

**HOPKINS HRA  
AGENDA  
Tuesday, September 6, 2022  
6:30 pm**

**THIS AGENDA IS SUBJECT TO CHANGE  
UNTIL THE START OF THE HRA MEETING**

**I. CALL TO ORDER**

**II. ADOPT AGENDA**

**III. CONSENT AGENDA**

1. Approve Minutes of the August 1, 2022 regular meeting
2. Approve Minutes of the August 16, 2022 special meeting
3. Approve Disbursements through August 24, 2022

**Recommendation: Approve Consent Agenda**

**IV. NEW BUSINESS**

1. MHFA POHP Loan Repayment Agreement (HRA2022-04)

**Recommendation: Adopt Resolution No. 546, approving to borrow a zero-interest forgivable loan from the Minnesota Housing Finance Agency (MHFA) regarding the building system improvements for Dow Towers.**

2. Business Subsidy Agreement – Ovation Apartments (HRA2022-03)

**Recommendation: Approve the Business Subsidy Agreement between Ovation Apartments, LLC and the Housing and Redevelopment Authority of the City of Hopkins.**

3. Loan Agreement – Ovation Apartments (HRA2022-05)

**Recommendation: Approve the Loan Agreement between Ovation Apartments, LLC and the Housing and Redevelopment Authority of the City of Hopkins.**

4. Loan Agreement – Blake Road Station (HRA2022-06)

**Recommendation: Approve the Loan Agreement between the Hopkins Housing and Redevelopment Authority and TF Hopkins, LLC.**

**V. ADJOURN**

**MINUTES OF THE HRA REGULAR MEETING PROCEEDINGS  
MONDAY, AUGUST 1, 2022**

**CALL TO ORDER**

Pursuant to due call and notice thereof a regular meeting of the Hopkins Housing and Redevelopment Authority was held on Monday, August 1, 2022 at 6:30 p.m. in the Council Chambers at City Hall, 1010 1<sup>st</sup> Street South.

Mayor Patrick Hanlon called the meeting to order with Council Members Balan, Beck, Hunke and Garrido attending. Others attending included Executive Director Mike Mornson and Assistant Executive Director Kersten Elverum.

**ADOPT AGENDA**

**Motion** by Balan. **Second** by Hunke.

**Motion** to Adopt the Agenda.

**Ayes: All.**

**Nays: None. Motion carried.**

**CONSENT AGENDA**

**Motion** by Hunke. **Second** by Balan.

**Motion** to approve the Consent Agenda.

1. Approve Minutes of the July 19, 2022 regular meeting
2. Approve Disbursements through July 25, 2022

**Ayes: All.**

**Nays: None. Motion carried.**

**ADJOURNMENT**

There being no further business to come before the HRA and upon a motion by Beck, second by Garrido, the meeting was unanimously adjourned at 7:01 p.m.

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Patrick Hanlon, Mayor

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Michael J. Mornson, Executive Director

**MINUTES OF THE HRA SPECIAL MEETING PROCEEDINGS  
TUESDAY, AUGUST 16, 2022**

**CALL TO ORDER**

Pursuant to due call and notice thereof a special meeting of the Hopkins Housing and Redevelopment Authority was held on Tuesday, August 16, 2022 at 6:30 p.m. in the Council Chambers at City Hall, 1010 1<sup>st</sup> Street South.

Mayor Patrick Hanlon called the meeting to order with Council Members Beck, Hunke, Garrido and Balan attending. Others attending included Executive Director Mike Mornson, Assistant Executive Director Kersten Elverum, Stacie Kvilvang from Ehlers and Associates, and Brian Bochman from Enclave Companies.

**ADOPT AGENDA**

**Motion** by Balan. **Second** by Beck.

**Motion** to adopt the agenda.

**Ayes: All.**

**Nays: None. Motion carried.**

**PUBLIC HEARING**

**1. Business Subsidy Agreement – Enclave Companies**

Assistant Executive Director Elverum stated that the intention for this agenda item was to bring all of the agreements for the proposed redevelopment of the former Hopkins Cinema 6 site to the HRA and City Council during the August 16 meeting; however, due to unavoidable delays the agreements were not ready for consideration and will instead be presented at the September 6 HRA and City Council meetings. Because notice for the public hearing was already published, it must held as planned but no action would be taken.

The business subsidy is proposed as a one-time forgivable loan utilizing excess TIF from District 2-11 in the maximum amount of \$1,250,000 which will be used for demolition of the theater, exterior improvements to the existing retail space and outdoor public space. If the demolition costs are less than \$750,000, the forgivable loan will be reduced dollar for dollar.

Staff received 7 comments from the public prior to the meeting. Four of the comments requested some affordability to be included in the development; one comment asked for affordability, prohibition of first floor housing and City oversight of the public art; one comment proposed a renter rebate to get to affordability; and one urged for more consideration of equitable development.

Director Elverum provided additional information on the affordability requests. To require 15 percent of the units to be affordable at 60 percent Area Median Income

(AMI), the cost would be approximately 2.4 million dollars and allow for 23 affordable units. The City Council previously asked staff to provide cost information for both 10 percent and 5 percent affordable units. To have 10 percent of the units as affordable, the cost would be approximately 1.58 million dollars and allow for 15 units. The cost to have 5 percent of the units as affordable would be \$825,000 and allow for 8 units.

Mayor Hanlon asked for clarification that the 2.4 million dollars is not in the City's budget. Director Elverum confirmed the City does not have another source of funding to assist with the affordability costs for the development. Director Elverum also shared that the September 13 City Council Work Session agenda will be focused on affordable housing and provide a more in depth and focused discussion around affordable housing policies.

Council member Beck and Mayor Hanlon asked that staff look into the cost of requiring affordable units at 80 percent AMI.

Mayor Hanlon opened the public hearing.

Don Roesner, resident at 618 West Park Valley Drive, spoke against the financial subsidy. Mr. Roesner requested further information regarding details of the movie theater's lease, purchase agreement between Beard and Enclave Companies, the financial assistance given to Beard to build the theater and current taxes on the property. Written response to the questions was provided to Mr. Roesner after the meeting.

A resident at Raspberry Woods spoke to the high cost of renting and asked that affordability be considered when choosing a developer.

Billie Kraut, resident at 140 11<sup>th</sup> Avenue South, spoke in favor of mixed-income developments.

Jim Sapienza, resident at 133 11<sup>th</sup> Avenue North, shared concerns about the financial subsidy.

**Motion** by Hunke. **Second** by Beck.

**Motion** to close the Public Hearing.

**Ayes: All.**

**Nays: None. Motion carried.**

Council member Beck asked the City's financial advisor, Stacie Kvilvang from Ehlers and Associates, to expand on the numbers for the financial subsidy. Ms. Kvilvang provided additional information on the process for developers seeking financial assistance from the City. Enclave requests at least a 7 percent return on their investment, which is lower than current market norms at 10 percent. Further discussion

from the Council was generally in support of providing the business subsidy in order to redevelop the vacant building and bring more residents into Hopkins that will support local businesses, however, it was requested that affordability be further considered.

**ADJOURNMENT**

There being no further business to come before the HRA and upon a motion by Beck, second by Garrido, the meeting was unanimously adjourned at 7:09 p.m.

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Patrick Hanlon, Mayor

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Michael J. Mornson, Executive Director

# Accounts Payable

## Checks by Date - Summary by Check Date

User: klindbery  
Printed: 8/24/2022 8:17 AM

Check No	Vendor No	Vendor Name	Check Date	Void Checks	Check Amount
15533	106	C. NABER & ASSOCIATES	08/09/2022	0.00	231.00
15534	102	CENTERPOINT ENERGY	08/09/2022	0.00	505.54
15535	120	CITY OF HOPKINS	08/09/2022	0.00	2,587.75
15536	212	DICK'S SANITATION SERVICE, INC.	08/09/2022	0.00	1,267.51
15537	137	FINKEN	08/09/2022	0.00	12.60
15538	222	NAHRO	08/09/2022	0.00	118.56
15539	146	NAN MCKAY & ASSOCIATES	08/09/2022	0.00	239.00
15540	116	PLUNKETT'S PEST CONTROL	08/09/2022	0.00	1,570.00
15541	108	QUALITY RESOURCE GROUP	08/09/2022	0.00	52.13
15542	118	VAIL PLACE	08/09/2022	0.00	6,583.33
15543	119	XCEL ENERGY	08/09/2022	0.00	5,625.30
Total for 8/9/2022:				0.00	18,792.72
15544	141	GRAINGER	08/15/2022	0.00	484.40
15545	202	ROBERT B. HILL CO.	08/15/2022	0.00	249.36
15546	181	VER-TECH, INC.	08/15/2022	0.00	184.10
Total for 8/15/2022:				0.00	917.86
15547	142	HOME DEPOT CREDIT SERVICES	08/24/2022	0.00	459.08
15548	190	JOHNSON CONTROLS FIRE PROTECTI	08/24/2022	0.00	600.29
15549	125	KENNEDY & GRAVEN, CHARTERED	08/24/2022	0.00	916.80
15550	115	NAHRO MN	08/24/2022	0.00	495.00
Total for 8/24/2022:				0.00	2,471.17
Report Total (18 checks):				0.00	22,181.75



## MHFA POHP Loan Repayment Agreement

### **Proposed Action:**

Staff recommends that the Council approve the following motion: adopt Resolution #546, approving to borrow a zero-interest forgivable loan from the Minnesota Housing Finance Agency (MHFA) regarding the building system improvements for Dow Towers

With the approval of this motion, staff will be able to close on the end loan amount of \$393,005.00 with MHFA.

### **Overview:**

MHFA has a competitive funding program that uses the proceeds of General Obligations Bonds to provide financial assistance in the form of a deferred, forgivable loan for the rehabilitation and preservation of public housing properties called Publically Owned Housing Program (POHP). MHFA committed \$393,005.00 to Dow Towers from the program to improve exterior doors, building ventilation system, a portion of the building plumbing, and water softeners. The project cost \$644,721.00. The construction project was completed in October of 2019. MHFA Loan Commitment to Hopkins HRA expires on October 5, 2022.

### **Supporting Information:**

- Borrowing Resolution #546
- Exhibit A

### **Items to Consider:**

- Declaration of Covenant
- Addendum to Declaration (Affordability)

### **Alternative**

- The HRA has the following alternatives regarding this issue:
  1. Approve the action as recommended by staff
  2. Continue for further information

*Muse Mohamed*

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Muse Mohamed, Executive Director

**HOUSING AND REDEVELOPMENT AUTHORITY  
OF HOPKINS, MINNESOTA**

**Hennepin County**

**RESOLUTION No. 546**

**RESOLUTION AUTHORIZING THE HRA TO BORROW A ZERO-INTEREST,  
FORGIVABLE LOAN FROM THE MINNESOTA HOUSING FINANCE AGENCY**

**I HEREBY CERTIFY** that I, Muse Mohamed, am the Executive Director and keeper of the records of the Housing and Redevelopment Authority of Hopkins, Minnesota, public body corporate and politic of the City of Hopkins, Minnesota, which is a political subdivision of the State of Minnesota (the “HRA”), that the preceding is a true and correct copy of the Resolution duly adopted by a quorum of the members of the HRA, September 6th 2022, the members of the HRA being present constituting a quorum for the transaction of business; further, that such meeting was called in compliance with all applicable laws of the HRA; that such Resolution does not conflict with any laws of the HRA nor have such Resolutions been in any way altered, amended or repealed and are in full force and effect, unrevoked and unrescinded as of this day, and have been entered upon the regular Minute Book of the HRA, as of the aforementioned date, and that all of the members of the HRA have and at the time of adoption of such Resolution, had full power and lawful authority to adopt such Resolutions and to confer the powers thereby granted to the officer therein named who has full power and lawful authority to exercise the same.

**WHEREAS**, on September 6th 2022, there has been presented to the meeting of the HRA a proposal for the HRA to borrow a zero-interest, forgivable loan from the Minnesota Housing Finance Agency, a public body corporate and politic of the State of Minnesota, 400 Wabasha St N Unit 400, St Paul, Minnesota 55102 (the “Agency”) in an amount not to exceed \$393, 005.00 (the “Loan”) that will be forgiven in twenty (20) years, which Loan will be evidenced by a Deferred Loan Repayment Agreement. Further, a General Obligations Bonds Declaration of Covenants, Conditions and Restrictions (the “G.O. Declaration”) and a Publicly Owned Housing Program Declaration of Covenants, Conditions and Restrictions (the “POHP Declaration”) shall be executed in connection with the Loan, the terms of which require that (i) the HRA retains ownership of the Development located at 22 5<sup>th</sup> Ave South in Hopkins in the County of Hennepin, State of Minnesota, and more fully described in **Exhibit A** attached hereto and made a part hereof, and (ii) provides public housing for a term of thirty-five (35) years. The Deferred Loan Repayment Agreement, the G.O. Declaration and the POHP Declaration are referred to collectively as the “Loan Documents.”

**NOW, THEREFORE,** be it resolved by all members of the HRA that the Executive Director of the HRA be hereby authorized on behalf of the HRA, at any time hereafter and without further action by or authority or direction from the HRA, to execute and deliver to the Agency in such form as may be required by the Agency, the Loan Documents evidencing the indebtedness.

**NOW, THEREFORE,** be it resolved by the members of the HRA, that the HRA be and hereby is authorized to borrow the funds referred to herein above from the agency, and,

**BE IT FURTHER RESOLVED,** that the Executive Director, Muse Mohamed, of the HRA be hereby authorized and directed on behalf of the HRA at any time and from time to time hereafter and without further action by or authority or direction from the HRA, to execute and deliver or cause to be executed and delivered, all such other further agreements, assignments, statements, instruments, certificates and documents and to do or cause to be done all such other and further acts and things as they may determine to be necessary or advisable under or in connection with such borrowing, and that their execution of any such agreement, assignment, statement, instrument, certificate or document, or the doing of any such act or thing, shall be conclusive evidence of their determination in that respect; and

**BE IT FURTHER RESOLVED,** that the Agency be and it hereby is authorized to rely on the continuing force and effect of these Resolutions, until receipt by the Commissioner of the Agency at its principal office of notice in writing from the HRA of any amendments or alterations thereof.

Adopted this 6<sup>th</sup> day of September, 2022.

By \_\_\_\_\_  
Patrick Hanlon, HRA Board Chair

ATTEST:

\_\_\_\_\_  
Muse Mohamed, Executive Director

FOR USE BY FILING OFFICER ONLY

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**Minnesota Housing Finance Agency  
Publicly Owned Housing Program**

**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**THIS DECLARATION** is made as of the \_\_\_\_ day of \_\_\_\_\_, 2022, by Housing and Redevelopment Authority in and for the City of Hopkins, a public body corporate and politic of the City of Hopkins, with its offices located at 1010 1<sup>st</sup> Street South, Hopkins, MN 55343 (“Declarant”).

**RECITALS:**

A. Declarant, as the owner in fee simple of the property located in the City of Hopkins, County of Hennepin, State of Minnesota, described in **Exhibit A** attached to this Declaration and made a part of this Declaration (the “Property”), has applied for a loan from the Minnesota Housing Finance Agency (“Lender” or “MHFA”), and Lender has selected Declarant to receive a loan under Lender’s Publicly Owned Housing Program (“POHP”) pursuant to Minnesota Statutes, Chapter 462A, and the rules promulgated thereunder, as may be amended, modified, or replaced from time to time (the “Act”), in the original principal amount of \$393,005.00 (the “Loan”) to aid Declarant in the acquisition, construction and/or rehabilitation of and financing on the Property of a housing development (the “Development”, as further defined in this Declaration) pursuant to the Act.

B. The Act, together with any requirements arising from program-specific provisions in state or federal law, regulations, guidebooks, handbooks, or notices, constitutes the “Program”.

C. The Program imposes income and rent and occupancy restrictions on the Assisted Units (as defined in this Declaration) and requires that these restrictions remain in place for the minimum period shown on the attached **Addendum** to this Declaration; and

D. Declarant desires to obtain the Loan and to impose on the Development the mutually beneficial covenants, conditions and restrictions set forth in this Declaration.

**NOW THEREFORE**, Declarant, as fee owner of the Property, and in consideration of the benefits to be derived therefrom by Declarant and its successors and assigns, makes the following declaration of the covenants, restrictions, limitations, conditions and uses (the “Covenants”) applicable to the Development.

## **ARTICLE I Definitions**

As used in this Declaration, the following terms have the following respective meanings:

For the purposes of this Declaration, the definitions set forth above or set forth in the Addendum are incorporated into this Article 1 by reference.

Section 1. “**Assisted Units**” means those units in the Development that are restricted as set forth in the attached **Addendum** to this Declaration.

Section 2. “**Declarant**” means Housing and Redevelopment Authority in and for the city of Hopkins, a public body corporate and politic of the City of Hopkins, and any successor or assign that is the owner of the Development from time to time.

Section 3. “**Development**” means the Property and all improvements now or hereafter located thereon, together with all assets of whatsoever nature used in or owned by the business conducted on the Property, identified as MHFA Development No. 6379.

Section 4. “**HUD**” means the United States Department of Housing and Urban Development.

Section 5. “**Income Restrictions**” means the income restrictions as set forth in the attached **Addendum** to this Declaration.

Section 6. “**Occupancy Restrictions**” means those occupancy restrictions as set forth in the attached **Addendum** to this Declaration.

Section 7. “**Rent Restrictions**” means the rent restrictions as set forth in the attached **Addendum** to this Declaration.

## **ARTICLE II Income, Rent and Occupancy Restrictions**

Section 1. **Income Restrictions.** Declarant declares, represents, covenants and agrees for itself and its successors and assigns that, for the term of this Declaration, the Assisted Units will be occupied by residents who satisfy the Income Restrictions.

Section 2. **Rent Restrictions.** Declarant declares, represents, covenants and agrees for itself and its successors and assigns that, for the term of this Declaration, the amount of rent to be charged to the residents of the Assisted Units will satisfy the Rent Restrictions.

Section 3. **Occupancy Restrictions.** Declarant declares, represents, covenants and agrees for itself and its successors and assigns that, for the term of this Declaration, the Assisted Units will be occupied by residents who satisfy the Occupancy Restrictions.

### **ARTICLE III Enforcement of Income, Rent and Occupancy Restrictions**

Section 1. Declarant will permit, during normal business hours and upon reasonable notice, any duly authorized representative of Lender to inspect any books and records of Declarant with respect to the incomes of the residents of the Assisted Units, the rents charged for the Assisted Units, and Occupancy Restrictions to ensure compliance with the requirements of Article II of this Declaration and the Program.

Section 2. At Lender's request, Declarant will submit any other information, documents or certifications that Lender, in its sole discretion, deems necessary to substantiate Declarant's compliance with the requirements of Article II of this Declaration and the Program.

Section 3. Declarant covenants that it will not knowingly take or permit any action that would result in a violation of the requirements of Article II of this Declaration or the Program. Declarant covenants to take any lawful action, including amendment of this Declaration, as may be necessary, in the opinion of Lender, to comply fully with the Program and with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the State of Minnesota, Lender, or HUD from time to time pertaining to Declarant's obligations under the Program and affecting the Development.

### **ARTICLE IV Representations, Covenants, and Warranties of Declarant**

Section 1. Declarant declares, represents, covenants and agrees for itself, its successors and assigns, that, for the term of this Declaration, it will not refuse to lease a unit to, or discriminate against, a prospective resident because the prospective resident is the holder of a voucher under Section 8 of the United States Housing Act of 1937 (42 U.S.C. § 1437f), a recipient of any other form of tenant-based rental assistance, or due to the requirements of the voucher or rental assistance program.

Section 2. Declarant declares, represents, covenants and agrees for itself and its successors and assigns that, for the term of this Declaration, each Assisted Unit is and will remain suitable for occupancy and meet the minimum housing standards required by Lender.

Section 3. Declarant declares, represents, covenants and agrees for itself and its successors and assigns that it will obtain Lender's consent in writing prior to any sale, transfer, or exchange of the Development or any portion thereof, during the term of this Declaration.

Section 4. Declarant declares, represents, covenants and agrees for itself and its successors and assigns that it has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions of this Declaration and that, in any event, the requirements of this Declaration are paramount and controlling as to the rights and obligations set forth in this Declaration and supersede any other requirements in conflict with this Declaration.

Section 5. Declarant declares, represents, covenants and agrees for itself and its successors and assigns that, for the term of this Declaration, the Assisted Units will be subject to the Income Restrictions, Rent Restrictions, and the Occupancy Restrictions.

Section 6. Declarant declares, represents, covenants and agrees for itself and its successors and assigns that, for the term of this Declaration, that it will provide any and all information and reports as required by this Declaration.

## **ARTICLE V**

### **Term**

Section 1. This Declaration will remain in full force and effect for a period ending 35 years from the date of this Declaration.

Section 2. Subject to Section 1 of this Article V, Declarant declares, represents, covenants and agrees for itself and its successors and assigns that the obligation to operate the Development subject to this Declaration and the Program for the term of the Declaration is independent of the existence of the Loan and that the provisions of this Declaration will survive the termination or extinguishment of the Loan and of any other security instruments placed of record in connection with financing of the Development by Lender and survive the termination of any subsequent financing or security instruments placed of record by other lenders.

## **ARTICLE VI**

### **Amendment, Termination of Covenants**

Section 1. The provisions of this Declaration will not be amended during the term of this Declaration, except by an instrument in writing executed by Lender and Declarant, or their respective successors or assigns except as set forth in this Declaration. Lender, or its successors or assigns, has the right to terminate this Declaration at any time in its sole discretion.

Section 2. Unless sooner amended or terminated as provided in this Article VI, the Covenants contained in this Declaration will continue in full force and effect through the term of this Declaration and will then terminate and be of no further force or effect.

## **ARTICLE VII Miscellaneous**

Section 1. **Covenants Touch and Concern.** Declarant agrees that these Covenants confer a financial benefit upon Declarant and constitute a burden on the use of Declarant's property, but Declarant agrees such burden is reasonable given the benefits of the transaction to Lender, Declarant, and the residents on whose behalf Lender exercised the powers given to it by law.

Section 2. **Covenants Running with the Land.** This Declaration constitutes covenants that run with the land and are binding upon Declarant, its successors, heirs or assigns, and all subsequent owners of all or any part of the Development, together with their grantees, successors, heirs, executors, administrators, devisees or assigns.

Section 3. **Lender Sole Representative.** This Declaration inures solely to the benefit of Lender. Lender, or its successors or assigns, is designated as the sole and exclusive representative of any and all other persons or entities also benefited by the Covenants with respect to the enforcement, construction, interpretation, amendment, release and termination of the Covenants.

Section 4. **Remedies.** Lender, or its successors and assigns, may institute and prosecute any proceedings at law or in equity to abate, prevent or enjoin any violation, or to specifically enforce, the Covenants, or to recover monetary damages caused by that violation or attempted violation. No delay in enforcing the provisions of this section as to a violation will waive the right to enforce that violation at any later time.

Section 5. **Severability.** If any provisions of this Declaration are found to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions will not in any way be affected or impaired.

Section 6. **Choice of Law.** This Declaration is governed by the laws of the State of Minnesota.

## **ARTICLE VIII Notices**

Any notice or petition required to be given to Lender or Declarant under this Declaration must be given in writing by personal delivery or certified mail at the address of such parties

specified below, or at such other address as may be specified by that party by notice given to the other party:

Lender:

Minnesota Housing Finance Agency  
400 Wabasha Street North, Suite 400  
St. Paul, MN 55102-1109  
Attention: Assistant Commissioner, Multifamily

Declarant:

Housing and Redevelopment Authority in and for the City of Hopkins  
101 1<sup>st</sup> Street South  
Hopkins, MN 55343  
Attention: Executive Director

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**Exhibit A**  
**LEGAL DESCRIPTION**

Parcel 1:

Lots 1, 2, 3, 4 and 5, Block 1, “West Minneapolis”.

Parcel 2:

That part of the Southwest Quarter of the Southeast Quarter of Section 24, Township 117, Range 22, lying Southwesterly of a line drawn parallel with and 20 feet Northeasterly from the Northeasterly line of Block 1, “West Minneapolis” and between the extensions North across it of the East line of Lot 1 in said Block 1 and the center line of the alley adjoining the West line of said Lot 1.

Parcel 3:

That part of the vacated alley adjoining the West line of Lot 1, Block 1, “West Minneapolis” lying East of the centerline of said alley and between the extensions across it of the Northeasterly line of said Lot 1 and the North line of the South 14 feet of Lot 30 in said Block 1.

Torrens Property.

## Attach Addendum

**ADDENDUM TO  
Minnesota Housing Finance Agency  
Publicly Owned Housing Program (Public Housing)  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

Total number of units in the Development:	<b>76</b>
Total number of units assisted with Program funds (the "Assisted Units") and restricted as set forth below:	<b>76</b>

**A. INCOME RESTRICTIONS.** Assisted Units must be occupied by households whose gross annual household income at initial occupancy does not exceed the Income Restriction(s) set forth below.

<b>PROGRAM</b>	<b># OF ASSISTED UNITS INCOME RESTRICTED</b>	<b>INCOME RESTRICTIONS</b>	<b>MAXIMUM TERM (YRS.) OF RESTRICTION*</b>
POHP	76	Resident of public housing or whose income does not exceed the maximum household income as determined by HUD.	35

**\*Subject to Article V, Section 1 of the Declaration.**

**B. RENT RESTRICTIONS.** Gross rents, including an allowance for tenant-paid utilities, must not exceed the Rent Restriction(s) set forth below.

NONE

**ADDITIONAL INSTRUCTIONS FOR INCOME AND/OR RENT RESTRICTIONS:** Income and rent limits are updated annually. Declarant is responsible for implementing new limits when they become effective.

NONE

**C. OCCUPANCY RESTRICTIONS.** Declarant must comply with any Occupancy Restrictions set forth below.

NONE

Photos before the improvements



Photos after the improvements



**BUSINESS SUBSIDY AGREEMENT – OVATION APARTMENTS**

**Proposed Action**

Staff recommends adoption of the following motion: Move to approve the Business Subsidy Agreement between Ovation Apartments, LLC and the Housing and Redevelopment Authority of the City of Hopkins.

With this motion, the Business Subsidy Agreement will be executed.

**Overview**

Ovation Apartments, also known as Enclave Companies has proposed a redevelopment of the former Hopkins Cinema 6 into a mixed-use housing and retail development. Due to the costs of land acquisition, demolition, site preparation and construction, the redevelopment is not financially feasible without public assistance. City goals are met by the proposed development and the City Council/HRA have indicated a willingness to provide financial assistance in order to realize the project.

The Agreement commits the Housing and Redevelopment Authority (HRA) to a one-time forgivable loan utilizing excess TIF from District 2-11 in the maximum amount of \$1,250,000. The forgivable loan will be utilized as follows: \$750,000 for demolition, \$350,000 for exterior improvements to the existing retail building and \$150,000 for outdoor public space. If actual costs are less overall, the forgivable loan will be reduced dollar for dollar.

The goals for the subsidy are to secure completion of the proposed improvements. The project is not being undertaken with goals of job creation.

**Primary Issues to Consider**

The project is contingent upon a successful rezoning and approvals of a PUD Agreement, loan agreement and parking agreement.

**Supporting Information**

- Business Subsidy Agreement

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Kersten Elverum  
Director of Planning & Development

Financial Impact: \$1,250,000 _____ Budgeted: Y/N _Y__ Source: _TIF 2-11 Related Documents (CIP, ERP, etc.): _____ Notes: _____
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## BUSINESS SUBSIDY AGREEMENT

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the Housing and Redevelopment Authority of the City of Hopkins, a public body corporate and politic under the laws of Minnesota (the “HRA”), and Ovation Apartments, LLC, a Minnesota limited liability company (“Ovation”).

Section 1. Business Subsidy Agreement. The provisions of this Agreement constitute the “business subsidy agreement” for the purposes of Minnesota Statutes, Sections 116J.993 through 116J.995 (the “Business Subsidy Act” or “Act”).

(a) *General Terms*. The parties agree and represent to each other as follows:

(1) For the purpose of this Agreement, the terms used in this Agreement which are defined in the PUD Agreement between the HRA and Ovation, dated as of September \_\_\_, 2022 (the “Contract”) shall have the meanings given them in the Contract or in the Act.

(2) Business subsidies are proposed to be granted by the HRA to Ovation under Minnesota Statutes, Sections 116J.993 through 116J.995 (the “Business Subsidy Act”), and Minnesota Statutes, Sections 469.174 through 469.179 (tax increment) for certain property in the City of Hopkins located along Mainstreet between 11<sup>th</sup> Avenue South and 12<sup>th</sup> Avenue South (PID No. 24-117-22-34-0249), in the City of Hopkins (the “Property”). Ovation recently secured an agreement to purchase the Property (1.88 acre site). Ovation’s development would provide a residential mix of 67 alcove, 22 studio, 47 one-bedroom, and 14 two-bedroom market rate apartments, and 5,382 square feet of commercial space on the ground floor accessed from Mainstreet at the Property. This Agreement, and another agreement, (the “Business Subsidy Agreement”), between Ovation and the HRA, provides for certain benefits and business subsidies to Ovation in connection with development of the Property, including the following assistance: a one-time forgivable loan utilizing excess TIF from District 2-11 from the City in the maximum principal amount of \$1,250,000 or 2.9% of the project costs, apportioned for project costs as follows: \$1,250,000 for demolition and environmental remediation associated with the demolition, for exterior improvements to the existing retail and for outdoor public space. If, demolition and environmental remediation associated with the demolition costs, the exterior improvement costs and the cost of the outdoor space (not including surface parking lot construction) is less than \$1,250,000, the forgivable loan would be reduced dollar for dollar. Such business subsidy provided to Ovation consists of the assistance provided by the HRA in the form of a forgivable loan agreement to be issued to Ovation (the “Loan Agreement”). Each disbursement or payment thereunder represents a forgivable loan that is repayable by Ovation in accordance with this Agreement.

(3) The public purposes of the subsidy are to promote redevelopment of an area which contained structurally substandard buildings, establish a mixed residential and

commercial development and to implement the HRA's and City of Hopkins' (the "City") land use goals identified in the comprehensive plan.

(4) The goals for the subsidy are to secure completion of the Minimum Improvements and operation of the Ovation development for at least five years as described in clause (7) below.

(5) If the goals described in clause (4) are not met, the amount of the subsidy and forgivable loan shall be reduced and Ovation or its successors and assigns must make the payments to the City described in Section 1(c) below.

(6) The subsidy is needed because the costs of land acquisition, demolition, clearance and site preparation, and construction of the required public and private infrastructure improvements, engineering, environmental consulting and correction and geotechnical consulting and correction costs, all as described in the Contract, does not make the development of the Minimum Improvements financially feasible without public assistance, as determined by the HRA.

(7) Ovation and its successors and assigns must continue operation of the Ovation development for at least five (5) years after the date of issuance of the Certificate of Completion for the Ovation development. For the purpose of this Section, space will be considered to be maintained in operation if it is leased, or available for lease, to any person or entity, or occupied by Ovation, or its successors and assigns for use in its trade or business.

(8) Ovation does not have a parent corporation.

(9) Ovation has not received, and does not expect to receive, financial assistance from any other "grantor" as defined in the Business Subsidy Act, in connection with Ovation's development.

(b) *Job and Wage Goals.* In accordance with Section 116J.994, subdivision 4, of the Business Subsidy Act, the HRA has determined after a public hearing held in August 16, 2022, that the creation or retention of jobs is not the goal of this redevelopment effort. Accordingly, the wage and job goals are set at zero.

(c) *Remedies.* If Ovation fails to continue operation of all or a divisible portion of the Ovation development for the five-year period as provided in Section 1(a)(7) hereof, the subsidy and forgivable loan shall be reduced by an amount equal to the percentage the square footage of the Ovation development which is not being operated represents of the approximately \_\_\_\_\_ square footage of the entire Ovation development and prorated by the remaining portion of the five-year operation period as of the date of default. If the amount of the reduction to the subsidy and forgivable loan exceeds the balance due under the Note, then such excess shall be paid by Ovation to the HRA as reimbursement of the balance of the amount of the business subsidy to be paid to the HRA. Any demand for repayment must be in writing and is subject to

the cure provisions of the Contract. Payment shall also include interest at the implicit price deflator as defined in Minnesota Statutes, Section 275.50, subd. 2, accrued from the Benefit Date to the date of payment.

Section 2. No Remedy Exclusive. Nothing in this Agreement shall be construed to limit the HRA's remedies under Article XII of the Contract in the event of a violation of any other provision of the Contract, to the extent any such provision applies to Ovation, but the remedy set forth in Section 1(c) hereof is the exclusive remedy for failure to comply with the terms of this Agreement. In addition to the exclusive remedy described in this Agreement, Ovation agrees and understands that it may not receive a business subsidy from the HRA or any grantor (as defined in the Act) for a period of five years from the date of the failure or until Ovation satisfies its repayment obligation under this Agreement, whichever occurs first.

Section 3. Reports. Ovation must submit to the HRA a written report regarding business subsidy goals and results by no later than March 1 of each year, beginning March 1 in the year following opening of the Ovation development and continuing until the later of (i) 30 days after expiration of the five-year period described in Section 1(a)(7); or (ii) if the goals are not met, the date the subsidy is repaid in accordance with Section 1(c). The report must comply with Section 116J.994, subdivision 7 of the Act. The HRA will provide information to Ovation regarding the required forms. If Ovation fails to timely file any report required under this Section, the HRA will mail by certified mail, return receipt requested, to Ovation a warning within one week after the required filing date. If, after 30 days after receipt of the warning, Ovation fails to provide a report, Ovation must pay to the HRA a penalty of \$100 for each subsequent day until the report is filed. Failure by the HRA to deliver a timely warning notice will not relieve Ovation's obligation to pay a penalty within 30 days after receipt of a notice to pay. The maximum aggregate penalty payable under this Section is \$1,000.

**[Signature pages to follow]**

IN WITNESS WHEREOF, the HRA and Ovation have caused this Agreement to be duly executed by their duly authorized representatives as of the date first above written.

**HOUSING AND REDEVELOPMENT AUTHORITY  
OF THE CITY OF HOPKINS**

By: \_\_\_\_\_  
Patrick Hanlon  
Its: Chair

By: \_\_\_\_\_  
Michael Mornson  
Its: Executive Director

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by Patrick Hanlon and Michael Mornson, the Chair and Executive Director of the Housing and Redevelopment Authority of the City of Hopkins, a public body corporate and politic under the laws of Minnesota, on behalf of said authority.

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



## **LOAN AGREEMENT – OVATION APARTMENTS**

### **Proposed Action**

Staff recommends adoption of the following motion: Move to approve the Loan Agreement between Ovation Apartments, LLC and the Housing and Redevelopment Authority of the City of Hopkins.

With this motion, the Loan Agreement will be executed.

### **Overview**

Ovation Apartments, also known as Enclave Companies has proposed a redevelopment of the former Hopkins Cinema 6 into a mixed-use housing and retail development. Due to the costs of land acquisition, demolition, site preparation and construction, the redevelopment is not financially feasible without public assistance. City goals are met by the proposed development and the City Council/HRA have indicated a willingness to provide financial assistance in order to realize the project.

The Agreement commits the Housing and Redevelopment Authority (HRA) to a one-time forgivable loan utilizing excess TIF from District 2-11 in the maximum amount of \$1,250,000. The forgivable loan will be utilized as follows: \$750,000 for demolition, \$350,000 for exterior improvements to the existing retail building and \$150,000 for outdoor public space. If actual costs are less overall, the forgivable loan will be reduced dollar for dollar.

At closing, the developer agrees to execute a Note and mortgage to be recorded against the property.

### **Primary Issues to Consider**

The project is contingent upon a successful rezoning and approvals of a PUD Agreement, Business Subsidy Agreement and Parking Agreement.

### **Supporting Information**

- Loan Agreement

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Kersten Elverum  
Director of Planning & Development

Financial Impact: \$1,250,000 \_\_\_\_\_ Budgeted: Y/N \_Y\_\_ Source: \_TIF 2-11  
 Related Documents (CIP, ERP, etc.): \_\_\_\_\_  
 Notes: \_\_\_\_\_

## LOAN AGREEMENT

THIS AGREEMENT (the “Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2022, between the Housing and Redevelopment Authority of the City of Hopkins, a public body corporate and politic under the laws of Minnesota (the “HRA”), and Ovation Apartments, LLC, a Minnesota limited liability company (the “Borrower”):

### RECITALS

1. The purpose of the HRA is as follows:
  - A. Provide a sufficient supply of adequate, safe and sanitary dwellings in order to protect the health, safety, morals and welfare of the city;
  - B. Clear and redevelop blighted areas;
  - C. Provide commercial development opportunities; and
  - D. Redevelop blighted areas in situations in which private enterprise would not act without governmental participation or subsidies.
  
2. Business subsidies are proposed to be granted by the HRA to Borrower under Minnesota Statutes, Sections 116J.993 through 116J.995 (the “Business Subsidy Act”), and Minnesota Statutes, Sections 469.174 through 469.179 (tax increment) for certain property in the City of Hopkins located along Mainstreet between 11<sup>th</sup> Avenue South and 12<sup>th</sup> Avenue South (PID No. 24-117-22-34-0249), in the City of Hopkins (the “Property”).
  
3. This Agreement, and another agreement, (the “Business Subsidy Agreement”), between the Borrower and the HRA, provides for certain benefits and business subsidies to the Borrower in connection with development of the Property, including the following assistance: a one-time forgivable loan utilizing excess TIF from District 2-11 from the City in the maximum principal amount of \$1,250,000 or 2.9% of the project costs, apportioned for project costs as follows: \$1,250,000 for demolition and environmental remediation associated with the demolition, for exterior improvements to the existing retail and for outdoor public space. If, demolition and environmental remediation associated with the demolition costs, the exterior improvement costs and the cost of the outdoor space (not including surface parking lot construction) is less than \$1,250,000, the forgivable loan would be reduced dollar for dollar.
  
4. The Borrower is acquiring certain real property (1.88 acres of land located along Mainstreet between 11<sup>th</sup> Avenue South and 12<sup>th</sup> Avenue South (PID No. 24-117-22-34-0249), Hopkins, Minnesota 55021 (the “Project”). The Borrower plans to perform demolition at

the Project and make exterior improvements to the Project, including the construction of a residential mix of 67 alcove, 22 studio, 47 one-bedroom, and 14 two-bedroom market rate apartments, and 5,382 square feet of commercial space on the ground floor accessed from Mainstreet at the Property (the "Improvements"). The Project will contain a mix of housing choices for area residents, providing a new opportunity to live in Hopkins. The Project also includes development of retail space, with tenants yet to be identified.

5. The Project is occurring on the real property legally described on Exhibit A attached hereto (the "Property").
6. The Borrower has requested financial assistance from the HRA in the amount of \$1,250,000 to assist with the cost of demolition and exterior improvements at the Property.
7. The HRA has agreed to lend to the Borrower, upon execution of this Agreement, project financing in the maximum principal amount of \$1,250,000 or 2.9% of the project costs (the "Funds"), apportioned for project costs as follows: \$1,250,000 for demolition and environmental remediation associated with the demolition, for exterior improvements to the existing retail and for outdoor public space. If, demolition and environmental remediation associated with the demolition costs, the exterior improvement costs and the cost of the outdoor space (not including surface parking lot construction) is less than \$1,250,000, the forgivable loan would be reduced dollar for dollar.
8. The HRA has reviewed this Agreement and finds that execution of this Agreement by the HRA and performance of the HRA's obligations hereunder are in the best interests of the HRA, the City, and its residents.
9. The parties are authorized and empowered to enter into this Agreement under the laws of the State of Minnesota.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the HRA and the Borrower agree as follows:

1. The recitals set forth in the preamble to this Agreement and the exhibits attached to this Agreement are incorporated into this Agreement as if fully set forth herein.
2. The Borrower intends to conduct demolition activity and to make the Improvements to the Property in accordance with the Project (the "Improvements").
3. Upon final inspection and approval of the demolition of the Improvements to the reasonable satisfaction of the HRA, the HRA agrees to provide funds in an amount not to exceed the maximum principal amount of \$1,250,000 or 2.9% of the project costs, apportioned for project costs as follows: \$1,250,000 for demolition and environmental remediation associated with the demolition, for exterior improvements to the existing retail and for outdoor public space. If, demolition and environmental remediation associated with the demolition costs, the exterior improvement costs and the cost of the outdoor space (not including surface parking lot construction) is less than \$1,250,000, the forgivable loan would be reduced dollar for dollar. Such Funds shall be provided as a \$1,250,000

forgivable loan pursuant to the Promissory Note (the “Note”), the form of which is attached hereto as Exhibit B.

4. The business subsidies in the form of a forgivable loan are proposed to be granted by the HRA to Borrower under Minnesota Statutes, Sections 116J.993 through 116J.995 (the “Business Subsidy Act”), and Minnesota Statutes, Sections 469.174 through 469.179 (tax increment).
5. The Borrower agrees to fully comply with all stated requirements, and acknowledges that all terms, conditions, and requirements are made part of this Agreement.
6. The Borrower agrees to execute at closing, the Note and a separate mortgage (the “Mortgage”), the form of which is attached hereto as Exhibit C. All documents executed shall, as deemed reasonably necessary by the HRA, be filed with the County Recorder and/or Registrar of Titles. The HRA shall maintain a lien on the Property pursuant to the security instruments required herein.
7. Failure to comply with any term, covenant, condition, or requirement contained in this Agreement, or a default under any note, mortgage, or other instrument executed in connection with this Agreement (following the passing of any applicable notice and cure periods), following thirty (30) days after the HRA gives written notice specifying the form of said non-compliance, shall constitute a breach of this Agreement and a default by the Borrower. The foregoing notwithstanding, if a default requires more than thirty (30) days to cure, such default shall not constitute an uncured default, provided that the curing of the default is promptly commenced upon receipt of written notice from the City, and with due diligence is thereafter continuously prosecuted to completion and is completed in a reasonable period of time, not to exceed ninety (90) days.

If any default shall occur, following the passing of applicable cure periods, the HRA may declare the Funds provided to Borrower to be due and payable in accordance with the terms of the Note. The HRA may also pursue remedies available under the terms of any mortgage or other instrument executed to secure its interests in the Funds or the Property, and other such remedies as may be available under local, state, or federal laws.

8. The Borrower, for itself and for its successors and/or its assigns, further agrees and consents to the filing of such security instruments and this Agreement with the government officials or entities appropriate to protect the interest of the HRA in the Property.
9. Without limitation of any provision set forth herein, the Borrower agrees to pay to the HRA any costs or expenses, including without limitation attorney fees, incurred by the HRA in enforcing any provision of this Agreement.
10. Except as expressly set forth herein, nothing in this Agreement shall constitute a limitation or waiver of the HRA’s or the City’s right to enforce any ordinance, law, rule, or regulation.
11. The Borrower shall and does hereby agree to protect, defend, indemnify and hold the HRA, including its officers, agents, and employees, harmless of and from any and all liability, loss, or damage that it may incur under or by reason of this Agreement, and of and from

any and all claims and demands whatsoever that may be asserted against the HRA by reason of any alleged obligations or undertakings on the part of the HRA to perform or discharge any of the terms, covenants, or agreements contained in this Agreement. This indemnification and hold harmless provision shall survive the execution, delivery, and performance of this Agreement and the payment or repayment of any Funds. The Borrower waives notice of the acceptance of this Agreement by the HRA. Nothing in this Agreement shall constitute a waiver or limitation of the HRA's immunities or limitations on liability as set forth in Minnesota Statutes, Chapter 466 or otherwise.

12. A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(A) as to the Developer: Ovation Apartments, LLC  
300 23<sup>rd</sup> Avenue East, Suite 300  
West Fargo, ND 58078-5807  
Attn: Austin J. Morris

with a copy to: Siegel Brill, P.A.  
100 Washington Avenue South, Suite 1300  
Minneapolis, MN 55401  
Attn: Anthony J. Gleekel

(B) as to the HRA: Housing and Redevelopment Authority  
of the City of Hopkins  
1010 1<sup>st</sup> Street South  
Hopkins, MN 55343  
Attn: Executive Director

with a copy to: Scott J. Riggs, City Attorney  
Kennedy & Graven, Chartered  
150 South 5<sup>th</sup> Street, Suite 700  
Minneapolis, MN 55402

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this section 12.

13. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.
14. The HRA and the Borrower acknowledge that nothing contained in this Agreement nor any act by the HRA and the Borrower shall be deemed or construed by the parties or by any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between the HRA, the City, and the Borrower.
15. This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement

waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

16. The performance or observance of any promise or condition set forth in this Agreement may be waived, amended, or modified only by a writing signed by both parties. No delay in the exercise of any power, right, or remedy operates as a waiver thereof, nor shall any single or partial exercise of any other power, right, or remedy.
17. This Agreement may be modified solely through written amendments hereto executed by both the Borrower and the HRA.
18. The Borrower shall not assign, subcontract, transfer, or pledge this Agreement whether in whole or in part, without the prior written consent of the HRA. Notwithstanding the foregoing, the Borrower may, without the HRA's consent transfer the Property to an affiliate of the Borrower that is owned by or under common ownership with the Borrower or any affiliate of Borrower, which entity will act as manager or operator of the Improvements; provided that any such transferee must enter into an agreement pursuant to which it assumes and agrees to perform the obligations of the Borrower under this Agreement. In addition, a transfer or pledge for any indebtedness of the Borrower for borrowed money from a lender that is secured by a first lien priority security interest in the Project or Property and any complete or partial refinancings of such indebtedness ("Senior Debt") shall not be prohibited by this Section 18. Nothing in this Section 18 shall limit Borrower's ability to enter into management agreements with affiliates.

The Borrower may sell, assign or transfer interest in the Property to an affiliated third party with notice to, and with the HRA's consent, following the completion of the Improvements, as evidenced by the issuance of a Certificate of Occupancy for the apartment portion of the Improvements.

19. Wherever possible, each provision of this Agreement and each related document shall be interpreted so that it is valid under applicable law. If any provision of this Agreement or any related document is to any extent found invalid by a court or other governmental entity of competent jurisdiction, that provision shall be ineffective only to the extent of such invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or any other related document.
20. This Agreement, together with the Exhibits hereto, which are expressly incorporated by reference, constitutes the complete and exclusive statement of all mutual understandings between the parties with respect to this Agreement, superseding all prior or contemporaneous proposals, communications, and understandings, whether oral or written, pertaining to the subject matter of this Agreement or concerning the Funds.
21. This Agreement shall be recorded among the land records of Hennepin County, Minnesota. The provisions of this Agreement shall run with the Property and be binding upon the Borrower and its assigns or successors in interest.
22. The Borrower warrants that all work performed pursuant to this Agreement shall be in compliance with existing laws, codes, ordinances, pertinent regulations, standards, and

specifications. This Agreement does not act as a substitute for any permits or approvals that are otherwise required by the Borrower in order to complete any of the Improvements.

23. If requested by Borrower in writing, the HRA will agree to subordinate this Agreement, the Note and the Mortgage to any Senior Debt.
24. Each of the undersigned parties warrants it has the full authority to execute this Agreement.

**[Signature pages to follow]**

IN WITNESS WHEREOF, the Borrower, having signed this Agreement, and the HRA having duly approved this Agreement on the day and year first written above and pursuant to such approval and the proper HRA officials having signed this Agreement, the parties hereto agree to be bound by the provisions herein set forth.

**THE BORROWER:**

**OVATION APARTMENTS, LLC**

Dated: \_\_\_\_\_, 2022.

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, the \_\_\_\_\_ of Ovation Apartments, LLC, a Minnesota limited liability company, by and on behalf of said company.

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

**HOPKINS HOUSING AND  
REDEVELOPMENT AUTHORITY OF  
THE CITY OF HOPKINS**

Dated: \_\_\_\_\_, 2022.

By: \_\_\_\_\_  
Patrick Hanlon  
Its: Chair

By: \_\_\_\_\_  
Michael Mornson  
Its: Executive Director

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF HENNEPIN    )

On this \_\_\_ day of \_\_\_\_\_, 2022, before me personally appeared Patrick Hanlon and Michael Mornson, the Chair and Executive Director, respectively, of the Hopkins Housing and Redevelopment Authority of the City of Hopkins, a public body corporate and politic under the laws of Minnesota, on behalf of said authority.

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

This document drafted by:  
Kennedy & Graven, Chartered (SJR)  
700 Fifth Street Towers  
150 South Fifth Street  
Minneapolis, MN 55402

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

The land to which this Agreement applies is legally described as follows:

Lots 1 to 6 inclusive, Block 7,

That part of the North half of the adjoining vacated East-West alley in said Block 7 lying between the extensions across it of the West line of said Lot 1 and the East line of Lot 26 in said Block 7, West Minneapolis,

That part of the vacated East-West alley lying North of the center line of said alley and between the extensions across it of the East line of Lot 6 and the East line of Lot 26, all in Block 7,

“West Minneapolis,” Hennepin County, Minnesota.

Torrens Certificate No. 834358

AND

Lot Twenty-three (23) except the South 25 feet thereof, front and rear, and all of Lots Twenty-four (24), Twenty-five (25) and Twenty-six (26), Block Seven (7), West Minneapolis, according to the recorded plat thereof, and situate in Hennepin County, Minnesota, together with that part of the South half of vacated East-West alley in said Block 7 lying between the extensions across it of the West line of said Lot 26 and the center line of the North-South alley in said Block 7 and together with that part of the West half of the vacated North-South alley in said Block 7 lying between the extensions across it of the South line of Lot 23 except the South 25 feet thereof and the North line of said Lot 26.

Abstract Property

AND

Lots Seven (7), Eight (8), Nine (8) and Ten (10), Block Seven (7) West Minneapolis, except the South 25 feet of said Lot 10, according to the recorded plat thereof, and situate in Hennepin County, Minnesota, together with that part of the East half of the vacated North-South alley in said Block Seven (7) lying between the extensions across it of the South line of said Lot 10 except the South 25 feet thereof and the North line of said Lot 7 and together with that part of the South half of the vacated East-West alley in said Block 7 lying between the extensions across it of the East line of said Lot 7 and the center line of the North-South alley in said Block 7.

Abstract Property

PID No.: 24-117-22-34-0249

**EXHIBIT B**  
**PROMISSORY NOTE**

\$1,250,000.00

Date: \_\_\_\_\_, 2022

Ovation Apartments, LLC, a Minnesota limited liability company (“Maker”), for value received, hereby promises to pay to the Housing and Redevelopment Authority of the City of Hopkins, a public body corporate and politic under the laws of Minnesota, or its assigns (collectively referred to herein as “Holder”), at its designated principal office or such other place as the Holder may designate in writing, the principal sum of One Million Two Hundred Fifty Thousand and No/100 Dollars (\$1,250,000.00) or so much thereof as may be advanced under this Note, without interest thereon, in any coin or currency that at the time or times of payment is legal tender for the payment of private debts in the United States of America. The principal of and interest on this Note is payable in installments due as follows:

1. The entire unpaid balance of principal shall be due and payable upon the earlier of the following: (i) thirty (30) days after written notification by Holder to Maker of the occurrence of any default or non-compliance with any provision or requirement of the Loan Agreement (following notice and passing of all applicable notice and cure provisions), dated September \_\_\_\_, 2022, between the Maker and Holder (the “Agreement”); or (ii) ten (10) days after the Maker makes or allows to be made any total or partial transfer, sale, assignment, conveyance or transfer in any other mode, of the Property (as such term is defined in the Agreement), if such transfer occurs within five (5) years after the date of this Note; unless, such transfer, sale, assignment, conveyance or transfer in any other mode is expressly allowed under the Agreement. If the Maker does not sell the Property within five (5) years of the Loan Closing Date, unless otherwise allowed under the Agreement, and does not default under the Agreement, no payments shall be payable on this Note and the entire principal balance shall be forgiven.

2. This Note is given pursuant to the Agreement between the Maker and Holder. If any information in the Agreement is found to be invalid for whatever reason, such invalidity shall constitute an Event of Default hereunder.

3. All of the agreements, conditions, covenants, provisions, and stipulations contained in the Agreement are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein. It is agreed that time is of the essence of this Note. If an Event of Default occurs under the Agreement, or any other instrument securing this Note, then the Holder of this Note may at its right and option, without notice, declare immediately due and payable the principal balance of this Note, together with reasonable attorneys’ fees and expenses incurred by the Holder of this Note in collecting or enforcing payment hereof, whether by lawsuit or otherwise, and all other sums due hereunder or any instrument securing this Note. The Maker of this Note agrees that the Holder of this Note may, without notice to and without affecting the liability of the Maker, accept additional or substitute security for this Note, or release any security or any party liable for this Note or extend or renew this Note.

4. The remedies of the Holder of this Note as provided herein, and in the Agreement, or any other instrument securing this Note shall be cumulative and concurrent and may be pursued

singly, successively, or together, and, at the sole discretion of the Holder of this Note, may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

The Holder of this Note shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Holder and then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event. This Note may not be amended, modified, or changed except only by an instrument in writing signed by the party against whom enforcement of any such amendment, modifications, or change is sought.

5. If any term of this Note, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Note, or the application of such term to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each term of this Note shall be valid and enforceable to the fullest extent permitted by law.

6. If any Event of Default occurs, and if Holder engages legal counsel or others in connection with advice to Holder or Holder's rights and remedies under the Agreement or this Note, Maker shall pay all reasonable expenses incurred by Holder for such persons, irrespective of whether any suit or other proceeding has been or is filed or commenced. Any such expenses, costs and charges shall constitute additional principal, payable upon demand, and subject to this Note.

7. It is intended that this Note is made with reference to and shall be construed as a Minnesota contract and is governed by the laws thereof. Any disputes, controversies, or claims arising out of this Note shall be heard in the state or federal courts of Minnesota, and all parties to this Note waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

8. The performance or observance of any promise or condition set forth in this Note may be waived, amended, or modified only by a writing signed by the Maker and the Holder. No delay in the exercise of any power, right, or remedy operates as a waiver thereof, nor shall any single or partial exercise of any other power, right, or remedy.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts, and things required to exist, happen, and be performed precedent to or in the issuance of this Note do exist, have happened, and have been performed in regular and due form as required by law.

IN WITNESS WHEREOF, the Maker has caused this Note to be duly executed as of the \_\_\_\_ day of September, 2022.

Ovation Apartments, LLC,  
a Minnesota limited liability company

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

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

**EXHIBIT C  
THE MORTGAGE**

**Mortgage**

THIS MORTGAGE, made this \_\_\_\_\_ day of September, 2022, by Ovation Apartments, LLC, a Minnesota limited liability company, with its principal place of business located at 300 23<sup>rd</sup> Avenue East, Suite 300, West Fargo, ND 58078-5807 (“Mortgagor”), to the Housing and Redevelopment Authority of the City of Hopkins, a public body corporate and politic under the laws of Minnesota, located at 1010 1st Street South, Hopkins, MN 55343 (“Mortgagee”).

**WITNESSETH:** That said Mortgagor hereby mortgages and conveys to said Mortgagee the following described premises located at PID No. 24-117-22-34-0249, Hopkins, Minnesota, Hennepin County Minnesota (the “Property”), and legally described as:

Lots 1 to 6 inclusive, Block 7,

That part of the North half of the adjoining vacated East-West alley in said Block 7 lying between the extensions across it of the West line of said Lot 1 and the East line of Lot 26 in said Block 7, West Minneapolis,

That part of the vacated East-West alley lying North of the center line of said alley and between the extensions across it of the East line of Lot 6 and the East line of Lot 26, all in Block 7,

“West Minneapolis,” Hennepin County, Minnesota.

Torrens Certificate No. 834358

AND

Lot Twenty-three (23) except the South 25 feet thereof, front and rear, and all of Lots Twenty-four (24), Twenty-five (25) and Twenty-six (26), Block Seven (7), West Minneapolis, according to the recorded plat thereof, and situate in Hennepin County, Minnesota, together with that part of the South half of vacated East-West alley in said Block 7 lying between the extensions across it of the West line of said Lot 26 and the center line of the North-South alley in said Block 7 and together with that part of the West half of the vacated North-South alley in said Block 7 lying between the extensions across it of the South line of Lot 23 except the South 25 feet thereof and the North line of said Lot 26.

Abstract Property

AND

Lots Seven (7), Eight (8), Nine (8) and Ten (10), Block Seven (7) West

Minneapolis, except the South 25 feet of said Lot 10, according to the recorded plat thereof, and situate in Hennepin County, Minnesota, together with that part of the East half of the vacated North-South alley in said Block Seven (7) lying between the extensions across it of the South line of said Lot 10 except the South 25 feet thereof and the North line of said Lot 7 and together with that part of the South half of the vacated East-West alley in said Block 7 lying between the extensions across it of the East line of said Lot 7 and the center line of the North-South alley in said Block 7.

#### Abstract Property

This Mortgage is given in consideration of and as security for the payment of One Million Two Hundred Fifty Thousand and No/100 Dollars (\$1,250,000.00) (the "Loan"), receipt of which is hereby acknowledged and which is made to enable the Mortgagor to make improvements to the Property. The Loan is evidenced by a Promissory Note (the "Note"), attached hereto as Exhibit A, and repayment of the Loan shall be in accordance with the terms of the Note.

Mortgagor makes and includes in this Mortgage the statutory covenants and other provisions set forth in Minnesota Statutes Section 507.15, including the following:

- a. To warrant title to the Property;
- b. To pay all other mortgages, liens, charges or encumbrances against the Property as and when they become due;
- c. To pay the indebtedness of the Note as herein provided;
- d. To pay all real estate taxes on the Property;
- e. To keep the Property in repair and not commit waste; and
- f. To keep the Property insured against loss by fire and other hazards for at least the sum of the full insurable value of the Property for the protection for the Mortgagee.

If the Mortgagor herein shall pay the Mortgagee herein, its successors or assigns, the sum of One Million Two Hundred Fifty Thousand and No/100 Dollars (\$1,250,000.00) when it becomes due according to the terms of the above-mentioned Note, then this Mortgage shall be null and void, otherwise to remain in full force and effect. But if default shall be made in payment of said sum when due or in any of the covenants or agreements contained herein, then the Mortgagee may declare immediately due and payable the entire unpaid principal balance, and the Mortgagee, its successors or assigns, are hereby authorized and empowered to foreclose this Mortgage by action or advertisement, pursuant to the statutes of the State of Minnesota in such case made and provided, power being expressly granted to sell the Property at public auction and convey the same to the purchaser in fee simple and, out of the proceeds arising from such sale, to pay the principal of the Note with interest, if any, together with all legal costs and charges of such foreclosure and the maximum attorneys' fees permitted by law.

Mortgagee prior to acceleration shall mail notice to Mortgagor specifying: (1) the event of default; (2) the action required to cure such event; (3) the date, not less than 30 days from the date the notice is mailed to Mortgagor, by which date such default must be cured; and (4) that failure to cure such default on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage and sale of the Property. The notice shall further inform Mortgagor of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Mortgagor to acceleration and sale. If the default is not cured on or before the date specified in the notice (subject to the cure rights set forth below), Mortgagee at Mortgagee's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may invoke the power of sale hereby granted and any other remedy permitted by applicable law. Any one of the following events shall constitute and Event of Default:

- i. Mortgagor fails to pay any amounts due under the Note when said payment is due, and such default shall continue for ten (10) days after notice from the City; and
- ii. Mortgagor violates or fails to perform any of the other terms, covenants or conditions of this Mortgage and such default shall continue for thirty (30) days after notice from the Mortgagee, unless such default cannot be cured in the exercise of reasonable diligence within said thirty (30) day period, in which event Mortgagor shall be allowed such additional time as is needed to cure such default with all due diligence.

If requested by Borrower in writing, the HRA will agree to subordinate this Agreement, the Note and the Mortgage to any Senior Debt (as defined in the Agreement”).

Notwithstanding Mortgagee's acceleration of the sums secured by this Mortgage, Mortgagor shall have the right to have any proceedings begun by Mortgagee to enforce this Mortgage discontinued at any time prior to the earlier of (i) sale of the Property pursuant to the power of sale contained in this Mortgage or (ii) a judgment enforcing this Mortgage, if: (a) Mortgagor pays Mortgagee all sums constituting the default actually existing under this Mortgage and the Note at the commencement of foreclosure proceedings under this Mortgage; (b) Mortgagor cures all breaches of any other covenants or agreements of Mortgagor contained in this Mortgage; (c) Mortgagor pays all reasonable expenses incurred by Mortgagee in enforcing the covenants and agreements of Mortgagor contained in this Mortgage and in enforcing Mortgagee's remedies as provided herein, including, but not limited to, reasonable attorneys' fees, and (d) Mortgagor takes such action as Mortgagee may reasonably require to assure that the lien of this Mortgage, Mortgagee's interest in the Property and Mortgagor's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Mortgagor, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

**MORTGAGOR HEREBY: EXPRESSLY CONSENTS TO THE FORECLOSURE AND SALE OF THE MORTGAGED PROPERTY BY ACTION PURSUANT TO MINNESOTA STATUTES CHAPTER 581 OR, AT OPTION OF MORTGAGEE, BY ADVERTISEMENT PURSUANT TO MINNESOTA STATUTES CHAPTER 580, WHICH PROVIDES FOR SALE**

AFTER SERVICE OF NOTICE THEREOF UPON THE OCCUPANT OF THE MORTGAGED PROPERTY AND PUBLICATION OF SAID NOTICE FOR SIX WEEKS IN THE COUNTY IN MINNESOTA WHERE THE MORTGAGED PROPERTY IS SITUATED AND ACKNOWLEDGES THAT SERVICE NEED NOT BE MADE UPON MORTGAGOR PERSONALLY UNLESS MORTGAGOR IS AN OCCUPANT AND THAT NO HEARING OF ANY TYPE IS REQUIRED IN CONNECTION WITH THE SALE AND EXCEPT AS MAY BE PROVIDED IN SAID STATUTES, EXPRESSLY WAIVES ANY AND ALL RIGHT TO PRIOR NOTICE OF SALE OF THE MORTGAGED PROPERTY.

If requested by Mortgagor in writing, the Mortgagee will subordinate this Mortgage, the Note and the Loan Agreement to any Senior Debt (as that term is defined in the Loan Agreement).

This Mortgage and the Note shall be construed according to the laws of the State of Minnesota. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision.

(Signatures Appear on Next Page)



**EXHIBIT A**  
**EXECUTED PROMISSORY NOTE**

[TO BE INSERTED]

## LOAN AGREEMENT – BLAKE ROAD STATION

### **Proposed Action**

Staff recommends adoption of the following motion: Move to approve the Loan Agreement between the Hopkins Housing and Redevelopment Authority and TF Hopkins, LLC.

### **Overview**

The Blake Road Station project is the redevelopment of 7.4 acres located at the intersection of Excelsior Boulevard and Blake Road South. Trilogy Real Estate Group has proposed to develop the site in a three-phase, multi-modal transit-oriented development adjacent to the Blake Road Southwest LRT Station. Each phase will build upon the improvements of the previous phase and will ultimately result in an increasingly connected, pedestrian friendly, and transit-focused community. Phase I is currently under construction.

The project will add to the mix of housing choices for area residents, providing a new opportunity to live immediately adjacent to the light rail transit station. The development also includes retail space, with tenants yet to be identified. The development will substantially increase the taxable market value of the property.

Due to the high cost of land and construction, the developer has indicated it is not financially feasible to undertake the project without City assistance. Staff is recommending \$685,000 in financial assistance be limited to environmental clean-up activities.

### **Primary Issues to Consider**

- What is the financial assistance request from Trilogy?
- Is the assistance necessary for the project to move forward and what is staff's recommendation?

### **Supporting Information**

- Loan Agreement

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Kersten Elverum  
Director of Planning & Development

Financial Impact: \$685,000    Budgeted: No    Source: TIF 2-11 Related Documents (CIP, ERP, etc.): _____
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## **Analysis of the Issues**

### **What is the financial assistance request from Trilogy?**

Trilogy Real Estate Group has submitted an application to the City of Hopkins for financial assistance to support the Blake Road Station development. There are several factors that have contributed to the financial gap in the project including environmental remediation, escalating lumber costs, and design changes. The specific request is for the costs associated with abatement of regulated materials and the remediation of contaminated soils estimated to be \$1.37 million. Non-City grant opportunities were pursued and a \$280,251 Environmental Grant from DEED was awarded to the project.

### **Is the assistance necessary for the project to move forward and what is staff's recommendation?**

City staff, and our financial consultant, Ehler's, believe that additional financial assistance is necessary for the project to move forward. It is staff's recommendation that the basis for the assistance be tied to the environmental remediation necessary for development. While the total costs of remediation, demolition and related costs for phase II are \$1,369,028, leaving a balance of \$1,088,777 after the DEED grant is applied, the City's source of funding, excess TIF from TIF District 2-11, has a remaining balance of approximately \$685,000. Therefore, this is the amount staff recommends be allocated to phase II.

Providing assistance to the developer for these costs will bring the site into a level field as greenfield sites or sites without significant environmental issues, and staff supports assisting with the environmental clean-up costs for community benefits. As structured, the loan would be forgiven after 10 years, but would be required to be paid back if the property was sold or transferred within the 10-year period.

## **Alternatives**

The HRA has the following alternatives regarding this item:

- Approve the loan agreement as proposed
- Amend the loan agreement and approve
- Elect not to enter into a loan agreement at this time. With this action, the project may not move forward.

**LOAN AGREEMENT**

THIS AGREEMENT (the “Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2022, between the Hopkins Housing and Redevelopment Authority, a public body corporate and politic under the laws of Minnesota (the “HRA”), and TF Hopkins, LLC, a Delaware limited liability company (the “Borrower”):

**RECITALS**

1. The purpose of the HRA is as follows:
  - A. Provide a sufficient supply of adequate, safe and sanitary dwellings in order to protect the health, safety, morals and welfare of the city;
  - B. Clear and redevelop blighted areas;
  - C. Provide commercial development opportunities; and
  - D. Redevelop blighted areas in situations in which private enterprise would not act without governmental participation or subsidies.
2. The Borrower owns certain real property (7.4 acres of land located at the intersection of Excelsior Boulevard and Blake Road South, Hopkins, Minnesota 55343 (the “Project”). The Borrower plans to perform environmental remediation at the Project and make improvements to the Project, including the construction of a three-phase, multi-modal transit-oriented development adjacent to the Blake Road Southwest LRT Station. It will contain a mix of housing choices for area residents, providing a new opportunity to live immediately adjacent to the light rail transit station. The development also includes development of retail space, with tenants yet to be identified.
3. The second phase of the Project is occurring on the real property legally described on Exhibit B attached hereto (the “Property”)
4. The Borrower has requested financial assistance from the HRA in the amount of \$685,000.00 to assist with the cost of environmental remediation, at the Property.
5. The HRA has agreed to lend to the Borrower, upon execution of this Agreement, second phase project financing for a total of up to \$685,000.00 (six hundred eighty-five thousand

dollars) in funds for environmental remediation at the Property, subject to additional approvals by the HRA and compliance with all stated requirements.

5. The HRA has reviewed this Agreement and finds that execution of this Agreement by the HRA and performance of the HRA's obligations hereunder are in the best interests of the HRA, the City, and its residents.
6. The parties are authorized and empowered to enter into this Agreement under the laws of the State of Minnesota.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the HRA and the Borrower agree as follows:

1. The recitals set forth in the preamble to this Agreement and the exhibits attached to this Agreement are incorporated into this Agreement as if fully set forth herein.
2. The Borrower intends to make certain environmental remediation improvements to the Property in accordance with its proposal (the "Improvements"). Upon final inspection and approval of the Improvements to the reasonable satisfaction of the HRA, the HRA agrees to provide funds in an amount not to exceed Six Hundred Eighty-Five Thousand Dollars (\$685,000.00) (the "Funds") as reimbursement for the Improvements. Such Funds shall be provided as a \$685,000 forgivable loan pursuant to the Promissory Note (the "Note"), the form of which is attached hereto as Exhibit C.
3. The Borrower agrees to fully comply with all stated requirements, and acknowledges that all terms, conditions, and requirements are made part of this Agreement.
4. The Borrower agrees to execute at closing, the Note and a separate mortgage (the "Mortgage"), the form of which is attached hereto as Exhibit D. All documents executed shall, as deemed reasonably necessary by the HRA, be filed with the County Recorder and/or Registrar of Titles. The HRA shall maintain a lien on the Property pursuant to the security instruments required herein.
5. Failure to comply with any term, covenant, condition, or requirement contained in this Agreement, or contained in any note, mortgage, or other instrument executed in connection with this Agreement, following thirty (30) days after the HRA gives written notice specifying the form of said non-compliance, shall constitute a breach of this Agreement and a default by the Borrower.

If any default shall occur, the HRA may declare the Funds provided to Borrower to be due and payable in accordance with the terms of the Note. The HRA may also pursue remedies available under the terms of any mortgage or other instrument executed to secure its interests in the Funds or the Property, and other such remedies as may be available under local, state, or federal laws.

6. The Borrower, for itself and for its successors and/or its assigns, further agrees and consents to the filing of such security instruments and this Agreement with the government officials or entities appropriate to protect the interest of the HRA in the Property.
7. Without limitation of any provision set forth herein, the Borrower agrees to pay to the HRA any costs or expenses, including without limitation attorney fees, incurred by the HRA in enforcing any provision of this Agreement.
8. Except as expressly set forth herein, nothing in this Agreement shall constitute a limitation or waiver of the HRA's or the City's right to enforce any ordinance, law, rule, or regulation.
9. The Borrower shall and does hereby agree to protect, defend, indemnify and hold the HRA, including its officers, agents, and employees, harmless of and from any and all liability, loss, or damage that it may incur under or by reason of this Agreement, and of and from any and all claims and demands whatsoever that may be asserted against the HRA by reason of any alleged obligations or undertakings on the part of the HRA to perform or discharge any of the terms, covenants, or agreements contained in this Agreement. This indemnification and hold harmless provision shall survive the execution, delivery, and performance of this Agreement and the payment or repayment of any Funds. The Borrower waives notice of the acceptance of this Agreement by the HRA. Nothing in this Agreement shall constitute a waiver or limitation of the HRA's immunities or limitations on liability as set forth in Minnesota Statutes, Chapter 466 or otherwise.
10. A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(A) as to the Developer: TF Hopkins, LLC  
520 W. Erie St., Ste. #100  
Chicago, IL 60654  
Attn: Shay Baldwin

And

TF Hopkins, LLC  
520 W. Erie St., Ste. #100  
Chicago, IL 60654  
Attn: Jesse Karasik

with a copy to: Taft Stettinius & Hollister LLP  
2200 IDS Center  
80 South 8th Street  
Minneapolis MN 55402  
Attn: Justin P. Weinberg

(B) as to the City: City of Hopkins  
1010 1<sup>st</sup> Street South  
Hopkins, MN 55343  
Attn: City Manager

with a copy to: Scott J. Riggs, City Attorney  
Kennedy & Graven, Chartered  
150 South 5<sup>th</sup> Street, Suite 700  
Minneapolis, MN 55402

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this section 10.

11. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.
12. The HRA and the Borrower acknowledge that nothing contained in this Agreement nor any act by the HRA and the Borrower shall be deemed or construed by the parties or by any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner, or joint venture between the HRA, the City, and the Borrower.
13. This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.
14. The performance or observance of any promise or condition set forth in this Agreement may be waived, amended, or modified only by a writing signed by both parties. No delay in the exercise of any power, right, or remedy operates as a waiver thereof, nor shall any single or partial exercise of any other power, right, or remedy.
15. This Agreement may be modified solely through written amendments hereto executed by both the Borrower and the HRA.
16. The Borrower shall not assign, subcontract, transfer, or pledge this Agreement whether in whole or in part, without the prior written consent of the HRA. Notwithstanding the foregoing, the Borrower may, without the HRA's consent transfer the Property to an affiliate of the Borrower that is owned by or under common ownership with the Borrower or any affiliate of Borrower, which entity will act as manager or operator of the Improvements; provided that any such transferee must enter into an agreement pursuant to which it assumes and agrees to perform the obligations of the Borrower under this Agreement. In addition, a transfer or pledge for any indebtedness of the Borrower for borrowed money from a lender that is secured by a first lien priority security interest in the Project or Property and any complete or partial refinancings of such indebtedness ("Senior

Debt”) shall not be prohibited by this section 16. Nothing in this section 16 shall limit Borrower’s ability to enter into management agreements with affiliates.

17. Wherever possible, each provision of this Agreement and each related document shall be interpreted so that it is valid under applicable law. If any provision of this Agreement or any related document is to any extent found invalid by a court or other governmental entity of competent jurisdiction, that provision shall be ineffective only to the extent of such invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or any other related document.
18. This Agreement, together with the Exhibits hereto, which are expressly incorporated by reference, constitutes the complete and exclusive statement of all mutual understandings between the parties with respect to this Agreement, superseding all prior or contemporaneous proposals, communications, and understandings, whether oral or written, pertaining to the subject matter of this Agreement or concerning the Funds.
19. This Agreement shall be recorded among the land records of Hennepin County, Minnesota. The provisions of this Agreement shall run with the Property and be binding upon the Borrower and its assigns or successors in interest.
20. The Borrower warrants that all work performed pursuant to this Agreement shall be in compliance with existing laws, codes, ordinances, pertinent regulations, standards, and specifications. This Agreement does not act as a substitute for any permits or approvals that are otherwise required by the Borrower in order to complete any of the Improvements.
21. If requested by Borrower in writing, the HRA will agree to subordinate this Agreement, the Note and the Mortgage to any Senior Debt.
22. Each of the undersigned parties warrants it has the full authority to execute this Agreement.

IN WITNESS WHEREOF, the Borrower, having signed this Agreement, and the HRA having duly approved this Agreement on the day and year first written above and pursuant to such approval and the proper HRA officials having signed this Agreement, the parties hereto agree to be bound by the provisions herein set forth.

**TF Hopkins, LLC, a Delaware limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

STATE OF ILLINOIS            )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ of TF Hopkins, LLC, a Delaware limited liability company, and \_\_\_\_\_, the \_\_\_\_\_ of TF Hopkins, LLC, a Delaware limited liability company, on behalf of said company.

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

**Hopkins Housing and Redevelopment Authority**

By: \_\_\_\_\_  
Patrick Hanlon  
Its: Chair

By: \_\_\_\_\_  
Michael Mornson  
Its: Executive Director

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF HENNEPIN )

On this \_\_\_ day of \_\_\_\_\_, 2022, before me personally appeared Patrick Hanlon and Michael Mornson, the Chair and Executive Director, respectively, of the Hopkins Housing and Redevelopment Authority, a public body corporate and politic under the laws of Minnesota, on behalf of said authority.

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

This document drafted by:  
Kennedy & Graven, Chartered (SJR)  
700 Fifth Street Towers  
150 South Fifth Street  
Minneapolis, MN 55402

**EXHIBIT B**  
**LEGAL DESCRIPTION OF THE PROPERTY**

The land to which this Agreement applies is legally described as follows:

Lot 3, Block 1, Hopkins Commerce Center Addition, Hennepin County, Minnesota.

**EXHIBIT C  
PROMISSORY NOTE**

\$685,000.00

Date: \_\_\_\_\_, 2022

TF Hopkins, LLC, a Delaware limited liability company (“Maker”), for value received, hereby promises to pay to the Hopkins Housing and Redevelopment Authority, a public body corporate and politic under the laws of Minnesota, or its assigns (collectively referred to herein as "Holder"), at its designated principal office or such other place as the Holder may designate in writing, the principal sum of Six hundred eighty-five thousand and No/100 Dollars (685,000.00) or so much thereof as may be advanced under this Note, without interest thereon, in any coin or currency that at the time or times of payment is legal tender for the payment of private debts in the United States of America. The principal of and interest on this Note is payable in installments due as follows:

1. The entire unpaid balance of principal shall be due and payable upon the earlier of the following: (i) thirty (30) days after written notification by Holder to Maker of the occurrence of any default or non-compliance with any provision or requirement of the Loan Agreement, dated \_\_\_\_\_, 2022, between the Maker and Holder (the “Agreement”); or (ii) ten (10) days after the Maker makes or allows to be made any total or partial transfer, sale, assignment, conveyance or transfer in any other mode, of the Property (as such term is defined in the Agreement), if such transfer occurs within ten (10) years after the date of this Note; unless, such transfer, sale, assignment, conveyance or transfer in any other mode is expressly allowed under the Agreement. If the Maker does not sell the Property within ten (10) years of the Loan Closing Date, unless otherwise allowed under the Agreement, and does not default under the Agreement, no payments shall be payable on this Note and the entire principal balance shall be forgiven.

2. This Note is given pursuant to the Agreement between the Maker and Holder. If any information in the Agreement is found to be invalid for whatever reason, such invalidity shall constitute an Event of Default hereunder.

3. All of the agreements, conditions, covenants, provisions, and stipulations contained in the Agreement are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein. It is agreed that time is of the essence of this Note. If an Event of Default occurs under the Agreement, or any other instrument securing this Note, then the Holder of this Note may at its right and option, without notice, declare immediately due and payable the principal balance of this Note, together with reasonable attorneys’ fees and expenses incurred by the Holder of this Note in collecting or enforcing payment hereof, whether by lawsuit or otherwise, and all other sums due hereunder or any instrument securing this Note. The Maker of this Note agrees that the Holder of this Note may, without notice to and without affecting the liability of the Maker, accept additional or substitute security for this Note, or release any security or any party liable for this Note or extend or renew this Note.

4. The remedies of the Holder of this Note as provided herein, and in the Agreement, or any other instrument securing this Note shall be cumulative and concurrent and may be pursued singly, successively, or together, and, at the sole discretion of the Holder of this Note, may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy

shall in no event be construed as a waiver or release thereof.

The Holder of this Note shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Holder and then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event. This Note may not be amended, modified, or changed except only by an instrument in writing signed by the party against whom enforcement of any such amendment, modifications, or change is sought.

5. If any term of this Note, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Note, or the application of such term to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each term of this Note shall be valid and enforceable to the fullest extent permitted by law.

6. If any Event of Default occurs, and if Holder engages legal counsel or others in connection with advice to Holder or Holder's rights and remedies under the Agreement or this Note, Maker shall pay all reasonable expenses incurred by Holder for such persons, irrespective of whether any suit or other proceeding has been or is filed or commenced. Any such expenses, costs and charges shall constitute additional principal, payable upon demand, and subject to this Note.

7. It is intended that this Note is made with reference to and shall be construed as a Minnesota contract and is governed by the laws thereof. Any disputes, controversies, or claims arising out of this Note shall be heard in the state or federal courts of Minnesota, and all parties to this Note waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

8. The performance or observance of any promise or condition set forth in this Note may be waived, amended, or modified only by a writing signed by the Maker and the Holder. No delay in the exercise of any power, right, or remedy operates as a waiver thereof, nor shall any single or partial exercise of any other power, right, or remedy.

IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts, and things required to exist, happen, and be performed precedent to or in the issuance of this Note do exist, have happened, and have been performed in regular and due form as required by law.

IN WITNESS WHEREOF, the Maker has caused this Note to be duly executed as of the \_\_\_\_ day of \_\_\_\_\_, 2022.

TF Hopkins, LLC, a Delaware limited liability company

By: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**EXHIBIT D  
THE MORTGAGE**

**Mortgage**

THIS MORTGAGE, made this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by TF Hopkins, LLC, a Delaware limited liability company, with its principal place of business located at 520 W. Erie St., Ste. #100, Chicago, IL 60654 (“Mortgagor”), to the Hopkins Housing and Redevelopment Authority, a public body corporate and politic under the laws of Minnesota, located at 1010 1st Street South, Hopkins, MN 55343 (“Mortgagee”).

**WITNESSETH:** That said Mortgagor hereby mortgages and conveys to said Mortgagee the following described premises located at PID No.1911721420046, Hopkins, Minnesota, Hennepin County Minnesota (the “Property”), and legally described as:

Lot 3, Block 1, Hopkins Commerce Center Addition, Hennepin County, Minnesota.

This Mortgage is given in consideration of and as security for the payment of Six hundred eighty-five thousand and No/100 Dollars (\$685,000.00) (the “Loan”), receipt of which is hereby acknowledged and which is made to enable the Mortgagor to make improvements to the Property. The Loan is evidenced by a Promissory Note (the “Note”), attached hereto as Exhibit A, and repayment of the Loan shall be in accordance with the terms of the Note.

Mortgagor makes and includes in this Mortgage the statutory covenants and other provisions set forth in Minnesota Statutes Section 507.15, including the following:

- a. To warrant title to the Property;
- b. To pay all other mortgages, liens, charges or encumbrances against the Property as and when they become due;
- c. To pay the indebtedness of the Note as herein provided;
- d. To pay all real estate taxes on the Property;
- e. To keep the Property in repair and not commit waste; and
- f. To keep the Property insured against loss by fire and other hazards for at least the sum of the full insurable value of the Property for the protection for the Mortgagee.

If the Mortgagor herein shall pay the Mortgagee herein, its successors or assigns, the sum of Six hundred eighty-five thousand and No/100 Dollars (\$685,000.00) when it becomes due according to the terms of the above-mentioned Note, then this Mortgage shall be null and void, otherwise to remain in full force and effect. But if default shall be made in payment of said sum when due or in any of the covenants or agreements contained herein, then the Mortgagee may declare immediately due and payable the entire unpaid principal balance, and the Mortgagee, its successors or assigns, are hereby authorized and empowered to foreclose this Mortgage by action or advertisement, pursuant to the statutes of the State of Minnesota in such case made and provided,

power being expressly granted to sell the Property at public auction and convey the same to the purchaser in fee simple and, out of the proceeds arising from such sale, to pay the principal of the Note with interest, if any, together with all legal costs and charges of such foreclosure and the maximum attorneys' fees permitted by law.

Mortgagee prior to acceleration shall mail notice to Mortgagor specifying: (1) the event of default; (2) the action required to cure such event; (3) the date, not less than 30 days from the date the notice is mailed to Mortgagor, by which date such default must be cured; and (4) that failure to cure such default on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage and sale of the Property. The notice shall further inform Mortgagor of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense of Mortgagor to acceleration and sale. If the default is not cured on or before the date specified in the notice, Mortgagee at Mortgagee's option, may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may invoke the power of sale hereby granted and any other remedy permitted by applicable law.

If requested by Borrower in writing, the HRA will agree to subordinate this Agreement, the Note and the Mortgage to any Senior Debt (as defined in the Agreement").

Notwithstanding Mortgagee's acceleration of the sums secured by this Mortgage, Mortgagor shall have the right to have any proceedings begun by Mortgagee to enforce this Mortgage discontinued at any time prior to the earlier of (i) sale of the Property pursuant to the power of sale contained in this Mortgage or (ii) a judgment enforcing this Mortgage, if: (a) Mortgagor pays Mortgagee all sums constituting the default actually existing under this Mortgage and the Note at the commencement of foreclosure proceedings under this Mortgage; (b) Mortgagor cures all breaches of any other covenants or agreements of Mortgagor contained in this Mortgage; (c) Mortgagor pays all reasonable expenses incurred by Mortgagee in enforcing the covenants and agreements of Mortgagor contained in this Mortgage and in enforcing Mortgagee's remedies as provided herein, including, but not limited to, reasonable attorneys' fees, and (d) Mortgagor takes such action as Mortgagee may reasonably require to assure that the lien of this Mortgage, Mortgagee's interest in the Property and Mortgagor's obligation to pay the sums secured by this Mortgage shall continue unimpaired. Upon such payment and cure by Mortgagor, this Mortgage and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

**MORTGAGOR HEREBY: EXPRESSLY CONSENTS TO THE FORECLOSURE AND SALE OF THE MORTGAGED PROPERTY BY ACTION PURSUANT TO MINNESOTA STATUTES CHAPTER 581 OR, AT OPTION OF MORTGAGEE, BY ADVERTISEMENT PURSUANT TO MINNESOTA STATUTES CHAPTER 580, WHICH PROVIDES FOR SALE AFTER SERVICE OF NOTICE THEREOF UPON THE OCCUPANT OF THE MORTGAGED PROPERTY AND PUBLICATION OF SAID NOTICE FOR SIX WEEKS IN THE COUNTY IN MINNESOTA WHERE THE MORTGAGED PROPERTY IS SITUATED AND ACKNOWLEDGES THAT SERVICE NEED NOT BE MADE UPON MORTGAGOR PERSONALLY UNLESS MORTGAGOR IS AN OCCUPANT AND THAT NO HEARING OF ANY TYPE IS REQUIRED IN CONNECTION WITH THE SALE AND EXCEPT AS MAY BE PROVIDED IN SAID STATUTES, EXPRESSLY WAIVES ANY AND ALL RIGHT TO PRIOR NOTICE OF SALE OF THE MORTGAGED PROPERTY.**

This Mortgage and the Note shall be construed according to the laws of the State of Minnesota. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision.

IN WITNESS WHEREOF, the Mortgagor has caused this Mortgage to be duly executed as of the day and year first above written.

**MORTGAGOR:**

**TF Hopkins, LLC**

By: \_\_\_\_\_  
\_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ILLINOIS        )  
  )ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me personally appeared \_\_\_\_\_, the \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ of TF Hopkins, LLC, a Delaware limited liability company on behalf of said company.

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

This document drafted by:  
Kennedy & Graven, Chartered (SJR)  
700 Fifth Street Towers  
150 South Fifth Street  
Minneapolis, MN 55402

**EXHIBIT A**  
**EXECUTED PROMISSORY NOTE**

[TO BE INSERTED]