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 Developer proposes to acquire certain property described in EXHIBIT A attached hereto (the “Development Property”) within the TIF District and construct an apartment complex with approximately 175 units, with twenty percent (20%) of the apartment units made affordable to families at or below fifty percent (50%) of the area median income, including underground and structured first-floor parking (the “Minimum Improvements”); and

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

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

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

Definitions

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

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

“Agreement” means this Contract for Private Development, 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 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 Development 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.

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

“Certificate of Completion” means the certification provided to the Developer 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 Developer on the Development 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.

“Developer” means Marsh Development DC-OV Minnetonka, LLC, a Minnesota limited liability company, or its permitted successors and assigns.
“Development Property” means the real property described in EXHIBIT A attached hereto.

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

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

“Holder” means the owner of a Mortgage.

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

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

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

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

“Minimum Improvements” means the development on the Development Property, which will include (i) a varied three- to six-story, approximately 175-unit apartment building subject to the affordability requirements and bedroom configurations described in Section 4.5 hereof, and (ii) approximately 236 underground parking spaces and approximately 7 first-floor parking spaces.

“Minimum Market Value” means a minimum market value for real estate tax purposes of $12,863,500 with respect to the Development Property and Minimum Improvements as of January 2, 2020 for taxes payable beginning in 2021 and $36,750,000 on January 2, 2021 for taxes payable beginning in 2022 through the Maturity Date.

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

“Public Improvements” means the improvements to be constructed by the Developer described in Section 4.7 hereof.

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

“Redevelopment Project” means the Redevelopment Project Development District No. 1.

“Redevelopment Project Area” means the real property located within the boundaries of the Redevelopment Project.

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

“Site Improvements” means the improvements described in EXHIBIT H.
“State” means the State of Minnesota.

“Tax Credit Law” means Section 42 of the Internal Revenue Code of 1986, as amended.

“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 ______________Tax Increment Financing District.

“Tax Increment Plan” or “TIF Plan” means the _____________ Tax Increment Financing Plan for Tax Increment Financing District, as approved _____________, 2019, 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 Developer pursuant to Section 3.4 hereof, and any obligation issued to refund the TIF Note.

“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. Unavoidable Delays shall not include delays experienced by the Developer 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.

(The remainder of this page is intentionally left blank.)
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 Redevelopment 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 by the City. The City makes the following representations:

(a) The City is a home rule city duly organized and existing under its Charter and the laws of the State. Under the provisions of the TIF Act, the City has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The City 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.

(c) The execution, delivery and performance of this Agreement and of any other documents or instruments required pursuant to this Agreement by the City, 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 City is a party or by which the City 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 City or its officers or its resolutions.

(d) There is not pending, nor to the best of the City’s knowledge is there threatened, any suit, action or proceeding against the City 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 City to perform its obligations hereunder, or the validity or enforcement of this Agreement.

Section 2.3. Representations and Warranties by the Developer. The Developer represents and warrants that:

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

(b) The Developer will construct, operate and maintain the Minimum Improvements in accordance with the terms of this Agreement, the Redevelopment 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).

(c) The Developer has received no notice or communication from any local, State or federal official that the activities of the Developer, the City or the Authority in the Redevelopment Project Area may be or will be in violation of any environmental law or regulation. The Developer is aware of no facts the existence of which would cause it to be in violation of or give any person a valid claim under any local, State or federal environmental law, regulation or review procedure.

(d) The Developer will construct the Minimum Improvements in accordance with all local, State or federal laws or regulations.

(e) The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, State and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed. The Developer did not obtain a building permit for any portion of the Minimum Improvements before ________________February 11, 2019, 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 Developer 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 Developer hereunder would not occur but for the tax increment financing assistance and other assistance being provided by the Authority hereunder.

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

(i) The Developer represents that no more than twenty percent (20%) of the square footage of the Minimum Improvements will consist of commercial, retail or other nonresidential use. For purposes of this covenant, the underground parking constructed for use by the tenants of the Minimum Improvements constitutes a residential use.

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

Tax Increment Assistance

Section 3.1. Status of Development Property. The Developer has entered into a purchase contract for the acquisition of the Development Property. Neither the Authority nor the City has any obligation to acquire any portion of the Development Property.

Section 3.2. Environmental Conditions.

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

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

Section 3.3. Reimbursement of Certain Developer 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 Public Improvements financially feasible, it is necessary to reduce the cost of acquisition of the Development 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 Development Property, it is in the best interest of the Authority for the Developer to acquire the Development Property directly. The Authority will reimburse the Developer for a portion of the actual cost of acquiring the Development Property in accordance with the terms of this Agreement.

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

(a) In consideration of the Developer constructing the Minimum Improvements and the Public 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 Developer, the Authority will issue and the Developer will purchase the TIF Note in the principal amount of $4,800,000 in substantially the form set forth in the EXHIBIT B attached hereto. The Authority and the Developer agree that the consideration from the Developer for the purchase of the TIF Note will consist of the Developer’s payment of the costs of land acquisition, site preparation, remediation, and any public improvements that are constructed within the TIF District and are eligible for reimbursement with tax increment, which are incurred by the Developer in at least the principal amount of the TIF Note.
The Authority shall issue the TIF Note on the date of closing on the financing for the Minimum Improvements upon satisfaction of the following conditions:

(i) the Developer has submitted Construction Plans to the Authority and obtained approval for the Construction Plans by the Authority;

(ii) the Developer has submitted and obtained Authority approval of financing in accordance with Section 7.1 hereof;

(iii) the Developer 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; and

(iv) the Developer has executed and delivered to the Authority the Minimum Assessment Agreement substantially in the form attached hereto as EXHIBIT G.

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

(c) The Authority acknowledges that the Developer may assign the TIF Note to a lender that provides the financing for the acquisition of the Development 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.

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

Section 3.6. Records. The Authority and its representatives will have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and records of Developer relating to the Minimum Improvements and the costs for which the Developer has been reimbursed with Tax Increment.
Section 3.7. **Purpose of Assistance.** The parties agree and understand that the purpose of the Authority’s financial assistance to the Developer 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.

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

Construction and Maintenance of Minimum Improvements and Public Improvements

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

Section 4.2. Construction Plans.

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

(b) If the Developer desires to make any Material Change in the Construction Plans after their approval by the Authority, the Developer must submit the proposed change to the Authority for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2 with respect to the previously approved Construction Plans, the Authority will approve the proposed change and notify the Developer in writing of its approval. Any change in the Construction Plans will, in any event, be deemed approved by the Authority unless rejected, in whole or in part, by written notice by the Authority to the Developer, setting forth in detail the reasons therefor. Any rejection
must be made within twenty (20) days after receipt of the notice of such change. The Authority’s approval of any Material Change in the Construction Plans will not be unreasonably withheld.

Section 4.3. Commencement and Completion of Construction.

(a) Subject to Unavoidable Delays, the Developer must commence construction of the Project by June 30, 2019 and will substantially complete construction of the Minimum Improvements by June 30, 2021. Construction is considered to be commenced upon the beginning of physical improvements on the site.

(b) All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Development Property must be in substantial conformity with the Construction Plans as submitted by the Developer and approved by the Authority. The Developer agrees for itself, its successors and assigns, and every successor in interest to the Development Property, or any part thereof, that the Developer, and its successors and assigns, will promptly begin and diligently prosecute to completion the development of the Development Property through the construction of the Minimum Improvements thereon, and that 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 Developer 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 Developer 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 Developer with a Certificate of Completion in substantially the form attached as EXHIBIT E. The certification by the Authority will be a conclusive determination of satisfaction and termination of the agreements and covenants in the Agreement and in any deed with respect to the obligations of the Developer, and its successors and assigns, to construct the Minimum Improvements and the dates for the completion thereof. The certification and the determination will not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any Holder of a Mortgage, or any insurer of a Mortgage, securing money loaned to finance the Minimum Improvements, or any part thereof.

(b) The Certificate of Completion provided for in this Section 4.4 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 Development 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 thirty (30) days after written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Authority, for the Developer to take or perform in order to obtain the certification.

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

Section 4.5. Affordability Covenants; Qualification of the TIF District. Developer agrees that the Minimum Improvements are subject to the following affordability covenants:

(a) As of the date hereof, the Developer expects that the Minimum Improvements will include the mix of Rental Housing Units found in EXHIBIT F attached hereto. The Developer will cause
at least twenty percent (20%) of the Rental Housing Units in the Minimum Improvements to be affordable to families at or below fifty percent (50%) of the area median income and to be rent-restricted in accordance with the Tax Credit Law, all as further described in the Declaration attached hereto as EXHIBIT D. Notwithstanding anything to the contrary in the Tax Credit Law (TIF Act), the restrictions will remain in effect for the thirty (30) year period described in the Declaration. On the date of execution of this Agreement, the Developer will deliver the executed Declaration to the Authority in recordable form.

(b) The Developer agrees to distribute the affordable Rental Housing Units among the different Rental Housing Unit types by setting aside twenty percent (20%) of each unit type or a larger unit as affordable units. For example, based on the mix of Rental Housing Units found in EXHIBIT F attached hereto, of the twenty percent (20%) of the Rental Housing Units that are income and rent-restricted, at least 7 Rental Housing Units must be alcove studio units; at least 21 Rental Housing Units must be one-bedroom units or a larger unit; and at least 7 Rental Housing Units must be two-bedroom units or a larger unit.

(c) The Developer intends to rent parking spaces in the underground garage to tenants of the Minimum Improvements for approximately $____ to $____ per parking space per month. The tenants in the income and rent-restricted Rental Housing Units will not be required to rent underground parking spaces; however, if such tenants do rent an underground parking space, the Developer will provide a ten percent (10%) discount of the rental charge for the underground parking space.

(d) During the term of the Declaration, the Developer shall not adopt any policies specifically prohibiting or excluding 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.

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

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

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

(h) Pursuant to Section 4.6, the Developer must submit evidence of Project tenant incomes and rents, showing that the Minimum Improvements meet the income and rent-requirements set forth in the Declaration. The City 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.

(i) If the Authority determines, based on the reports submitted by the Developer or if the Authority or the City 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 Developer, this type of event will be deemed an Event of Default of the Developer 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 Developer will indemnify, defend and hold harmless the Authority and the City for any damages or costs resulting therefrom.

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

Section 4.7. Property Management Covenant. The Developer shall cause its property manager to operate the Minimum Improvements in accordance with the policies described in this Section. For any documented disorderly violations by a tenant or guest, including but not limited to prostitution, gang-related activity, intimidating or assaultive behavior (not including domestic), unlawful discharge of firearms, illegal activity, or drug complaints (each a “Violation”), the Developer agrees and understands that the following procedures shall apply:

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

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

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

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

(e) If the Developer and property manager fail to respond to the written notice under paragraph (d) above, or at least two (2) additional Violations occur within the next twelve (12) month period after the date of the notice under paragraph (d) above, then the Authority may direct the Developer to terminate the management agreement with the existing property manager and to replace that entity with a replacement property manager selected by the Developer but approved by the Authority.
Section 4.8. Construction of Site Improvements.

(a) In consideration of the assistance provided to the Developer by the Authority, subject to the limitations set forth in this Sections 4.8 and Section 4.9, the Developer agrees that it will install or cause to be installed, in conformance with City standards and specifications, the Site Improvements on the Development Property or adjacent to the Development Property, as applicable, as described in EXHIBIT H attached hereto.

(b) When constructing the Site Improvements, the Developer is responsible for compliance with all conditions outlined in Resolution No. 2018_____160 and Resolution No. 2018_____161.

(c) Building permits for the Site Improvements will be issued only in conformance with conditions in Resolution 2018——160. Unless otherwise authorized by the City in writing, no certificates of occupancy will be provided until the following is completed:

(i) Site grading is completed and approved by the City;
(ii) All public utilities have been tested, approved, and accepted by the City Engineer;
(iii) All curbing is installed and backfilled;
(iv) The first lift of bituminous is in place and approved by the City; and
(v) All required fees have been paid in full.

Upon completion of the Site Improvements, the City shall issue a certificate of occupancy. The receipt of a certificate of occupancy for one or more of the Site Improvements shall confirm that the conditions referred to in this Section 4.8(c) have been met for the applicable Site Improvement unless so stated in the certificate of occupancy.

Section 4.9. Site Improvements Construction Addendum. Prior to the issuance of any permits, the City and the Developer shall enter into a mutually agreeable Construction Addendum containing (i) timeframes for the construction of the Site Improvements; (ii) the security to be provided by the Developer to the City to ensure the quality and completion of the Site Improvements; (iii) the methods of acceptance related to the Site Improvements; (iv) the process by which the security provided to the City may be reduced; (v) the process to obtain a certificate of occupancy from the City; and (vi) final design details.

Section 4.10. Fees. The Developer must pay all water and sewer hook-up fees, SAC, WAC, and REC fees, Engineering Inspection Fees and park dedication fees in accordance with applicable City policies and ordinances. Based on the size of the Minimum Improvements, it is anticipated that the Developer will owe approximately $875,000 in park dedication fees. The park dedication fee is calculated at a rate of $5,000 per unit.
ARTICLE V

Insurance

Section 5.1. Insurance.

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

(i) Builder’s risk insurance, written on the so-called “Builder’s Risk – Completed Value Basis,” in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called “all risk” form of policy. The interest of the Authority 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; and

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

(b) Upon completion of construction of the Minimum Improvements and prior to the Maturity Date, the Developer 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 City and the Authority as an additional insured.

(iii) Other insurance, including workers’ compensation insurance respecting all employees, if any, of the Developer, in an amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Developer 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 of this Agreement must be taken out and maintained in responsible insurance companies selected by the Developer which are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Developer 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 of this Agreement 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 Developer and the Authority at least thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, the Developer may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Developer 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 Developer 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 Developer 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 Developer will apply the Net Proceeds of any insurance relating to the damage received by the Developer to the payment or reimbursement of the costs thereof.

The Developer will complete the repair, reconstruction and restoration of the Minimum Improvements, whether or not the Net Proceeds of insurance received by the Developer 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 Developer.

(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 Developer fails to complete any repair, reconstruction or restoration of the Minimum Improvements within eighteen months from the date of damage, the Authority may, at its option, terminate the TIF Note as provided in Section 9.3(b) hereof. If the Authority terminates the TIF Note, the termination will constitute the Authority’s sole remedy under this Agreement as a result of the Developer’s failure to repair, reconstruct or restore the Minimum Improvements. Thereafter, the Authority will have no further obligations to make any payments under the TIF Note.

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

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

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

Tax Increment; Taxes; Minimum Assessment Agreement

Section 6.1. Right to Collect Delinquent Taxes. The Developer acknowledges that the Authority is providing substantial aid and assistance in furtherance of the redevelopment through issuance of the TIF Note. The Developer understands that the Tax Increments pledged to payment of the TIF Note are derived from real estate taxes on the Development Property, which taxes must be promptly and timely paid. To that end, the Developer agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Development Property and the Minimum Improvements. The Developer acknowledges that this obligation creates a contractual right on behalf of the Authority to sue the Developer or its successors and assigns to collect delinquent real estate taxes and any penalty or interest thereon and to pay over the same as a tax payment to the county auditor. In 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 Developer from contesting the assessor’s proposed market values for the Development Property or the Minimum Improvements, but the Developer 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 Developer shall execute the Minimum Assessment Agreement for the Development 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 Development 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 Development Property in excess of the Assessor’s Minimum Market Value or prohibit the Developer from seeking through the exercise of legal or administrative remedies a reduction in any increase in the market value established pursuant to subsection (a) above; provided, however, that the Developer shall not seek a reduction of such market value below the Assessor’s 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 Developer 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 Developer 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 Developer, its successors and assigns, in accordance with the terms of this Agreement and the Minimum Assessment Agreement. Notwithstanding anything contained in this Agreement to the contrary, the Developer shall not be precluded from contesting the Minimum Market Value if the Minimum Improvements or the Development 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 Developer 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 Development
Property through: (a) willful destruction of the Development Property or any part thereof; or (b) willful refusal to reconstruct damaged or destroyed property pursuant to Section 5.1 hereof.

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

The Developer 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 Development Property reduced. Prior to seeking a reduction in the estimated market value, the Developer must provide the Authority with written notice indicating its intention to do so. The Developer 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 Developer of its intention to cause the reduction of the estimated market value of the Development Property, or otherwise learning of the Developer’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 Development Property. During the period that the payments are subject to suspension, the Authority may make partial payments on the TIF Note, from the amounts subject to suspension, 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. Property Tax Classification. The amount of Tax Increment to be derived from the TIF District during the term of the TIF District was estimated by the City and the Authority’s financial advisor based on a “class 4a” property classification rate for rental properties under Minnesota Statutes, Section 273.13, subdivision 25(a). The Developer acknowledges and understands that if it changes the property tax classification of all or any portion of the Project to a “class 4d” property classification rate for affordable rental properties under Minnesota Statutes, Section 273.13, the amount of Available Tax Increment derived from the TIF District and used to pay the principal of and interest on the TIF Note will decrease.

Section 6.5. Qualifications. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that upon transfer of the Development Property to another person or entity, the Developer 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.
ARTICLE VII

Financing

Section 7.1. Mortgage Financing.

(a) Before commencement of construction of the Minimum Improvements, the Developer 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 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, 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 Developer in writing of its approval. The approval will not be unreasonably withheld and either approval or rejection will be given within twenty (20) days from the date when the Authority is provided the evidence of financing. A failure by the Authority to respond to 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 Developer 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 Developer’s funds is provided through mortgage financing, and there occurs a default under any Mortgage authorized pursuant to Article VII hereof, the Developer will cause the Authority to receive copies of any notice of default received by the Developer 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 Developer within the cure periods as are available to the Developer under the Mortgage documents.

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

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

Prohibitions Against Assignment and Transfer; Indemnification

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

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

(a) Except only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Development 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 Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to the Agreement or the Development 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 City and the Authority unless the Developer remains liable and bound by this Agreement in which event the City and 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 Developer, upon transfer or assignment of the Development Property seeks to be released from its obligations under this Agreement, the City and 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 City and the Authority, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer.

(ii) Any proposed transferee, by instrument in writing satisfactory to the City and 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 City and the Authority, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property, or any part thereof, will not, for whatever reason, have assumed these obligations or so agreed, and will not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City and the Authority) deprive the City and the Authority of any rights or remedies or controls with respect to the Development Property or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Development Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, will operate, legally or practically, to deprive or limit the City or 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 City or the
Authority would have had, had there been no transfer or change. In the absence of specific written agreement by the City and the Authority to the contrary, no transfer or approval by the City and the Authority thereof will be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto.

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

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

After issuance of the Certificate of Completion for the Minimum Improvements, the Developer may transfer or assign the Development Property or the Developer’s interest in this Agreement if it obtains the prior written consent of the City and the Authority (which consent will not be unreasonably withheld) and the transferee or assignee is bound by all the Developer’s obligations hereunder. The Developer must submit to the City and the Authority written evidence of any transfer or assignment, including the transferee or assignee’s express assumption of the Developer’s obligations under this Agreement. If the Developer fails to provide evidence of transfer and assumption, the Developer will remain bound by all its obligations under this Agreement.

Section 8.3. Release and Indemnification Covenants.

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

(b) Except for any willful misrepresentation or any willful or wanton misconduct of the following named parties, the Developer agrees to protect and defend the Authority, the City and their respective 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, the City and their respective 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 Developer or its officers, agents, servants or employees or any other person who may be about the Development Property or Minimum Improvements due to any act of negligence of any person.

(d) All covenants, stipulations, promises, agreements and obligations of the Authority and the City contained herein will be deemed to be the covenants, stipulations, promises, agreements and obligations of the Authority and the City and not of any governing body member, officer, agent, servant or employee of the Authority or the City 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 30 days, the defaulting party does not, within the thirty (30) day period, provide assurances reasonably satisfactory to the party providing notice of default that the event will be cured and will be cured as soon as reasonably possible:

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

(b) The Developer:

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

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

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

(iv) is adjudicated as bankrupt or insolvent; or

(c) Prior to the Maturity Date, the Developer appeals or challenges the Minimum Market Value of the Development Property or the Minimum Improvements under this Agreement or the Minimum Assessment Agreement, except as otherwise permitted in Article VI hereof.

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

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

(b) Cancel and rescind or terminate this Agreement.

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

(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 and the City may exercise its rights under Section 9.2(c) hereof only for the following Events of Default:

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

(b) the Developer fails to comply with Developer’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 Developer’s failure to comply with Developer’s obligations under Sections 4.1 or 5.1(c) hereof, if uncured after thirty days’ written notice to the Developer of the failure, the Authority may only suspend payments under the TIF Note until the Developer complies with said obligations. If the Developer fails to comply with said obligations for a period of eighteen months, the Authority may terminate the TIF Note and the TIF District; or

(c) the Developer fails to comply with the rent and income restrictions or to deliver annual rent and income reports as provided in Section 4.5 hereof and the Declaration; provided that, upon the Developer’s failure to provide annual reports, if uncured after thirty days’ written notice to the Developer of the failure, the Authority may only suspend payments under the TIF Note until the Developer delivers said reports. If the Developer fails to deliver rent and income reports for a period of six months following the date the reports are due after written notice to the Developer 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, the City or the Developer 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 City or 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 Developer under this Agreement, and the City or the Authority prevails in the action, the Developer agrees that it will, within ten days of written demand by the City or the Authority, pay to the City or the Authority the reasonable fees of the attorneys and the other expenses so incurred by the City and the Authority.
ARTICLE X

Additional Provisions

Section 10.1. Conflict of Interests; Authority Representatives Not Individually Liable. The Authority and the Developer, to the best of their respective knowledge, represent and agree that no member, 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 Developer, 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 Developer or successor or on any obligations under the terms of the Agreement.

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

Section 10.3. Restrictions on Use. The Developer agrees that, prior to the Maturity Date, the Developer, and its successors and assigns, will use the Development 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 Development Property or any improvements erected or to be erected thereon, or any part thereof.

Section 10.4. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to or will be merged by reason of any deed transferring any interest in the Development 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 sufficient given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(a) in the case of the Developer, is addressed to or delivered personally to the Developer at Marsh Development, LLC, [ADDRESS], DC-OV Minnetonka, LLC, 7803 Glenroy Road, Suite 200, Bloomington, Minnesota 55439, Attention: Legal Department, with a copy to Brian S. McCool, Fredrikson & Byron P.A., 200 South Sixth Street, Suite 4000, Minneapolis, Minnesota 55402;

(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;

(c) in the case of the City, is addressed to or delivered personally to the City at 14600
Minnetonka Boulevard, Minnetonka, Minnesota 55345-1502, Attention: City Manager;

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 Hennepin County recorder. The Developer must pay all costs for recording.

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

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

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

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, the Authority has caused this Agreement to be duly executed in its name and behalf and its seal to be hereunto duly affixed, the City has caused this Agreement to be duly executed in its name and behalf and its seal to be hereunto duly affixed, and the Developer has caused this Agreement to be duly executed in its 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    )
COUNTY OF HENNEPIN   ) SS.

The foregoing instrument was acknowledged before me this _____ day of ______________, 20___, 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    )
COUNTY OF HENNEPIN   ) SS.

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

__________________________________________
Notary Public
CITY OF MINNETONKA, MINNESOTA

By ________________________________
Its Mayor

By ________________________________
Its City Manager

STATE OF MINNESOTA  )
COUNTY OF HENNEPIN   ) SS.

The foregoing instrument was acknowledged before me this _____ day of _____________, 20___,
by Brad Wiersum, the Mayor of the City of Minnetonka, Minnesota, on behalf of the City.

______________________________
Notary Public

STATE OF MINNESOTA  )
COUNTY OF HENNEPIN   ) SS.

The foregoing instrument was acknowledged before me this _____ day of _____________, 20___,
by Geralyn Barone, the City Manager of the City of Minnetonka, Minnesota, on behalf of the City.

______________________________
Notary Public

(Signature Page of City to the Contract for Private Development)
MARSH DEVELOPMENT DC-OV MINNETONKA, LLC

By: Marsh Development, LLC
Its: Manager

By
Its

STATE OF MINNESOTA )
 ) SS.
COUNTY OF __________ )

The foregoing instrument was acknowledged before me this _____ day of _______________, 20___, by ________________________, the ____________________________President of Marsh Development, LLC, a Minnesota limited liability company, the Manager of DC-OV Minnetonka, LLC, a Minnesota limited liability company, on behalf of the Developer DC-OV Minnetonka, LLC.

________________________________________
Notary Public

(Signature Page of Developer to the Contract for Private Development)
EXHIBIT A

DESCRIPTION OF DEVELOPMENT PROPERTY

[Insert legal description – PIDs are 02-117-22-13-0062 and 02-117-22-13-0050]
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 of Original Issue

[5.00% or the developer’s actual rate of financing, whichever is less] __________

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 Marsh Development DC-OV Minnetonka, LLC, a Minnesota limited liability company, 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, 2021, and each February 1 and August 1 thereafter to and including February 1, 2038 (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 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,” which will mean, on each Payment Date, ninety percent (90%) of the Tax Increment attributable to the Development Property (defined in the Agreement) 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 Development, dated ____________, 20___ (the “Agreement”), between the Authority and Owner. Available Tax Increment will not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default under the Agreement.
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, 2038.

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 Developer 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 Redevelopment Project undertaken by the Authority pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended, and is issued pursuant to an authorizing resolution (the “Resolution”) duly adopted by the Authority on December 17, 2018, 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 DeveloperOwner 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, 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.

<table>
<thead>
<tr>
<th>Date of Registration</th>
<th>Registered Owner</th>
<th>Signature of Executive Director</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Marsh Development DC-OV Minnetonka, LLC 7803 Glenroy Road Suite 200 Bloomington, MN 55439</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Federal ID #_____________________</td>
<td>_______________________________</td>
</tr>
</tbody>
</table>
EXHIBIT C

FORM OF INVESTMENT LETTER

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

Date: ___________________________

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

The undersigned, as Owner of $_______ in principal amount of the above-captioned Note (the “Note”) pursuant to a resolution of the Authority adopted on December 17, 2018 (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 Development, dated ______________, 20___ (the “Contract”), between the Authority, the City of Minnetonka, Minnesota, 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 acknowledge and understand that, if at any time, the Owner fails to meet the housing income restrictions required for a housing tax increment district as set forth in Minnesota Statutes, Section 469.174, subdivision 11 and Section 469.1761, and therefore, the tax increment district will no longer qualify as a housing tax increment district, no further payments will be made under the TIF Note.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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

12. The Owner’s federal tax identification number is ____________.

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

MARSH DEVELOPMENT DC-OV MINNETONKA, LLC

By: Marsh Development, LLC
Its: Manager

By ________________________________
Its ________________________________
EXHIBIT D
FORM OF DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this “Declaration”) dated as of ______________, 20___, by MARSH DEVELOPMENT DC-OV MINNETONKA, LLC, a Minnesota limited liability company (the “Developer”), 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 entered into that certain Contract for Private Development, dated ______________, 20___, filed ______________, 20____ in the Office of the Registrar of Titles for Hennepin County as Document No. ___________ (the “Contract”), between the Authority, the City of Minnetonka, and the Developer; and

WHEREAS, pursuant to the Contract, the Developer is obligated to cause construction of 175 housing units of rental housing on the property described in EXHIBIT A attached hereto (the “Property”), and to cause compliance with certain affordability covenants described in Section 4.5 of the Contract; and

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

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

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

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

1. Term of Restrictions.

(a) Occupancy and Rental Restrictions. The term of the Occupancy Restrictions set forth in Section 3 hereof and the Rental Restrictions set forth in Section 4 hereof shall commence at the end of the first taxable year of the credit period for the Property under the Tax Credit Law date the Project is placed in service. The period from commencement to termination is the “Qualified Project Period.”

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

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

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

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

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

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

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

3. **Occupancy Restrictions.**

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

(i) **Qualifying Tenants.** From the commencement of the Qualified Project Period, at least twenty percent (20%) (i.e., 35) 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 those persons and families who shall be determined from time to time by the Developer to have combined adjusted income that does not exceed fifty percent (50%) of the Minneapolis-St. Paul metropolitan statistical area (the “Metro Area”) median income for the applicable calendar year. For purposes of this definition, the occupants of a residential unit shall not be deemed to be Qualifying Tenants if all the occupants of such residential unit at any time are “students,” as defined in Section 151(c)(4) of the Internal Revenue Code of 1986, as amended (the “Code”), not entitled to an exemption under the Code. The determination of whether an individual or family is of low or moderate income shall be made at the time the tenancy commences and on an ongoing basis thereafter, determined at least annually. If during their tenancy a Qualifying Tenant’s income exceeds one hundred forty percent (140%) of the maximum income qualifying as low or moderate income for a family of its size, the next available unit (determined in accordance with the Code and applicable regulations) (the “Next Available Unit Rule”) must be leased to a Qualifying Tenant or held vacant and available for occupancy by a Qualifying Tenant. If the Next Available Unit Rule is violated, the 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 Low Income Tenants.

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

(iii) **Lease.** The form of lease to be utilized by the Developer in renting any 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 Developer covenants and agrees that during the term of this Declaration, it will prepare and submit to the Authority on or before January 31 of each year, a certificate substantially in the form of EXHIBIT C hereto, executed by the Developer, (a) identifying the tenancies and the dates of occupancy (or vacancy) for all Qualifying Tenants in the Project, including the percentage of the dwelling units of the Project 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 Developer was not otherwise in default under this Declaration during such year.

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

(b) **Section 8 Housing.** During the term of this Declaration, the Developer shall not adopt any policies specifically prohibiting or excluding 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.

4. **Rental Restrictions.** The Developer represents, warrants and covenants that the maximum gross rent for all units occupied by Qualifying Tenants shall not exceed thirty percent (30%) of the fifty percent (50%) income limitation, all in accordance with the Tax Credit Law.

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

6. **[Intentionally omitted.]**

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

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

(c) The Developer acknowledges that the primary purpose for requiring compliance by the Developer with the restrictions provided in this Declaration is to ensure compliance of the property with the housing affordability covenants set forth in Section 4.5 of the Contract, and by reason thereof, the Developer, in consideration for assistance provided by the Authority under the Contract that makes possible the construction of the Minimum Improvements (as defined in the Contract) 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 Developer of its obligations under this Declaration in a state court of competent jurisdiction. The Developer hereby further specifically acknowledges that the Authority cannot be adequately compensated by monetary damages in the event of any default hereunder.

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

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

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

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

142. 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 Developer and the Authority may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, or other communications shall be sent. The initial addresses for notices and other communications are as follows:

To the Authority: Economic Development Authority in and for the City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, MN 55345
Attention: Community Development Director
1210. 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.

1311. Attorneys’ Fees. In case any action at law or in equity, including an action for declaratory relief, is brought against the Developer to enforce the provisions of this Declaration, the Developer agrees to pay the reasonable attorneys’ fees and other reasonable expenses paid or incurred by the Authority in connection with such action.

1412. Declaration Binding. This Declaration and the covenants contained herein shall run with the real property comprising the Project and shall bind the Developer 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.

15. Relationship to Tax Credit Law Requirements. Notwithstanding anything to the contrary, during any period while at least 35 units in the Property are subject to income and rent limitations under the Tax Credit Law, evidence of compliance with such Tax Credit Law requirements filed with the Authority at least annually will satisfy any requirements otherwise imposed under this Declaration. During any portion of the Qualified Project Period as defined herein when the Tax Credit Law income and rent restrictions do not apply to the Property, this Declaration controls.

Drafted by:

Kennedy & Graven Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55406
IN WITNESS WHEREOF, the Developer has caused this Declaration of Restrictive Covenants to be signed by its respective duly authorized representatives, as of the day and year first written above.

MARSH DEVELOPMENT DC-OV MINNETONKA, LLC

By: Marsh Development, LLC
Its: Manager

By ________________________________
Its ________________________________

STATE OF MINNESOTA )
 ) ss.
COUNTY OF ____________ )

The foregoing instrument was acknowledged before me this _____ day of ____________, 20___, by ________________________, the ______ President of Marsh Development, LLC, a Minnesota limited liability company, the Manager of DC-OV Minnetonka, LLC, a Minnesota limited liability company, on behalf of the Developer DC-OV Minnetonka, LLC.

______________________________
Notary Public
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 )
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____ day of _____________, 20___, by ________________________, 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 )
COUNTY OF HENNEPIN )

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
EXHIBIT A

to Declaration of Restrictive Covenants

Legal Description

[Insert legal description – PIDs are 02-117-22-13-0062 and 02-117-22-13-0050]
EXHIBIT B

to Declaration of Restrictive Covenants

Certification of Tenant Eligibility

Project: _________________ Minnetonka Boulevard

Developer: Marsh Development DC-OV Minnetonka, LLC

Unit Type: ______ Alcove Studio ______ 1 BR _____ 2 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:

<table>
<thead>
<tr>
<th>Name of Members of Household</th>
<th>Relationship To Head of Household</th>
<th>Age</th>
<th>Place of Employment</th>
</tr>
</thead>
<tbody>
<tr>
<td>_______________ _____________ ___ _________________</td>
<td>___________________________</td>
<td>__</td>
<td>___________________</td>
</tr>
<tr>
<td>_______________ _____________ ___ _________________</td>
<td>___________________________</td>
<td>__</td>
<td>___________________</td>
</tr>
<tr>
<td>_______________ _____________ ___ _________________</td>
<td>___________________________</td>
<td>__</td>
<td>___________________</td>
</tr>
</tbody>
</table>

Income Computation

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

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

(b) excluding casual, sporadic or irregular gifts; amounts which are specifically for or in reimbursement of medical expenses; lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen’s compensation), capital gains and settlement for personal or property losses; amounts of educational scholarships paid directly to the student or the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and
equipment, but in either case only to the extent used for such purposes; special pay to a serviceman head of a family who is away from home and exposed to hostile fire; relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; foster child care payments; the value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charged for the allotments; and payments received pursuant to participation in ACTION volunteer programs, is as follows: $____________.

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

   (a) the total value of all such assets owned by all such persons: $____________;
   (b) the amount of income expected to be derived from such assets in the 12 month period commencing this date: $____________; and
   (c) the amount of such income which is included in income listed in item 2: $__________.

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

   Yes ________________   No ________________

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

   Yes ________________   No ________________
THE UNDERSIGNED HEREBY CERTIFY THAT THE INFORMATION SET FORTH ABOVE IS TRUE AND CORRECT. THE UNDERSIGNED ACKNOWLEDGE THAT THE LEASE FOR THE UNIT TO BE OCCUPIED BY THE UNDERSIGNED WILL BE CANCELLED UPON 10 DAYS WRITTEN NOTICE IF ANY OF THE INFORMATION ABOVE IS NOT TRUE AND CORRECT.

__________________________________________
Head of Household

__________________________________________
Spouse
FOR COMPLETION BY OWNER
(OR ITS MANAGER) ONLY

1. Calculation of Eligible Tenant Income:
   (a) Enter amount entered for entire household in 2 above: $__________
   (b) If the amount entered in 3(a) above is greater than $5,000, enter the greater of
       (i) the amount entered in 3(b) less the amount entered in 3(c) or (ii) 10% of the amount entered in
       3(a): $__________
   (c) TOTAL ELIGIBLE INCOME (Line 1(a) plus Line 1(b)): $__________

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

3. Rent:
   (a) The rent for the unit is $________________
   (b) The amount entered in 3(a) is less than or equal to the maximum rent permitted
       under the Declaration.

4. Number of apartment unit assigned: ___________.

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

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

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

DC-OV MINNETONKA, LLC
By: Marsh Development, LLC,
a Minnesota limited liability company
Its: Manager

By ____________________________
Its ____________________________
EXHIBIT C

to Declaration of Restrictive Covenants

Certificate of
Continuing Program Compliance

Date: _______________________.

The following information with respect to the Project located at ___________________, Minnetonka, Minnesota (the “Project”), is being provided by Marsh Development DC-0V Minnetonka, LLC (the “Developer”) to the Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”), pursuant to that certain Declaration of Restrictive Covenants, dated ________, 20___ (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 Studio Units:

1 BR Units:

2 BR Units:

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

<table>
<thead>
<tr>
<th>Unit Number</th>
<th>Previous Designation of Unit (if any)</th>
<th>Replacing Unit Number</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
(D) The following residential units are considered to be occupied by Qualifying Tenants based on the information set forth below:

<table>
<thead>
<tr>
<th>Unit Number</th>
<th>Name of Tenant</th>
<th>Number of Persons Residing in the Unit</th>
<th>Number of Bedrooms</th>
<th>Total Adjusted Gross Income</th>
<th>Date of Initial Occupancy</th>
<th>Rent</th>
</tr>
</thead>
</table>
(E) The Developer has obtained a “Certification of Tenant Eligibility,” in the form provided as EXHIBIT B to the Declaration, from each Tenant named in (D) above, and each such Certificate is being maintained by the Developer in its records with respect to the Project. Attached hereto is the most recent “Certification of Tenant Eligibility” for each Tenant named in (D) above who signed such a Certification since ______________, _____, the date on which the last “Certificate of Continuing Program Compliance” was filed with the Authority by the Developer.

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

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

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

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

(J) The rental levels for each Qualifying Tenant comply with the maximum permitted under the Declaration.
IN WITNESS WHEREOF, I have hereunto affixed my signature, on behalf of the Developer, on ________________. 20__.

**DC-OV MINNETONKA, LLC**

**By:** Marsh Development, LLC;

*a Minnesota limited liability company*

**Its:** Manager

By ________________________________
Its ________________________________
EXHIBIT E

CERTIFICATE OF COMPLETION

The undersigned hereby certifies that Marsh Development DC-OV Minnetonka, LLC (the "Developer"), has fully complied with its obligations under Articles III and IV of that document titled “Contract for Private Development,” dated ____________, 20___ (the “Agreement”), between the Economic Development Authority in and for the City of Minnetonka, Minnesota, the City of Minnetonka, Minnesota, and the Developer, with respect to construction of the Minimum Improvements in accordance with Article IV of the Agreement, and that the Developer is released and forever discharged from its obligations with respect to construction of the Minimum Improvements under Articles III and IV of the Agreement.

Dated: ________________, 20__.

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 ________________, 20___, by ________________, 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 ________________, 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)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN  55402
**EXHIBIT F**

**RENTAL HOUSING UNITS BY UNIT TYPE**

<table>
<thead>
<tr>
<th>Unit Type</th>
<th>Number of Units in Minimum Improvements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcove Studios:</td>
<td>28 units</td>
</tr>
<tr>
<td>One Bedroom</td>
<td>102 units</td>
</tr>
<tr>
<td>Two Bedroom</td>
<td>35 units</td>
</tr>
</tbody>
</table>
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,

MARSH DEVELOPMENT DC-OV MINNETONKA, LLC,

and

CITY ASSESSOR FOR THE CITY OF MINNETONKA, MINNESOTA

This Document was drafted by:

KENNEDY & GRAVEN, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300
THIS MINIMUM ASSESSMENT AGREEMENT, dated as of this ___ day of ______________, 20___ (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 MARSH DEVELOPMENT DC-OV MINNETONKA, LLC, a Minnesota limited liability company, its successors and assigns (the “Owner”).

WITNESSETH:

WHEREAS, the Authority and the Owner have entered into a Contract for Private Development, dated ______________, 20____ (the “Agreement”), concerning the property legally described on EXHIBIT A attached hereto (the “Development Property”); and

WHEREAS, pursuant to the Agreement, the Owner will construct on the Development Property an apartment complex with approximately 175 units, with twenty percent (20%) of the apartment units made affordable to families at or below fifty percent (50%) of the area median income, including underground and structured first-floor parking (the “Minimum Improvements”); and

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

WHEREAS, the Authority and the City Assessor for the City of Minnetonka, Minnesota have reviewed the plans for the Minimum Improvements which the Owner has agreed to construct on the Development 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 Development Property, together with the Minimum Improvements constructed thereon, shall not be less than $12,863,500 as of January 2, 2020, notwithstanding the progress of construction by such date, and as of each January 2 thereafter until January 1, 2021.

2. The minimum market value which shall be assessed for ad valorem tax purposes for the Development Property, together with the Minimum Improvements constructed thereon, shall not be less than $36,750,000 as of January 2, 2021, for taxes payable beginning in 2022, 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.

3. The Minimum Market Value herein established shall be of no further force and effect and this Minimum Assessment Agreement shall terminate on the Maturity Date. The Maturity Date has the meaning given to it under the Agreement.

4. 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.

5. 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.

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

7. 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.

8. 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.

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

10. 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.

11. 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.

12. This Minimum Assessment Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.
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 ______________, 20___, 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 ______________, 20___, by Geralyn Barone, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

________________________________________
Notary Public
MARSH DEVELOPMENT DC-OV MINNETONKA, LLC

By: Marsh Development, LLC
Its: Manager

By ________________________________
Its ________________________________

STATE OF MINNESOTA   )
) SS.
COUNTY OF __________  )

The foregoing instrument was acknowledged before me this _____ day of ____________, 20___, by _____________________________, the __________________________President of Marsh Development, LLC, a Minnesota limited liability company, the Manager of DC-OV Minnetonka, LLC, a Minnesota limited liability company, on behalf of the Developer DC-OV Minnetonka, LLC.

_______________________________
Notary Public

(Signature Page of Owner to Minimum Assessment Agreement)
CERTIFICATION BY ASSESSOR

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

City Assessor for Minnetonka, Minnesota

STATE OF MINNESOTA   )
COUNTY OF HENNEPIN  )

The foregoing instrument was acknowledged before me this _____ day of __________, 20____, by __________________________, the City Assessor, City of Minnetonka, Hennepin County, Minnesota.

Notary Public
EXHIBIT A

to Minimum Assessment Agreement

The Development Property is legally described as follows:

[Insert legal description – PIDs are 02-117-22-13-0062 and 02-117-22-13-0050]
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.
EXHIBIT H

SITE IMPROVEMENTS

The following improvements are the Site Improvements required under this Agreement:

- Surveying and staking;
- Surface improvements, including but not limited to streets, curbs, sidewalks and trails;
- Water main;
- Sanitary sewer;
- Storm sewer and stormwater management facilities;
- Lot and block monuments;
- Gas, electric, telephone and cable lines;
- Site grading;
- Landscaping;
- Street lighting; and
- Street signs; and

__________________
<table>
<thead>
<tr>
<th>Summary report:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Litera® Change-Pro for Word 10.4.0.0 Document comparison done on</td>
<td>2/15/2019 4:46:51 PM</td>
</tr>
<tr>
<td><strong>Style name:</strong></td>
<td>Default Style</td>
</tr>
<tr>
<td><strong>Intelligent Table Comparison:</strong></td>
<td>Active</td>
</tr>
<tr>
<td><strong>Original DMS:</strong></td>
<td>iw://WORKSITE/FB1/65964639/1</td>
</tr>
<tr>
<td><strong>Modified DMS:</strong></td>
<td>iw://WORKSITE/FB1/65964639/3</td>
</tr>
<tr>
<td><strong>Changes:</strong></td>
<td></td>
</tr>
<tr>
<td>Add</td>
<td>89</td>
</tr>
<tr>
<td>Delete</td>
<td>102</td>
</tr>
<tr>
<td>Move From</td>
<td>0</td>
</tr>
<tr>
<td>Move To</td>
<td>0</td>
</tr>
<tr>
<td>Table Insert</td>
<td>0</td>
</tr>
<tr>
<td>Table Delete</td>
<td>0</td>
</tr>
<tr>
<td>Table moves to</td>
<td>0</td>
</tr>
<tr>
<td>Table moves from</td>
<td>0</td>
</tr>
<tr>
<td>Embedded Graphics (Visio, ChemDraw, Images etc.)</td>
<td>0</td>
</tr>
<tr>
<td>Embedded Excel</td>
<td>0</td>
</tr>
<tr>
<td>Format changes</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total Changes:</strong></td>
<td>191</td>
</tr>
</tbody>
</table>
CONTRACT

FOR

PRIVATE DEVELOPMENT

between

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

CITY OF MINNETONKA, MINNESOTA,

and

DC-OV MINNETONKA, LLC

Dated: February __, 2019

This document was drafted by:
KENNEDY & GRAVEN, CHARTERED (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota 55402
Telephone: 612-337-9300
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>PREAMBLE</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td><strong>ARTICLE I</strong></td>
<td>Definitions</td>
<td>2</td>
</tr>
<tr>
<td>Section 1.1</td>
<td>Definitions</td>
<td>2</td>
</tr>
<tr>
<td><strong>ARTICLE II</strong></td>
<td>Representations and Warranties</td>
<td>5</td>
</tr>
<tr>
<td>Section 2.1</td>
<td>Representations by the Authority</td>
<td>5</td>
</tr>
<tr>
<td>Section 2.2</td>
<td>Representations by the City</td>
<td>5</td>
</tr>
<tr>
<td>Section 2.3</td>
<td>Representations and Warranties by the Developer</td>
<td>6</td>
</tr>
<tr>
<td><strong>ARTICLE III</strong></td>
<td>Tax Increment Assistance</td>
<td>8</td>
</tr>
<tr>
<td>Section 3.1</td>
<td>Status of Development Property</td>
<td>8</td>
</tr>
<tr>
<td>Section 3.2</td>
<td>Environmental Conditions</td>
<td>8</td>
</tr>
<tr>
<td>Section 3.3</td>
<td>Reimbursement of Certain Developer Costs</td>
<td>8</td>
</tr>
<tr>
<td>Section 3.4</td>
<td>Issuance of Pay-As-You-Go Note</td>
<td>8</td>
</tr>
<tr>
<td>Section 3.5</td>
<td>Payment of Administrative Costs</td>
<td>9</td>
</tr>
<tr>
<td>Section 3.6</td>
<td>Records</td>
<td>9</td>
</tr>
<tr>
<td>Section 3.7</td>
<td>Purpose of Assistance</td>
<td>10</td>
</tr>
<tr>
<td><strong>ARTICLE IV</strong></td>
<td>Construction and Maintenance of Minimum Improvements and Public Improvements</td>
<td>11</td>
</tr>
<tr>
<td>Section 4.1</td>
<td>Construction of Minimum Improvements</td>
<td>11</td>
</tr>
<tr>
<td>Section 4.2</td>
<td>Construction Plans</td>
<td>11</td>
</tr>
<tr>
<td>Section 4.3</td>
<td>Commencement and Completion of Construction</td>
<td>12</td>
</tr>
<tr>
<td>Section 4.4</td>
<td>Certificate of Completion</td>
<td>12</td>
</tr>
<tr>
<td>Section 4.5</td>
<td>Affordability Covenants; Qualification of the TIF District</td>
<td>12</td>
</tr>
<tr>
<td>Section 4.6</td>
<td>Affordable Housing Reporting</td>
<td>13</td>
</tr>
<tr>
<td>Section 4.7</td>
<td>Property Management Covenant</td>
<td>14</td>
</tr>
<tr>
<td>Section 4.8</td>
<td>Construction of Site Improvements</td>
<td>14</td>
</tr>
<tr>
<td>Section 4.9</td>
<td>Site Improvements</td>
<td>15</td>
</tr>
<tr>
<td>Section 4.10</td>
<td>Fees</td>
<td>15</td>
</tr>
<tr>
<td><strong>ARTICLE V</strong></td>
<td>Insurance</td>
<td>16</td>
</tr>
<tr>
<td>Section 5.1</td>
<td>Insurance</td>
<td>16</td>
</tr>
<tr>
<td>Section 5.2</td>
<td>Subordination</td>
<td>17</td>
</tr>
</tbody>
</table>
ARTICLE VI
Tax Increment; Taxes; Minimum Assessment Agreement

Section 6.1. Right to Collect Delinquent Taxes ................................................................. 18
Section 6.2. Minimum Assessment Agreement ............................................................... 18
Section 6.3. Reduction of Taxes .................................................................................... 19
Section 6.4. Property Tax Classification ........................................................................ 19
Section 6.5. Qualifications ........................................................................................... 19

ARTICLE VII
Financing

Section 7.1. Mortgage Financing .................................................................................. 20
Section 7.2. Authority’s Option to Cure Default on Mortgage ........................................ 20
Section 7.3. Modification; Subordination ....................................................................... 20

ARTICLE VIII
Prohibitions Against Assignment and Transfer; Indemnification

Section 8.1. Representation as to Development ............................................................. 21
Section 8.2. Prohibition Against Developer’s Transfer of Property and Assignment of Agreement ......................................................................................................................... 21
Section 8.3. Release and Indemnification Covenants ...................................................... 22

ARTICLE IX
Events of Default

Section 9.1. Events of Default Defined .......................................................................... 23
Section 9.2. Remedies on Default ................................................................................ 23
Section 9.3. Termination or Suspension of TIF Note ....................................................... 24
Section 9.4. No Remedy Exclusive ............................................................................... 24
Section 9.5. No Additional Waiver Implied by One Waiver ........................................ 24
Section 9.6. Attorneys’ Fees ......................................................................................... 24

ARTICLE X
Additional Provisions

Section 10.1. Conflict of Interests; Authority Representatives Not Individually Liable ... 25
Section 10.2. Equal Employment Opportunity ............................................................... 25
Section 10.3. Restrictions on Use ................................................................................ 25
Section 10.4. Provisions Not Merged With Deed ............................................................ 25
Section 10.5. Titles of Articles and Sections ................................................................. 25
Section 10.6. Notices and Demands ............................................................................. 25
Section 10.7. Counterparts .......................................................................................... 26
Section 10.8. Recording ............................................................................................... 26
Section 10.9. Amendment ............................................................................................ 26
Section 10.10. Authority and City Approvals ................................................................. 26
Section 10.11. Termination .......................................................................................... 26

TESTIMONIUM ........................................................................................................... S-1
SIGNATURES ............................................................................................................. S-1
THIS CONTRACT FOR PRIVATE DEVELOPMENT, made as of the ______ day of February, 2019 (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”), the CITY OF MINNETONKA, MINNESOTA, a home rule city, municipal corporation, and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the “City”), and DC-OV MINNETONKA, LLC, a Minnesota limited liability company (the “Developer”).

WITNESSETH:

WHEREAS, the Authority was created pursuant to Minnesota Statutes, Sections 469.090 through 469.1082, as amended, and was authorized to transact business and exercise its powers by a resolution of the City Council of the City; 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 redevelopment project known as Development District No. 1 (hereinafter referred to as the “Redevelopment Project”) in the City, pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended; and

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

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

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

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

“Agreement” means this Contract for Private Development, 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 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 Development 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.

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

“Certificate of Completion” means the certification provided to the Developer 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 Developer on the Development 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.

“Developer” means DC-OV Minnetonka, LLC, a Minnesota limited liability company, or its permitted successors and assigns.
“Development Property” means the real property described in EXHIBIT A attached hereto.

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

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

“Holder” means the owner of a Mortgage.

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

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

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

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

“Minimum Improvements” means the development on the Development Property, which will include (i) a varied three- to six-story, approximately 175-unit apartment building subject to the affordability requirements and bedroom configurations described in Section 4.5 hereof, and (ii) approximately 236 underground parking spaces and approximately 7 first-floor parking spaces.

“Minimum Market Value” means a minimum market value for real estate tax purposes of $12,863,500 with respect to the Development Property and Minimum Improvements as of January 2, 2020 for taxes payable beginning in 2021 and $36,750,000 on January 2, 2021 for taxes payable beginning in 2022 through the Maturity Date.

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

“Public Improvements” means the improvements to be constructed by the Developer described in Section 4.7 hereof.

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

“Redevelopment Project” means the Development District No 1.

“Redevelopment Project Area” means the real property located within the boundaries of the Redevelopment Project.

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

“Site Improvements” means the improvements described in EXHIBIT H.
“State” means the State of Minnesota.

“Tax Credit Law” means Section 42 of the Internal Revenue Code of 1986, as amended.

“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 ______________Tax Increment Financing District.

“Tax Increment Plan” or “TIF Plan” means the _____________ Tax Increment Financing Plan for Tax Increment Financing District, as approved _____________, 2019, 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 Developer pursuant to Section 3.4 hereof, and any obligation issued to refund the TIF Note.

“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. Unavoidable Delays shall not include delays experienced by the Developer 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.

(The remainder of this page is intentionally left blank.)
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 Redevelopment 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 by the City. The City makes the following representations:

(a) The City is a home rule city duly organized and existing under its Charter and the laws of the State. Under the provisions of the TIF Act, the City has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The City 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.

(c) The execution, delivery and performance of this Agreement and of any other documents or instruments required pursuant to this Agreement by the City, 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 City is a party or by which the City 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 City or its officers or its resolutions.

(d) There is not pending, nor to the best of the City’s knowledge is there threatened, any suit, action or proceeding against the City 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 City to perform its obligations hereunder, or the validity or enforcement of this Agreement.

Section 2.3. Representations and Warranties by the Developer. The Developer represents and warrants that:

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

(b) The Developer will construct, operate and maintain the Minimum Improvements in accordance with the terms of this Agreement, the Redevelopment 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).

(c) The Developer has received no notice or communication from any local, State or federal official that the activities of the Developer, the City or the Authority in the Redevelopment Project Area may be or will be in violation of any environmental law or regulation. The Developer is aware of no facts the existence of which would cause it to be in violation of or give any person a valid claim under any local, State or federal environmental law, regulation or review procedure.

(d) The Developer will construct the Minimum Improvements in accordance with all local, State or federal laws or regulations.

(e) The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, State and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed. The Developer did not obtain a building permit for any portion of the Minimum Improvements before February 11, 2019, 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 Developer 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 Developer hereunder would not occur but for the tax increment financing assistance and other assistance being provided by the Authority hereunder.

(h) The Developer must promptly advise the City and the Authority in writing of all litigation or claims affecting any part of the Minimum Improvements and all written complaints and charges made by any governmental authority materially affecting the Minimum Improvements or materially affecting Developer or its business which may delay or require changes in construction of the Minimum Improvements.
(i) The Developer represents that no more than twenty percent (20%) of the square footage of the Minimum Improvements will consist of commercial, retail or other nonresidential use. For purposes of this covenant, the underground parking constructed for use by the tenants of the Minimum Improvements constitutes a residential use.

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

Tax Increment Assistance

Section 3.1. Status of Development Property. The Developer has entered into a purchase contract for the acquisition of the Development Property. Neither the Authority nor the City has any obligation to acquire any portion of the Development Property.

Section 3.2. Environmental Conditions.

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

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

Section 3.3. Reimbursement of Certain Developer 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 Public Improvements financially feasible, it is necessary to reduce the cost of acquisition of the Development 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 Development Property, it is in the best interest of the Authority for the Developer to acquire the Development Property directly. The Authority will reimburse the Developer for a portion of the actual cost of acquiring the Development Property in accordance with the terms of this Agreement.

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

(a) In consideration of the Developer constructing the Minimum Improvements and the Public 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 Developer, the Authority will issue and the Developer will purchase the TIF Note in the principal amount of $4,800,000 in substantially the form set forth in the EXHIBIT B attached hereto. The Authority and the Developer agree that the consideration from the Developer for the purchase of the TIF Note will consist of the Developer’s payment of the costs of land acquisition, site preparation, remediation, and any public improvements that are constructed within the TIF District and are eligible for reimbursement with tax increment, which are incurred by the Developer in at least the principal amount of the TIF Note.
The Authority shall issue the TIF Note on the date of closing on the financing for the Minimum Improvements upon satisfaction of the following conditions:

(i) the Developer has submitted Construction Plans to the Authority and obtained approval for the Construction Plans by the Authority;

(ii) the Developer has submitted and obtained Authority approval of financing in accordance with Section 7.1 hereof;

(iii) the Developer 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; and

(iv) the Developer has executed and delivered to the Authority the Minimum Assessment Agreement substantially in the form attached hereto as EXHIBIT G.

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

(c) The Authority acknowledges that the Developer may assign the TIF Note to a lender that provides the financing for the acquisition of the Development 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.

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

Section 3.6. Records. The Authority and its representatives will have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and records of Developer relating to the Minimum Improvements and the costs for which the Developer has been reimbursed with Tax Increment.
Section 3.7. **Purpose of Assistance.** The parties agree and understand that the purpose of the Authority’s financial assistance to the Developer 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.

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

Construction and Maintenance of Minimum Improvements and Public Improvements

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

Section 4.2. Construction Plans.

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

(b) If the Developer desires to make any Material Change in the Construction Plans after their approval by the Authority, the Developer must submit the proposed change to the Authority for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2 with respect to the previously approved Construction Plans, the Authority will approve the proposed change and notify the Developer in writing of its approval. Any change in the Construction Plans will, in any event, be deemed approved by the Authority unless rejected, in whole or in part, by written notice by the Authority to the Developer, setting forth in detail the reasons therefor. Any rejection
must be made within twenty (20) days after receipt of the notice of such change. The Authority’s approval of any Material Change in the Construction Plans will not be unreasonably withheld.

Section 4.3. Commencement and Completion of Construction.

(a) Subject to Unavoidable Delays, the Developer must commence construction of the Project by June 30, 2019 and will substantially complete construction of the Minimum Improvements by June 30, 2021. Construction is considered to be commenced upon the beginning of physical improvements on the site.

(b) All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Development Property must be in substantial conformity with the Construction Plans as submitted by the Developer and approved by the Authority. The Developer agrees for itself, its successors and assigns, and every successor in interest to the Development Property, or any part thereof, that the Developer, and its successors and assigns, will promptly begin and diligently prosecute to completion the development of the Development Property through the construction of the Minimum Improvements thereon, and that 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 Developer 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 Developer 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 Developer with a Certificate of Completion in substantially the form attached as EXHIBIT E. The certification by the Authority will be a conclusive determination of satisfaction and termination of the agreements and covenants in the Agreement and in any deed with respect to the obligations of the Developer, and its successors and assigns, to construct the Minimum Improvements and the dates for the completion thereof. The certification and the determination will not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any Holder of a Mortgage, or any insurer of a Mortgage, securing money loaned to finance the Minimum Improvements, or any part thereof.

(b) The Certificate of Completion provided for in this Section 4.4 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 Development 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 thirty (30) days after written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Authority, for the Developer to take or perform in order to obtain the certification.

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

Section 4.5. Affordability Covenants; Qualification of the TIF District. Developer agrees that the Minimum Improvements are subject to the following affordability covenants:

(a) As of the date hereof, the Developer expects that the Minimum Improvements will include the mix of Rental Housing Units found in EXHIBIT F attached hereto. The Developer will cause
at least twenty percent (20%) of the Rental Housing Units in the Minimum Improvements to be affordable to families at or below fifty percent (50%) of the area median income, all as further described in the Declaration attached hereto as EXHIBIT D. Notwithstanding anything to the contrary in the TIF Act, the restrictions will remain in effect for the thirty (30) year period described in the Declaration. On the date of execution of this Agreement, the Developer will deliver the executed Declaration to the Authority in recordable form.

(b) The Developer agrees to distribute the affordable Rental Housing Units among the different Rental Housing Unit types by setting aside twenty percent (20%) of each unit type or a larger unit as affordable units. For example, based on the mix of Rental Housing Units found in EXHIBIT F attached hereto, of the twenty percent (20%) of the Rental Housing Units that are income and rent-restricted, at least 7 Rental Housing Units must be alcove studio units; at least 21 Rental Housing Units must be one-bedroom units or a larger unit; and at least 7 Rental Housing Units must be two-bedroom units a larger unit.

(c) The Developer intends to rent parking spaces in the underground garage to tenants of the Minimum Improvements for approximately $____ to $____ per parking space per month. The tenants in the income and rent-restricted Rental Housing Units will not be required to rent underground parking spaces; however, if such tenants do rent an underground parking space, the Developer will provide a ten percent (10%) discount of the rental charge for the underground parking space.

(d) During the term of the Declaration, the Developer shall not adopt any policies specifically prohibiting or excluding 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.

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

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

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

(h) Pursuant to Section 4.6, the Developer must submit evidence of Project tenant incomes, showing that the Minimum Improvements meet the income requirements set forth in the Declaration. The City 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.

(i) If the Authority determines, based on the reports submitted by the Developer or if the Authority or the City 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 Developer, this type of event will be deemed an Event of Default of the Developer 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 Developer will indemnify, defend and hold harmless the Authority and the City for any damages or costs resulting therefrom.

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

Section 4.7. Property Management Covenant. The Developer shall cause its property manager to operate the Minimum Improvements in accordance with the policies described in this Section. For any documented disorderly violations by a tenant or guest, including but not limited to prostitution, gang-related activity, intimidating or assaulitive behavior (not including domestic), unlawful discharge of firearms, illegal activity, or drug complaints (each a “Violation”), the Developer agrees and understands that the following procedures shall apply:

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

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

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

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

(e) If the Developer and property manager fail to respond to the written notice under paragraph (d) above, or at least two (2) additional Violations occur within the next twelve (12) month period after the date of the notice under paragraph (d) above, then the Authority may direct the Developer to terminate the management agreement with the existing property manager and to replace that entity with a replacement property manager selected by the Developer but approved by the Authority.
Section 4.8. Construction of Site Improvements.

(a) In consideration of the assistance provided to the Developer by the Authority, subject to the limitations set forth in this Sections 4.8 and Section 4.9, the Developer agrees that it will install or cause to be installed, in conformance with City standards and specifications, the Site Improvements on the Development Property or adjacent to the Development Property, as applicable, as described in EXHIBIT H attached hereto.

(b) When constructing the Site Improvements, the Developer is responsible for compliance with all conditions outlined in Resolution No. 2018-160 and Resolution No. 2018-161.

(c) Building permits for the Site Improvements will be issued only in conformance with conditions in Resolution 2018-160. Unless otherwise authorized by the City in writing, no certificates of occupancy will be provided until the following is completed:

(i) Site grading is completed and approved by the City;
(ii) All public utilities have been tested, approved, and accepted by the City Engineer;
(iii) All curbing is installed and backfilled;
(iv) The first lift of bituminous is in place and approved by the City; and
(v) All required fees have been paid in full.

Upon completion of the Site Improvements, the City shall issue a certificate of occupancy. The receipt of a certificate of occupancy for one or more of the Site Improvements shall confirm that the conditions referred to in this Section 4.8(c) have been met for the applicable Site Improvement unless so stated in the certificate of occupancy.

Section 4.9. Site Improvements Construction Addendum. Prior to the issuance of any permits, the City and the Developer shall enter into a mutually agreeable Construction Addendum containing (i) timeframes for the construction of the Site Improvements; (ii) the security to be provided by the Developer to the City to ensure the quality and completion of the Site Improvements; (iii) the methods of acceptance related to the Site Improvements; (iv) the process by which the security provided to the City may be reduced; (v) the process to obtain a certificate of occupancy from the City; and (vi) final design details.

Section 4.10. Fees. The Developer must pay all water and sewer hook-up fees, SAC, WAC, and REC fees, Engineering Inspection Fees and park dedication fees in accordance with applicable City policies and ordinances. Based on the size of the Minimum Improvements, it is anticipated that the Developer will owe approximately $875,000 in park dedication fees. The park dedication fee is calculated at a rate of $5,000 per unit.
ARTICLE V

Insurance

Section 5.1. Insurance.

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

(i) Builder’s risk insurance, written on the so-called “Builder’s Risk – Completed Value Basis,” in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called “all risk” form of policy. The interest of the Authority 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; and

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

(b) Upon completion of construction of the Minimum Improvements and prior to the Maturity Date, the Developer 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 City and the Authority as an additional insured.

(iii) Other insurance, including workers’ compensation insurance respecting all employees, if any, of the Developer, in an amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Developer 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 of this Agreement must be taken out and maintained in responsible insurance companies selected by the Developer which are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Developer 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 of this Agreement 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 Developer and the Authority at least thirty (30) days before the cancellation or
Modification becomes effective. In lieu of separate policies, the Developer may maintain a single policy,
blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which
event the Developer 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 Developer 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 Developer 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 Developer will apply the Net Proceeds of any insurance relating to the damage received by the Developer to the payment or reimbursement of the costs thereof.

The Developer will complete the repair, reconstruction and restoration of the Minimum
Improvements, whether or not the Net Proceeds of insurance received by the Developer 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 Developer.

(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 Developer fails to complete any
repair, reconstruction or restoration of the Minimum Improvements within eighteen months from the date
of damage, the Authority may, at its option, terminate the TIF Note as provided in Section 9.3(b) hereof.
If the Authority terminates the TIF Note, the termination will constitute the Authority’s sole remedy
under this Agreement as a result of the Developer’s failure to repair, reconstruct or restore the Minimum
Improvements. Thereafter, the Authority will have no further obligations to make any payments under
the TIF Note.

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

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

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

Tax Increment; Taxes; Minimum Assessment Agreement

Section 6.1. Right to Collect Delinquent Taxes. The Developer acknowledges that the Authority is providing substantial aid and assistance in furtherance of the redevelopment through issuance of the TIF Note. The Developer understands that the Tax Increments pledged to payment of the TIF Note are derived from real estate taxes on the Development Property, which taxes must be promptly and timely paid. To that end, the Developer agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Development Property and the Minimum Improvements. The Developer acknowledges that this obligation creates a contractual right on behalf of the Authority to sue the Developer or its successors and assigns to collect delinquent real estate taxes and any penalty or interest thereon and to pay over the same as a tax payment to the county auditor. In 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 Developer from contesting the assessor’s proposed market values for the Development Property or the Minimum Improvements, but the Developer 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 Developer shall execute the Minimum Assessment Agreement for the Development 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 Development 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 Development Property in excess of the Assessor’s Minimum Market Value or prohibit the Developer from seeking through the exercise of legal or administrative remedies a reduction in any increase in the market value established pursuant to subsection (a) above; provided, however, that the Developer shall not seek a reduction of such market value below the Assessor’s 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 Developer 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 Developer 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 Developer, its successors and assigns, in accordance with the terms of this Agreement and the Minimum Assessment Agreement. Notwithstanding anything contained in this Agreement to the contrary, the Developer shall not be precluded from contesting the Minimum Market Value if the Minimum Improvements or the Development 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 Developer 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 Development
Property through: (a) willful destruction of the Development Property or any part thereof; or (b) willful refusal to reconstruct damaged or destroyed property pursuant to Section 5.1 hereof.

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

The Developer 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 Development Property reduced. Prior to seeking a reduction in the estimated market value, the Developer must provide the Authority with written notice indicating its intention to do so. The Developer 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 Developer of its intention to cause the reduction of the estimated market value of the Development Property, or otherwise learning of the Developer’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 Development Property. During the period that the payments are subject to suspension, the Authority may make partial payments on the TIF Note, from the amounts subject to suspension, 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. Property Tax Classification. The amount of Tax Increment to be derived from the TIF District during the term of the TIF District was estimated by the City and the Authority’s financial advisor based on a “class 4a” property classification rate for rental properties under Minnesota Statutes, Section 273.13, subdivision 25(a). The Developer acknowledges and understands that if it changes the property tax classification of all or any portion of the Project to a “class 4d” property classification rate for affordable rental properties under Minnesota Statutes, Section 273.13, the amount of Available Tax Increment derived from the TIF District and used to pay the principal of and interest on the TIF Note will decrease.

Section 6.5. Qualifications. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that upon transfer of the Development Property to another person or entity, the Developer 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.
ARTICLE VII

Financing

Section 7.1. Mortgage Financing.

(a) Before commencement of construction of the Minimum Improvements, the Developer 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 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, 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 Developer in writing of its approval. The approval will not be unreasonably withheld and either approval or rejection will be given within twenty (20) days from the date when the Authority is provided the evidence of financing. A failure by the Authority to respond to 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 Developer 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 Developer’s funds is provided through mortgage financing, and there occurs a default under any Mortgage authorized pursuant to Article VII hereof, the Developer will cause the Authority to receive copies of any notice of default received by the Developer 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 Developer within the cure periods as are available to the Developer under the Mortgage documents.

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

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

Prohibitions Against Assignment and Transfer; Indemnification

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

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

(a) Except only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Developer or any successor in interest to the Development 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 Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease, or any trust or power, or transfer in any other mode or form of or with respect to the Agreement or the Development 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 City and the Authority unless the Developer remains liable and bound by this Agreement in which event the City and 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 Developer, upon transfer or assignment of the Development Property seeks to be released from its obligations under this Agreement, the City and 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 City and the Authority, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer.

(ii) Any proposed transferee, by instrument in writing satisfactory to the City and 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 City and the Authority, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property or any part thereof, will not, for whatever reason, have assumed these obligations or so agreed, and will not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City and the Authority) deprive the City and the Authority of any rights or remedies or controls with respect to the Development Property or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Development Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, will operate, legally or practically, to deprive or limit the City or 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 City or the
Authority would have had, had there been no transfer or change. In the absence of specific written agreement by the City and the Authority to the contrary, no transfer or approval by the City and the Authority thereof will be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto.

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

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

After issuance of the Certificate of Completion for the Minimum Improvements, the Developer may transfer or assign the Development Property or the Developer’s interest in this Agreement if it obtains the prior written consent of the City and the Authority (which consent will not be unreasonably withheld) and the transferee or assignee is bound by all the Developer’s obligations hereunder. The Developer must submit to the City and the Authority written evidence of any transfer or assignment, including the transferee or assignee’s express assumption of the Developer’s obligations under this Agreement. If the Developer fails to provide evidence of transfer and assumption, the Developer will remain bound by all its obligations under this Agreement.

Section 8.3. Release and Indemnification Covenants.

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

(b) Except for any willful misrepresentation or any willful or wanton misconduct of the following named parties, the Developer agrees to protect and defend the Authority, the City and their respective 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, the City and their respective 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 Developer or its officers, agents, servants or employees or any other person who may be about the Development Property or Minimum Improvements due to any act of negligence of any person.

(d) All covenants, stipulations, promises, agreements and obligations of the Authority and the City contained herein will be deemed to be the covenants, stipulations, promises, agreements and obligations of the Authority and the City and not of any governing body member, officer, agent, servant or employee of the Authority or the City 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 30 days, the defaulting party does not, within the thirty (30) day period, provide assurances reasonably satisfactory to the party providing notice of default that the event will be cured and will be cured as soon as reasonably possible:

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

(b) The Developer:

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

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

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

(iv) is adjudicated as bankrupt or insolvent; or

(c) Prior to the Maturity Date, the Developer appeals or challenges the Minimum Market Value of the Development Property or the Minimum Improvements under this Agreement or the Minimum Assessment Agreement, except as otherwise permitted in Article VI hereof.

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

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

(b) Cancel and rescind or terminate this Agreement.

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

(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 and the City may exercise its rights under Section 9.2(c) hereof only for the following Events of Default:

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

(b) the Developer fails to comply with Developer’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 Developer’s failure to comply with Developer’s obligations under Sections 4.1 or 5.1(c) hereof, if uncured after thirty days’ written notice to the Developer of the failure, the Authority may only suspend payments under the TIF Note until the Developer complies with said obligations. If the Developer fails to comply with said obligations for a period of eighteen months, the Authority may terminate the TIF Note and the TIF District; or

(c) the Developer fails to comply with the income restrictions or to deliver annual income reports as provided in Section 4.5 hereof and the Declaration; provided that, upon the Developer’s failure to provide annual reports, if uncured after thirty days’ written notice to the Developer of the failure, the Authority may only suspend payments under the TIF Note until the Developer delivers said reports. If the Developer fails to deliver income reports for a period of six months following the date the reports are due after written notice to the Developer 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, the City or the Developer 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 City or 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 Developer under this Agreement, and the City or the Authority prevails in the action, the Developer agrees that it will, within ten days of written demand by the City or the Authority, pay to the City or the Authority the reasonable fees of the attorneys and the other expenses so incurred by the City and the Authority.
ARTICLE X

Additional Provisions

Section 10.1. Conflict of Interests; Authority Representatives Not Individually Liable. The Authority and the Developer, to the best of their respective knowledge, represent and agree that no member, 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 Developer, 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 Developer or successor or on any obligations under the terms of the Agreement.

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

Section 10.3. Restrictions on Use. The Developer agrees that, prior to the Maturity Date, the Developer, and its successors and assigns, will use the Development 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 Development Property or any improvements erected or to be erected thereon, or any part thereof.

Section 10.4. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to or will be merged by reason of any deed transferring any interest in the Development 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 Developer, is addressed to or delivered personally to the Developer at DC-OV Minnetonka, LLC, 7803 Glenroy Road, Suite 200, Bloomington, Minnesota 55439, Attention: Legal Department, with a copy to Brian S. McCool, Fredrikson & Byron P.A., 200 South Sixth Street, Suite 4000, Minneapolis, Minnesota 55402;

(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;

(c) in the case of the City, is addressed to or delivered personally to the City at 14600 Minnetonka Boulevard, Minnetonka, Minnesota 55345-1502, Attention: City Manager;
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 Hennepin County recorder. The Developer must pay all costs for recording.

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

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

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

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, the Authority has caused this Agreement to be duly executed in its name and behalf and its seal to be hereunto duly affixed, the City has caused this Agreement to be duly executed in its name and behalf and its seal to be hereunto duly affixed, and the Developer has caused this Agreement to be duly executed in its 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 ____________, 20___, 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 ______________, 20___, by Geralyn Barone, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

_______________________________________________
Notary Public
CITY OF MINNETONKA, MINNESOTA

By __________________________
Its Mayor

By __________________________
Its City Manager

STATE OF MINNESOTA  )
                   ) SS.
COUNTY OF HENNEPIN  )

The foregoing instrument was acknowledged before me this _____ day of __________, 20____, by Brad Wiersum, the Mayor of the City of Minnetonka, Minnesota, on behalf of the City.

________________________________________________________________________
Notary Public

STATE OF MINNESOTA  )
                   ) SS.
COUNTY OF HENNEPIN  )

The foregoing instrument was acknowledged before me this _____ day of __________, 20____, by Geralyn Barone, the City Manager of the City of Minnetonka, Minnesota, on behalf of the City.

________________________________________________________________________
Notary Public

(Signature Page of City to the Contract for Private Development)
DC-OV MINNETONKA, LLC

By: Marsh Development, LLC
Its: Manager

By ____________________________
Its ____________________________

STATE OF MINNESOTA )
COUNTY OF __________ ) SS.

The foregoing instrument was acknowledged before me this _____ day of _____________, 20___, by ______________________, the President of Marsh Development, LLC, a Minnesota limited liability company, the Manager of DC-OV Minnetonka, LLC, a Minnesota limited liability company, on behalf of DC-OV Minnetonka, LLC.

Notary Public

(Signature Page of Developer to the Contract for Private Development)
EXHIBIT A

DESCRIPTION OF DEVELOPMENT PROPERTY

[Insert legal description – PIDs are 02-117-22-13-0062 and 02-117-22-13-0050]
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 developer’s actual rate of financing, whichever is less] __________

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 DC-OV Minnetonka, LLC, a Minnesota limited liability company, 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, 2021, and each February 1 and August 1 thereafter to and including February 1, 2038 (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 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,” which will mean, on each Payment Date, ninety percent (90%) of the Tax Increment attributable to the Development Property (defined in the Agreement) 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 Development, dated ______________, 20___ (the “Agreement”), between the Authority and Owner. Available Tax Increment will not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default under the Agreement.
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, 2038.

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 Developer 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 Redevelopment Project undertaken by the Authority pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended, and is issued pursuant to an authorizing resolution (the “Resolution”) duly adopted by the Authority on December 17, 2018, 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, 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.

<table>
<thead>
<tr>
<th>Date of Registration</th>
<th>Registered Owner</th>
<th>Signature of Executive Director</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>DC-OV Minnetonka, LLC 7803 Glenroy Road Suite 200 Bloomington, MN 55439</td>
<td>Federal ID # __________</td>
</tr>
</tbody>
</table>

________________________________________  ______________________________________

B-3
EXHIBIT C

FORM OF INVESTMENT LETTER

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

Date: __________________________

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

The undersigned, as Owner of $________ in principal amount of the above-captioned Note (the “Note”) pursuant to a resolution of the Authority adopted on December 17, 2018 (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 Development, dated ______________, 20___ (the “Contract”), between the Authority, the City of Minnetonka, Minnesota, 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 acknowledge and understand that, if at any time, the Owner fails to meet the housing income restrictions required for a housing tax increment district as set forth in Minnesota Statutes, Section 469.174, subdivision 11 and Section 469.1761, and therefore, the tax increment district will no longer qualify as a housing tax increment district, no further payments will be made under the TIF Note.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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

12. The Owner’s federal tax identification number is ____________.

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

DC-OV MINNETONKA, LLC

By: Marsh Development, LLC
Its: Manager

By _______________________________
Its _______________________________
EXHIBIT D

FORM OF DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this “Declaration”) dated as of ______________, 20___, by DC-OV MINNETONKA, LLC, a Minnesota limited liability company (the “Developer”), 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 entered into that certain Contract for Private Development, dated __________, 20___, filed ______________, 20____ in the Office of the Registrar of Titles for Hennepin County as Document No. ___________ (the “Contract”), between the Authority, the City of Minnetonka, and the Developer; and

WHEREAS, pursuant to the Contract, the Developer is obligated to cause construction of 175 housing units of rental housing on the property described in EXHIBIT A attached hereto (the “Property”), and to cause compliance with certain affordability covenants described in Section 4.5 of the Contract; and

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

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

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

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

1. Term of Restrictions.

   (a) Occupancy Restrictions. The term of the Occupancy Restrictions set forth in Section 3 hereof shall commence on the date the Project is placed in service. The period from commencement to termination is the “Qualified Project Period.”

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

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

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

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

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

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

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

3. **Occupancy Restrictions.**

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

(i) **Qualifying Tenants.** From the commencement of the Qualified Project Period, at least twenty percent (20%) (i.e., 35) 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 those persons and families who shall be determined from time to time by the Developer to have combined adjusted income that does not exceed fifty percent (50%) of the Minneapolis-St. Paul metropolitan statistical area (the “Metro Area”) median income for the applicable calendar year. For purposes of this definition, the occupants of a residential unit shall not be deemed to be Qualifying Tenants if all the occupants of such residential unit at any time are “students,” as defined in Section 151(c)(4) of the Internal Revenue Code of 1986, as amended (the “Code”), not entitled to an exemption under the Code. The determination of whether an individual or family is of low or moderate income shall be made at the time the tenancy commences and on an ongoing basis thereafter, determined at least annually. If during their tenancy a Qualifying Tenant’s income exceeds one hundred forty percent (140%) of the maximum income qualifying as low or moderate income for a family of its size, the next available unit (determined in accordance with the Code and applicable regulations) (the “Next Available Unit Rule”) must be leased to a Qualifying Tenant or held vacant and available for occupancy by a Qualifying Tenant. If the Next Available Unit Rule is violated, the 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 Low Income Tenants.

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

(iii) **Lease.** The form of lease to be utilized by the Developer in renting any 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 Developer covenants and agrees that during the term of this Declaration, it will prepare and submit to the Authority on or before January 31 of each year, a certificate substantially in the form of EXHIBIT C hereto, executed by the Developer, (a) identifying the tenancies and the dates of occupancy (or vacancy) for all Qualifying Tenants in the Project, including the percentage of the dwelling units of the Project 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 Developer was not otherwise in default under this Declaration during such year.

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

(b) **Section 8 Housing.** During the term of this Declaration, the Developer shall not adopt any policies specifically prohibiting or excluding 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.

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

5. **Enforcement.**

(a) The Developer shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Authority to inspect any books and records of the Developer regarding the Project with respect to the incomes of Qualifying Tenants.
(b) The Developer shall submit any other information, documents or certifications requested by the Authority which the Authority deems reasonably necessary to substantial continuing compliance with the provisions specified in this Declaration.

(c) The Developer acknowledges that the primary purpose for requiring compliance by the Developer with the restrictions provided in this Declaration is to ensure compliance of the property with the housing affordability covenants set forth in Section 4.5 of the Contract, and by reason thereof, the Developer, in consideration for assistance provided by the Authority under the Contract that makes possible the construction of the Minimum Improvements (as defined in the Contract) 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 Developer of its obligations under this Declaration in a state court of competent jurisdiction. The Developer hereby further specifically acknowledges that the Authority cannot be adequately compensated by monetary damages in the event of any default hereunder.

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

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

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

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

9. **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 Developer and the Authority may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, or other communications shall be sent. The initial addresses for notices and other communications are as follows:

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

To the Developer: DC-OV Minnetonka, LLC
7803 Glenroy Road
Suite 200
Bloomington, MN 55439
10. **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.

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

12. **Declaration Binding.** This Declaration and the covenants contained herein shall run with the real property comprising the Project and shall bind the Developer 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)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55406
IN WITNESS WHEREOF, the Developer has caused this Declaration of Restrictive Covenants to be signed by its respective duly authorized representatives, as of the day and year first written above.

DC-OV MINNETONKA, LLC

By: Marsh Development, LLC
Its: Manager

By ____________________________
Its ____________________________

STATE OF MINNESOTA )
) SS.
COUNTY OF __________ )

The foregoing instrument was acknowledged before me this _____ day of _____________,
20___, by ________________________, the President of Marsh Development, LLC, a Minnesota limited liability company, the Manager of DC-OV Minnetonka, LLC, a Minnesota limited liability company, on behalf of DC-OV Minnetonka, LLC.

_____________________________________
Notary Public
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 _______________, 20___, by ____________________, 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 _______________, 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
EXHIBIT A

to Declaration of Restrictive Covenants

Legal Description

[Insert legal description — PIDs are 02-117-22-13-0062 and 02-117-22-13-0050]
EXHIBIT B

to Declaration of Restrictive Covenants

Certification of Tenant Eligibility

Project: _______________ Minnetonka Boulevard

Developer: DC-OV Minnetonka, LLC

Unit Type: _____ Alcove Studio  _____ 1 BR  _____ 2 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:

<table>
<thead>
<tr>
<th>Name of Members of the Household</th>
<th>Relationship To Head of Household</th>
<th>Age</th>
<th>Place of Employment</th>
</tr>
</thead>
<tbody>
<tr>
<td>________________</td>
<td>________________</td>
<td>___</td>
<td>________________</td>
</tr>
<tr>
<td>________________</td>
<td>________________</td>
<td>___</td>
<td>________________</td>
</tr>
<tr>
<td>________________</td>
<td>________________</td>
<td>___</td>
<td>________________</td>
</tr>
<tr>
<td>________________</td>
<td>________________</td>
<td>___</td>
<td>________________</td>
</tr>
</tbody>
</table>

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
1. Calculation of Eligible Tenant Income:

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

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

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

2. The amount entered in 1(c) is less than or equal to _______ 50% of median income for
the area in which the Project is located, as defined in the Declaration. 50% 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 50% 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.

DC-OV MINNETONKA, LLC

By: Marsh Development, LLC
Its: Manager

By _____________________________
Its ____________________________
EXHIBIT C

to Declaration of Restrictive Covenants

Certificate of
Continuing Program Compliance

Date: _______________________, ______.

The following information with respect to the Project located at __________________, Minnetonka, Minnesota (the “Project”), is being provided by DC-OV Minnetonka, LLC (the “Developer”) to the Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”), pursuant to that certain Declaration of Restrictive Covenants, dated _______, 20___ (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 Studio Units:

1 BR Units:

2 BR Units:

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

<table>
<thead>
<tr>
<th>Unit Number</th>
<th>Previous Designation of Unit (if any)</th>
<th>Replacing Unit Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>___________</td>
<td>_________________________________</td>
<td>_________________</td>
</tr>
</tbody>
</table>
(D) The following residential units are considered to be occupied by Qualifying Tenants based on the information set forth below:

<table>
<thead>
<tr>
<th>Unit Number</th>
<th>Name of Tenant</th>
<th>Number of Persons Residing in the Unit</th>
<th>Number of Bedrooms</th>
<th>Total Adjusted Gross Income</th>
<th>Date of Initial Occupancy</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>19</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>20</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>22</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>24</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>26</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>27</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>28</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>29</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>30</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>31</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>32</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>33</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>34</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>35</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>36</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>37</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>38</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>39</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>40</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>41</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
(E) The Developer has obtained a “Certification of Tenant Eligibility,” in the form provided as EXHIBIT B to the Declaration, from each Tenant named in (D) above, and each such Certificate is being maintained by the Developer in its records with respect to the Project. Attached hereto is the most recent “Certification of Tenant Eligibility” for each Tenant named in (D) above who signed such a Certification since ______________, _____, the date on which the last “Certificate of Continuing Program Compliance” was filed with the Authority by the Developer.

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

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

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

(I) The Developer certifies that as of the date hereof at least ______ of the residential dwelling units in the Project are occupied or held open for occupancy by Qualifying Tenants, as defined and provided in the Declaration.
IN WITNESS WHEREOF, I have hereunto affixed my signature, on behalf of the Developer, on ________________, 20__.

DC-OV MINNETONKA, LLC

By: Marsh Development, LLC
Its: Manager

By ________________________________
Its ________________________________
EXHIBIT E

CERTIFICATE OF COMPLETION

The undersigned hereby certifies that DC-OV Minnetonka, LLC (the “Developer”), has fully complied with its obligations under Articles III and IV of that document titled “Contract for Private Development,” dated __________, 20___ (the “Agreement”), between the Economic Development Authority in and for the City of Minnetonka, Minnesota, the City of Minnetonka, Minnesota, and the Developer, with respect to construction of the Minimum Improvements in accordance with Article IV of the Agreement, and that the Developer is released and forever discharged from its obligations with respect to construction of the Minimum Improvements under Articles III and IV of the Agreement.

Dated: ________________, 20__.

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 ______________, 20___, by ________________, 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 ______________, 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
EXHIBIT F

RENTAL HOUSING UNITS BY UNIT TYPE

<table>
<thead>
<tr>
<th>Unit Type</th>
<th>Number of Units in Minimum Improvements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcove Studios:</td>
<td>28 units</td>
</tr>
<tr>
<td>One Bedroom</td>
<td>102 units</td>
</tr>
<tr>
<td>Two Bedroom</td>
<td>35 units</td>
</tr>
</tbody>
</table>
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,

DC-OV MINNETONKA, LLC,

and

CITY ASSESSOR FOR THE CITY OF MINNETONKA, MINNESOTA

This Document was drafted by:

KENNEDY & GRAVEN, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300
THIS MINIMUM ASSESSMENT AGREEMENT, dated as of this ___ day of __________, 20___ (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 DC-OV MINNETONKA, LLC, a Minnesota limited liability company, its successors and assigns (the “Owner”).

WITNESSETH:

WHEREAS, the Authority and the Owner have entered into a Contract for Private Development, dated ________________, 20____ (the “Agreement”), concerning the property legally described on EXHIBIT A attached hereto (the “Development Property”); and

WHEREAS, pursuant to the Agreement, the Owner will construct on the Development Property an apartment complex with approximately 175 units, with twenty percent (20%) of the apartment units made affordable to families at or below fifty percent (50%) of the area median income, including underground and structured first-floor parking (the “Minimum Improvements”); and

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

WHEREAS, the Authority and the City Assessor for the City of Minnetonka, Minnesota have reviewed the plans for the Minimum Improvements which the Owner has agreed to construct on the Development 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 Development Property, together with the Minimum Improvements constructed thereon, shall not be less than $12,863,500 as of January 2, 2020, notwithstanding the progress of construction by such date, and as of each January 2 thereafter until January 1, 2021.

2. The minimum market value which shall be assessed for ad valorem tax purposes for the Development Property, together with the Minimum Improvements constructed thereon, shall not be less than $36,750,000 as of January 2, 2021, for taxes payable beginning in 2022, 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.

3. The Minimum Market Value herein established shall be of no further force and effect and this Minimum Assessment Agreement shall terminate on the Maturity Date. The Maturity Date has the meaning given to it under the Agreement.

4. 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.

5. 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.

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

7. 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.

8. 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.

9. 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 heretofore, and such further instruments as may reasonably be required for correcting any inadequate, or incorrect, or amended description of the Development Property, or for carrying out the expressed intention of this Minimum Assessment Agreement.

10. 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.

11. 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.

12. This Minimum Assessment Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.
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 ____________, 20___, 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 ____________, 20___, by Geralyn Barone, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

______________________________
Notary Public
DC-OV MINNETONKA, LLC

By: Marsh Development, LLC
Its: Manager

By ________________________________
Its ________________________________

STATE OF MINNESOTA )
) SS.
COUNTY OF __________ )

The foregoing instrument was acknowledged before me this _____ day of _____________, 20__, by _________________________, the President of Marsh Development, LLC, a Minnesota limited liability company, the Manager of DC-OV Minnetonka, LLC, a Minnesota limited liability company, on behalf of DC-OV Minnetonka, LLC.

__________________________________________
Notary Public

(Signature Page of Owner to Minimum Assessment Agreement)
CERTIFICATION BY ASSESSOR

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

City Assessor for Minnetonka, Minnesota

STATE OF MINNESOTA )
) ss.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this _____ day of ________, 20____, by __________________________, the City Assessor, City of Minnetonka, Hennepin County, Minnesota.

Notary Public
EXHIBIT A

to Minimum Assessment Agreement

The Development Property is legally described as follows:

[Insert legal description – PIDs are 02-117-22-13-0062 and 02-117-22-13-0050]
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

G-1
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.
EXHIBIT H

SITE IMPROVEMENTS

The following improvements are the Site Improvements required under this Agreement:

- Surveying and staking;
- Surface improvements, including but not limited to streets, curbs, sidewalks and trails;
- Water main;
- Sanitary sewer;
- Storm sewer and stormwater management facilities;
- Lot and block monuments;
- Gas, electric, telephone and cable lines;
- Site grading;
- Landscaping;
- Street lighting; and
- Street signs
February 19, 2019

VIA EMAIL (JEddington@Kennedy-Graven.com)

Julie Eddington, Esq.
Kennedy & Graven, Chartered
470 U. S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402

RE: Marsh Run – Contract for Private Development

Dear Julie:

On behalf of my client, Marsh Development, LLC, which is the Manager of DC-OV Minnetonka, LLC (the “Developer”), I am writing to respond to your email from earlier today concerning the status of the Contract for Private Development (the “Contract”) for the Developer’s proposed development in the City of Minnetonka (the “Project”).

My client is disappointed in the City’s and EDA’s position regarding the Contract. As you note in your email, the Contract was approved by both the City Council and the EDA’s Board of Commissioners on December 17, 2018. Notably, the form of the Contract approved at that time was the City’s and EDA’s form that was provided to the Developer only a couple of days before the December 17 meeting. The Developer did not offer any comments on the Contract in advance of that meeting because the Developer was generally comfortable with the substantive contents of such contract. As such, the contents of the Contract presented on December 17 were drafted entirely by the City and EDA without input from the Developer, so it is difficult to understand why City/EDA staff are now “not interested” in executing that approved contract as stated in your email.

City/EDA Staff’s position at this point seems to be that either the Developer must accept the version of the Contract that was submitted to us last week as City/EDA Staff’s “final offer” or this project is not moving forward. This position is untenable under Minnesota law. Formal resolutions of the City Council and the EDA’s Board of Commissioners approved the form of the Contract that we submitted to the City last Friday with a few non-material revisions. Importantly, these resolutions did not authorize City/EDA Staff to refuse to move forward with signing the approved form of the Contract if the Developer refused to agree to changes
City/EDA Staff proposed after the December 17 meeting. Yet, this is exactly how City/EDA Staff are proceeding at this point.

Given the foregoing, either the form of the Contract that we presented last Friday should be executed by the appropriate individuals on behalf of the City and the EDA, or City/EDA Staff should place the Contract on the agenda for the February 25 City Council and EDA meetings so that the City Council and the EDA may weigh in on the non-material changes that the Developer proposed to the Contract last Friday. You noted in your email that City/EDA Staff do not intend to place these items on the agenda for February 25 because they “do not have a final contract to approve.” This is simply not accurate – just because City/EDA Staff now seek to change terms in the Contract that was previously approved does not mean there is not a “final contract.” The draft of the Contract that we submitted to you last Friday should be final because we proposed only minor, non-material changes to the approved form of the Contract and the resolutions approving such contract expressly authorized omissions/insertions to the Contract that “do not materially change the substance thereof.”

As we have mentioned previously, it is critical for the Developer’s financing to have this resolved by February 25. The Developer will incur substantial damages if such financing is impacted as a result of any further delays with the Contract. Moreover, further delays in finalizing the Contract will also be prejudicial to the Developer because such delays will provide the Developer less time to meet the deadlines in the Contract for commencing and completing construction of the Project. The Developer is excited about this Project and is eager to resolve the outstanding issues relating to the Contract so that this project may move forward. We hope that City/EDA Staff share in that objective.

Please review the foregoing with your client as soon as possible and let us know by the end of the day today (assuming today remains the deadline for finalizing the agendas) whether the City and EDA will execute the draft of the Contract we circulated last Friday or whether this matter will be on the agendas for the February 25 meetings.

Regards,

Brian S. McCool
Direct Dial: 612.492.7309
Email: bmccool@fredlaw.com

cc: Corrine Heine, Esq., City Attorney, City of Minnetonka (via email)
Anne Behrendt, Doran RE Partners (via email)
Ryan Johnson, Doran RE Partners (via email)
Tony Kuechle, Doran RE Partners (via email)