

Agenda
Edina Housing and Redevelopment Authority
City of Edina, Minnesota
Edina City Hall Council Chambers
Thursday, June 2, 2022
7:30 AM City Council to meet immediately following the Housing and
Redevelopment Authority Meeting
Watch the meeting on cable TV or at EdinaMN.gov/LiveMeetings or
[Facebook.com/EdinaMN](https://www.facebook.com/EdinaMN).

Participate in Community Comment
Call 888-504-7949

Enter Participant Passcode 679180

Press *1 on your telephone keypad when you would like to get in the queue to speak.
An operator will introduce you when it is your turn.

- I. Call to Order
- II. Roll Call
- III. Pledge of Allegiance
- IV. Approval of Meeting Agenda
- V. Community Comment

During "Community Comment," the Edina Housing and Redevelopment Authority (HRA) will invite residents to share new issues or concerns that haven't been considered in the past 30 days by the HRA or which aren't slated for future consideration. Individuals must limit their comments to three minutes. The Chair may limit the number of speakers on the same issue in the interest of time and topic. Generally speaking, items that are elsewhere on today's agenda may not be addressed during Community Comment. Individuals should not expect the Chair or Commissioners to respond to their comments today. Instead the Commissioners might refer the matter to staff for consideration at a future meeting.

A. Executive Director's Response to Community Comments

- VI. Adoption of Consent Agenda

All agenda items listed on the consent agenda are considered routine and will be enacted by one motion. There will be no separate discussion of such items unless requested to be removed from the Consent Agenda by a Commissioner of the HRA. In such cases the item will be removed from the

Consent Agenda and considered immediately following the adoption of the Consent Agenda. (Favorable rollcall vote of majority of Commissioners present to approve.)

A. Draft Minutes of Regular Meeting May 19, 2022

VII. Reports/Recommendations: (Favorable vote of majority of Commissioners present to approve except where noted)

A. Resolution 2022-06: Contract for Private Development and Sale of Property to United Properties Residential LLC

B. Resolution 2022-07: Contract for Private Development and Sale of Property to Jester Concepts LLC

C. 7001 France Ave - Tax Increment Financing Project Update

VIII. HRA Commissioners' Comments

IX. Executive Director's Comments

X. Adjournment

The Edina Housing and Redevelopment Authority wants all participants to be comfortable being part of the public process. If you need assistance in the way of hearing amplification, an interpreter, large-print documents or something else, please call 952-927-8861 72 hours in advance of the meeting.



Edina Housing and Redevelopment
Authority
Established 1974

CITY OF EDINA
HOUSING & REDEVELOPMENT
AUTHORITY
4801 West 50th Street
Edina, MN 55424
www.edinamn.gov

Date: June 2, 2022

Agenda Item #: V.A.

To: Chair & Commissioners of the Edina HRA

Item Type:
Other

From: Liz Olson, Administrative Support Specialist

Item Activity:
Information

Subject: Executive Director's Response to Community
Comments

ACTION REQUESTED:

None.

INTRODUCTION:

Executive Director Neal will respond to questions asked at the previous council meeting.



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Date: June 2, 2022

Agenda Item #: VI.A.

To: Chair & Commissioners of the Edina HRA

Item Type:
Minutes

From: Liz Olson, Administrative Support Specialist

Item Activity:
Action

Subject: Draft Minutes of Regular Meeting May 19, 2022

ACTION REQUESTED:
Approve May 19, 2022 Minutes.

INTRODUCTION:

ATTACHMENTS:

Draft Minutes May 19, 2022

**MINUTES
OF THE REGULAR MEETING OF THE
EDINA HOUSING AND REDEVELOPMENT AUTHORITY
MAY 19, 2022
7:30 A.M.**

I. CALL TO ORDER

Chair Hovland called the meeting to order at 7:33 a.m. then explained the processes created for public comment.

II. ROLL CALL

Answering rollcall were Commissioners Anderson, Jackson, Pierce, Staunton, and Chair Hovland.

Absent: None.

III. PLEDGE OF ALLEGIANCE

IV. MEETING AGENDA APPROVED - AS PRESENTED

Motion by Commissioner Jackson, seconded by Commissioner Pierce, approving the meeting agenda as presented.

Roll call:

Ayes: Anderson, Jackson, Pierce, Staunton, and Hovland

Motion carried.

V. COMMUNITY COMMENT

No one appeared.

VA. CITY MANAGER'S RESPONSE TO COMMUNITY COMMENT

None.

VI. CONSENT AGENDA ADOPTED - AS PRESENTED

Member Jackson made a motion, seconded by Member Anderson, approving the consent agenda as presented:

VI.A. Approve Minutes of the Regular Meeting April 28, 2022

VI.B. Approve Claims for Payment for Check Register Pre-List Dated April 2022, totaling \$456,261.20

VI.C. Approve Contract Change Order with SEH

Rollcall:

Ayes: Anderson, Jackson, Pierce, Staunton, and Hovland

Motion carried.

VII. PUBLIC HEARINGS - Affidavits of Notice presented and ordered placed on file.

VII.A. ADOPT RESOLUTION 2022-06; CONTRACT FOR PRIVATE DEVELOPMENT AND SALE OF PROPERTY TO UNITED PROPERTIES RESIDENTIAL LLC - ADOPTED

Economic Development Manager Neuendorf stated this item pertained to the sale of property at 5146 Eden Avenue. This 3.3-acre property was formerly used by Edina's Public Works Department until they moved to larger facilities in 2013. He said the HRA had considered several different types of transactions in recent years and the proposed sale was intended for redevelopment purposes. The southernmost portion was intended to be used for a new housing cooperative and the middle portion as a restaurant with indoor and outdoor seating. The northernmost portion was intended to be transformed into a public park. He said the City Attorney had prepared a sales contract with United Properties Residential LLC and Jester Concepts LLC based on letters of intent previously reviewed and discussed by the HRA Board and that staff recommended approval of these terms and that a public hearing should be held with final action scheduled for June 2, 2022.

He outlined existing site conditions and redevelopment concept for a senior housing cooperative for United Properties and Applewood Pointe that would include 10% affordable units and a restaurant concept with Jester Concepts LLC.

City Attorney McDowell Poehler explained the right of first refusal language for the senior housing and reverter rights that would apply should the developer fail to commence construction within time period provided.

Alex Hall, United Properties, answered questions regarding the proposed presale requirement timeline prior to construction, proposed senior housing management companies, allocated shared to ensure the nine affordable units remain eligible then spoke about the limited equity concept which cannot change the increase in equity without HUD approval and how United Properties would be guaranteeing the master mortgage.

Mr. Neuendorf outlined the restaurant parcel that would be no more than three stories and complement the adjacent public park. He said site was a lower value but was also a smaller property with many restrictions and could include a service window into the park. He outlined the possibility of a grant request through the SPARQ program in the future in the amount of \$149,000 based on the current business subsidy policy and laws as it was difficult to determine the market two years into the future when construction was anticipated. He noted construction on both sites would occur at the same time and would include space for future amenities and areas for public and private events.

The Board asked questions and provided feedback.

Brent Fredrick, Jester Concepts, shared their intent to retain the site as a restaurant into the future but requested the need to provide some comment on the proposed deed restrictions in the event the economy changes.

City Attorney Kendall spoke about the proposed language and the concern that the use included some level of restaurant use for coordination with the park use into the future.

Chair Hovland opened the public hearing at 8:43 a.m.

Public Testimony

Lori Grotz, 5513 Park Place, addressed the Board.

Member Staunton moved to close the public hearing at noon on May 23, 2022, and continue action to the June 2, 2022, HRA meeting to adopt Resolution No. 2022-06 approving contract for private development and sale of property to United Properties Residential, LLC. Member Jackson seconded the motion.

Rollcall:

Ayes: Anderson, Jackson, Pierce, Staunton, and Hovland

Motion carried.

VII.B. ADOPT RESOLUTION 2022-07; CONTRACT FOR PRIVATE DEVELOPMENT AND SALE OF PROPERTY TO JESTER CONCEPTS LLC - ADOPTED

Member Anderson moved to close the public hearing at noon on May 23, 2022, and continue action to the June 2, 2022, HRA meeting to adopt Resolution No. 2022-07 approving contract for private development and sale of property to Jester Concepts, LLC. Member Staunton seconded the motion.

Rollcall:

Ayes: Anderson, Jackson, Pierce, Staunton, and Hovland

Motion carried.

VIII. HRA COMMISSIONERS' COMMENTS – Received

IX. EXECUTIVE DIRECTOR'S COMMENTS – Received

X. ADJOURNMENT

Motion made by Commissioner Jackson, seconded by Commissioner Pierce, to adjourn the meeting at 9:00 a.m.

Roll call:

Ayes: Anderson, Jackson, Pierce, Staunton, and Hovland

Motion carried.

Respectfully submitted,

Scott Neal, Executive Director



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CITY OF EDINA
HOUSING & REDEVELOPMENT
AUTHORITY
4801 West 50th Street
Edina, MN 55424
www.edinamn.gov

Date: June 2, 2022

Agenda Item #: VII.A.

To: Chair & Commissioners of the Edina HRA

Item Type:
Report / Recommendation

From: Bill Neuendorf, Economic Development Manager

Item Activity:
Action

Subject: Resolution 2022-06: Contract for Private
Development and Sale of Property to United
Properties Residential LLC

ACTION REQUESTED:

Approve Resolution 2022-06 approving the Contract for Private Development and Sale of Property to United Properties Residential LLC

INTRODUCTION:

This item pertains to the sale of 1.69 acres of land located at 5146 Eden Avenue. The City Attorney has prepared a sales contract based on terms negotiated by staff. Staff will present information about this transaction at the meeting and will be available for questions.

Staff recommends approval of Resolution 2022-06.

ATTACHMENTS:

Resolution 2022-06 - sale to United Properties

Staff Report

Staff presentation

Sale Contract - senior coop



**EDINA HOUSING AND REDEVELOPMENT AUTHORITY
HENNEPIN COUNTY
STATE OF MINNESOTA**

RESOLUTION NO. 2022-06

**RESOLUTION APPROVING CONTRACT FOR
PRIVATE DEVELOPMENT AND SALE OF PROPERTY
TO UNITED PROPERTIES RESIDENTIAL, LLC**

WHEREAS, the Board of Commissioners (the “Board”) of the Edina Housing and Redevelopment Authority (“Authority”) intends to plat the certain real property legally described in Exhibit A (“Authority Property”) as Grandview Yard Addition, to consist of three lots;

WHEREAS, the Authority and United Properties Residential LLC, a Minnesota Limited Liability Company (“Developer”) have negotiated a Contract for Private Development attached hereto as Exhibit B (“Contract”) that includes the sale of a portion of the Authority Property to be platted as the most southerly lot of the Grandview Yard Addition plat, consisting of approximately 1.69 acres (“Property”);

WHEREAS, the Contract requires the Developer to construct on the Property a multi-story limited equity senior housing cooperative consisting of approximately 90 units containing a mixture of unit sizes at both market and affordable prices as further defined and depicted in the Contract (“Minimum Improvements”);

WHEREAS, the Authority believes that the sale of the Property pursuant to the terms of the Contract for Private Development is in the best interest of the Authority, City of Edina, and its residents;

WHEREAS, the Board, after proper published notice, held a public hearing at approximately 7:30 a.m. on May 19, 2022, with regard to the sale of the Property;

WHEREAS, all requirements of Minnesota Statutes, Section 469.029 regarding the sale of the Property have been satisfied.

NOW, THEREFORE, BE IT RESOLVED by the Board:

1. The Contract by and between the Authority and Developer is hereby approved. The President and Secretary are authorized and directed to execute the Contract.
2. The President, Secretary and City Attorney are authorized and directed to execute and record all documents necessary to convey the Property and comply with the terms of the Contract.

Approved by the Board on June 2, 2022.

James B. Hovland, Chair

ATTEST:

James Pierce, Secretary

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) SS
CITY OF EDINA)

CERTIFICATE OF EXECUTIVE DIRECTOR

I, the undersigned duly appointed and acting Executive Director for the Housing and Redevelopment Authority of Edina, Minnesota, do hereby certify that the attached and foregoing Resolution is a true and correct copy of the Resolution duly adopted by the Housing and Redevelopment Authority of Edina, Minnesota at its Meeting of June 2, 2022, and as recorded in the Minutes of said Meeting.

WITNESS my hand and seal of said City this _____ day of _____, 2022.

Scott Neal, Executive Director

EXHIBIT A

LEGAL DESCRIPTION OF AUTHORITY PROPERTY

Lots 2, 3, 4, 5, 6, 7, 8, 9 and 10;
The East 90 feet of Lots 11 to 19 inclusive;

all in Block 2, "Grand View Heights".

That part of Government Lot 8, Section 28, Township 117, Range 21, lying North of the center line of Eden Avenue and East of a line drawn parallel to the main track of the Minneapolis, Northfield and Southern Railway from a point on the North line of said Government Lot 8 distant 582 feet East from the Northwest corner of said Government Lot 8.

EXHIBIT B

CONTRACT FOR PRIVATE DEVELOPMENT

This page is blank. Contract is attached.



Housing and Redevelopment Authority
Established 1974

Date: June 2, 2022

To: Chair and Commissioners of Edina Housing & Redevelopment Authority

From: Bill Neuendorf, Economic Development Manager

Subject: Resolution 2022-06 and 2022-07: Contracts for Private Redevelopment and Sale of Property to United Properties Residential, LLC and Jester Concepts, LLC

Information / Background:

This item pertains to the sale of property at 5146 Eden Avenue. This 3.3 acre property was formerly used by Edina's Public Works Department until they moved to larger facilities in 2013. The property has been tax-exempt since 1962. It was previously used as a concrete plant after the train tracks were activated.

The HRA took ownership of the site so that it could be held and conveyed for redevelopment purposes. The intended uses are strongly informed by the Grandview Development Framework that was prepared by a group of 50+ community volunteers from 2010 to 2012. The Grandview Seven Guiding Principles have also been applied as the potential users for the site have been identified. The Framework envisioned a mixture of public and private uses on the 3.3-acre site that could create a catalyst to attract future development and to create a new community destination. The Framework also urged that better access be provided through the District, that parking resources be organized to be more efficiently used; and that a unique sense of place be established.

The HRA has considered several different types of projects for the vacant site over the past ten years. The 2022 proposal is the tenth version considered.

Frauenschuh Companies has assisted the HRA staff in coordinating conversations with proposed buyers for the past year. Frauenschuh has also provided oversight as pre-development engineering and design work was conducted to prepare initial concept plans and a submittal for Edina's Sketch Plan review process in January 2022.

The HRA Board has discussed aspects of potential real estate transactions in closed session in 2021 and 2022. The HRA Board directed staff to prepare sales contracts to achieve the desired redevelopment outcomes. Two sales contracts have been prepared by the City Attorney based on the Letters of Intent submitted by United Properties Residential, LLC and Jester Concepts, LLC in March 2022.

The Edina Planning Commission reviewed the intended outcomes of these sales and confirmed via Resolution B-22-08 that sale of property to be used as multi-family housing and a restaurant with indoor and

outdoor seating is consistent with the Comprehensive Plan. This determination is limited to the future land use only. As part of the City's standard rezoning process, proposed site plans for the 3.3 acre site will be submitted for review by the Planning Commission and City Council.

For-Sale Cooperative Housing

United Properties proposes to construct a senior housing cooperative on the southern most portion of the site using the Applewood Pointe concept that has been successfully implemented in other locations in Minnesota. Approximately 90 units would be available for sale in this project. Financing is intended to be provided by means of a master cooperative mortgage through the U.S. Department of Housing and Urban Development (HUD). This financing strategy requires that at least 60% of the units be pre-sold before funding is available.

Most of the units will be sold for market-rate prices but 10% of the units will be sold at affordable prices in accordance with Edina's housing policy. The current price for "affordable" units is \$355,400. This amount is adjusted annually for inflation. Covenants are anticipated to be executed as part of the rezoning process to ensure that the affordable units are occupied by income-qualified residents for the initial and subsequent owners. Such covenants must be recorded as a condition of sale and should also be included in the Cooperative Bylaws.

Restaurant with Indoor & Outdoor Dining

Jester Concepts proposes to construct a new restaurant and hospitality facility approximately 12,000 to 15,000 square feet on three levels. Jester has several successful restaurant operations located in Minneapolis and Saint Paul. They were selected for the responsiveness and compatibility with a Request for Interest that was distributed to over 40 restaurant and hospitality groups in late 2021.

The restaurant is set on the back of the lot so that outdoor seating and activity area can be maximized and be located next to the active portions of the park. The restaurant is intended to feature indoor and outdoor dining designed to complement the adjacent public park. Portions of the restaurant property are intended to be used for outdoor activities such as bonfires or outdoor games. Finally, the restaurant will include toilets and limited storage space that open to the park. These facilities would be available to park patrons but may be seasonal in nature. Complete details of the restaurant, outdoor seating and activity areas and public toilets will be established and refined through the rezoning and site plan approval process.

Private financing is anticipated for the acquisition and construction of the restaurant. If construction costs continue to escalate however, Jester may request a grant from the HRA using the new SPARC program that was created to create jobs and fund new construction.

Public Park or Public Green Space (Grandview Yard)

The northernmost portion of the site is intended to be transformed into a public park or similar public use that serves as green space. In the future, access to the train tracks might be considered on a portion of this site too. During the design development process, the layout will be finalized including additional consideration to how the park and the restaurant can best work together to create a vibrant and active public space.

As part of the rezoning process, the HRA will need to re-plat the overall site and create 3 separate lots to accommodate the new uses. The new plat is tentatively called Grandview Yards to recognize its location and previous industrial uses that are still visible by the active freight train tracks and railroad siding.

The proceeds from selling the land are anticipated to be used to prepare the site and construct the new park. After completion, the park is anticipated to be turned over to the City of Edina. Annual park maintenance will become a responsibility of the Park and Recreation Department. The City will be responsible for programming the park space. Jester Concepts has a strong interest in working together with the City to provide activities and programming in the park too.

Conclusion and Requested Action:

The Public Hearing regarding the sale of property has concluded. The staff presentation from May 19, 2022 is attached for reference. Final contracts have been prepared by the City Attorney. The final versions of the contracts consider questions and comments received during the Public Hearing process. United Properties and Jester Concepts are agreeable to the terms of the Contracts and are ready to proceed.

Staff recommends that Resolution 2022-06 and 2022-07 be approved.

END



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Resolutions 2022-06 and 2022-07

Sale of Property at 5146 Eden Avenue

Housing & Redevelopment Authority

Public Hearing

May 19, 2022

Updated June 2, 2022

Existing Conditions



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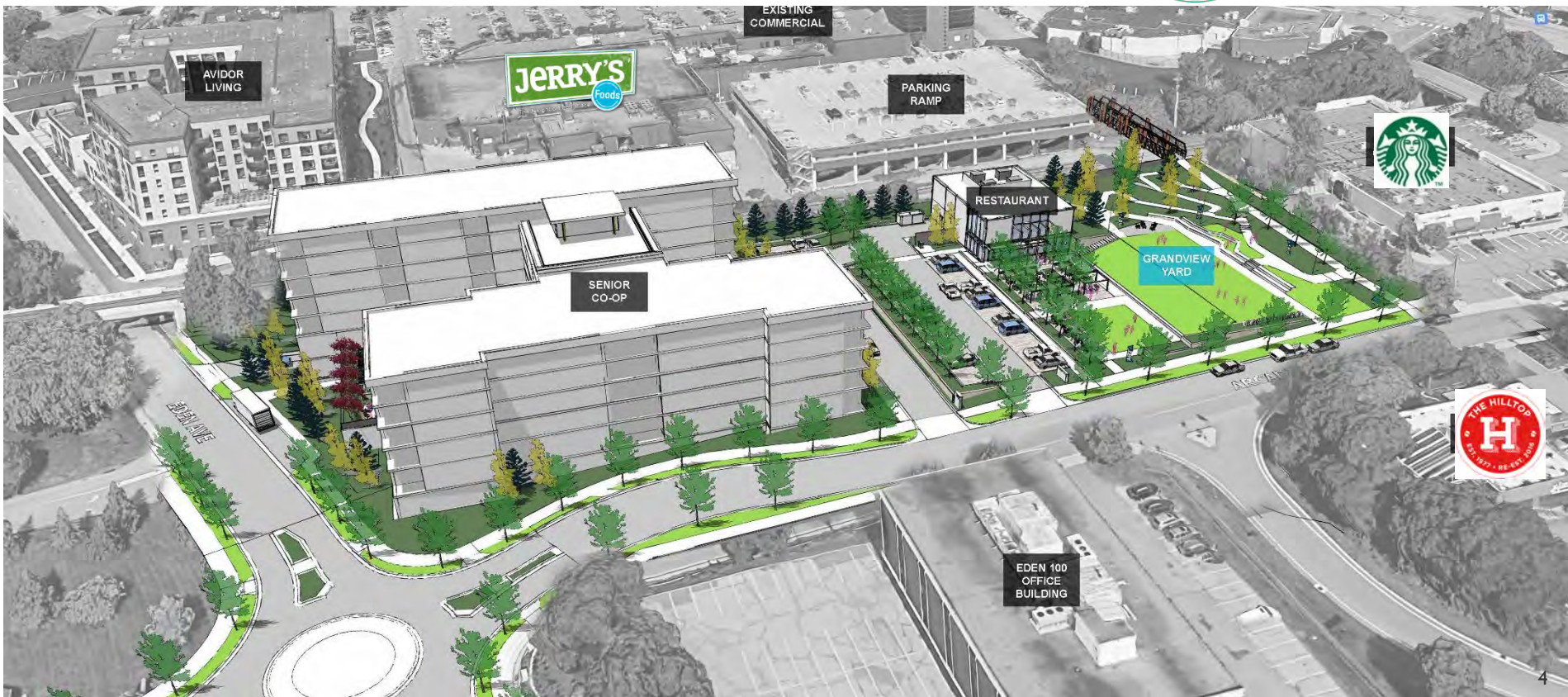
Redevelopment Concept



Redevelopment Concept - birds eye



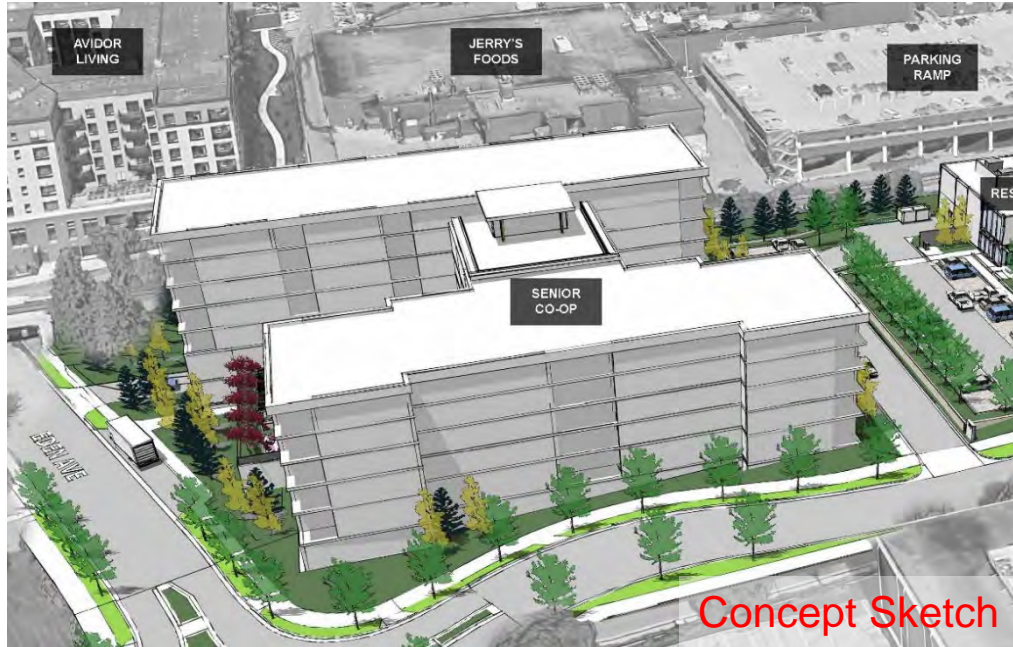
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Lot I - Housing Cooperative



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UNITED PROPERTIES



APPLEWOOD POINTE

Housing Cooperative

Sales Price and use restrictions

- \$3,000,000 for 1.69 acres
 - \$33,333 price reduction per unit if fewer than 90 units approved
 - close upon financing
 - no broker fees paid by HRA
- Must be limited-equity housing cooperative for seniors
- Must include 10% of units sold at affordable prices
 - 90% sold at market rate



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Staff Comments

- Price per unit is in the typical range of most recent multi-family transactions
- Consistent with April 2022 Appraisal
- This is a fair land value based on the HRA's preference for ownership housing rather than rental and HRA's preference to limit overall density on the site.

Housing Cooperative

Key contractual terms



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- ~~\$50,000~~ \$100,000 earnest money
- Two-phase due diligence
 - 180 days for zoning
 - 180 days for pre-sales
 - Extendable, if needed
- Closing costs, pro-rated and standard
- Right of reverter if not built

Staff Comments

- Typical terms and conditions
- Two-phase due diligence is unique for most residential but typical for cooperatives due to pre-sale requirements of HUD financing

Housing Cooperative

Easements and Restrictions



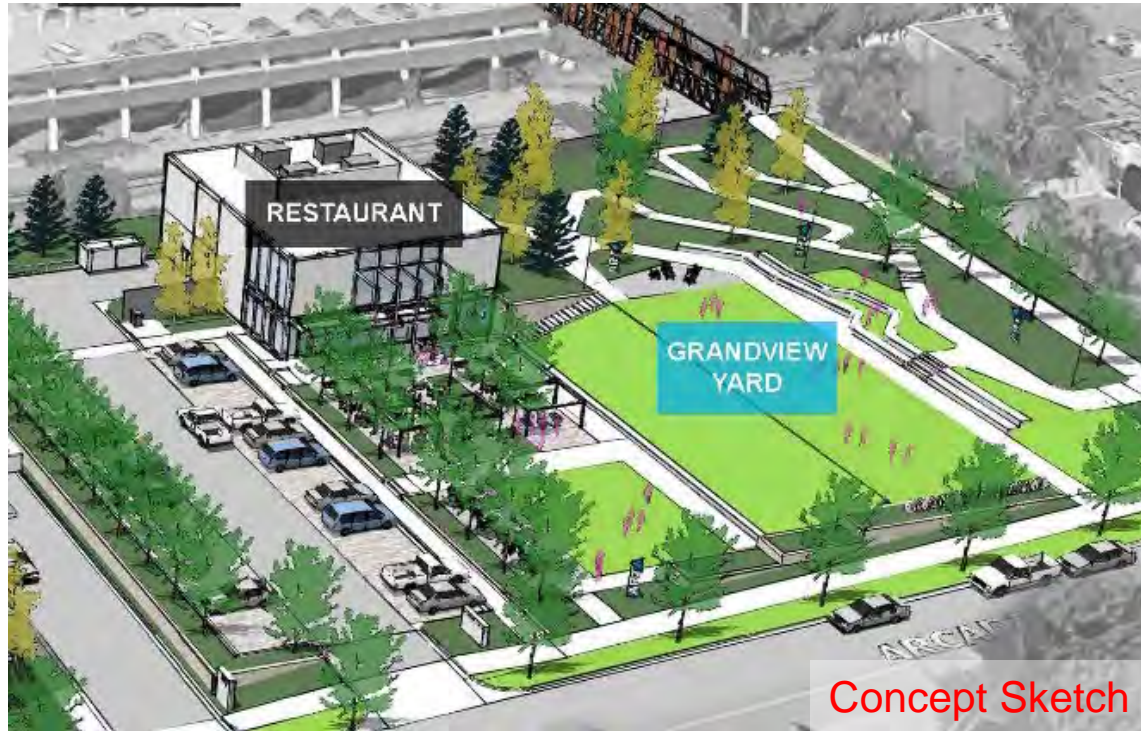
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- HRA must commit to build park
- Restaurant parcel no more than 3 stories for at least 10 years
- Shared easement for driveway
- Public easement along tracks for access

Staff Comments

- HRA obligations are reasonable
- Both housing and restaurant will have multiple cross access easements to maximize efficiency

Lot 2 - Restaurant



Concept Sketch



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Restaurant

Sale price and use restrictions

- \$500,000 for 0.72 acres
 - will reimburse Frauenshuh for securing operator per 2021 contract
- Must be ~~food-oriented commercial business that complements the park~~ restaurant with indoor and outdoor dining and related outdoor activity space for 30-years – unless waived by HRA in future
- Must be no more than 3 stories unless waived by HRA in future
- Buyer may require \$149,000 grant if construction costs continue to escalate



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Staff Comments

- Consistent with April 2022 Appraisal
- This is a fair land value based on the HRA's preference for a food-oriented business that complements the adjacent public park.
- SPARC grant may be considered in the future after construction costs and schedule clarified.

Restaurant

Key contractual terms



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- \$20,000 earnest money
- Two-phase due diligence to match housing
 - 180 days for zoning
 - 180 days for pre-sales
- Mutually renegotiated if housing fails to close by deadline
- Closing costs, pro-rated and standard
- Right of first refusal, if sold
- Right of reverter, if not built

Staff Comments

- Typical terms and conditions
- Two-phase due diligence is unique for most commercial but mirrors the schedule required to secure HUD financing for the cooperative

Restaurant

Easements and Restrictions



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- Shared easement for driveway
- Public easement along tracks for access
- Must include exterior-facing public toilets to serve Park
- Participation in Maintenance District
- Temporary easement for construction of housing and restaurant

Staff Comments

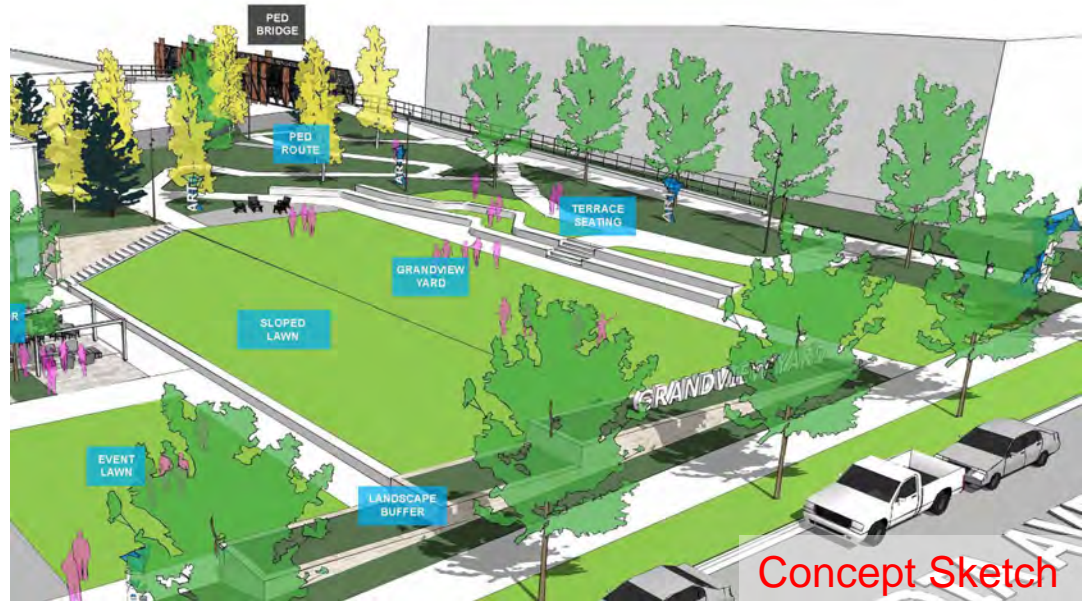
- Both housing and restaurant will have multiple cross access easements to maximize efficiency

Lot 3 - Public Park – concept



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- Permanent public space for residents, employees, customers and general public
- Portions could include access to train in future
- Could include some areas that could be licensed for public/private events
- Designed to accommodate elevation change from pedestrian bridge to restaurant
- ADA access throughout
- Flat open yard to allow for special events (music, movies, festival, etc TBD)



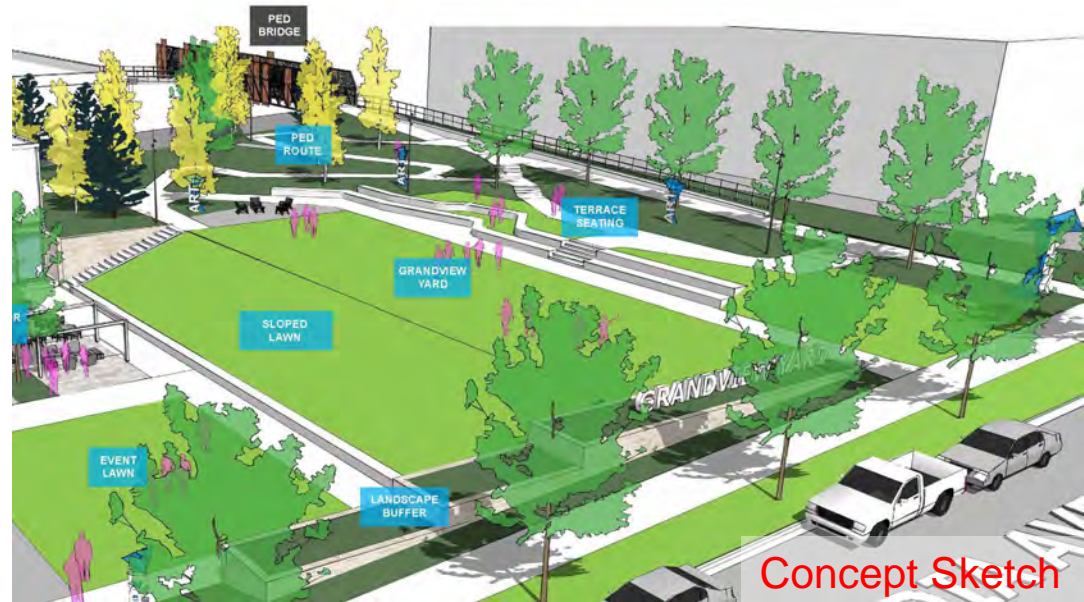
CONFLUENCE

Lot 3 - Public Park – concept



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- On-street parking and parking in adjacent Grandview parking structure
- No playground equipment anticipated
- No ball fields or similar sporting events anticipated
- Space for future park structures (gazebo, shade pavilion, etc TBD)
- Space for future park amenities (water feature, hammocking, etc TBD)
- Space for future public art



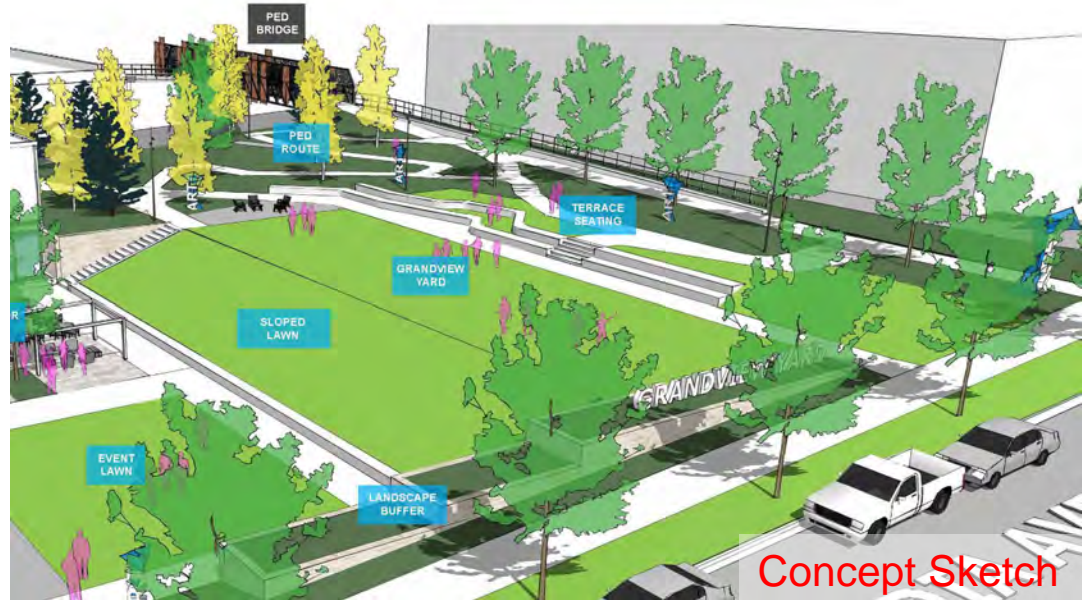
CONFLUENCE

Obligations of the HRA



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- Complete pedestrian bridge
- Prepare 3-acre site to allow two buildable pads to be sold
- Construct new park after closing
 - Rough grading: approx. \$1 M
 - Final grading & landscaping: approx. \$1 M
 - Future structures TBD



CONFLUENCE

Future Steps for Redevelopment



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Real Estate Transaction

- Final Action scheduled June 2, 2022
- Closing deferred until 2023 or 2024

Zoning Entitlement

- Anticipated late summer/fall 2022
- Public Hearings required

Pre-Development Site Work

- By HRA to create buildable site
- Anticipated summer/fall 2023

Pre-Sales and Project Financing

- Anticipated to begin fall 2022
- 60% pre-sales required for HUD financing
- Private financing for restaurant
- SPARC grant may be necessary based on restaurant construction costs
- New park to be funded by real estate proceeds

Construction

- Anticipated 2024 to 2026

Staff Recommendation



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- These contracts reflect market conditions and are responsive to the direction set by the HRA for the future use of this site.
- Staff recommends that the Public Hearing be completed.
- Staff further recommends that the contracts be considered on June 2, 2022 after any Board questions have been resolved.



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Staff and Buyers available
for questions and comments

Sketch Plan – for reference



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Sketch Plan – for reference



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Sketch Plan – for reference



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Sketch Plan – for reference



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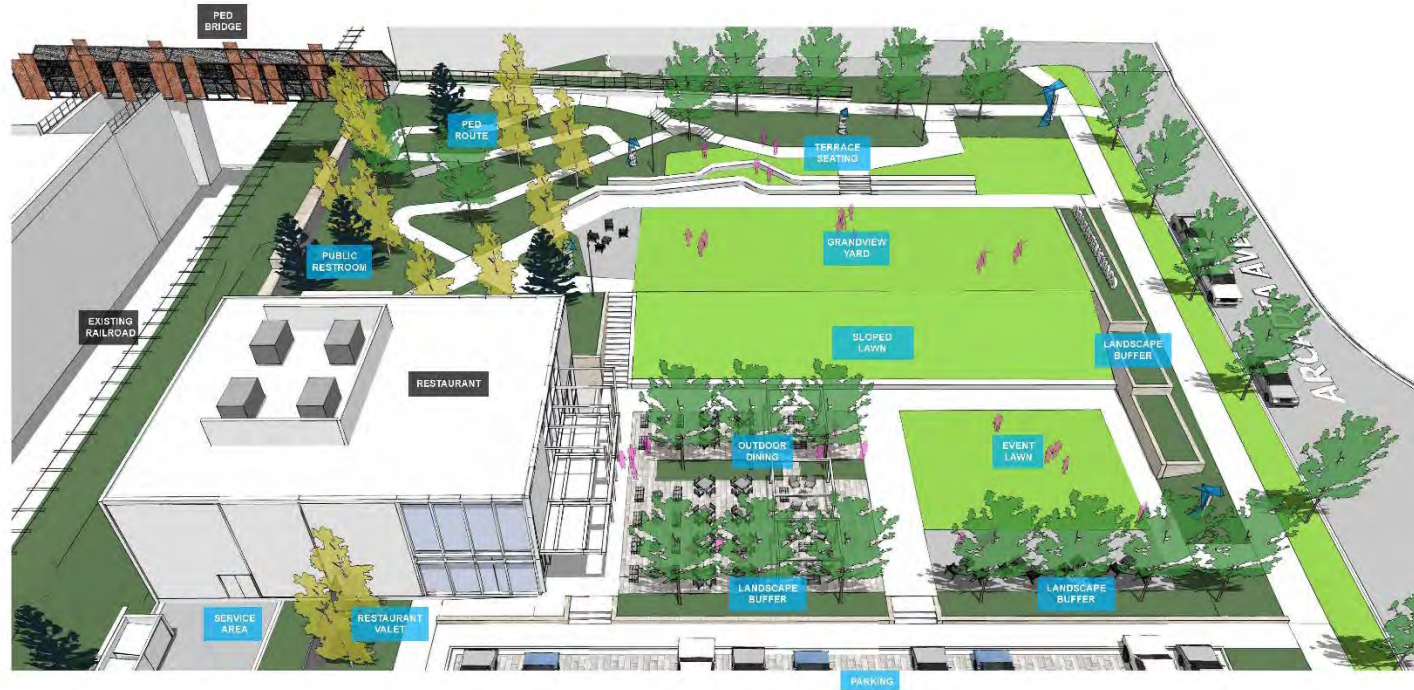
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Sketch Plan – for reference



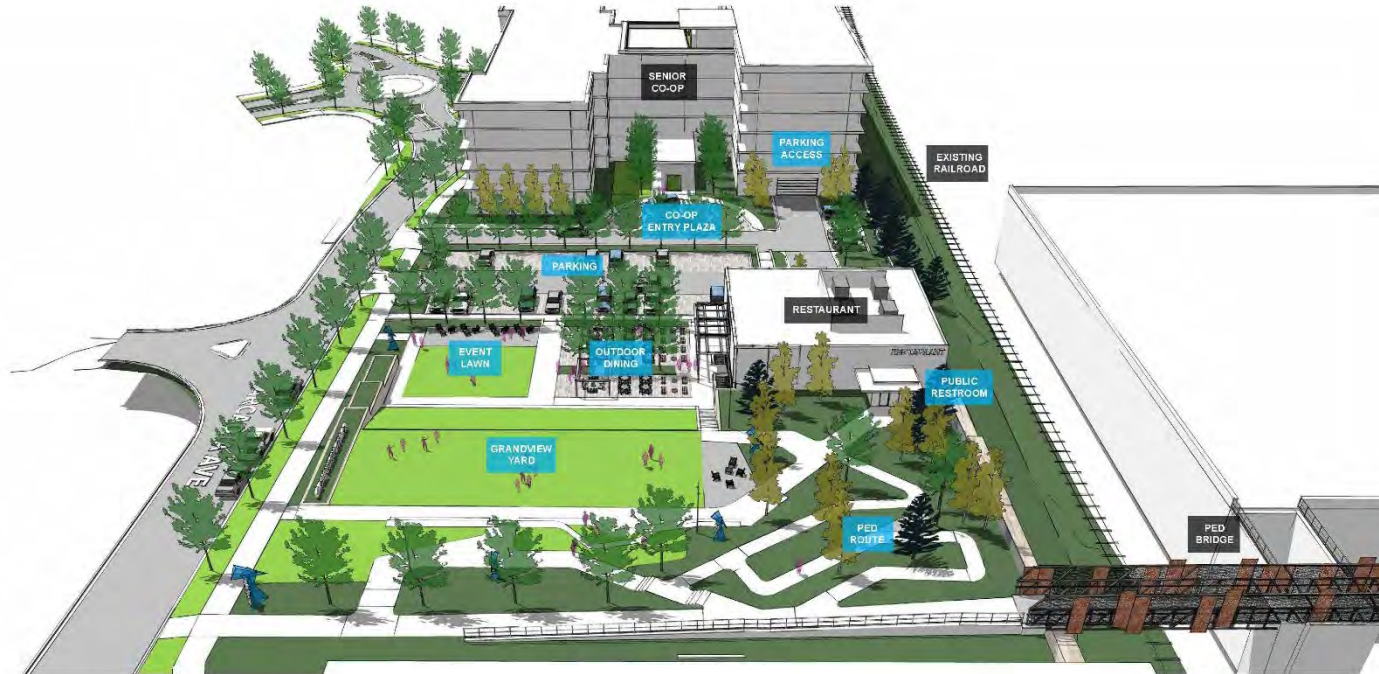
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Sketch Plan – for reference



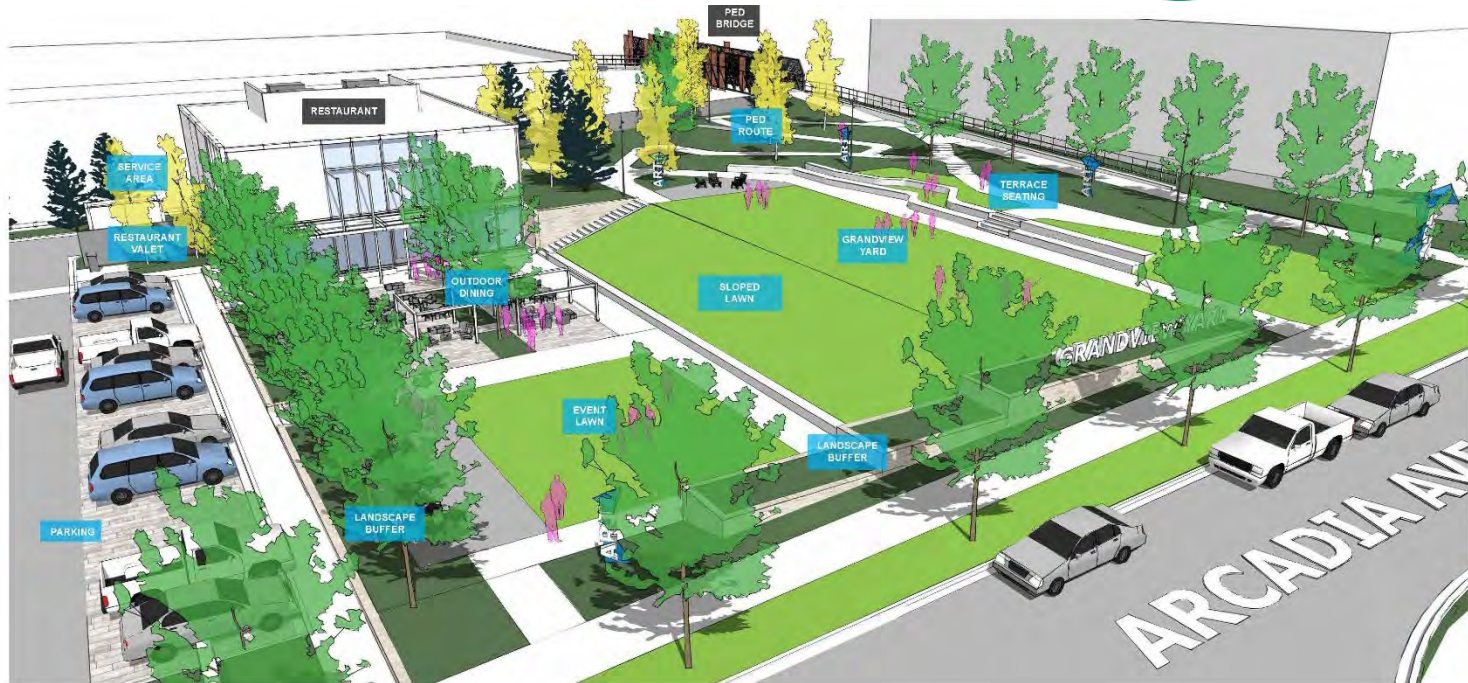
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Sketch Plan – for reference



The CITY of
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Sketch Plan – for reference



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Sketch Plan – for reference



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Seven Guiding Principles - 2012



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- 1.) Leverage publicly-owned parcels and civic presence to **create a vibrant and connected district that serves as a catalyst** for high quality, integrated public and private development.
- 2.) Enhance the District's economic viability as **a neighborhood center with regional connections**, recognizing that meeting the needs of both businesses and residents will make the district a good place to do business.
- 3.) **Turn perceived barriers into opportunities.** Consider layering development over supporting infrastructure and taking advantage of the natural topography of the area.
- 4.) **Design for the present and the future** by pursuing logical increments of change using key parcels as stepping stones to a more vibrant, walkable, functional, attractive, and life-filled place.
- 5.) **Organize parking** as an effective resource for the district by linking community parking to public and private destinations while also providing parking that is convenient for businesses and customers.
- 6.) **Improve movement within and access** to the district for people of all ages by facilitating multiple modes of transportation, and preserve future transit opportunities provided by the rail corridor.
- 7.) **Create an identity and unique sense of place** that incorporates natural spaces into a high quality and sustainable development reflecting Edina's innovative development heritage.

(reserved for recording information)

CONTRACT FOR PRIVATE DEVELOPMENT

***UNITED PROPERTIES SENIOR HOUSING COOPERATIVE AT
GRANDVIEW YARD***

THIS AGREEMENT, made on or as of the ____ day of _____, 2022 (“Effective Date”), by and between the **EDINA HOUSING AND REDEVELOPMENT AUTHORITY**, a public body corporate and politic under the laws of the State of Minnesota (the "HRA") and **UNITED PROPERTIES RESIDENTIAL LLC**, a Minnesota limited liability company (the "Developer").

WITNESSETH:

WHEREAS, the HRA was created pursuant to Minnesota Statutes, Sections 469.001-.047 and was authorized to transact business and exercise its powers by a resolution of the City Council of the City of Edina pursuant to Section 469.003 of the Act; and

WHEREAS, pursuant to the Act, the HRA is authorized to undertake certain activities to prepare real property for development and redevelopment by private enterprise; and

WHEREAS, the HRA is the fee owner of property located in the City of Edina, as legally described in **Exhibit A** attached hereto (“HRA Property”), which the HRA intends to plat as the Grandview Yard Addition prior to Closing (defined herein) into three (3) separate lots: Lot 1, Block 1 (“Sale Property”), Lot 2, Block 1 (“Restaurant Lot”) and Lot 3, Block 1 (“Park Lot”), all as shown on attached **Exhibit B**;

WHEREAS, there has been a proposal that the HRA approve the sale of the portion of the HRA Property to be platted as the Sale Property, consisting of approximately 1.69 acres of

land (the “Property”) to the Developer for development of a multi-story limited equity senior housing cooperative consisting of approximately 90 units with a mixture of unit sizes and with 10% of the units designated as affordable pursuant to City zoning requirements (“Project”); and

WHEREAS, the HRA believes that the Project and fulfillment generally of this Agreement is in the best interest of the HRA and the health, safety, morals and welfare of the residents of the City of Edina and in accord with the public purposes and provisions of the applicable state and local laws and requirements.

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

ARTICLE I. **DEFINITIONS**

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

"Act" means Minnesota Statutes, Sections 469.001-.043, as amended.

"Agreement" [or “Contract”] means this Contract for Private Development by and between the HRA and the Developer, as the same may be from time to time modified, amended or supplemented.

"Articles and Sections" mentioned by number only are the respective Articles and Sections of this Agreement so numbered.

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

“Certificate of Completion” means the certificate to be issued by the HRA pursuant to the terms of Section 4.6.

"City" means the City of Edina, Minnesota.

“Closing” means the closing on the transfer of the Property pursuant to Article III.

“Closing Date” means the date of closing on the transfer of the Property as provided in Section 3.6.

“Commence” or “Commencement” means the first visible improvement to the Property made in furtherance of the construction of the Minimum Improvements (including, specifically, pouring footings and foundations).

“Completion” means the Developer’s receipt of the Certificate of Completion from the HRA for the Minimum Improvements.

"County" means the County of Hennepin, Minnesota.

“Cure Rights” means the rights to cure a Default as specified in Section 7.2.

“Deed” means a limited warranty deed in the Minnesota Uniform Conveyancing Blank Form, subject to the right of reverter provided under Section 4.5.

“Developer” means United Properties Residential LLC, or any assigns that have received prior written approval from the HRA.

“Event of Default” means an action by the Developer listed in Article VII of this Agreement.

“HRA” means the Edina Housing and Revvelopment Authority.

“Minimum Improvements” means the construction by the Developer on the Property of a multi-story limited equity senior housing cooperative consisting of approximately 90 units containing a mixture of unit sizes which will include the elements as generally described and depicted in **Exhibit C** attached hereto, in accordance with all applicable local, state and federal regulations governing such facilities, and in conformance with site plans as the same have been submitted to the HRA.

“Parties” means the Developer and the HRA.

“Party” means either the Developer or the HRA.

“Plat” means the final plat of the HRA Property for the Grandview Yard Addition, consisting of three (3) lots as generally depicted in **Exhibit B**.

“Project” means the Property and the completed Minimum Improvements thereon.

“Property” means that portion of the HRA Property to be platted as the Sale Property. The parties acknowledge that the Sale Property contains approximately 1.69 acres, but that the legal description of the Sale Property shall be verified by the Survey and the Title Company (both as hereinafter defined) on or before Closing.

“Purchase Price” means the sum of Three Million and No/100 Dollars (\$3,000,000.00), which the Developer shall pay the HRA for the purchase of the Property. The Purchase Price is based on the construction of 90 units. The Purchase Price will be adjusted by an amount of \$33,333.00 per unit based on the final number of units approved by the City of Edina and the HRA.

“Reverter Closing Date” means ninety (90) days after the Developer’s receipt of the HRA’s notice exercising the HRA’s right of reverter for the Property as set forth in Section 4.5.

“Reverter Deed” means the limited warranty deed through with the Developer will convey the Property and any improvements thereon back to the HRA upon the HRA’s exercise of its right of reverter as set forth in Section 4.5.

"State" means the State of Minnesota.

“Title Company” means Land Title, Inc.

"Unavoidable Delays" means delays outside the control of the party claiming its occurrence which are the direct result of strikes, other labor troubles, unusually severe or prolonged bad weather, Acts of God, fire or other casualty to the Minimum Improvements, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the HRA) which directly result in delays. Unavoidable delays shall not include delays in the Developer obtaining permits or governmental approvals necessary directly to enable construction of the Minimum Improvements.

ARTICLE II.

REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties by the HRA. The HRA represents and warrants that:

(a) The HRA is a public body corporate and politic duly organized and existing under the laws of the State. Under the provisions of the Act and the laws of the State, the HRA has the power to enter into this Agreement and carry out its obligations hereunder.

(b) Subject to satisfaction of the terms and conditions of this Agreement, the HRA will convey the Property to the Developer for development in accordance with the terms of this Agreement.

(c) There is not pending, nor to the best of the HRA’s knowledge is there threatened, any suit, action or proceeding against the HRA before any court, arbitrator, administrative agency, or other governmental authority that may materially and adversely affect the validity of any of the transactions contemplated hereby, the ability of the HRA to perform its obligations hereunder or as contemplated hereby, or the validity or enforceability of this Agreement.

(d) To the best of the HRA’s knowledge and belief, no member of the Board or officer of the Board, has either a direct or indirect financial interest in this Agreement nor will any HRA Board member or officer of the HRA, benefit financially from this Agreement within the meaning of Minnesota Statutes Section 460.009

(e) To the best of its knowledge, the HRA believes that a private wells were located on the Property, but have since been sealed.

(f) To the best of the HRA's knowledge any sewage generated on the Property goes to a facility permitted by the Minnesota Pollution Control Agency and there are no active or abandoned individual sewage treatment systems located on or serving all or any part of the Property.

(g) To the best of the HRA's knowledge, no methamphetamine production has occurred on the Property. This statement is being made pursuant to the disclosure requirements of Minnesota Statutes Section 152.0275.

(h) To the best of the HRA's knowledge and without independent investigation by the HRA, the HRA has not received written notice of the presence or existence of any hazardous materials regulated by any applicable federal, state, county or local government authorities in amounts on the Property that violate existing law, except as otherwise provided in the environmental reports provided to Developer per Section 3.4(a)(2).

(i) The HRA has not received notice of default concerning any of its obligations or liabilities regarding the Property;

(j) The HRA has not received written notice of any action, litigation, investigation, condemnation or proceeding of any kind pending or threatened against the HRA or any portion of the Property.

(k) The HRA will reasonably cooperate in the processing of any applications required under this Agreement to be filed with the City by the Developer. The HRA does not hereby warrant or represent that the City will approve an application filed by Developer, except as expressly provided in this Agreement.

(l) The execution, delivery and performance of this Agreement, and any other documents, instruments or actions required or contemplated pursuant to this Agreement by the HRA does not, and consummation of the transactions contemplated therein and the fulfillment of the terms thereof will not conflict with or constitute on the part of the HRA a breach of or default under any existing agreement or instrument to which the HRA is a party or violate any law, charter or other proceeding or action establishing or relating to the establishment and powers of the HRA or its officers, officials or resolutions.

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

(a) The Developer is a limited liability company organized and in good standing under the laws of the State of Minnesota, is qualified to do business in the State, is not in violation of any provisions of its operating agreement or other organization documents or the laws of the State, has power to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action of its members.

(b) The execution and delivery of this Agreement and the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions thereof do not

and will not conflict with or result in a breach of any material terms or conditions of the Developer's organizational documents, any restriction or any agreement or instrument to which the Developer is now a party or by which it is bound or to which any property of the Developer is subject, and do not and will not constitute a default under any of the foregoing or a violation of any order, decree, statute, rule or regulation of any court or of any state or Federal regulatory body having jurisdiction over the Developer or its properties, including its interest in the Minimum Improvements, and do not and will not result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of Developer contrary to the terms of any instrument or agreement to which the Developer is a party or by which is bound.

(c) To the best of the Developer's knowledge and belief, the execution and delivery of this Agreement will not create a conflict of interest prohibited by Minnesota Statutes Section 469.009, as amended.

(d) The Developer has the capacity to enter into this Agreement and to perform its obligations hereunder.

(e) When the Property is conveyed to the Developer, the Developer will construct, operate and maintain the Minimum Improvements upon the Property in accordance with the terms of this Agreement, and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations).

(f) The Minimum Improvements will be constructed by the Developer, at its sole expense, in such manner, and at such expense as are necessary to make the Property usable by the Developer, including all such improvements as are necessary to make said facility comply with all applicable federal, state and local rules, regulations, ordinances and laws.

(g) There are no pending or threatened legal proceedings, of which the Developer has notice, contemplating the liquidation or dissolution of the Developer or threatening its existence, or seeking to restrain or enjoin the transactions contemplated by this Agreement or the validity of this Agreement.

(h) The Developer reasonably expects that it will be able to obtain private financing in an amount sufficient to enable the Developer to successfully construct the Minimum Improvements, as provided herein.

(i) The Developer will use its best efforts to construct the Minimum Improvements in accordance with all local, state or federal energy-conservation laws or regulations.

(j) The Developer will use its best efforts to obtain, in a timely manner, all required permits, licenses and approvals and to meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed.

ARTICLE III.

CONVEYANCE OF PROPERTY

Section 3.1. Property. Subject to the the terms and conditions of this Agreement, the HRA will sell and convey the Property to the Developer and the Developer will purchase and accept the Property from the HRA fee ownership of the Property.

Section 3.2. Purchase Price. The purchase price for the Property shall be payable by Developer as follows:

(a) On Hundred Thousand and No/100 Dollars (\$100,000.00) as earnest money deposited with the HRA within five (5) days of the Effective Date of this Agreement (the “Earnest Money”) which shall not bear interest. The Earnest Money shall be non-refundable except in the event of termination of this Agreement as specifically provided under Section 3.4(j) of this Agreement; and

(b) The balance payable in cash, certified funds or wire transfer paid to the HRA at Closing.

Section 3.3. Title and Survey. The Developer shall be responsible for performing any and all title and survey examination or due diligence of the Property that the Developer deems prudent, at the Developer’s sole cost and expense, except as otherwise provided for in this Agreement. The HRA will provide marketable title to the Property at Closing, but the the HRA is otherwise not providing any representations or warranties as to the condition of title and Developer expressly waives and claims the Developer may have against the HRA in connection with title defects. Notwithstanding the foregoing, the HRA agrees to reasonably cooperate with the Developer to cure any title defects that my exist before the expiration of the Initial Due Diligence Period (as defined below).

Section 3.4. Due Diligence Periods.

(a) Documents and Materials. Within five (5) business days after the Effective Date, the HRA shall deliver to Developer the following documents in the HRA’s possession or control: (1) the most current ALTA survey and prior title policy; (2) Any soils reports, environmental assessment reports, topographical maps, utility information, site studies, engineering reports or other property condition reports (3) Any permits, development engineering plans, correspondence with jurisdictional agencies, utility service agreements, leases, use or licensing agreements, and other such information affecting the Property (collectively, the “Property Documents”); provided, however, that notwithstanding the foregoing, the HRA’s internally prepared notes, memoranda or other documents and any other documents or materials which are confidential or proprietary to the HRA will be excluded from the Property Documents.

(b) Initial Due Diligence Period. Developer shall have One Hundred and Eighty (180) days from the Effective Date to: (1) examine the Property Documents; (2) make a physical inspection of the Property; (3) procure financing sources for construction of the Minimum Improvements; (4) determine anticipated phased construction schedule; (5) obtain final land use

approvals for the proposed development; and (6) review title to the Property (the “Initial Due Diligence Period”), as the same may be extended as provided below. In this regard, Developer and its authorized employees, agents, contractors and representatives (collectively, “Developer’s Representatives”) shall be entitled to enter upon the Property at all reasonable times during the Due Diligence Period for the purpose of inspecting, investigating, surveying and the conducting of testing of the Property (collectively, “Inspections”), upon reasonable prior oral or written notice to the HRA. All Inspections shall occur at reasonable times agreed upon by the HRA and Developer. Developer shall pay all costs and expenses of all Inspections. Notwithstanding anything herein to the contrary, Developer shall not perform soil tests, asbestos or lead tests, or perform tests of a similarly intrusive nature without the prior written consent of HRA, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, Developer shall have the right to complete a Phase I and a Phase II environmental report as part of such Inspections. In the event Developer has not obtained final land use approvals for the proposed development or the HRA has not yet obtained final plat approval, either party may, by notice to the other party, extend the Initial Due Diligence Period for a period of up to 60 days. Any additional extension of the Due Diligence Period by a party shall require written consent of the other party.

(c) Responsibilities During Initial Due Diligence Period. During the Initial Due Diligence Period (as the same may be extended), the parties will work in good faith to:

- (1) confirm the physical delivery condition of the Property at Closing, including, but not limited to, establishing:
 - (a) the rough grade elevation of the Property to be conveyed at Closing;
 - (b) the approximate location of the new curb line for Arcadia Avenue
 - (c) the location of all sanitary sewer, water and stormwater utility connections serving the Property;
 - (d) the location of entry and access points to the Property (whether directly to public right of way or through separate agreements with adjacent properties); and
 - (e) responsibility for maintenance of the public sidewalk serving the Property and establishing any actions necessary to finalize maintenance responsibility.
- (2) finalize the terms and forms of agreements to be delivered at Closing for
 - (i) a declaration of public uses, including a park, to be recorded against the Park Lot for 30 years;
 - (ii) a declaration restricting the height of any building on the Restaurant Lot to no more than three stories for a period of at least 10 years; and
 - (iii) any easements determined by the parties necessary for their intended uses of their respective lots within the Plat including, but not limited to:
 - (a) an easement for the proposed private road serving the lots within the Plat and operation and maintenance of the private road;

- (b) an easement for access over the westerly 10 feet of the Property and the Restaurant Lot for the benefit of the Restaurant Lot and the Park Lot; and
- (c) temporary construction easement(s) over the Restaurant Lot and the Park Lot to serve the Property and the Restaurant Lot for staging grounds for the construction of the improvements on the Property and the Restaurant Lot;

(d) Title and Survey. The Developer shall be responsible for performing any and all title and survey examination or due diligence of the Property that the Developer deems prudent, at the Developer's sole cost and expense, except as otherwise provided in this Agreement. The HRA will provide marketable title to the Property at Closing, but the HRA is otherwise not providing any representations or warranties as to the condition of title and Developer expressly waives any claims the Developer may have against the HRA in connection with any title defects. Notwithstanding the foregoing, the HRA agrees to reasonably cooperate with Developer to cure any title defects that may exist before Closing.

(e) Approvals. During the Initial Due Diligence Period, Developer shall use commercially reasonable efforts to obtain zoning designations, or other zoning and land use approvals required to construct the Minimum Improvements on the Property in an efficient and cost effective manner as determined by Developer in Developer's sole and absolute discretion (the "Approvals"). The HRA shall, at no cost or liability to the HRA, reasonably cooperate and affirmatively assist Developer with Developer's efforts to obtain its Approvals, but does not guarantee the granting of such Approvals. Developer shall be solely responsible for all costs associated with obtaining the Approvals and no such Approvals will be effective prior to the Closing Date unless approved by the HRA.

(f) Plat. During the Initial Due Diligence Period (as the same may be extended) the HRA shall use commercially reasonable efforts to obtain plat approval of the Plat to be recorded at Closing, subject to review and approval by the Developer in relation to the Property.

(g) Second Due Diligence Period. Developer shall have up to One Hundred Eighty (180) days following the expiration of the Initial Due Diligence Period, as the same may be extended (the "Second Due Diligence Period") solely for the purpose of completing the Housing and Urban Development financing required pre-sale of at least 60% of the Senior Cooperative Units ("Pre-Sale Requirements"). Developer shall use commercially reasonable efforts to market the senior cooperative units and complete the Pre-Sale Requirements. The Developer may waive the Second Due Diligence Period upon Developer achieving the Pre-Sale Requirements by written notice to the HRA. . In the event Developer has not obtained Pre-sale Requirements during the Second Due Diligence Period, Developer, may, by notice to HRA extend the Second Due Diligence Period for a period of up to 90 days.

(h) Indemnification; Manner of Inspections. Developer shall indemnify, defend and hold the HRA and the Property harmless from all loss, damages, costs, claims, liabilities and expenses, including without limitation attorneys' fees, relating to the Inspections or the activities of the Developer and the Developer Representatives. Developer and the Developer

Representatives shall perform the Inspections upon the Property (i) in a manner so as not to cause damage to the Property or the death or personal injury to any persons and (ii) in a manner which keeps the Property free of any liens or third-party claims resulting therefrom. Developer shall repair and restore any damage to the Property caused by any of the Developer Representatives or occurring during the Inspections and shall return the Property to substantially the same condition as existed prior to such entry. At the HRA's option, a representative of the HRA may accompany Developer and the Developer Representatives during the Inspections. The HRA and Developer agree that the provisions of this Section 3.4(h) shall survive the closing of the transaction contemplated by this Agreement.

(i) Insurance. Before and during any Inspections, Developer and each Developer Representative shall maintain workers' compensation insurance in accordance with applicable law, and Developer or the applicable Developer Representative, shall secure, maintain and provide evidence to HRA of (i) a commercial general liability insurance with limits of at least \$2,000,000 for bodily or personal injury or death, which policy shall name HRA and its agents as additional insureds, (ii) property damage insurance in the amount of at least \$1,000,000 and (iii) contractual liability insurance. Developer shall deliver to HRA evidence of such workers' compensation insurance and a certificate evidencing the commercial general liability, property damage and contractual liability insurance before conducting any Inspections on the Property.

(j) Termination During Due Diligence Periods.

(i) Initial Due Diligence Period. Developer may terminate this Agreement by giving written notice to HRA prior to the expiration of the Initial Due Diligence Period (as the same may be amended). Upon termination, the Earnest Money shall be refunded to the Developer and the parties shall have no further obligation to the other party upon termination, other than obligations which, by the express terms of this Agreement, survive a termination of this Agreement.

(ii) Second Due Diligence Period. Developer may terminate this Agreement by written notice to HRA prior to the expiration of the Second Due Diligence Period. If HRA elects to terminate for any reason other than Developer's failure to meet the Pre-Sale Requirements, the HRA shall retain the Earnest Money and the parties shall have no further obligation to the other party upon termination, other than obligations which, by the express terms of this Agreement, survive a termination of this Agreement. If Developer elects to terminate this Agreement prior to the expiration of the Second Due Diligence Period for failing to achieve the Pre-Sale Requirements, the HRA shall retain fifty percent (50%) of the Earnest Money and the remaining Earnest Money shall be refunded to Developer.

Section 3.5. Conditions Precedent to Conveyance of Property.

(a) The HRA's obligation to convey the Property shall be subject to the satisfaction of, or waiver in writing by the HRA of, all of the following conditions precedent:

- (i) The Developer shall have performed all of the obligations this Agreement expressly requires the Developer to perform on or before the Closing Date, and the Developer shall not be in default under the terms of this Agreement;
 - (ii) The Developer shall have delivered to the HRA all of the documents to be delivered by the Developer and described in Section 3.7(b) on or before the Closing Date;
 - (iii) The Developer having secured all governmental permits and approvals in order to permit construction of the Minimum Improvements prior to Closing;
 - (iv) The Developer shall have submitted to the HRA and the HRA shall have approved Construction Plans for Minimum Improvements pursuant to Article IV of this Agreement substantially consistent with the concept plan attached as **Exhibit C**;
 - (v) The HRA and any adjacent property owners, if applicable, agreeing to easements, covenants and/or restrictions which, in HRA's sole and absolute discretion, shall meet HRA's needs for its intended usage of the Restaurant Lot and Park Lot;
 - (vi) Developer (i) securing the necessary and appropriate financing to purchase the Property, and (ii) receiving the HRA's approval of the same as required pursuant to Section 6.3.
 - (vii) The issues identified in Section 3.4 have been adequately addressed prior to the expiration of the Due Diligence Period, or extension thereof; and
 - (viii) The Plat has been approved and is recorded at Closing.
- (b) The Developer shall be obligated to accept title to the Property subject to satisfaction, or waiver in writing by the Developer, of the following conditions precedent:
- (i) The HRA shall have performed all of the obligations required to be performed by the HRA under this Agreement as of the Closing Date and shall not be in default under the terms of this Agreement;
 - (ii) The Developer having secured the HRA's approval of the Construction Plans and all other governmental permits and approvals, including building permits necessary to construct the Minimum Improvements;
 - (iii) Developer (i) securing the necessary and appropriate financing to purchase the Property, and (ii) receiving the HRA's approval of the same as required pursuant to Section 6.3.
 - (iv) The issues identified in Section 3.4 have been adequately addressed prior to the expiration of the Due Diligence Period, or extension thereof; and

- (v) Developer and any adjacent property owners, if applicable, agreeing to easements, covenants and/or restrictions which, in Developer's sole and absolute discretion, shall meet Developer's needs for its intended usage of the Property
- (vi) The Plat has been approved and is recorded at Closing.
- (c) HRA and Developer Options. In the event that any of the foregoing contingencies are not satisfied on or before the Closing Date, the Developer or the HRA, as the case may be must:
 - (i) terminate this Agreement by written notice to the other party; or
 - (ii) waive such failure and proceed to close.

In the event of termination by either party, the Earnest Money will be non-refundable, except as otherwise provided under Section 3.4(j).

Section 3.6. Closing. Subject to the terms and conditions of this Agreement, the Closing shall occur within thirty (30) days of expiration of the Second Due Diligence Period ("Closing Date"), unless otherwise extended by approval of the Parties. The conveyance will be closed through an escrow arrangement with the Title Company.

Section 3.7. Closing Documents.

- (a) HRA Documents. At the Closing, the HRA shall execute, where appropriate, and deliver all of the following (collectively, the "HRA Documents"):
 - (i) The Deed properly executed on behalf of the HRA conveying the Property to the Developer;
 - (ii) A Minnesota Uniform Conveyancing Blank Form Affidavit Regarding Business Entity;
 - (iii) A resolution of the HRA Board authorizing the HRA's execution and delivery of the Deed;
 - (iv) A non-foreign affidavit containing such information as required by Internal Revenue Code Section 1445(b)(9ii) and any regulations relating thereto;
 - (v) A Minnesota Well Disclosure Certificate;
 - (vi) Such information as required by Developer or Title Company to permit Title Company to file an electronic certificate of real estate value;

- (vii) A settlement statement reflecting the financial provisions of the Closing, consistent with the provisions of this Agreement;
 - (viii) The Plat;
 - (ix) Declaration of Restrictions in recordable format with respect to the Park Lot and Restaurant Lot as referenced in Section 3.4(c) above.
 - (x) Easements and any additional documents determined necessary by the parties during the Initial Due Diligence Period as referenced in Section 3.4(c) above, or any extension thereof, by amendment of this Agreement; and
 - (xi) Any other items required by this Agreement or reasonably requested by the Title Company or the Developer of the Closing.
- (b) Developer Documents. At the Closing, the Developer shall execute, where appropriate, and deliver all of the following (collectively, the “Developer Documents”):
- (i) The Purchase Price by wire transfer of immediately available funds to the Title Company;
 - (ii) Such affidavits of the Developer or other documents as may be reasonably required by the Title Company (including a Certificate of Real Estate Value) to record the HRA Documents and issue any title insurance policy required by the Developer;
 - (iii) A resolution of the members or manager of the Developer authorizing and approving the transaction contemplated by this Agreement, certified as true and correct by an officer of the Developer;
 - (iv) A settlement statement reflecting the financial provision of the Closing, consistent with provisions of this Agreement;
 - (v) Easements and any additional documents determined necessary by the parties during the Initial Due Diligence Period, or any extension thereof; and
 - (vi) Any other items required by this Agreement or reasonably requested by the Title Company or the HRA for the Closing.

Section 3.8. Taxes and Deferred Assessments. Except as otherwise provided herein, the HRA shall pay all general real estate taxes and installments of special assessments due and payable in the year prior to the Date of Closing and years prior thereto. The HRA and Developer shall prorate all general real estate taxes due and payable on the Property in the year in which the Date of Closing occurs on a per diem basis. Except as otherwise provided below, HRA shall pay on or before Closing all levied and pending special assessments associated with the Property as of the date of this Agreement.

Section 3.9. Prorations. The HRA and the Developer shall make the following prorations and allocations of costs and expenses at Closing:

- (a) the Developer shall pay:
 - (i) the cost of the ALTA Owner's title insurance policy, including the cost of any endorsements or extended coverage provisions, if any;
 - (ii) one-half of the closing fee charged by the Title Company;
 - (iii) the cost for any environmental investigation, tests, or surveys elected to be completed by Developer, including consultants hired by Developer;
 - (iv) all taxes payable in accordance with the terms of this Agreement;
 - (v) its own attorneys' fees; and
 - (vi) recording fees for easements.

- (b) At Closing, the HRA shall pay:

- (i) the cost for issuance of the title commitment;
 - (ii) one-half of the closing fee charged by the Title Company;
 - (iii) all costs for the creation and recording of the Plat;
 - (iv) all costs for recording fees for documents necessary for correction of title;
 - (v) state deed tax and conservation fees; and
 - (iv) all taxes and assessments payable in accordance with this Agreement.

(c) All costs incidental to the Closing, not otherwise specifically allocated in this Agreement shall be allocated in accordance with the custom and practice for similar transactions.

(d) The HRA and Developer each represent and warrant to the other party that it has dealt with no brokers, finders, or the like in connection with this Agreement or the transactions contemplated hereby. The HRA and Developer agree to indemnify and defend each other against, and hold each other harmless from, all claims, damages, costs, and expenses of or for any fees or commissions resulting from their actions or agreements regarding the execution or performance of this Agreement, if and to the extent the representation and warranty made by such party in the immediately preceding sentence is not true.

Section 3.10. No Representation by the HRA. EXCEPT FOR THE HRA'S REPRESENTATIONS AND WARRANTIES MADE IN THIS AGREEMENT, THE DEVELOPER EXPRESSLY ACKNOWLEDGES AND AGREES THAT IT IS PURCHASING THE PROPERTY "AS IS" AND "WITH ALL FAULTS," AFTER SUCH INSPECTION, ANALYSIS, EXAMINATION AND INVESTIGATION THE DEVELOPER CARES TO MAKE AND EXPRESSLY WITHOUT COVENANT, WARRANTY OR REPRESENTATION BY THE HRA AS TO PHYSICAL OR ENVIRONMENTAL CONDITION, TITLE, LEASES, RENTS, REVENUES, INCOME, EXPENSES, OPERATION, FLOOD PLAIN, SHORELAND, WETLANDS, ZONING OR OTHER REGULATION, COMPLIANCE WITH LAW, SUITABILITY FOR PARTICULAR PURPOSES, ALL OTHER MATTERS WHICH THE DEVELOPER DEEMS RELEVANT TO ITS PURCHASE OF THE PROPERTY OR ANY

OTHER MATTERS WHATSOEVER, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT.

THE DEVELOPER REPRESENTS TO THE HRA THAT DEVELOPER HAS CONDUCTED, OR WILL HAVE HAD THE OPPORTUNITY TO CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL, ENVIRONMENTAL AND GEOTECHNICAL CONDITIONS THEREOF, AS DEVELOPER DEEMS NECESSARY TO SATISFY ITSELF OF THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES OR MATERIALS ON, WITHIN, UNDER OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF THE HRA.

UPON CLOSING, DEVELOPER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL, ENVIRONMENTAL AND GEOTECHNICAL CONDITIONS MAY HAVE BEEN REVEALED BY DEVELOPER'S INVESTIGATIONS, AND DEVELOPER, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED THE HRA (AND THE HRA'S OFFICIALS, EMPLOYEES AND AGENTS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT) LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH DEVELOPER MIGHT HAVE ASSERTED OR ALLEGED AGAINST THE HRA (AND THE HRA'S OFFICERS, DIRECTORS, SHAREHOLDER, EMPLOYEES AND AGENTS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY; PROVIDED, HOWEVER, THE HRA SHALL NOT MAKE ANY CLAIM RELATING TO A BREACH OF A REPRESENTATION, WARRANTY OR COVENANT IN THIS AGREEMENT OR ANY OTHER CLOSING DOCUMENT

The HRA and Developer agree that the provisions of this Section 3.10 shall survive the closing of the transaction contemplated by this Agreement.

ARTICLE IV.

CONSTRUCTION OF MINIMUM IMPROVEMENTS

Section 4.1. Construction of Minimum Improvements. The Developer agrees that it will construct the Minimum Improvements on the Property in accordance with construction plans approved by the HRA, (the "Construction Plans") and will operate and maintain, preserve and keep the Minimum Improvements or cause the Minimum Improvements to be maintained, preserved and kept with the appurtenances and every part and parcel thereof in good repair and

condition. Developer acknowledges that, in addition to HRA approval of plans, Developer is required to obtain all necessary HRA approvals for the development.

Section. 4.2. Construction Plans.

(a) On or before August 5, 2022, the Developer shall submit to the HRA Preliminary Plans (site plan for the Property and schematic plans for the Minimum Improvements) for review and approval by the HRA for general compliance of the Plans with the terms of this Contract.

(b) Thirty days prior to Closing, the Developer shall provide to the HRA the Construction Plans providing for the construction of the Minimum Improvements for a determination that the Construction Plan are in conformity with this Agreement, the Preliminary Plans, and all applicable state and local laws and regulations, together with the construction budget for the Project. The HRA's Executive Director shall approve the Construction Plans in writing if, in the reasonable discretion of the HRA: (i) the Construction Plans conform to the terms and conditions of this Agreement; (ii) the Construction Plans conform to all applicable federal, state and local law, ordinances, rules and regulations as determined by the City's Building Inspector; (iii) the Construction Plans are adequate to provide for the construction of the subject Minimum Improvements; (iv) the Construction Plans do not provide for expenditures in excess of the funds which will be available to the Developer for the construction of the Minimum Improvements; and (v) no Event of Default has occurred and is continuing. No approval by the HRA under this Section 4.2 shall relieve the Developer of the obligation to comply with the terms of this Agreement, applicable federal, state and local laws, ordinances, rules and regulations, or to construct the Minimum Improvements. No approval by the HRA shall constitute a waiver of an Event of Default. The HRA shall review the Construction Plans within thirty (30) days of submission of a complete set of Construction Plans and either approve the same or provide Developer with a list of specific required changes to be made to the Construction Plans. Upon making the specific changes to the Construction Plans as required by the HRA, the Developer shall submit the Construction Plans with the required changes to the HRA for its approval and if Developer made the required changes, the Construction Plans shall be approved.

(b) If the Developer desires to make any material change in any Construction Plans after their approval by the HRA, the Developer shall submit the proposed change to the HRA for approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2 of this Agreement with respect to such previously approved Construction Plans, the HRA shall approve the proposed change and notify the Developer in writing of its approval.

Section 4.3. Construction of Minimum Improvements.

(a) The Developer shall commence construction of the Minimum Improvements within 30 days of the Closing Date. Subject to Unavoidable Delays.

(b) The Developer shall substantially complete construction of the Minimum Improvements, except for minor "punch list items", within twenty four (24) months after the Closing Date.

(c) All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Property must be in substantial conformance with the Construction Plans as submitted by the Developer and approved by the HRA. The Developer agrees for itself, its successors and assigns, and every successor in interest to the Property, or any part thereof, that the Developer, and its successors and assigns, shall promptly begin and diligently prosecute to completion the development of the Property through the construction of the Minimum Improvements thereon, and that such construction shall in any event be completed within the period specified in this Section 4.3 of this Agreement, subject to Unavoidable Delays. Subsequent to conveyance of the Property, or any part thereof, to the Developer, and until construction of the Minimum Improvements has been completed, the Developer, or its architect or contractor, shall make construction progress reports, at such times as may reasonably be requested by the HRA, but not more than once a month, as to the actual progress of the Developer with respect to such construction.

(d) In constructing the Minimum Improvements, the Developer shall comply with all federal, state and local laws and regulations.

Section 4.4. Failure to Accept Title to Property. In the event all conditions precedent herewith are met or waived and the Developer fails to accept title to the Property pursuant to Article III the HRA shall retain the Earnest Money, except as otherwise provided under Section 3.4.

Section 4.5 Right of Reverter.

(a) If the Developer fails to cause the Commencement of construction of the Minimum Improvements within 90 days of the Closing Date, or such later date that may be established pursuant to the terms of this Agreement if Commencement is subject to an Unavoidable Delay then the HRA may, in addition to such other rights and remedies that are available to the HRA hereunder, require that the Property be transferred back to the HRA. The HRA may, but shall not be obligated to, cause the Developer to reconvey the Property and all improvements thereon to the HRA by giving the Developer notice of the HRA's exercise of its right of reverter pursuant to this Section. Such notice shall be subject to the notice and right to cure provisions in Article VII. The right of reverter under this section shall terminate and no longer of any force and effect upon the Commencement of the Minimum Improvements. The HRA agrees to execute and deliver to the Developer a recordable release of its right of reverter, in a form reasonably acceptable to the Developer, within ten (10) days after request by Developer. The HRA will agree to subject such reversion rights to one or more Mortgages securing one or more loans the proceeds of which are solely used to finance the Developer's acquisition of the Property, construction of the Minimum Improvements, or both, in a form and substance acceptable to the HRA.

(b) On the Reverter Closing Date, the Developer will convey fee title to the Property and all improvements thereon to the HRA by the Reverter Deed, as follows:

- (i) The HRA will pay the Developer \$2,900,000.00 (the Purchase Price less \$100,000.00) as consideration for receiving the Reverter Deed;
- (ii) The Developer will convey the Property and any improvements thereon to the HRA free and clear of all encumbrances other than encumbrances that existed when the HRA conveyed the Property to the Developer and easements or other encumbrances which the HRA previously approved in writing;
- (iii) Upon the recording of the Reverter Deed to the HRA, this Agreement shall terminate, the Developer shall have no further rights to the Property or the improvements thereon, and neither the HRA or the Developer will have any rights or obligations under this Agreement other than obligations which, by the express terms of this Agreement, survive a termination of this Agreement;
- (iv) On or before the Reverter Closing Date, the Developer will execute and deliver to the HRA a Minnesota Uniform Conveyancing Blank Form 50.3.1 Affidavit Regarding Business Entity confirming that there has been no labor or materials provided the Property since the HRA's conveyance of the Property to the Developer for which payment has not been made; and
- (v) The Developer shall deliver an updated title insurance commitment to the HRA evidencing the status of title to the HRA consistent with the terms of this Agreement.

Section 4.6. Certificate of Completion.

(a) Promptly after substantial completion of the Minimum Improvements in accordance with the provisions of this Agreement, the HRA will furnish Developer with a certificate of completion substantially in the form shown at **Exhibit D** (the "Certificate of Completion"). Such certification by the HRA shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement with respect to the obligations of Developer, and its successors and assigns, to construct the Minimum Improvements, and shall operate to forever waive the HRA's interest in the Property, including the right of reverter.

(b) If the HRA shall refuse or fail to provide any certification in accordance with the provisions of this Section 4.6, the HRA shall, upon demand, provide Developer with a written statement, indicating in adequate detail in what respect Developer has failed to complete the Minimum Improvements in accordance with the provision of this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the opinion of the HRA, for Developer to take or perform in order to obtain such certification. Upon Developer's completion of the items so described by the HRA, the HRA shall deliver a fully executed Certificate of Completion to Developer.

(c) The construction of the Minimum Improvements shall be deemed to be completed when the Minimum Improvements are, as reasonably determined by the HRA, substantially

completed in accordance with the Construction Plans and when a certificate of occupancy is issued.

ARTICLE V INSURANCE AND CONDEMNATION

Section 5.1. Required Insurance. The Developer agrees to provide and maintain or cause its general contractor to provide and maintain at all times during the process of constructing the Minimum Improvements and, from time to time at the request of the HRA, furnish the HRA with proof of payment of premiums on:

- (a) Builder's risk insurance, written on the so-called "Builder's Risk -- Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called "all risk" form of policy;
- (b) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an owner's contractor's policy with limits against bodily injury and property damage of not less than \$1,000,000 for each occurrence (to accomplish the above required limits, an umbrella excess liability policy may be used); and
- (c) Workers' compensation insurance, with statutory coverage.

The policies of insurance required pursuant to clauses (a) and (b) above shall be in form and content reasonably satisfactory to the HRA and shall be placed with financially sound and reputable insurers licensed to transact business in Minnesota. The policy of insurance delivered pursuant to clause (a) above shall contain an agreement of the insurer to give not less than thirty (30) days' advance written notice to the HRA in the event of cancellation of such policy or change affecting the coverage thereunder.

Section 5.2. Evidence of Insurance. All insurance required in this Article V shall be taken out and maintained in responsible insurance companies selected by the Developer which are authorized under the laws of Minnesota to assume the risks covered thereby. Until the Certificate of Completion is issued, the Developer agrees to deposit annually with the HRA copies of policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V, each policy shall contain a provision that the insurer shall not cancel nor materially modify it without giving written notice to the Developer and the HRA at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Developer shall furnish the HRA evidence satisfactory to the HRA that the policy has been renewed or replaced by another policy conforming to the provisions of this Article V, or that there is no necessity therefor under the terms of this Agreement. In lieu of separate policies, the Developer may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event

the Developer shall deposit with the HRA a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

Section 5.3. Condemnation. In the event that title to and possession of the Property, or any part thereof shall be taken in condemnation or by exercise of the power of eminent domain by any governmental body or other person (except the HRA) the Developer shall, with reasonable promptness notify the HRA as to the nature and extent of such taking.

ARTICLE VI

PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER; ENCUMBRANCES; AND INDEMNIFICATION

Section 6.1. Representation as to Development. The Developer represents and agrees that its purchase of the Property, and its other undertakings pursuant to the Agreement, are, and will be used, for the purpose of redevelopment of the Property and not for speculation in land holding. The Developer further recognizes that, in view of the importance of the redevelopment of the Property to the general welfare of the community and the substantial financing and other public aids that have been made available by the HRA for the purpose of making such development possible, the qualifications and identity of the Developer, and its shareholders, are of particular concern to the community and the HRA. The Developer further recognizes that it is because of such qualifications and identity that the HRA is entering into the Agreement with the Developer, and, in so doing, is further willing to accept and rely on the obligations of the Developer for the faithful performance of all undertakings and covenants hereby by it to be performed relating to the construction of the Minimum Improvements.

Section 6.2. Limitations on Transfer. Until the issuance of a Certificate of Completion for the Minimum Improvements:

(a) The Developer will not sell, assign, convey, lease or transfer in any other mode or manner any of its right, title, and interest in and to this Agreement, all or any part of the Minimum Improvements, without the express approval of the HRA.

(b) The HRA shall be entitled to require, as conditions to its approval of any sale, assignment, conveyance, use or transfer of any rights, title and interest in and to this Agreement or the Minimum Improvements that:

- (1) Any proposed transferee shall not be exempt from the payment of real estate taxes and shall have the qualifications and financial responsibility, as determined by the HRA, necessary and adequate to fulfil the obligations undertaken in this Agreement by the Developer;
- (2) Any proposed transferee, by instrument in writing satisfactory to the HRA and in form recordable among the land records shall, for itself and its successors and assigns, and expressly for the benefit of the HRA have expressly assumed all of the obligations of the Developer under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject; and

- (3) The transferee must demonstrate, in a manner satisfactory to the HRA, its ability to perform all assumed obligations in this Agreement.

(b) In the absence of specific written agreement of the by the HRA to the contrary, neither the transfer of the Minimum Improvements prior to the issuance of a Certificate of Completion or the HRA's consent to such a transfer will relieve the Developer or any other party bound in any way by this Agreement from their obligations under the Agreement.

Section 6.3. Limitation Upon Encumbrance of Property. Prior to the issuance of the Certificate of Completion, except for financing approved by HRA pursuant to Section 3.5(a)(vi), the Developer agrees not to engage in any financing creating any mortgage or other encumbrance or lien upon the Property or the Minimum Improvements, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property or the Minimum Improvements, other than the liens or encumbrances directly and solely related to acquisition of the Property, construction of the Minimum Improvements and approved by the HRA, which approval shall not be withheld or delayed unreasonably if the HRA determines that such lien or encumbrance will not threaten its security in the Property.

Section 6.4. Release and Indemnification Covenants.

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

(b) Except for the negligence of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Minimum Improvements.

(c) The Indemnified Parties shall not be liable for any damage or injury to the persons or property of the company or its officers, agents, servants or employees or any other person who may be about the Property or Minimum Improvements due to any act of negligence of any person other than the Indemnified parties.

(d) None of the Indemnified Parties shall be liable to the Developer or to any third party for any consequential or other damages that may arise out of delays of any kind relating to activities undertaken pursuant to this Agreement, including but not limited to delays due to environmental conditions, court challenges or elements outside the control of the HRA.

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

(f) Nothing in this Section is intended to waive any municipal liability limitations contained in Minnesota Statutes, particularly Chapter 466.

ARTICLE VII

Events of Default

Section 7.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement (unless the context otherwise provides), any one or more of the following events:

- (a) Failure by the Developer to pay when due any payments required to be paid under this Agreement or to pay when due ad valorem taxes on the Property.
- (b) Failure by the Developer to close on the acquisition of the Property;
- (c) The Developer's failure to achieve Commencement and Completion of Minimum Improvements, or portions thereof, pursuant to the terms, conditions and limitations of this Agreement.
- (d) Failure by Developer to observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed hereunder.
- (e) The Developer does any of the following prior to completion of construction of the Minimum Improvements: (i) files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under United States Bankruptcy Laws or any similar federal or state laws; or (ii) make an assignment for the benefit of its creditors; or (iii) admit, in writing, its inability to pay its debts generally as they become due; or (iv) be adjudicated, bankrupt or insolvent.
- (f) If any warranty or representation by the Developer in this Agreement is untrue in any material respect.
- (g) If Developer is in default under any Mortgage and has not entered into a work-out agreement with the holder of the Mortgage.

Section 7.2. HRA Events of Default. Subject to Unavoidable Delays, the failure of the City or the HRA to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement, and the continuation of such failure for a period of thirty (30) days after written notice of such failure from any party hereto shall be an Event of Default by the HRA, as applicable.

Section 7.3. HRA'S Remedies on Default. Whenever any Event of Default by Developer referred to in Section 7.1 of this Agreement occurs, subject to the Cure Rights and Unavoidable Delays, the HRA may take any one or more of the following actions:

- (a) Suspend its performance under the Agreement until it receives assurances from the Developer, deemed adequate by the HRA, that the Developer will cure its default and continue its performance under the Agreement.
- (b) Terminate this Agreement;
- (c) Take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to the HRA to collect any payments due or damages arising under this Agreement or to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

Section 7.4 Developer's Remedies on Default. Whenever any Event of Default occurs by the HRA, the Developer may take whatever action at law or in equity may appear necessary or desirable to the Developer to enforce performance and observance of any obligation, agreement, or covenant of the HRA under this Agreement. Nothing in this Agreement shall entitle the Developer to make any claim against the Authority for any damages whatsoever and the Developer's remedies are strictly limited to the foregoing.

Section 7.5. No Remedy Exclusive. No remedy herein conferred upon or reserved to the HRA is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 7.6. Attorneys' Fees. Whenever any Event of Default occurs and either the HRA shall employ attorneys or incur expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer under this Agreement, the Developer agrees that it shall, within ten (10) days of written demand by the HRA pay to the HRA the reasonable fees of such attorneys and such other expenses so incurred by the HRA; provided, that the Developer shall only be obligated to make such reimbursement if the other party prevails in such collection or enforcement action.

ARTICLE VIII.

ADDITIONAL PROVISIONS

Section 8.1. Restrictions on Use. The Developer agrees for itself, its successors and assigns, and every successor in interest to the Property, or any part thereof, that the Developer

and such successors and assigns shall devote the Property to, and only to, and in accordance with, the uses specified in the Edina City Code.

Section 8.2. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in this Agreement it will comply with all applicable federal, state and local equal employment and nondiscrimination laws and regulations.

Section 8.3. Conflicts of Interest. No member of the governing body or other official of the HRA shall have any financial interest, direct or indirect, in this Agreement, the Project or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to the Agreement which affects his personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested. No member, official or employee of the HRA shall be personally liable to the Developer or any successors in interest, in the event of any default or breach by the HRA or for any amount which may become due to the Developer or successor or on any obligations under the terms of the Agreement.

Section 8.4. Waiver and Release by Developer. Except as otherwise provided for herein The Developer hereby waives, releases and forever discharges the HRA from any claim for costs incurred in preliminary plans, specifications, site testing improvements, professional fees or legal fees in connection with the Project.

Section 8.5. Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 8.6. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested or delivered personally; and

- (a) In the case of the Developer, is addressed or delivered personally to:

Alex Hall
United Properties Residential LLC
250 Nicollet Mall
Suite 500
Minneapolis, MN 55402

- (b) In the case of the HRA, is addressed or delivered personally to:

Executive Director
Edina Housing and Redevelopment Authority
4801 W. 50th Street

Edina, Minnesota 55424

with a copy to:

Andrea McDowell Poehler
CAMPBELL KNUTSON
Professional Association
Grand Oak Office Center I
860 Blue Gentian Road, Suite 290
Eagan, Minnesota 55121
Telephone: (651) 452-5000

- (c) Either Party may, upon written notice to the other Party, change the address to which such notices and demands are made.

Section 8.7. Disclaimer of Relationship. The Developer acknowledges that nothing contained in this Agreement nor any act by the HRA or the Developer shall be deemed or construed by the Developer or any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner or joint venture between the HRA and the Developer.

Section 8.8. Covenants Running with the Land. The terms and provisions of this Agreement shall be deemed covenants running with the Property and shall be binding upon any successors or assigns of the Developer and any future owners or encumbrancers of the Property.

Section 8.9. Counterparts. This Agreement is executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 8.10. Law Governing. This Agreement will be governed and construed in accordance with the laws of Minnesota.

IN WITNESS WHEREOF, the HRA has caused this Agreement to be duly executed in its name and behalf, and the Developer has caused this Agreement to be duly executed in its name and behalf, on or as of the date first above written.

[Remainder of page intentionally left blank.]

[Signature pages to follow.]

**EDINA HOUSING AND REDEVELOPMENT
AUTHORITY**

By: _____

James B. Hovland
Its President

By: _____

James Pierce
Its Secretary

Attested By: _____

Scott Neal
Its Executive Director

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by James B. Hovland and James Pierce, respectively, the President and Secretary, of the Edina Housing and Redevelopment Authority, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the public body corporate and politic.

Notary Public

UNITED PROPERTIES RESIDENTIAL, LLC

By: _____

_____ [print name]

Its _____

By: _____

_____ [print name]

Its _____

STATE OF MINNESOTA)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, the _____ of United Properties Residential LLC, a Minnesota limited liability company, on its behalf.

Notary Public

DRAFTED BY:

Campbell Knutson

Professional Association

Grand Oak Office Center I

860 Blue Gentian Road, Suite 290

Eagan, Minnesota 55121

Telephone: (651) 452-5000

EXHIBIT "A"

LEGAL DESCRIPTION OF HRA PROPERTY

Lots 2, 3, 4, 5, 6, 7, 8, 9 and 10, and the East 90 feet of Lots 11 to 19 inclusive, all in Block 2, Grandview Heights, Hennepin County, Minnesota according to the recorded plat thereof;

And

That part of Government Lot 8, Section 28, Township 117, Range 21, lying North of the centerline of Eden Avenue and East of a line drawn parallel to the main track of the Minneapolis, Northfield and Southern Railway from a point on the North line of said Government Lot 8 distant 582 feet East from the Northwest corner of said Government Lot 8.

EXHIBIT “B”

DEPICTION OF PROPOSED PLAT



GRANDVIEW YARD - CONCEPT
EDINA, MN

CONFLUENCE
JANUARY 2022

EXHIBIT "C"

CONCEPT PLAN FOR MINIMUM IMPROVEMENTS



GRANDVIEW YARD - CONCEPT
EDINA, MN

CONFLUENCE
JANUARY 2022



GRANDVIEW YARD - CONCEPT
EDINA, MN

CONFLUENCE
JANUARY 2022

EXHIBIT “D”

CERTIFICATE OF COMPLETION

The undersigned hereby certifies that **UNITED PROPERTIES RESIDENTIAL LLC**, a Minnesota limited liability company (“Developer”) has fully complied with its obligations to construct the Minimum Improvements under that document titled Contract for Private Development dated _____, 20__, by and between the Edina Housing and Redevelopment Authority in and (the “HRA”) and Developer, and that Developer is released and forever discharged from its obligations under the Agreement with respect to the obligations of Developer, and its successors and assigns, to construct the Minimum Improvements, and the HRA waives any right, title or interest it may have in the Property, including a right of reverter. The Hennepin County Recorder’s Office is hereby authorized to accept for recording the filing of this instrument, to be a conclusive determination of the satisfaction and termination of the covenants and conditions of the Contract for Private Development described above.

IN WITNESS WHEREOF, the HRA has caused this Certificate to be duly executed in its name and behalf on or as of the date first above-written.

EDINA HOUSING AND REDEVELOPMENT AUTHORITY

By: _____

James B. Hovland
Its President

By: _____

James Pierce
Its Secretary

Attested By: _____

Scott Neal
Its Executive Director

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by James B. Hovland and James Pierce, respectively, the President and Secretary, of the Edina Housing and Redevelopment Authority, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the public body corporate and politic.

Notary Public



Edina Housing and Redevelopment
Authority
Established 1974

CITY OF EDINA
HOUSING & REDEVELOPMENT
AUTHORITY

4801 West 50th Street
Edina, MN 55424
www.edinamn.gov

Date: June 2, 2022

Agenda Item #: VII.B.

To: Chair & Commissioners of the Edina HRA

Item Type:
Report / Recommendation

From: Bill Neuendorf, Economic Development Manager

Item Activity:
Action

Subject: Resolution 2022-07: Contract for Private
Development and Sale of Property to Jester Concepts
LLC

ACTION REQUESTED:

Approve Resolution 2022-07 approving Contract for Private Development and Sale of Property to Jester Concepts LLC

INTRODUCTION:

This item pertains to the sale of 0.72 acres of land located at 5146 Eden Avenue. The City Attorney has prepared a sales contract based on terms negotiated by staff. Staff will present information about this transaction at the meeting and will be available for questions.

Staff recommends approval of Resolution 2022-07.

ATTACHMENTS:

Resolution 2022-07
Staff Report
Staff presentation
Contract - 5146 Eden Jester Concepts



**EDINA HOUSING AND REDEVELOPMENT AUTHORITY
HENNEPIN COUNTY
STATE OF MINNESOTA**

RESOLUTION NO. 2022-07

**RESOLUTION APPROVING CONTRACT FOR
PRIVATE DEVELOPMENT AND SALE OF PROPERTY
TO JESTER CONCEPTS, LLC**

WHEREAS, the Board of Commissioners (the “Board”) of the Edina Housing and Redevelopment Authority (“Authority”) intends to plat the certain real property legally described in Exhibit A (“Authority Property”) as Grandview Yard Addition, to consist of three lots;

WHEREAS, the Authority and Jester Concepts LLC, a Minnesota Limited Liability Company (“Developer”) have negotiated a Contract for Private Development attached hereto as Exhibit B (“Contract”) that includes the sale of a portion of the Authority Property to be platted as the centrally located lot of the Grandview Yard Addition plat, consisting of approximately 0.72 acres (“Property”);

WHEREAS, the Contract requires the Developer to construct on the Property a multi-story restaurant and hospitality facility containing both indoor and outdoor dining as further defined and depicted in the Contract (“Minimum Improvements”);

WHEREAS, the Authority believes that the sale of the Property pursuant to the terms of the Contract for Private Development is in the best interest of the Authority, City of Edina, and its residents;

WHEREAS, the Board, after proper published notice, held a public hearing at approximately 7:30 a.m. on May 19, 2022, with regard to the sale of the Property;

WHEREAS, all requirements of Minnesota Statutes, Section 469.029 regarding the sale of the Property have been satisfied.

NOW, THEREFORE, BE IT RESOLVED by the Board:

1. The Contract by and between the Authority and Developer is hereby approved. The President and Secretary are authorized and directed to execute the Contract.
2. The President, Secretary and City Attorney are authorized and directed to execute and record all documents necessary to convey the Property and comply with the terms of the Contract.

Approved by the Board on June 2, 2022.

James B. Hovland, Chair

ATTEST:

James Pierce, Secretary

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) SS
CITY OF EDINA)

CERTIFICATE OF EXECUTIVE DIRECTOR

I, the undersigned duly appointed and acting Executive Director for the Housing and Redevelopment Authority of Edina, Minnesota, do hereby certify that the attached and foregoing Resolution is a true and correct copy of the Resolution duly adopted by the Housing and Redevelopment Authority of Edina, Minnesota at its Meeting of June 2, 2022, and as recorded in the Minutes of said Meeting.

WITNESS my hand and seal of said City this _____ day of _____, 2022.

Scott Neal, Executive Director

EXHIBIT A

LEGAL DESCRIPTION OF AUTHORITY PROPERTY

Lots 2, 3, 4, 5, 6, 7, 8, 9 and 10;
The East 90 feet of Lots 11 to 19 inclusive;

all in Block 2, "Grand View Heights".

That part of Government Lot 8, Section 28, Township 117, Range 21, lying North of the center line of Eden Avenue and East of a line drawn parallel to the main track of the Minneapolis, Northfield and Southern Railway from a point on the North line of said Government Lot 8 distant 582 feet East from the Northwest corner of said Government Lot 8.

EXHIBIT B
CONTRACT FOR PRIVATE DEVELOPMENT

This page is blank. Contract is attached.



Housing and Redevelopment Authority
Established 1974

Date: June 2, 2022

To: Chair and Commissioners of Edina Housing & Redevelopment Authority

From: Bill Neuendorf, Economic Development Manager

Subject: Resolution 2022-06 and 2022-07: Contracts for Private Redevelopment and Sale of Property to United Properties Residential, LLC and Jester Concepts, LLC

Information / Background:

This item pertains to the sale of property at 5146 Eden Avenue. This 3.3 acre property was formerly used by Edina's Public Works Department until they moved to larger facilities in 2013. The property has been tax-exempt since 1962. It was previously used as a concrete plant after the train tracks were activated.

The HRA took ownership of the site so that it could be held and conveyed for redevelopment purposes. The intended uses are strongly informed by the Grandview Development Framework that was prepared by a group of 50+ community volunteers from 2010 to 2012. The Grandview Seven Guiding Principles have also been applied as the potential users for the site have been identified. The Framework envisioned a mixture of public and private uses on the 3.3-acre site that could create a catalyst to attract future development and to create a new community destination. The Framework also urged that better access be provided through the District, that parking resources be organized to be more efficiently used; and that a unique sense of place be established.

The HRA has considered several different types of projects for the vacant site over the past ten years. The 2022 proposal is the tenth version considered.

Frauenschuh Companies has assisted the HRA staff in coordinating conversations with proposed buyers for the past year. Frauenschuh has also provided oversight as pre-development engineering and design work was conducted to prepare initial concept plans and a submittal for Edina's Sketch Plan review process in January 2022.

The HRA Board has discussed aspects of potential real estate transactions in closed session in 2021 and 2022. The HRA Board directed staff to prepare sales contracts to achieve the desired redevelopment outcomes. Two sales contracts have been prepared by the City Attorney based on the Letters of Intent submitted by United Properties Residential, LLC and Jester Concepts, LLC in March 2022.

The Edina Planning Commission reviewed the intended outcomes of these sales and confirmed via Resolution B-22-08 that sale of property to be used as multi-family housing and a restaurant with indoor and

outdoor seating is consistent with the Comprehensive Plan. This determination is limited to the future land use only. As part of the City's standard rezoning process, proposed site plans for the 3.3 acre site will be submitted for review by the Planning Commission and City Council.

For-Sale Cooperative Housing

United Properties proposes to construct a senior housing cooperative on the southern most portion of the site using the Applewood Pointe concept that has been successfully implemented in other locations in Minnesota. Approximately 90 units would be available for sale in this project. Financing is intended to be provided by means of a master cooperative mortgage through the U.S. Department of Housing and Urban Development (HUD). This financing strategy requires that at least 60% of the units be pre-sold before funding is available.

Most of the units will be sold for market-rate prices but 10% of the units will be sold at affordable prices in accordance with Edina's housing policy. The current price for "affordable" units is \$355,400. This amount is adjusted annually for inflation. Covenants are anticipated to be executed as part of the rezoning process to ensure that the affordable units are occupied by income-qualified residents for the initial and subsequent owners. Such covenants must be recorded as a condition of sale and should also be included in the Cooperative Bylaws.

Restaurant with Indoor & Outdoor Dining

Jester Concepts proposes to construct a new restaurant and hospitality facility approximately 12,000 to 15,000 square feet on three levels. Jester has several successful restaurant operations located in Minneapolis and Saint Paul. They were selected for the responsiveness and compatibility with a Request for Interest that was distributed to over 40 restaurant and hospitality groups in late 2021.

The restaurant is set on the back of the lot so that outdoor seating and activity area can be maximized and be located next to the active portions of the park. The restaurant is intended to feature indoor and outdoor dining designed to complement the adjacent public park. Portions of the restaurant property are intended to be used for outdoor activities such as bonfires or outdoor games. Finally, the restaurant will include toilets and limited storage space that open to the park. These facilities would be available to park patrons but may be seasonal in nature. Complete details of the restaurant, outdoor seating and activity areas and public toilets will be established and refined through the rezoning and site plan approval process.

Private financing is anticipated for the acquisition and construction of the restaurant. If construction costs continue to escalate however, Jester may request a grant from the HRA using the new SPARC program that was created to create jobs and fund new construction.

Public Park or Public Green Space (Grandview Yard)

The northernmost portion of the site is intended to be transformed into a public park or similar public use that serves as green space. In the future, access to the train tracks might be considered on a portion of this site too. During the design development process, the layout will be finalized including additional consideration to how the park and the restaurant can best work together to create a vibrant and active public space.

As part of the rezoning process, the HRA will need to re-plat the overall site and create 3 separate lots to accommodate the new uses. The new plat is tentatively called Grandview Yards to recognize its location and previous industrial uses that are still visible by the active freight train tracks and railroad siding.

The proceeds from selling the land are anticipated to be used to prepare the site and construct the new park. After completion, the park is anticipated to be turned over to the City of Edina. Annual park maintenance will become a responsibility of the Park and Recreation Department. The City will be responsible for programming the park space. Jester Concepts has a strong interest in working together with the City to provide activities and programming in the park too.

Conclusion and Requested Action:

The Public Hearing regarding the sale of property has concluded. The staff presentation from May 19, 2022 is attached for reference. Final contracts have been prepared by the City Attorney. The final versions of the contracts consider questions and comments received during the Public Hearing process. United Properties and Jester Concepts are agreeable to the terms of the Contracts and are ready to proceed.

Staff recommends that Resolution 2022-06 and 2022-07 be approved.

END



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Resolutions 2022-06 and 2022-07

Sale of Property at 5146 Eden Avenue

Housing & Redevelopment Authority

Public Hearing

May 19, 2022

Updated June 2, 2022

Existing Conditions



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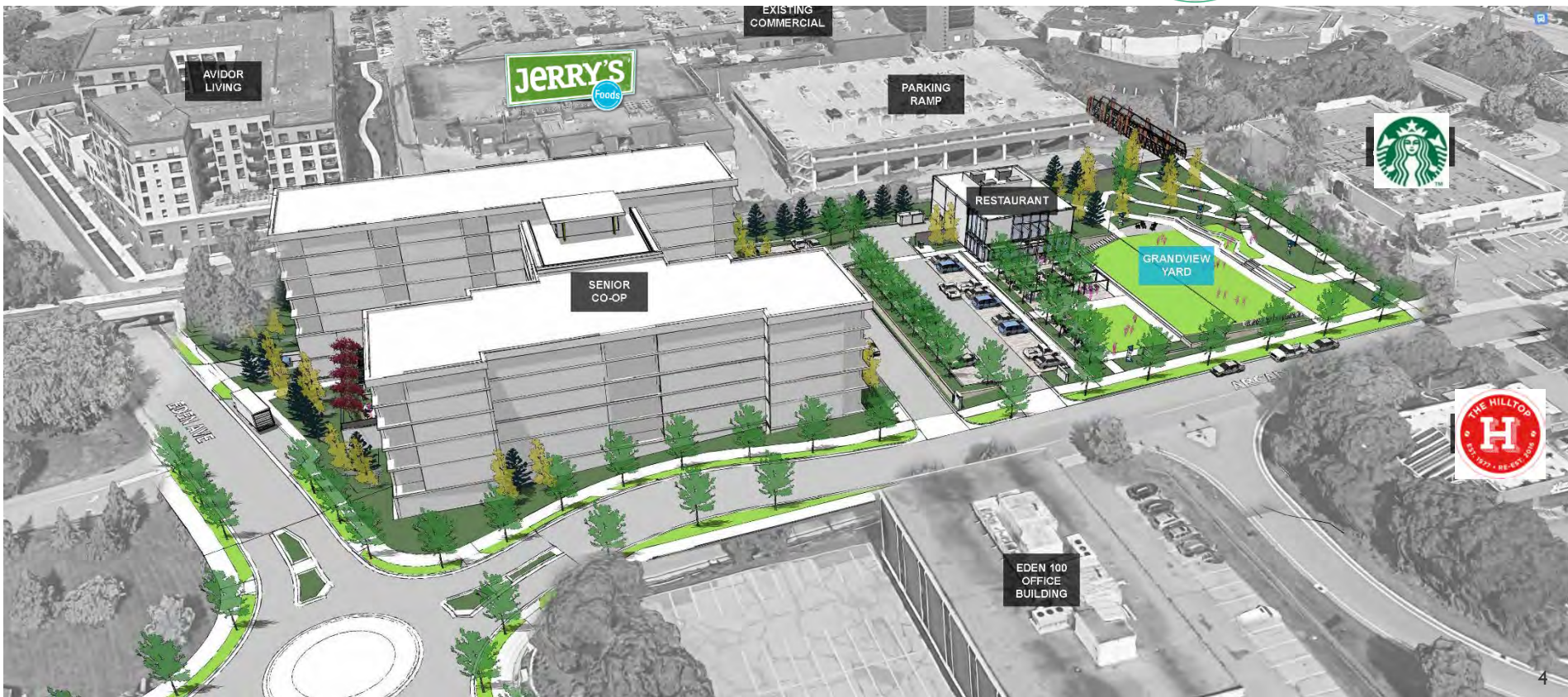
Redevelopment Concept



Redevelopment Concept - birds eye



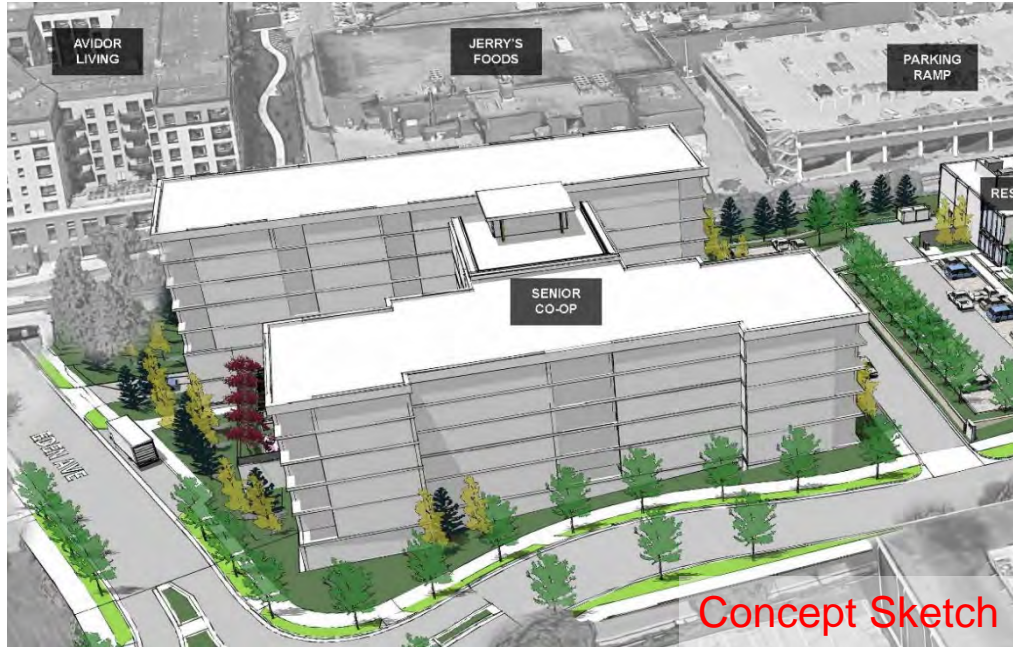
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Lot I - Housing Cooperative



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UNITED PROPERTIES



APPLEWOOD POINTE

Housing Cooperative

Sales Price and use restrictions

- \$3,000,000 for 1.69 acres
 - \$33,333 price reduction per unit if fewer than 90 units approved
 - close upon financing
 - no broker fees paid by HRA
- Must be limited-equity housing cooperative for seniors
- Must include 10% of units sold at affordable prices
 - 90% sold at market rate



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Staff Comments

- Price per unit is in the typical range of most recent multi-family transactions
- Consistent with April 2022 Appraisal
- This is a fair land value based on the HRA's preference for ownership housing rather than rental and HRA's preference to limit overall density on the site.

Housing Cooperative

Key contractual terms



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- ~~\$50,000~~ \$100,000 earnest money
- Two-phase due diligence
 - 180 days for zoning
 - 180 days for pre-sales
 - Extendable, if needed
- Closing costs, pro-rated and standard
- Right of reverter if not built

Staff Comments

- Typical terms and conditions
- Two-phase due diligence is unique for most residential but typical for cooperatives due to pre-sale requirements of HUD financing

Housing Cooperative

Easements and Restrictions



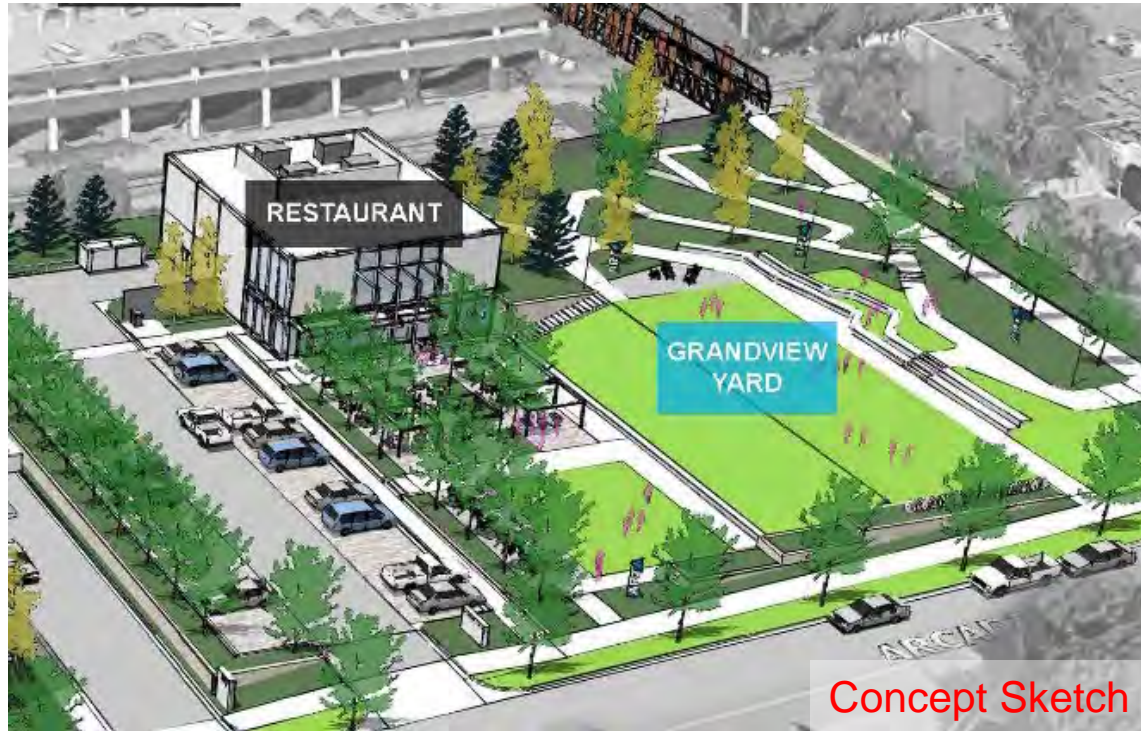
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- HRA must commit to build park
- Restaurant parcel no more than 3 stories for at least 10 years
- Shared easement for driveway
- Public easement along tracks for access

Staff Comments

- HRA obligations are reasonable
- Both housing and restaurant will have multiple cross access easements to maximize efficiency

Lot 2 - Restaurant



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Restaurant

Sale price and use restrictions

- \$500,000 for 0.72 acres
 - will reimburse Frauenshuh for securing operator per 2021 contract
- Must be ~~food-oriented commercial business that complements the park~~ restaurant with indoor and outdoor dining and related outdoor activity space for 30-years – unless waived by HRA in future
- Must be no more than 3 stories unless waived by HRA in future
- Buyer may require \$149,000 grant if construction costs continue to escalate



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Staff Comments

- Consistent with April 2022 Appraisal
- This is a fair land value based on the HRA's preference for a food-oriented business that complements the adjacent public park.
- SPARC grant may be considered in the future after construction costs and schedule clarified.

Restaurant

Key contractual terms



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- \$20,000 earnest money
- Two-phase due diligence to match housing
 - 180 days for zoning
 - 180 days for pre-sales
- Mutually renegotiated if housing fails to close by deadline
- Closing costs, pro-rated and standard
- Right of first refusal, if sold
- Right of reverter, if not built

Staff Comments

- Typical terms and conditions
- Two-phase due diligence is unique for most commercial but mirrors the schedule required to secure HUD financing for the cooperative

Restaurant

Easements and Restrictions



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- Shared easement for driveway
- Public easement along tracks for access
- Must include exterior-facing public toilets to serve Park
- Participation in Maintenance District
- Temporary easement for construction of housing and restaurant

Staff Comments

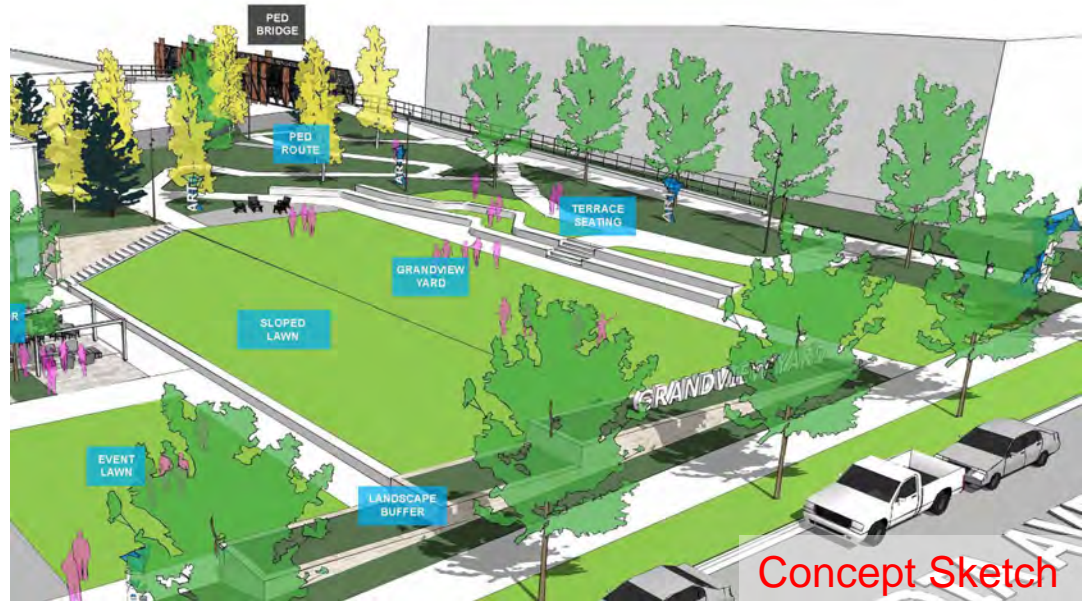
- Both housing and restaurant will have multiple cross access easements to maximize efficiency

Lot 3 - Public Park – concept



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- Permanent public space for residents, employees, customers and general public
- Portions could include access to train in future
- Could include some areas that could be licensed for public/private events
- Designed to accommodate elevation change from pedestrian bridge to restaurant
- ADA access throughout
- Flat open yard to allow for special events (music, movies, festival, etc TBD)



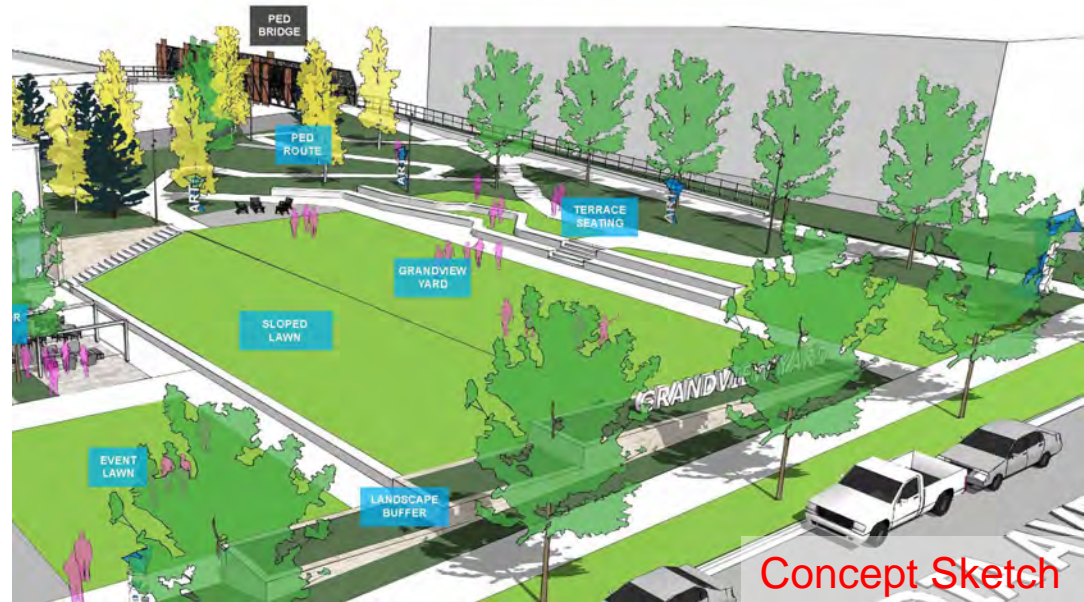
CONFLUENCE

Lot 3 - Public Park – concept



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- On-street parking and parking in adjacent Grandview parking structure
- No playground equipment anticipated
- No ball fields or similar sporting events anticipated
- Space for future park structures (gazebo, shade pavilion, etc TBD)
- Space for future park amenities (water feature, hammocking, etc TBD)
- Space for future public art



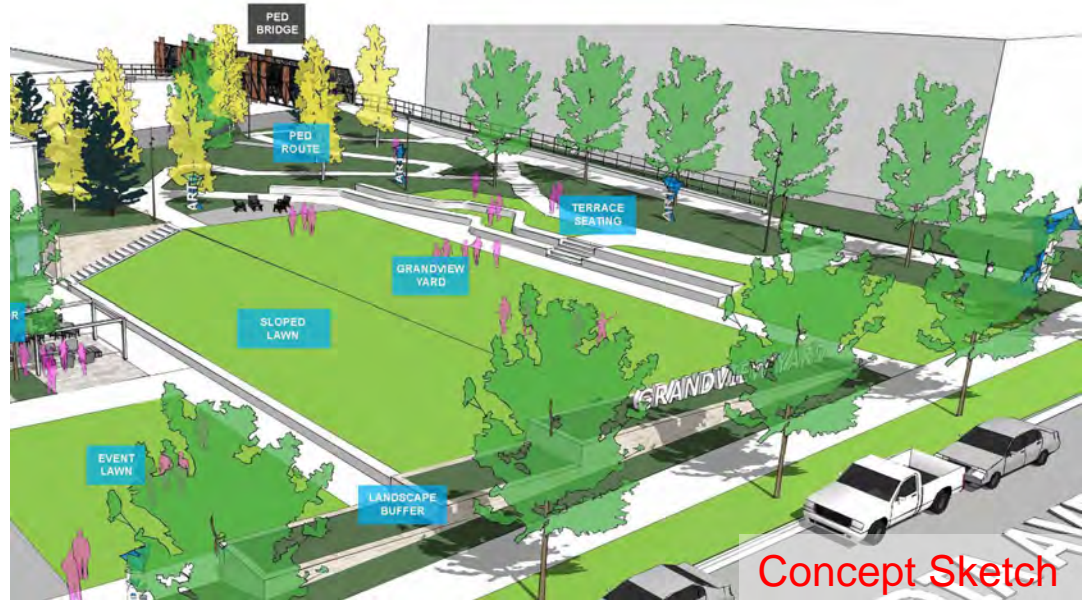
CONFLUENCE

Obligations of the HRA



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- Complete pedestrian bridge
- Prepare 3-acre site to allow two buildable pads to be sold
- Construct new park after closing
 - Rough grading: approx. \$1 M
 - Final grading & landscaping: approx. \$1 M
 - Future structures TBD



CONFLUENCE

Future Steps for Redevelopment



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Real Estate Transaction

- Final Action scheduled June 2, 2022
- Closing deferred until 2023 or 2024

Zoning Entitlement

- Anticipated late summer/fall 2022
- Public Hearings required

Pre-Development Site Work

- By HRA to create buildable site
- Anticipated summer/fall 2023

Pre-Sales and Project Financing

- Anticipated to begin fall 2022
- 60% pre-sales required for HUD financing
- Private financing for restaurant
- SPARC grant may be necessary based on restaurant construction costs
- New park to be funded by real estate proceeds

Construction

- Anticipated 2024 to 2026

Staff Recommendation



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- These contracts reflect market conditions and are responsive to the direction set by the HRA for the future use of this site.
- Staff recommends that the Public Hearing be completed.
- Staff further recommends that the contracts be considered on June 2, 2022 after any Board questions have been resolved.



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Staff and Buyers available
for questions and comments

Sketch Plan – for reference



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Sketch Plan – for reference



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Sketch Plan – for reference



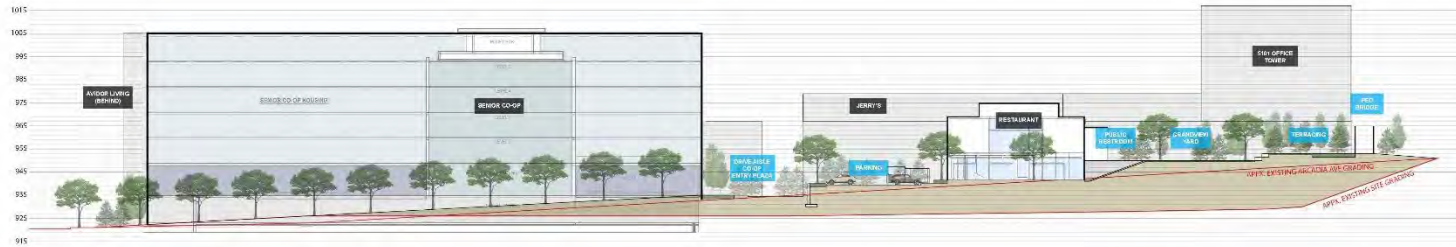
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Sketch Plan – for reference



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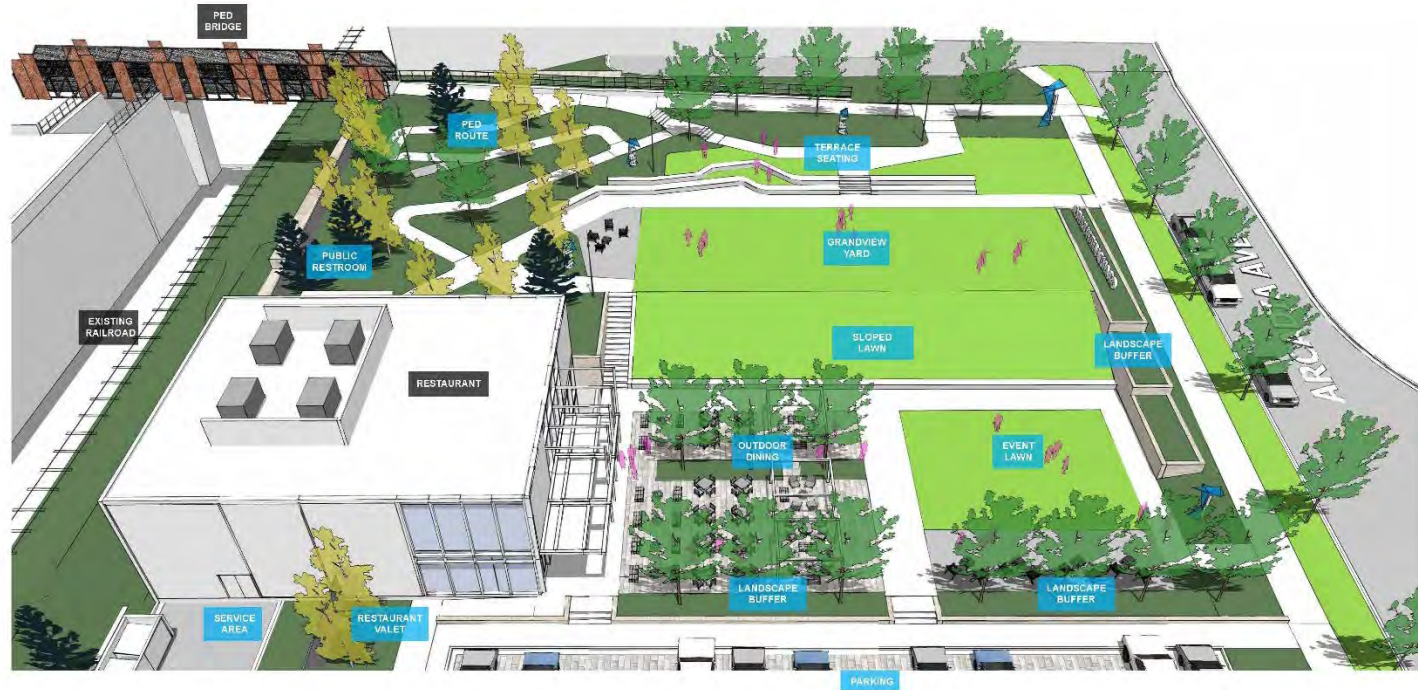
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Sketch Plan – for reference



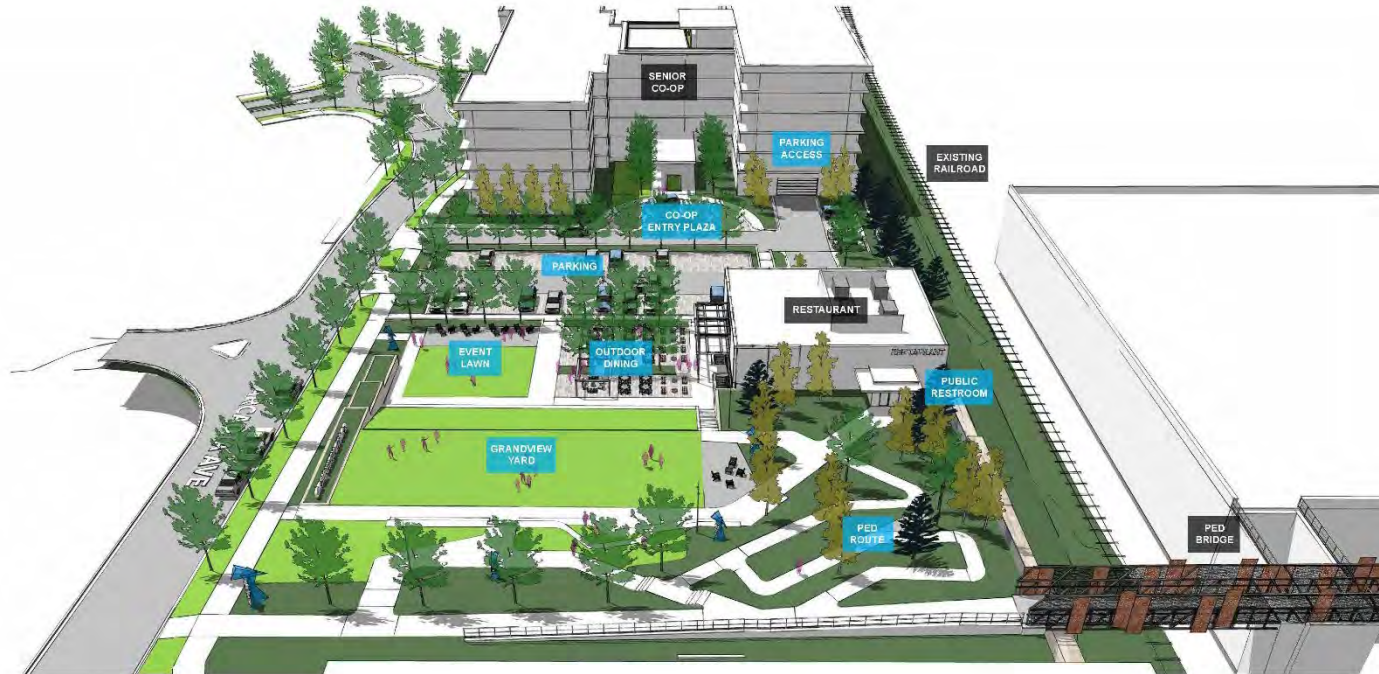
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Sketch Plan – for reference



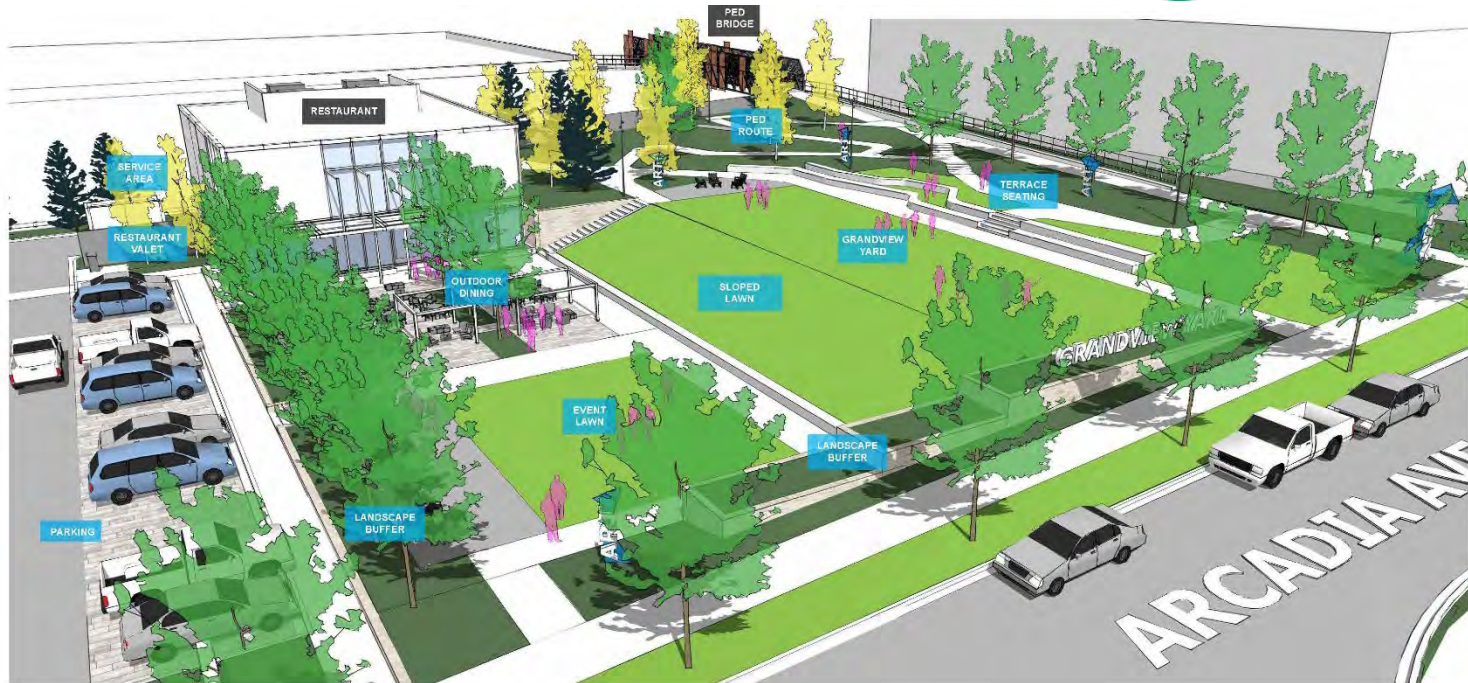
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Sketch Plan – for reference



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Sketch Plan – for reference



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Sketch Plan – for reference



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Seven Guiding Principles - 2012



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- 1.) Leverage publicly-owned parcels and civic presence to **create a vibrant and connected district that serves as a catalyst** for high quality, integrated public and private development.
- 2.) Enhance the District's economic viability as **a neighborhood center with regional connections**, recognizing that meeting the needs of both businesses and residents will make the district a good place to do business.
- 3.) **Turn perceived barriers into opportunities.** Consider layering development over supporting infrastructure and taking advantage of the natural topography of the area.
- 4.) **Design for the present and the future** by pursuing logical increments of change using key parcels as stepping stones to a more vibrant, walkable, functional, attractive, and life-filled place.
- 5.) **Organize parking** as an effective resource for the district by linking community parking to public and private destinations while also providing parking that is convenient for businesses and customers.
- 6.) **Improve movement within and access** to the district for people of all ages by facilitating multiple modes of transportation, and preserve future transit opportunities provided by the rail corridor.
- 7.) **Create an identity and unique sense of place** that incorporates natural spaces into a high quality and sustainable development reflecting Edina's innovative development heritage.

(reserved for recording information)

CONTRACT FOR PRIVATE DEVELOPMENT

RESTAURANT/HOSPITALITY FACILITY AT GRANDVIEW YARD

THIS AGREEMENT, made on or as of the 2nd day of June, 2022 (“Effective Date”), by and between the **EDINA HOUSING AND REDEVELOPMENT AUTHORITY**, a public body corporate and politic under the laws of the State of Minnesota (the "HRA") and **JESTER CONCEPTS LLC**, a Minnesota limited liability company (the "Developer").

WITNESSETH:

WHEREAS, the HRA was created pursuant to Minnesota Statutes, Sections 469.001-.047 and was authorized to transact business and exercise its powers by a resolution of the City Council of the City of Edina pursuant to Section 469.003 of the Act; and

WHEREAS, pursuant to the Act, the HRA is authorized to undertake certain activities to prepare real property for development and redevelopment by private enterprise; and

WHEREAS, the HRA is the fee owner of property located in the City of Edina, as legally described in **Exhibit A** attached hereto (“HRA Property”), which the HRA intends to plat as the Grandview Yard Addition prior to Closing (defined herein) into three (3) separate lots: Lot 1, Block 1 (“Senior Cooperative Lot”), Lot 2, Block 1 (“Sale Property”) and Lot 3, Block 1 (“Park Lot”), all as shown on attached **Exhibit B**;

WHEREAS, there has been a proposal that the HRA approve the sale of the portion of the HRA Property to be platted as the Sale Property, consisting of approximately 0.72 acres of land (the “Property”) to the Developer for development of a restaurant and hospitality facility with indoor and outdoor dining and activities (“Project”); and

WHEREAS, the City of Edina owns and operates adjacent property at 5116 Brookside Avenue which is known as the Grandview Parking Structure and provides public parking for businesses located in the Grandview Commercial Area; and

WHEREAS, the HRA intends to construct a green space with infrastructure to accommodate transportation connections and open space for general use by the public on the Park Lot; and

WHEREAS, the HRA believes that the Project and fulfillment generally of this Agreement is in the best interest of the HRA and the health, safety, morals and welfare of the residents of the City of Edina and in accord with the public purposes and provisions of the applicable state and local laws and requirements.

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

ARTICLE I. **DEFINITIONS**

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

"Act" means Minnesota Statutes, Sections 469.001-.043, as amended.

"Agreement" [or "Contract"] means this Contract for Private Development by and between the HRA and the Developer, as the same may be from time to time modified, amended or supplemented.

"Articles and Sections" mentioned by number only are the respective Articles and Sections of this Agreement so numbered.

"Board" means the Board of Commissioners of the HRA.

"Certificate of Completion" means the certificate to be issued by the HRA pursuant to the terms of Section 4.6.

"City" means the City of Edina, Minnesota.

"Closing" means the closing on the transfer of the Property pursuant to Article III.

"Closing Date" means the date of closing on the transfer of the Property as provided in Section 3.6.

"Commence" or "Commencement" means the first visible improvement to the Property made in furtherance of the construction of the Minimum Improvements (including, specifically, pouring footings and foundations).

“Completion” means the Developer’s receipt of the Certificate of Completion from the HRA for the Minimum Improvements.

“County” means the County of Hennepin, Minnesota.

“Cure Rights” means the rights to cure a Default as specified in Sections 7.2 and 7.3.

“Deed” means a quit claim deed in the Minnesota Uniform Conveyancing Blank Form, subject to the right of first refusal under Section 3.11, the right of reverter provided under Section 4.5, and the restrictive covenants provided under Section 3.13.

“Developer” means Jester Concepts LLC, or any assigns that have received prior written approval from the HRA, except as otherwise set forth in Section 6.2(a).

“Event of Default” means an action by the Developer listed in Article VII of this Agreement.

“HRA” means the Edina Housing and Redevelopment Authority.

“Minimum Improvements” means the construction by the Developer on the Property of approximately a 12,000 to 15,000 square foot multi-level restaurant and hospitality facility with indoor and outdoor dining, two (2) exterior restrooms for public use and the elements as generally described and depicted in **Exhibit C** attached hereto, in accordance with all applicable local, state and federal regulations governing such facilities, and in conformance with site plans as the same have been submitted to the HRA.

“Parties” means the Developer and the HRA.

“Party” means either the Developer or the HRA.

“Plat” means the final plat of the HRA Property for the Grandview Yard Addition, consisting of three (3) lots as generally depicted in **Exhibit B**.

“Project” means the Property and the completed Minimum Improvements thereon.

“Property” means that portion of the HRA Property to be platted as the Sale Property. The parties acknowledge that the Sale Property contains approximately 0.72 acres, but that the legal description of the Sale Property shall be verified by the Survey and the Title Company (both as hereinafter defined) on or before Closing.

“Purchase Price” means the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00), which the Developer shall pay the HRA for the purchase of the Property.

“Related Party” means with respect to any person or entity (i) any other person or entity controlling, controlled by or under common control with such person or entity; or (ii) any other

person or entity in which the majority equity interest is owned by the parties that have a majority equity interest in such person or entity.

“Reverter Closing Date” means thirty (30) days after the Developer’s receipt of the HRA’s notice exercising the HRA’s right of reverter for the Property as set forth in Section 4.5.

“Reverter Deed” means the limited warranty deed through which the Developer will convey the Property and any improvements thereon back to the HRA upon the HRA’s exercise of its right of reverter as set forth in Section 4.5.

“State” means the State of Minnesota.

“Title Company” means First American Title Insurance Company.

“Unavoidable Delays” means unanticipated delays outside the control of the party claiming its occurrence which are the direct result of strikes, other labor troubles, unusually severe or prolonged bad weather, Acts of God, pandemic, material, supply and labor shortages, fire or other casualty to the Minimum Improvements, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the HRA) which directly result in delays. Unavoidable delays shall not include delays in the Developer obtaining permits or governmental approvals necessary directly to enable construction of the Minimum Improvements.

ARTICLE II.

REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties by the HRA. The HRA represents and warrants that:

(a) The HRA is a public body corporate and politic duly organized and existing under the laws of the State. Under the provisions of the Act and the laws of the State, the HRA has the power to enter into this Agreement and carry out its obligations hereunder.

(b) Subject to satisfaction of the terms and conditions of this Agreement, the HRA will convey the Property to the Developer for development in accordance with the terms of this Agreement.

(c) There is not pending, nor to the best of the HRA’s knowledge is there threatened, any suit, action or proceeding against the HRA before any court, arbitrator, administrative agency, or other governmental authority that may materially and adversely affect the validity of any of the transactions contemplated hereby, the ability of the HRA to perform its obligations hereunder or as contemplated hereby, or the validity or enforceability of this Agreement.

(d) To the best of the HRA’s knowledge and belief, no member of the Board or officer of the Board, has either a direct or indirect financial interest in this Agreement nor will any HRA Board member or officer of the HRA, benefit financially from this Agreement within

the meaning of Minnesota Statutes Section 460.009

(e) To the best of its knowledge, the HRA believes that private wells were located on the Property, but have since been sealed.

(f) To the best of the HRA's knowledge any sewage generated on the Property goes to a facility permitted by the Minnesota Pollution Control Agency and there are no active or abandoned individual sewage treatment systems located on or serving all or any part of the Property.

(g) To the best of the HRA's knowledge, no methamphetamine production has occurred on the Property. This statement is being made pursuant to the disclosure requirements of Minnesota Statutes Section 152.0275.

(h) The HRA has not received notice of default concerning any of its obligations or liabilities regarding the Property;

(i) The HRA has not received written notice of any action, litigation, investigation, condemnation or proceeding of any kind pending or threatened against the HRA or any portion of the Property.

(j) The HRA will reasonably cooperate in the processing of any applications required under this Agreement to be filed with the City by the Developer. The HRA does not hereby warrant or represent that the City will approve an application filed by Developer, except as expressly provided in this Agreement.

(k) The execution, delivery and performance of this Agreement, and any other documents, instruments or actions required or contemplated pursuant to this Agreement by the HRA does not, and consummation of the transactions contemplated therein and the fulfillment of the terms thereof will not conflict with or constitute on the part of the HRA a breach of or default under any existing agreement or instrument to which the HRA is a party or violate any law, charter or other proceeding or action establishing or relating to the establishment and powers of the HRA or its officers, officials or resolutions.

(l) To the best of the HRA's knowledge and without independent investigation by the HRA, the HRA has not received written notice of the presence or existence of any hazardous materials regulated by any applicable federal, state, county or local government authorities in amounts on the Property that violate existing law, except as otherwise provided in the environmental reports provided to Developer per Section 3.4(a)(2).

(m) The HRA recognizes that Developer may seek public grant or loan financing to assist in the acquisition and or development of the Project. The HRA will assist the Developer in applying for public grant or loan funds that may be available through the HRA or the City, if requested by Developer, but the HRA does not guarantee that such grant or loan funding is available or will be awarded to Developer.

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

(a) The Developer is a limited liability company organized and in good standing under the laws of the State of Minnesota, is qualified to do business in the State, is not in violation of any provisions of its operating agreement or other organization documents or the laws of the State, has power to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action of its members.

(b) The execution and delivery of this Agreement and the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions thereof do not and will not conflict with or result in a breach of any material terms or conditions of the Developer's organizational documents, any restriction or any agreement or instrument to which the Developer is now a party or by which it is bound or to which any property of the Developer is subject, and do not and will not constitute a default under any of the foregoing or a violation of any order, decree, statute, rule or regulation of any court or of any state or Federal regulatory body having jurisdiction over the Developer or its properties, including its interest in the Minimum Improvements, and do not and will not result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of Developer contrary to the terms of any instrument or agreement to which the Developer is a party or by which is bound.

(c) To the best of the Developer's knowledge and belief, the execution and delivery of this Agreement will not create a conflict of interest prohibited by Minnesota Statutes Section 469.009, as amended.

(d) The Developer has the capacity to enter into this Agreement and to perform its obligations hereunder.

(e) When the Property is conveyed to the Developer, the Developer will construct, operate and maintain the Minimum Improvements upon the Property in accordance with the terms of this Agreement, and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations).

(f) The Minimum Improvements will be constructed by the Developer, at its sole expense, in such manner, and at such expense as are necessary to make the Property usable by the Developer, including all such improvements as are necessary to make said facility comply with all applicable federal, state and local rules, regulations, ordinances and laws.

(g) There are no pending or threatened legal proceedings, of which the Developer has notice, contemplating the liquidation or dissolution of the Developer or threatening its existence, or seeking to restrain or enjoin the transactions contemplated by this Agreement or the validity of this Agreement.

(h) The Developer reasonably expects that it will be able to obtain private financing in an amount sufficient to enable the Developer to successfully acquire and construct the Minimum Improvements, as provided herein.

(i) The Developer will use its best efforts to construct the Minimum Improvements in accordance with all local, state or federal energy-conservation laws or regulations.

(j) The Developer will use its best efforts to obtain, in a timely manner, all required permits, licenses and approvals and to meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed.

ARTICLE III. CONVEYANCE OF PROPERTY

Section 3.1. Property. Subject to the terms and conditions of this Agreement, the HRA will sell and convey the Property to the Developer and the Developer will purchase and accept the Property from the HRA fee ownership of the Property.

Section 3.2. Purchase Price. The purchase price for the Property shall be payable by Developer as follows:

(a) Twenty Thousand and No/100 Dollars (\$20,000.00) as earnest money deposited with the HRA within five (5) days of the Effective Date of this Agreement (the “Earnest Money”) which shall not bear interest. The Earnest Money shall be non-refundable except in the event of termination of this Agreement as specifically provided under Section 3.4(j) and (k) of this Agreement or for a failure of the conditions set forth in Section 3.5(b)(i), (v), or (vi); and

(b) The balance payable in cash, certified funds or wire transfer paid to the HRA at Closing.

Section 3.3. Title and Survey. The Developer shall be responsible for performing any and all title and survey examination or due diligence of the Property that the Developer deems prudent, at the Developer’s sole cost and expense, except as otherwise provided for in this Agreement. The HRA will provide marketable title to the Property at Closing, but the HRA is otherwise not providing any representations or warranties as to the condition of title and Developer expressly waives and claims the Developer may have against the HRA in connection with title defects. Notwithstanding the foregoing, the HRA agrees to reasonably cooperate with the Developer to cure any title defects that may exist before the expiration of the Initial Due Diligence Period (as defined below) or any new title defect arising subsequent to the Initial Due Diligence Period, which was not disclosed on the title commitment obtained by Developer prior to the expiration of the Initial Due Diligence Period.

Section 3.4. Due Diligence Period.

(a) Documents and Materials. Within five (5) business days after the Effective Date, the HRA shall deliver to Developer the following documents in the HRA’s possession or control: (1) the most current ALTA survey and prior title policy; (2) Any soils reports, environmental assessment reports, topographical maps, utility information, site studies, engineering reports or

other property condition reports (3) Any permits, development engineering plans, correspondence with jurisdictional agencies, utility service agreements, leases, use or licensing agreements, and other such information affecting the Property (collectively, the “Property Documents”); provided, however, that notwithstanding the foregoing, the HRA’s internally prepared notes, memoranda or other documents and any other documents or materials which are confidential or proprietary to the HRA will be excluded from the Property Documents.

(b) Due Diligence Period. Developer shall have One Hundred and Eighty (180) days from the Effective Date to: (1) examine the Property Documents; (2) make a physical inspection of the Property; (3) determine anticipated phased construction schedule; (4) complete land use approvals for the proposed development; and (5) review title to the Property (the “Initial Due Diligence Period”), as the same may be extended as provided below. In this regard, Developer and its authorized employees, agents, contractors and representatives (collectively, “Developer’s Representatives”) shall be entitled to enter upon the Property at all reasonable times during the Due Diligence Period for the purpose of inspecting, investigating, surveying and the conducting of testing of the Property (collectively, “Inspections”), upon reasonable prior oral or written notice to the HRA. All Inspections shall occur at reasonable times agreed upon by the HRA and Developer. Developer shall pay all costs and expenses of all Inspections. Notwithstanding anything herein to the contrary, Developer shall not perform soil tests, asbestos or lead tests, or perform tests of a similarly intrusive nature without the prior written consent of HRA, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, Developer shall have the right to complete a Phase I and a Phase II environmental report as part of such Inspections.

(c) Responsibilities During Due Diligence Period. During the Due Diligence Period, the parties will work in good faith to:

- (1) Confirm the physical delivery condition of the Property at Closing, including, but not limited to, establishing the items set forth below. The parties will negotiate in good faith the terms of a site improvement agreement or similar agreement that addresses these conditions.
 - (a) the rough grade elevation of the Property to be conveyed at Closing;
 - (b) the approximate location of the new curb line for Arcadia Avenue
 - (c) the location of all sanitary sewer, water and stormwater utility connections serving the Property;
 - (d) the location of entry and access points to the Property (whether directly to public right of way or through separate agreements with adjacent properties); and
 - (e) determining responsibility for maintenance of the public sidewalk serving the Property and establishing any actions necessary to finalize maintenance responsibility.

- (2) Finalize terms of any easements determined by the parties necessary for their intended uses of their respective lots within the Plat including, but not limited to:
 - (a) an easement for the proposed private road serving the lots within the Plat and operation and maintenance of the private road;
 - (b) an easement for access over the westerly 10 feet of the Property and the Senior Cooperative Lot for the benefit of the Lot and the Park Lot;
 - (c) temporary construction easement(s) over the Property and the Park Lot to serve the Property and the Senior Cooperative Lot for staging grounds for the construction of the improvements on the Property and the Senior Cooperative Lot;
 - (d) an easement for two (2) exterior restrooms for public use and accessory storage room for public use; and
 - (e) temporary construction easement over the Property for construction of the Park Lot.
- (3) Developer finalizing the terms and forms of agreements with the City to be delivered at Closing for (i) the use of the Park Lot, and (ii) and approval of Developer's parking needs on Brookside Avenue and in the Grandview Parking structure for the proposed uses on the Property.

(d) Financing. Prior to the expiration of the Initial Due Diligence Period, the Developer shall submit to the HRA or provide access thereto for review by HRA staff, consultants and agents, evidence reasonably satisfactory to the HRA that Developer has available funds, or commitments to obtain funds, whether in the nature of mortgage financing, equity, grants, loans, or other sources sufficient for paying the cost of acquiring the Property and developing the Minimum Improvements, provided that any lender or grantor commitments shall be subject only to such conditions as are normal and customary in the commercial lending industry.

(e) Approvals. During the Initial Due Diligence Period, Developer shall use commercially reasonable efforts to obtain zoning designations, or other zoning and land use approvals required to construct the Minimum Improvements on the Property in an efficient and cost effective manner as determined by Developer in Developer's sole and absolute discretion (the "Approvals"). The HRA shall, at no cost or liability to the HRA, reasonably cooperate and affirmatively assist Developer with Developer's efforts to obtain its Approvals, but does not guarantee the granting of such Approvals. Developer shall be solely responsible for all costs associated with obtaining the Approvals and no such Approvals will be effective prior to the Closing Date unless approved by the HRA.

(f) Plat. During the Due Diligence Period, as may be extended as provided herein, the HRA shall use commercially reasonable efforts to obtain final plat approval of the Plat to be recorded at Closing, subject to review and approval by the Developer in relation to the Property.

(g) Indemnification; Manner of Inspections. Developer shall indemnify, defend and hold the HRA and the Property harmless from all loss, damages, costs, claims, liabilities and expenses, including without limitation attorneys' fees, relating to the Inspections or the activities of the Developer and the Developer Representatives. Developer and the Developer Representatives shall perform the Inspections upon the Property (i) in a manner so as not to cause damage to the Property or the death or personal injury to any persons and (ii) in a manner which keeps the Property free of any liens or third-party claims resulting therefrom. Developer shall repair and restore any damage to the Property caused by any of the Developer Representatives or occurring during the Inspections and shall return the Property to substantially the same condition as existed prior to such entry. At the HRA's option, a representative of the HRA may accompany Developer and the Developer Representatives during the Inspections. The HRA and Developer agree that the provisions of this Section 3.4(g) shall survive the closing of the transaction contemplated by this Agreement.

(h) Insurance. Before and during any Inspections, Developer and each Developer Representative shall maintain workers' compensation insurance in accordance with applicable law, and Developer or the applicable Developer Representative, shall secure, maintain and provide evidence to HRA of (i) a commercial general liability insurance with limits of at least \$2,000,000 for bodily or personal injury or death, which policy shall name HRA and its agents as additional insureds, (ii) property damage insurance in the amount of at least \$1,000,000 and (iii) contractual liability insurance. Developer shall deliver to HRA evidence of such workers' compensation insurance and a certificate evidencing the commercial general liability, property damage and contractual liability insurance before conducting any Inspections on the Property.

(i) Extended Due Diligence Approval. In the event the Developer has not obtained the Approvals prior to the expiration of the Initial Due Diligence Period, the Developer shall have up to an additional ninety (90) days (the "Extended Due Diligence Period" and together with the Initial Due Diligence Period, the "Due Diligence Period") for the sole purpose of obtaining the Approvals.

(j) Due Diligence Period Termination.

(i) Developer may terminate this Agreement by giving written notice to the HRA prior to the expiration of the Due Diligence Period, as may be amended by any written amendment to this Agreement extending the Due Diligence Period. Developer may terminate this Agreement, for the sole reason of its failure to obtain the Approvals, by giving notice to the HRA prior to the expiration of the Extended Due Diligence Period, as may be amended by any written amendment to this Agreement extending the Due Diligence Period. Upon termination, the Earnest Money shall be refunded to the Developer and the parties shall have no further obligation to the other party upon termination, other than obligations which, by the express terms of this Agreement, survive a termination of this Agreement.

(ii) The HRA may terminate this Agreement, if, by the expiration of the Due Diligence Period, Developer fails to obtain the Approvals, the terms of agreements and easements are not finalized under 3.4(c)(1) and (2), or the Plat is not approved, by giving notice to the Developer prior to the expiration of the Due Diligence Period, as may be amended by any

written amendment to this Agreement extending the Due Diligence Period. Upon termination, the Earnest Money shall be refunded to the Developer and the parties shall have no further obligation to the other party upon termination, other than obligations which, by the express terms of this Agreement, survive a termination of this Agreement.

(k) Post Due Diligence Period Termination. Developer and the HRA acknowledge that the Project includes the sale of the Senior Cooperative Lot, which is subject to a Contract for Private Development for the Senior Cooperative Lot ("Senior Cooperative Contract") between the HRA and United Properties Residential, LLC ("Senior Cooperative Developer"). In the event that the Senior Cooperative Developer or the HRA terminates the Senior Cooperative Contract, the Developer may, at its option, (i) terminate this Agreement by written notice to the HRA, in which event the Earnest Money will be refunded to the Developer or (ii) notify the HRA that it desires to proceed with this Agreement and the parties shall, in good faith, mutually negotiate an amendment to this Agreement to address the modifications necessary due to the termination of the Senior Cooperative Contract. If the parties are unsuccessful in negotiating such an amendment, then the HRA or the Developer may terminate this Agreement by written notice to other party, in which event the Earnest Money will be refunded to the Developer. If the Senior Cooperative Developer proceeds to closing on the Senior Cooperative Contract following the expiration of the Senior Cooperative Developer's second (2nd) one hundred eighty (180) day due diligence period, as the same may be extended, the Earnest Money shall be non-refundable, except in the event of a breach by the HRA or as otherwise set forth in this Agreement. If neither the HRA nor Developer terminate this Agreement following termination of the Senior Cooperative Contract, Developer agrees to construct the private road serving the Property and pay all costs for the private road, subject to a plan mutually agreed upon by HRA and Developer.

Section 3.5. Conditions Precedent to Conveyance of Property.

(a) The HRA's obligation to convey the Property shall be subject to the satisfaction of, or waiver in writing by the HRA of, all of the following conditions precedent:

- (i) The Developer shall have performed all of the obligations this Agreement expressly requires the Developer to perform on or before the Closing Date, and the Developer shall not be in default under the terms of this Agreement;
- (ii) The Developer shall have delivered to the HRA all of the documents to be delivered by the Developer and described in Section 3.7(b) on or before the Closing Date;
- (iii) The Developer having secured all governmental permits and approvals in order to permit construction of the Minimum Improvements prior to Closing;
- (iv) The Developer shall have submitted to the HRA and the HRA shall have approved Construction Plans for Minimum Improvements pursuant to Article IV of this Agreement substantially consistent with the concept plan attached as **Exhibit C**;

- (v) The HRA and any adjacent property owners, if applicable, agreeing to easements, covenants and/or restrictions which, in HRA's sole and absolute discretion, shall meet HRA's needs for its intended usage of the Property and Park Lot;
 - (vi) Developer (i) securing the necessary and appropriate financing to purchase the Property, and (ii) receiving the HRA's approval of the same as required pursuant to Section 6.3;
 - (vii) The issues identified in Section 3.4 have been adequately addressed prior to the expiration of the Due Diligence Period, or extension thereof;
 - (viii) The Plat has been approved and is recorded at Closing; and
 - (ix) The HRA shall be bound to complete a public open space on the Park Lot, as contemplated on Exhibit C, within 36 months of the earlier of the closing on the Restaurant Lot or the Senior Cooperative Lot.
- (b) The Developer shall be obligated to accept title to the Property subject to satisfaction, or waiver in writing by the Developer, of the following conditions precedent:
- (i) The HRA shall have performed all of the obligations required to be performed by the HRA under this Agreement as of the Closing Date and shall not be in default under the terms of this Agreement;
 - (ii) The Developer having secured the HRA's approval of the Construction Plans and all other governmental permits and approvals, including building permits necessary to construct the Minimum Improvements;
 - (iii) Developer (i) securing the necessary and appropriate financing to purchase the Property, and (ii) receiving the HRA's approval of the same as required pursuant to Section 6.3;
 - (iv) The issues identified in Section 3.4 have been adequately addressed prior to the expiration of the Due Diligence Period, or extension thereof;
 - (v) Developer and any adjacent property owners, if applicable, agreeing to easements, covenants and/or restrictions which, in Developer's sole and absolute discretion, shall meet Developer's needs for its intended usage of the Property;
 - (vi) The Plat has been approved and is recorded at Closing; and
 - (vii) The closing on the Senior Cooperative Lot under the Senior Cooperative Contract has been completed.

(c) HRA and Developer Options. In the event that any of the foregoing contingencies are not satisfied on or before the Closing Date, the Developer or the HRA, as the case may be must:

- (i) terminate this Agreement by written notice to the other party; or
- (ii) waive such failure and proceed to close.

In the event of termination by either party, the Earnest Money will be non-refundable, except as otherwise provided under Section 3.4(j)-(k) or except for a failure of the conditions set forth in Section 3.5(b)(i), (v), or (vi).

Section 3.6. Closing. Subject to the terms and conditions of this Agreement, the Closing shall occur simultaneously with the Closing on the sale of the Senior Cooperative Lot, or if the Senior Cooperative Contract is terminated at such earlier date as may be determined by parties but no later than December 31, 2023 unless otherwise extended by approval of the Parties. The conveyance will be closed through an escrow arrangement with the Title Company.

Section 3.7. Closing Documents.

(a) HRA Documents. At the Closing, the HRA shall execute, where appropriate, and deliver all of the following (collectively, the “HRA Documents”):

- (i) The Deed properly executed on behalf of the HRA conveying the Property to the Developer,
- (ii) The Declaration required under Section 3.13;
- (iii) A Minnesota Uniform Conveyancing Blank Form Affidavit Regarding Business Entity;
- (iv) A resolution of the HRA Board authorizing the HRA’s execution and delivery of the Deed;
- (v) A non-foreign affidavit containing such information as required by Internal Revenue Code Section 1445(b)(9ii) and any regulations relating thereto;
- (vi) A Minnesota Well Disclosure Certificate;
- (vii) Such information as required by Developer or Title Company to permit Title Company to file an electronic certificate of real estate value;
- (viii) A settlement statement reflecting the financial provisions of the Closing, consistent with the provisions of this Agreement;
- (ix) The Plat;

- (x) Easements and any additional documents determined necessary by the parties during the Due Diligence Period, or any extension thereof, by amendment of this Agreement; and
 - (xi) Any other items required by this Agreement or reasonably requested by the Title Company or the Developer of the Closing.
- (b) Developer Documents. At the Closing, the Developer shall execute, where appropriate, and deliver all of the following (collectively, the “Developer Documents”):
- (i) The Purchase Price by wire transfer of immediately available funds to the Title Company;
 - (ii) Such affidavits of the Developer or other documents as may be reasonably required by the Title Company (including a Certificate of Real Estate Value) to record the HRA Documents and issue any title insurance policy required by the Developer;
 - (iii) A resolution of the members or manager of the Developer authorizing and approving the transaction contemplated by this Agreement, certified as true and correct by an officer of the Developer;
 - (iv) A settlement statement reflecting the financial provision of the Closing, consistent with provisions of this Agreement;
 - (v) Easements and any additional documents determined necessary by the parties during the Initial Due Diligence Period, or any extension thereof; and
 - (vi) Any other items required by this Agreement or reasonably requested by the Title Company or the HRA for the Closing.

Section 3.8. Taxes and Deferred Assessments. Except as otherwise provided herein, the HRA shall pay all general real estate taxes and installments of special assessments due and payable in the year prior to the Date of Closing and years prior thereto. The HRA and Developer shall prorate all general real estate taxes due and payable on the Property in the year in which the Date of Closing occurs on a per diem basis. Except as otherwise provided below, HRA shall pay on or before Closing all levied and pending special assessments associated with the Property as of the date of this Agreement.

Section 3.9. Prorations. The HRA and the Developer shall make the following prorations and allocations of costs and expenses at Closing:

- (a) the Developer shall pay:

- (i) the cost of the ALTA Owner's title insurance policy, including the cost of any endorsements or extended coverage provisions, if any;
- (ii) one-half of the closing fee charged by the Title Company;
- (iii) the cost for any environmental investigation, tests, or surveys elected to be completed by Developer, including consultants hired by Developer;
- (iv) all taxes payable in accordance with the terms of this Agreement;
- (v) its own attorneys' fees; and
- (vi) recording fees for easements.

(b) At Closing, the HRA shall pay:

- (i) the cost for issuance of the title commitment;
- (ii) one-half of the closing fee charged by the Title Company;
- (iii) all costs for the creation and recording of the Plat;
- (iv) all costs for recording fees for documents necessary for correction of title;
- (v) state deed tax and conservation fees; and
- (vi) all taxes and assessments payable in accordance with this Agreement.

(c) All costs incidental to the Closing, not otherwise specifically allocated in this Agreement shall be allocated in accordance with the custom and practice for similar transactions.

(d) Except for Pete Kostroski of Rokos Advisors ("Rokos") and Frauenshuh, Inc. (the "Brokers"), the HRA and Developer each represent and warrant to the other party that it has dealt with no brokers, finders, or the like in connection with this Agreement or the transactions contemplated hereby. The HRA shall pay the commission Frauenshuh, Inc., pursuant to the Agreement between the HRA and Frauenshuh Inc. dated August 26, 2021 ("Broker Agreement"). Except to the extent that Rokos is paid pursuant to the terms of the ("Broker Agreement"), Developer shall be responsible for any additional commission to be paid by Rokos. The HRA and Developer agree to indemnify and defend each other against, and hold each other harmless from, all claims, damages, costs, and expenses of or for any fees or commissions resulting from their actions or agreements regarding the execution or performance of this Agreement, if and to the extent the representation and warranty made by such party in the immediately preceding sentence is not true.

Section 3.10. No Representation by the HRA. EXCEPT FOR THE HRA'S REPRESENTATIONS AND WARRANTIES MADE IN THIS AGREEMENT, THE DEVELOPER EXPRESSLY ACKNOWLEDGES AND AGREES THAT IT IS PURCHASING THE PROPERTY "AS IS" AND "WITH ALL FAULTS," AFTER SUCH INSPECTION, ANALYSIS, EXAMINATION AND INVESTIGATION THE DEVELOPER CARES TO MAKE AND EXPRESSLY WITHOUT COVENANT, WARRANTY OR REPRESENTATION BY THE HRA AS TO PHYSICAL OR ENVIRONMENTAL CONDITION, TITLE, LEASES, RENTS, REVENUES, INCOME, EXPENSES, OPERATION, FLOOD PLAIN, SHORELAND, WETLANDS, ZONING OR OTHER REGULATION, COMPLIANCE WITH LAW, SUITABILITY FOR PARTICULAR PURPOSES, ALL OTHER MATTERS WHICH THE DEVELOPER DEEMS RELEVANT TO ITS PURCHASE OF THE PROPERTY OR ANY OTHER MATTERS WHATSOEVER, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT.

THE DEVELOPER REPRESENTS TO THE HRA THAT DEVELOPER HAS CONDUCTED, OR WILL HAVE HAD THE OPPORTUNITY TO CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL, ENVIRONMENTAL AND GEOTECHNICAL CONDITIONS THEREOF, AS DEVELOPER DEEMS NECESSARY TO SATISFY ITSELF OF THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES OR MATERIALS ON, WITHIN, UNDER OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF THE HRA.

UPON CLOSING, DEVELOPER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL, ENVIRONMENTAL AND GEOTECHNICAL CONDITIONS MAY HAVE BEEN REVEALED BY DEVELOPER'S INVESTIGATIONS, AND DEVELOPER, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED THE HRA (AND THE HRA'S OFFICIALS, EMPLOYEES AND AGENTS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT) LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH DEVELOPER MIGHT HAVE ASSERTED OR ALLEGED AGAINST THE HRA (AND THE HRA'S OFFICERS, DIRECTORS, SHAREHOLDER, EMPLOYEES AND AGENTS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY; PROVIDED, HOWEVER, THE HRA SHALL NOT MAKE ANY CLAIM RELATING TO A BREACH OF A REPRESENTATION, WARRANTY OR COVENANT IN THIS AGREEMENT OR ANY OTHER CLOSING DOCUMENT.

The HRA and Developer agree that the provisions of this Section 3.10 shall survive the closing of the transaction contemplated by this Agreement.

Section 3.11. Right of First Refusal.

(a) Right of First Refusal. Developer hereby grants to the HRA the right of first refusal to purchase the Property upon the terms and conditions set forth in this Section (the "Right of First Refusal"). The terms of this Section shall be incorporated in the Deed and shall survive the Closing.

(b) Conditions. The Developer shall not, without the consent of the HRA, enter into an agreement with any third party to sell or otherwise transfer their interests in the Property without first providing the HRA an opportunity to acquire fee simple title to the Property on the same terms as they proposes to transfer it to said third party. Upon receipt of a bona fide third party offer for the Property, the Developer shall provide written notice thereof to the HRA, which shall set forth the

identity of the proposed third-party purchaser, their offering price, the proposed terms of transfer, and the purchase price (the “Offer Notice”).

(c) Exercise of Right of First Refusal. The HRA shall have 60 days after receiving such Offer Notice (the “Election Period”) within which to elect to purchase the Property on the terms set forth in the Offer Notice. Such election shall be made by a written notice of election given to the Developer prior to the expiration of the Election Period stating that the HRA accepts the offer described in the Offer Notice (the “Election Notice”). The HRA’s election may be made contingent upon (a) inspection of the Property, (b) environmental assessment of the Property, and (c) the HRA obtaining satisfactory financing.

(d) Failure to Exercise Right of First Refusal. If the HRA fails to deliver the Election Notice prior to the end of the Election Period or if the HRA communicates to the Developer in writing that it will not be exercising its Right of First Refusal prior to the end of the Election Period (“Failed to Exercise Right”), the Developer shall be free to transfer their interests in the Property at a price equal to or greater than that specified in the Offer Notice. The Developer shall not transfer their interests in the Property at a price lower than ninety seven percent (97%) of that specified in the Offer Notice without providing the HRA another Right of First Refusal as set forth in this Section.

Section 3.12. Maintenance Assessment District. The Property is located within the Grandview Commercial Area which is Maintenance Assessment District. This District has been established in accordance with City Code Chapter 24, Article V pursuant to Laws of Minnesota 1983, Chapter 59 to cover the cost of these services provided at a higher level than supported by City property tax levy:

- (a) Removal of snow, ice and refuse, including litter, from sidewalks, streets and parking facilities.
- (b) Elimination of weeds from any and all streets, sidewalks and private property.
- (c) Removal or elimination of any public health or safety hazards from private property.
- (d) Trimming and care of trees and the removal of unsound trees.
- (e) Repair of sidewalks and alleys.
- (f) Operation, including maintenance and repair, of city-owned lighting systems, streets, sidewalks and public parking facilities.

After the Certificate of Completion is issued, the property will be subject to its proportional share of the annual maintenance costs that are assessed to commercial property owners in the Grandview Commercial Area. The Developer agrees to pay the amount due promptly. The Developer further agrees to support the creation of a Business Improvement District or Special Services District should such a district be proposed to replace the Maintenance District within five years of the Closing Date.

Section 3.13. Declaration. The parties agree that the HRA shall subject the Property to a Declaration of restrictive covenants providing that the Property:

- (a) may not be used for age-restricted 62 plus housing residential cooperative for a period of thirty (30) years from the date of Closing;
- (b) may not be used for any use that does not include a restaurant with indoor and outdoor seating and related outdoor activity space that is adjacent to and visible to the Park Lot as the primary use, without the express consent of the HRA for a period of thirty (30) years from the date of Closing; and
- (c) may not be used for any building on the Property that exceeds three (3) stories above grade, without the express consent of the HRA, for a period of eleven (11) years following the date of Closing;

(“Declarations”).

ARTICLE IV.

CONSTRUCTION OF MINIMUM IMPROVEMENTS

Section 4.1. Construction of Minimum Improvements. The Developer agrees that it will construct the Minimum Improvements on the Property in accordance with construction plans approved by the HRA, (the “Construction Plans”) and will operate and maintain, preserve and keep the Minimum Improvements or cause the Minimum Improvements to be maintained, preserved and kept with the appurtenances and every part and parcel thereof in good repair and condition. Developer acknowledges that, in addition to HRA approval of plans, Developer is required to obtain all necessary HRA approvals for the development.

Section. 4.2. Construction Plans.

(a) On or before August 5, 2022, the Developer shall submit to the HRA Preliminary Plans (site plan for the Property and schematic plans for the Minimum Improvements) for review and approval by the HRA for general compliance of the Plans with the terms of this Contract.

(b) Thirty days prior to Closing, the Developer shall provide to the HRA the Construction Plans providing for the construction of the Minimum Improvements for a determination that the Construction Plan are in conformity with this Agreement, the Preliminary Plans, and all applicable state and local laws and regulations, together with the construction budget for the Project. The HRA’s Executive Director shall approve the Construction Plans in writing if, in the reasonable discretion of the HRA: (i) the Construction Plans conform to the terms and conditions of this Agreement; (ii) the Construction Plans conform to all applicable federal, state and local law, ordinances, rules and regulations as determined by the City’s Building Inspector; (iii) the Construction Plans are adequate to provide for the construction of the subject Minimum Improvements; (iv) the Construction Plans do not provide for expenditures in excess of the funds which will be available to the Developer for the construction of the Minimum Improvements; and (v) no Event of Default has occurred and is continuing. No approval by the HRA under this Section 4.2 shall relieve the Developer of the obligation to comply with the terms of this Agreement, applicable federal, state and local laws, ordinances, rules and regulations, or to construct the Minimum Improvements. No approval by the HRA

shall constitute a waiver of an Event of Default. The HRA shall review the Construction Plans within thirty (30) days of submission of a complete set of Construction Plans and either approve the same or provide Developer with a list of specific required changes to be made to the Construction Plans. Upon making the specific changes to the Construction Plans as required by the HRA, the Developer shall submit the Construction Plans with the required changes to the HRA for its approval and if Developer made the required changes, the Construction Plans shall be approved. The Closing shall be extended as necessary to complete the review of the Construction Plans amongst the parties as contemplated in this Section.

(c) If the Developer desires to make any material change in any Construction Plans after their approval by the HRA, the Developer shall submit the proposed change to the HRA for approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2 of this Agreement with respect to such previously approved Construction Plans, the HRA shall approve the proposed change and notify the Developer in writing of its approval.

Section 4.3. Construction of Minimum Improvements.

(a) The Developer shall commence construction of the Minimum Improvements within 90 days of the Closing Date. Subject to Unavoidable Delays.

(b) The Developer shall substantially complete construction of the Minimum Improvements, except for minor "punch list items", within twenty four (24) months after the Closing Date, subject to Unavoidable Delays.

(c) All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Property must be in substantial conformance with the Construction Plans as submitted by the Developer and approved by the HRA. The Developer agrees for itself, its successors and assigns, and every successor in interest to the Property, or any part thereof, that the Developer, and its successors and assigns, shall promptly begin and diligently prosecute to completion the development of the Property through the construction of the Minimum Improvements thereon, and that such construction shall in any event be completed within the period specified in this Section 4.3 of this Agreement, subject to Unavoidable Delays. Subsequent to conveyance of the Property, or any part thereof, to the Developer, and until construction of the Minimum Improvements has been completed, the Developer, or its architect or contractor, shall make construction progress reports, at such times as may reasonably be requested by the HRA, but not more than once a month, as to the actual progress of the Developer with respect to such construction.

(d) In constructing the Minimum Improvements, the Developer shall comply with all federal, state and local laws and regulations.

Section 4.4. Failure to Accept Title to Property. In the event all conditions precedent herewith are met or waived and the Developer fails to accept title to the Property pursuant to Article III the HRA shall retain the Earnest Money, except as otherwise provided under Sections 3.4 or 3.5.

Section 4.5 Right of Reverter.

(a) If the Developer fails to cause the Commencement of construction of the Minimum Improvements within 90 days of the Closing Date, or such later date that may be established pursuant to the terms of this Agreement if Commencement is subject to an Unavoidable Delay then the HRA may, in addition to such other rights and remedies that are available to the HRA hereunder, require that the Property be transferred back to the HRA. The HRA may, but shall not be obligated to, cause the Developer to reconvey the Property and all improvements thereon to the HRA by giving the Developer notice of the HRA's exercise of its right of reverter pursuant to this Section. Such notice shall be subject to the notice and right to cure provisions in Article VII. The right of reverter under this section shall terminate and no longer of any force and effect upon the Commencement of the Minimum Improvements. The HRA agrees to execute and deliver to the Developer a recordable release of its right of reverter, in a form reasonably acceptable to the Developer, within ten (10) days after request by Developer. The HRA will agree to subject such reversion rights to one or more Mortgages securing one or more loans the proceeds of which are solely used to finance the Developer's acquisition of the Property, construction of the Minimum Improvements, or both, in a form and substance acceptable to the HRA.

(b) On the Reverter Closing Date, the Developer will convey fee title to the Property and all improvements thereon to the HRA by the Reverter Deed, as follows:

- (i) The HRA will pay the Developer \$475,000.00 as consideration for receiving the Reverter Deed;
- (ii) The Developer will convey the Property and any improvements thereon to the HRA free and clear of all encumbrances other than encumbrances that existed when the HRA conveyed the Property to the Developer and easements or other encumbrances which the HRA previously approved in writing;
- (iii) Upon the recording of the Reverter Deed to the HRA, this Agreement shall terminate, the developer shall have no further rights to the Property or the improvements thereon, and neither the HRA or the Developer will have any rights or obligations under this Agreement other than obligations which, by the express terms of this Agreement, survive a termination of this Agreement;
- (iv) On or before the Reverter Closing Date, the Developer will execute and deliver to the HRA a Minnesota Uniform Conveyancing Blank Form 50.3.1 Affidavit Regarding Business Entity confirming that there has been no labor or materials provided the Property since the HRA's conveyance of the Property to the Developer for which payment has not been made; and
- (v) The Developer shall deliver an updated title insurance commitment to the HRA evidencing the status of title to the HRA consistent with the terms of this Agreement.

Section 4.6. Certificate of Completion.

(a) Promptly after substantial completion of the Minimum Improvements in accordance with the provisions of this Agreement, the HRA will furnish Developer with a certificate of completion substantially in the form shown at **Exhibit D** (the “Certificate of Completion”). Such certification by the HRA shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement with respect to the obligations of Developer, and its successors and assigns, to construct the Minimum Improvements, and shall operate to forever waive the HRA’s interest in the Property, including the right of reverter.

(b) If the HRA shall refuse or fail to provide any certification in accordance with the provisions of this Section 4.6, the HRA shall, upon demand, provide Developer with a written statement, indicating in adequate detail in what respect Developer has failed to complete the Minimum Improvements in accordance with the provision of this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the opinion of the HRA, for Developer to take or perform in order to obtain such certification. Upon Developer’s completion of the items so described by the HRA, the HRA shall deliver a fully executed Certificate of Completion to Developer.

(c) The construction of the Minimum Improvements shall be deemed to be completed when the Minimum Improvements are, as reasonably determined by the HRA, substantially completed in accordance with the Construction Plans and when a certificate of occupancy is issued.

ARTICLE V INSURANCE AND CONDEMNATION

Section 5.1. Required Insurance. The Developer agrees to provide and maintain or cause its general contractor to provide and maintain at all times during the process of constructing the Minimum Improvements and, from time to time at the request of the HRA, furnish the HRA with proof of payment of premiums on:

- (a) Builder’s risk insurance, written on the so-called “Builder’s Risk -- Completed Value Basis,” in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called “all risk” form of policy;
- (b) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an owner’s contractor’s policy with limits against bodily injury and property damage of not less than \$1,000,000 for each occurrence (to accomplish the above required limits, an umbrella excess liability policy may be used); and

- (c) Workers' compensation insurance, with statutory coverage.

The policies of insurance required pursuant to clauses (a) and (b) above shall be in form and content reasonably satisfactory to the HRA and shall be placed with financially sound and reputable insurers licensed to transact business in Minnesota. The policy of insurance delivered pursuant to clause (a) above shall contain an agreement of the insurer to give not less than thirty (30) days' advance written notice to the HRA in the event of cancellation of such policy or change affecting the coverage thereunder.

Section 5.2. Evidence of Insurance. All insurance required in this Article V shall be taken out and maintained in responsible insurance companies selected by the Developer which are authorized under the laws of Minnesota to assume the risks covered thereby. Until the Certificate of Completion is issued, the Developer agrees to deposit annually with the HRA copies of policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V, each policy shall contain a provision that the insurer shall not cancel nor materially modify it without giving written notice to the Developer and the HRA at least thirty (30) days before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Developer shall furnish the HRA evidence satisfactory to the HRA that the policy has been renewed or replaced by another policy conforming to the provisions of this Article V, or that there is no necessity therefor under the terms of this Agreement. In lieu of separate policies, the Developer may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Developer shall deposit with the HRA a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

Section 5.3. Condemnation. In the event that title to and possession of the Property, or any part thereof shall be taken in condemnation or by exercise of the power of eminent domain by any governmental body or other person (except the HRA) the Developer shall, with reasonable promptness notify the HRA as to the nature and extent of such taking.

ARTICLE VI

PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER; ENCUMBRANCES; AND INDEMNIFICATION

Section 6.1. Representation as to Development. The Developer represents and agrees that its purchase of the Property, and its other undertakings pursuant to the Agreement, are, and will be used, for the purpose of redevelopment of the Property and not for speculation in land holding. The Developer further recognizes that, in view of the importance of the redevelopment of the Property to the general welfare of the community and the substantial financing and other public aids that have been made available by the HRA for the purpose of making such development possible, the qualifications and identity of the Developer, and its shareholders, are of particular concern to the community and the HRA. The Developer further recognizes that it is because of such qualifications and identity that the HRA is entering into the Agreement with the Developer, and, in so doing, is further willing to accept and rely on the obligations of the

Developer for the faithful performance of all undertakings and covenants hereby by it to be performed relating to the construction of the Minimum Improvements.

Section 6.2. Limitations on Transfer.

(a) Until the HRA's issuance of the Certificate of Completion, Developer shall not sell, assign, convey, lease or transfer in any other mode or manner any of its right, title, and interest in and to this Agreement, all or any part of the Project Area or the Minimum Improvements, without the express written approval of the Authority, provided that the consent of the Authority shall not be required for any of the following:

(i) granting of a mortgage or other security interests in the Project Area as provided in Section 6.3 hereof; or

(ii) transfer to a Related Party, provided such Related Party, upon request of the HRA, executes an agreement in a form reasonably approved by the HRA pursuant to which such Related Party assumes and agrees to perform the obligations of Developer under this Agreement.

(b) If the HRA's consent to a transfer is required pursuant to this Section 6.2, the HRA shall be entitled to require, as conditions to its approval of any sale, assignment, conveyance, use or transfer of any rights, title, and interest in and to this Agreement, the Project Area or the Minimum Improvements that:

(i) Any proposed transferee shall not be exempt from the payment of real estate taxes and shall have the qualifications and financial responsibility, as determined by the HRA, necessary and adequate to fulfil the obligations undertaken in this Agreement by the Developer;

(ii) Any proposed transferee, by instrument in writing satisfactory to the HRA and in form recordable among the land records shall, for itself and its successors and assigns, and expressly for the benefit of the HRA have expressly assumed all of the obligations of the Developer under this Agreement and agree to be subject to all the conditions and restrictions to which the Developer is subject; and

(iii) The transferee must demonstrate, in a manner satisfactory to the HRA, its ability to perform all assumed obligations in this Agreement.

(c) In the absence of specific written agreement of the by the HRA to the contrary, neither the transfer of the Minimum Improvements prior to the issuance of a Certificate of Completion or the HRA's consent to such a transfer will relieve the Developer or any other party bound in any way by this Agreement from their obligations under the Agreement.

Section 6.3. Limitation Upon Encumbrance of Property. Prior to the issuance of the Certificate of Completion, except for financing approved by HRA pursuant to Section 3.5(a)(vi) or as otherwise permitted in this Section 6.3, the Developer agrees not to engage in any financing

creating any mortgage or other encumbrance or lien upon the Property or the Minimum Improvements, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property or the Minimum Improvements, other than the liens or encumbrances directly and solely related to acquisition of the Property, construction of the Minimum Improvements, and acquisition of fixtures, furniture and equipment for the Property and approved by the HRA, which approval shall not be withheld or delayed unreasonably if the HRA determines that such lien or encumbrance will not threaten its security in the Property.

Section 6.4. Release and Indemnification Covenants.

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

(b) Except for the negligence of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Minimum Improvements.

(c) The Indemnified Parties shall not be liable for any damage or injury to the persons or property of the company or its officers, agents, servants or employees or any other person who may be about the Property or Minimum Improvements due to any act of negligence of any person other than the Indemnified parties.

(d) None of the Indemnified Parties shall be liable to the Developer or to any third party for any consequential or other damages that may arise out of delays of any kind relating to activities undertaken pursuant to this Agreement, including but not limited to delays due to environmental conditions, court challenges or elements outside the control of the HRA.

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

(f) Nothing in this Section is intended to waive any municipal liability limitations contained in Minnesota Statutes, particularly Chapter 466.

ARTICLE VII **Events of Default**

Section 7.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" or "Default" shall mean, whenever it is used in this Agreement (unless the context otherwise provides), any one or more of the following events, subject to the Cure Rights:

- (a) Failure by the Developer to pay when due any payments required to be paid under this Agreement or to pay when due ad valorem taxes on the Property.
- (b) Failure by the Developer to close on the acquisition of the Property;
- (c) The Developer's failure to achieve Commencement and Completion of Minimum Improvements, or portions thereof, pursuant to the terms, conditions and limitations of this Agreement.
- (d) Failure by Developer to observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed hereunder.
- (e) The Developer does any of the following prior to completion of construction of the Minimum Improvements: (i) files any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under United States Bankruptcy Laws or any similar federal or state laws; or (ii) make an assignment for the benefit of its creditors; or (iii) admit, in writing, its inability to pay its debts generally as they become due; or (iv) be adjudicated, bankrupt or insolvent.
- (f) If any warranty or representation by the Developer in this Agreement is untrue in any material respect.
- (g) If Developer is in default under any Mortgage and has not entered into a work-out agreement with the holder of the Mortgage.

Section 7.2. Developer and HRA Events of Default. Subject to Unavoidable Delays, the failure of the Developer or the HRA to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement, and the continuation of such failure for a period of thirty (30) days after written notice of such failure from any party hereto shall be an Event of Default by the Developer or the HRA, as applicable.

Section 7.3 Cure Rights. Notwithstanding the foregoing, if a Default reasonably requires more than thirty (30) days to cure, such Default shall not constitute an Event of Default, provided that the curing of the Default is promptly commenced upon receipt by the defaulting party of the notice of the Default, and with due diligence is thereafter continuously prosecuted to completion and is completed within a reasonable period of time, and provided the defaulting party keeps the non-defaulting party well informed at all times of its progress in curing the Default; provided in no event shall such additional cure period extend beyond sixty (60) days.

Section 7.4. HRA'S Remedies on Default. Whenever any Event of Default by Developer referred to in Section 7.1 of this Agreement occurs, subject to the Cure Rights and Unavoidable Delays, the HRA may take any one or more of the following actions:

- (a) Suspend its performance under the Agreement until it receives assurances from the Developer, deemed adequate by the HRA, that the Developer will cure its default and continue its performance under the Agreement.
- (b) Terminate this Agreement;
- (c) Take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to the HRA to collect any payments due or damages arising under this Agreement or to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

Section 7.5. Developer's Remedies on Default. Whenever any Event of Default occurs by the HRA, the Developer may take whatever action at law or in equity may appear necessary or desirable to the Developer to enforce performance and observance of any obligation, agreement, or covenant of the HRA under this Agreement. Nothing in this Agreement shall entitle the Developer to make any claim against the HRA for any damages whatsoever and the Developer's remedies are strictly limited to the foregoing.

Section 7.6 No Remedy Exclusive. No remedy herein conferred upon or reserved to the HRA is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 7.7. Attorneys' Fees. Whenever any Event of Default occurs and the HRA shall employ attorneys or incur expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer under this Agreement, Developer agrees that it shall, within ten (10) days of written demand by the HRA pay to the HRA the reasonable fees of such attorneys and such other expenses so incurred by the HRA; provided, that the Developer shall only be obligated to make such reimbursement if the HRA prevails in such collection or enforcement action.

ARTICLE VIII.

ADDITIONAL PROVISIONS

Section 8.1. Restrictions on Use. The Developer agrees for itself, its successors and assigns, and every successor in interest to the Property, or any part thereof, that the Developer and such successors and assigns shall devote the Property to, and only to, and in accordance with, the uses specified in the Edina City Code and this Agreement.

Section 8.2. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in this Agreement it will comply with all applicable federal, state and local equal employment and nondiscrimination laws and regulations.

Section 8.3. Conflicts of Interest. No member of the governing body or other official of the HRA shall have any financial interest, direct or indirect, in this Agreement, the Project or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to the Agreement which affects his personal interest or the interest of any corporation, partnership or association in which he is, directly or indirectly, interested. No member, official or employee of the HRA shall be personally liable to the Developer or any successors in interest, in the event of any default or breach by the HRA or for any amount which may become due to the Developer or successor or on any obligations under the terms of the Agreement.

Section 8.4. Waiver and Release by Developer. The Developer hereby waives, releases and forever discharges the HRA from any claim for costs incurred in preliminary plans, specifications, site testing improvements, professional fees or legal fees in connection with the Project.

Section 8.5. Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 8.6. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested or delivered personally; and

- (a) In the case of the Developer, is addressed or delivered personally to:

Jester Concepts
730 N. Washington Ave.
Minneapolis, Minnesota 55401
Attention Brent Frederick

- (b) In the case of the HRA, is addressed or delivered personally to:

Executive Director
Edina Housing and Redevelopment Authority
4801 W. 50th Street
Edina, Minnesota 55424

with a copy to:

Andrea McDowell Poehler
CAMPBELL KNUTSON
Professional Association
Grand Oak Office Center I
860 Blue Gentian Road, Suite 290
Eagan, Minnesota 55121
Telephone: (651) 452-5000

- (c) Either Party may, upon written notice to the other Party, change the address to which such notices and demands are made.

Section 8.7. Disclaimer of Relationship. The Developer acknowledges that nothing contained in this Agreement nor any act by the HRA or the Developer shall be deemed or construed by the Developer or any third person to create any relationship of third-party beneficiary, principal and agent, limited or general partner or joint venture between the HRA and the Developer.

Section 8.8. Covenants Running with the Land. The terms and provisions of this Agreement shall be deemed covenants running with the Property and shall be binding upon any successors or assigns of the Developer and any future owners or encumbrancers of the Property.

Section 8.9. Counterparts. This Agreement is executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 8.10. Law Governing. This Agreement will be governed and construed in accordance with the laws of Minnesota.

IN WITNESS WHEREOF, the HRA has caused this Agreement to be duly executed in its name and behalf, and the Developer has caused this Agreement to be duly executed in its name and behalf, on or as of the date first above written.

[Remainder of page intentionally left blank.]

[Signature pages to follow.]

**EDINA HOUSING AND REDEVELOPMENT
AUTHORITY**

By: _____

James B. Hovland
Its President

By: _____

James Pierce
Its Secretary

Attested By: _____

Scott Neal
Its Executive Director

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by James B. Hovland and James Pierce, respectively, the President and Secretary, of the Edina Housing and Redevelopment Authority, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the public body corporate and politic.

Notary Public

JESTER CONCEPTS, LLC

By: _____

_____ [print name]

Its _____

STATE OF MINNESOTA)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____, the _____ of Jester Concepts LLC, a Minnesota limited liability company, on its behalf.

Notary Public

DRAFTED BY:
Campbell Knutson
Professional Association
Grand Oak Office Center I
860 Blue Gentian Road, Suite 290
Eagan, Minnesota 55121
Telephone: (651) 452-5000

EXHIBIT "A"

LEGAL DESCRIPTION OF HRA PROPERTY

Lots 2, 3, 4, 5, 6, 7, 8, 9 and 10, and the East 90 feet of Lots 11 to 19 inclusive, all in Block 2, Grandview Heights, Hennepin County, Minnesota according to the recorded plat thereof;

And

That part of Government Lot 8, Section 28, Township 117, Range 21, lying North of the centerline of Eden Avenue and East of a line drawn parallel to the main track of the Minneapolis, Northfield and Southern Railway from a point on the North line of said Government Lot 8 distant 582 feet East from the Northwest corner of said Government Lot 8.

EXHIBIT "B"

DEPICTION OF PROPOSED PLAT

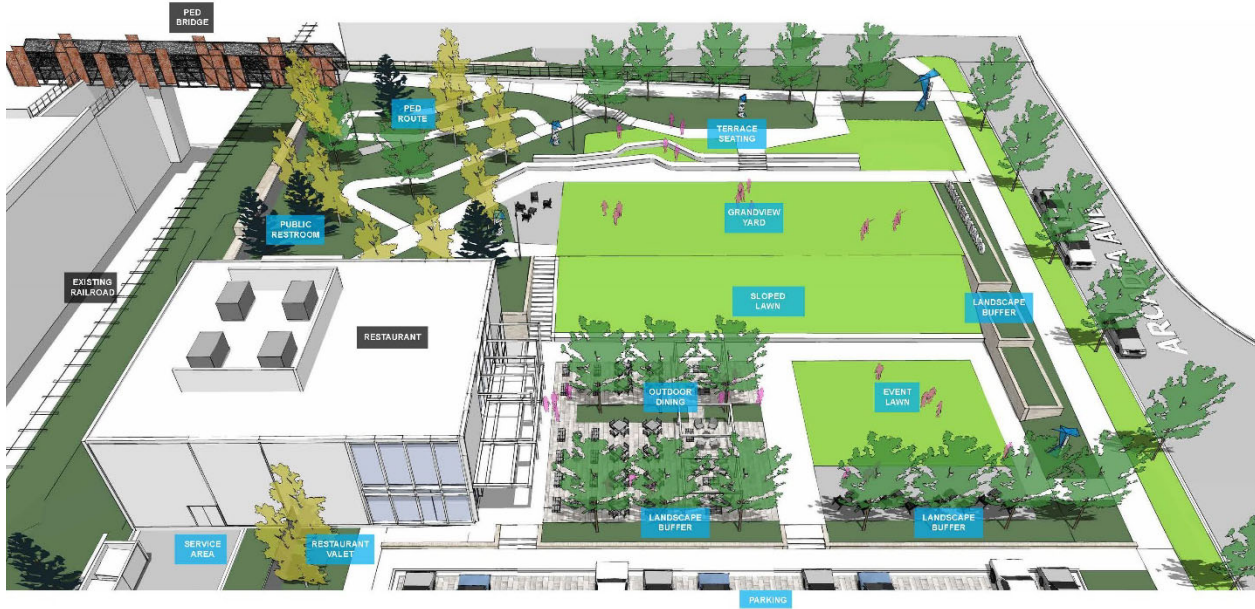


GRANDVIEW YARD - CONCEPT
EDINA, MN

CONFLUENCE
JANUARY 2022

EXHIBIT "C"

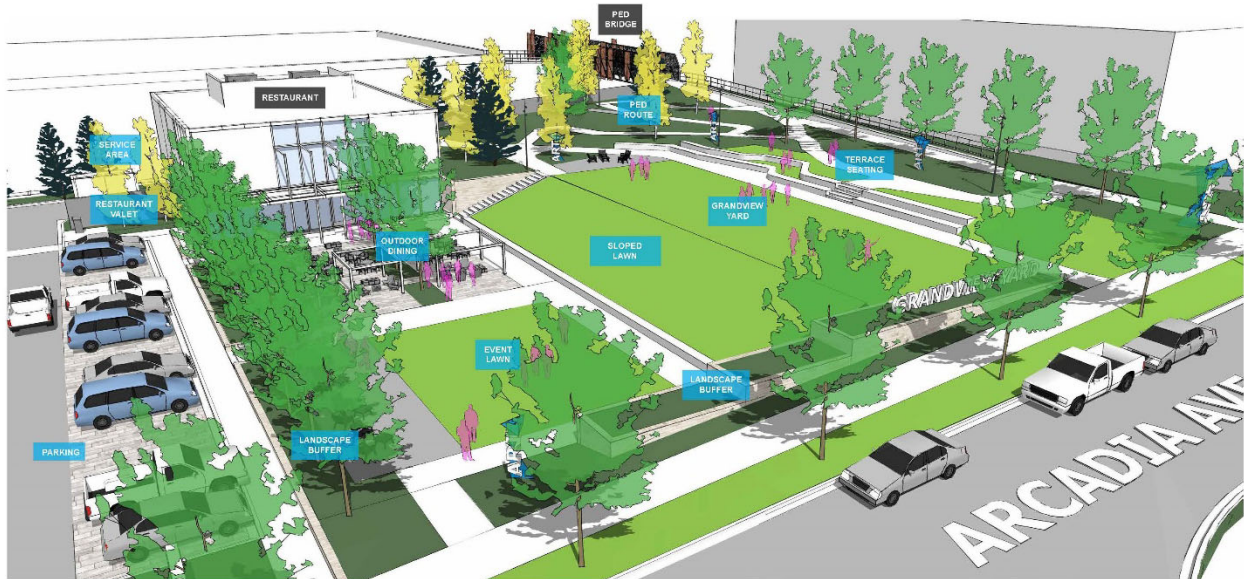
CONCEPT PLAN FOR MINIMUM IMPROVEMENTS



GRANDVIEW YARD - CONCEPT

EDINA, MN

CONFLUENCE
JANUARY 2022



GRANDVIEW YARD - CONCEPT

EDINA, MN

CONFLUENCE
JANUARY 2022

EXHIBIT "D"

CERTIFICATE OF COMPLETION

The undersigned hereby certifies that **JESTER CONCEPTS, LLC**, a Minnesota limited liability company ("Developer") has fully complied with its obligations to construct the Minimum Improvements under that document titled Contract for Private Development dated _____, 20__, by and between the Edina Housing and Redevelopment Authority in and (the "HRA") and Developer, and that Developer is released and forever discharged from its obligations under the Agreement with respect to the obligations of Developer, and its successors and assigns, to construct the Minimum Improvements, and the HRA waives any right, title or interest it may have in the Property, including a right of reverter. The Hennepin County Recorder's Office is hereby authorized to accept for recording the filing of this instrument, to be a conclusive determination of the satisfaction and termination of the covenants and conditions of the Contract for Private Development described above.

IN WITNESS WHEREOF, the HRA has caused this Certificate to be duly executed in its name and behalf on or as of the date first above-written.

**EDINA HOUSING AND REDEVELOPMENT
AUTHORITY**

By: _____
James B. Hovland
Its President

By: _____
James Pierce
Its Secretary

Attested By: _____
Scott Neal
Its Executive Director

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__, by James B. Hovland and James Pierce, respectively, the President and Secretary, of the Edina Housing and Redevelopment Authority, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the public body corporate and politic.

Notary Public



Edina Housing and Redevelopment
Authority
Established 1974

CITY OF EDINA
HOUSING & REDEVELOPMENT
AUTHORITY
4801 West 50th Street
Edina, MN 55424
www.edinamn.gov

Date: June 2, 2022

Agenda Item #: VII.C.

To: Chair & Commissioners of the Edina HRA

Item Type:
Report / Recommendation

From: Bill Neuendorf, Economic Development Manager

Item Activity:
Information

Subject: 7001 France Ave - Tax Increment Financing Project
Update

ACTION REQUESTED:

No action required.

INTRODUCTION:

This item pertains to the use of Tax Increment Financing to support redevelopment of commercial property at 7001 France Avenue.

Legal counsel has been engaged to prepare binding Redevelopment Agreements for Site A (residential and site work), Site B (office) and Site C (parking).

Staff will provide an update on the Project. Staff and developers will be available for questions.

ATTACHMENTS:

Staff Report

Staff Presentation



Housing and Redevelopment Authority
Established 1974

Date: June 2, 2022

To: Chair and Commissioners of Edina Housing & Redevelopment Authority

From: Bill Neuendorf, Economic Development Manager

Subject: 7001 France Avenue – Tax Increment Financing Project Update

Information / Background:

Mortenson Development and Orion Investments are the developers for the 5.7-acre commercial site located at 7001-7025 France Avenue. The site is occupied by a US Bank branch and a vacant office building. Much progress has been made since the site received preliminary zoning approval in November 2021 and a TIF District was established in March 2022.

Recently, the following important actions have occurred:

1. Mortenson closed on the purchase of the land
2. Environmental abatement has begun on the vacant office building.
3. Demolition has begun on the vacant office building.
4. Site work has commenced for the new bank branch (Site D)
5. A Redevelopment Grant from DEED has been awarded
6. Mortenson has identified the equity investor for Phase I (Site A residential)
7. Orion is under contract to purchase Site B/C later in 2022
8. Final site plans have been submitted for Sites A, B & C and should be considered by City Council on June 21, 2022
9. Developers continue to market the new retail and office space on Site B and are seeing strong interest in the marketplace
10. Mortenson and Orion have requested binding TIF Redevelopment Agreements be prepared now for formal consideration in June 2022.

Since the TIF District was established and general terms approved for the use of TIF on the site, City staff has engaged legal and financial advisors to prepare TIF Redevelopment Agreements. The purpose of this memo is to alert the HRA Board of some clarifications that are expected when full TIF Redevelopment Agreements are submitted for binding consideration.

Based on the ongoing uncertainty in the construction industry and the sensitivity in the financing markets, the development team is proposing a slightly different strategy to ensure that the overall project can be delivered under conditions that will make the project successful. Staff is supportive of most of these clarifications because they follow the spirit of the Term Sheet. Staff is still negotiating a few items with the developers and clarity is expected when the binding TIF Agreements are considered later in June 2022. The clarifications and pending issues include:

- 1) Two separate and distinct Agreements will be prepared
 - a. Site A (residential and site work) will not be bound with Site B/C in any way
 - b. A TIF default of Site B/C will not have any impact on the Site A TIF Agreement
- 2) An additional 12 months will be added to the development deadlines for the office & parking facilities on Site B/C
- 3) Allow greater flexibility in the future use of TIF in case the office and parking on Site B/C needs to be rescoped or redesigned based on market conditions
 - a. Provide remedy to the HRA in case the office does not commence as intended while still providing developers with opportunity to pivot and find a different commercial project on Site B that is successful
- 4) Reconsider many of the public safety, security, functional and aesthetic requirements included in the Term Sheet for the 8-story public parking on Site C.
 - a. The developer and staff are still working through several details.

Preparation of the TIF Agreements is actively underway. It is expected that these binding Agreements will be presented to the City Council on June 21 and to the HRA Board on June 30. This update is provided so that you are aware of the current status and not surprised when you see the final Agreements.

Recommended Action:

No action is required at this time. Staff and developer are available for questions or to listen to your suggestions.

###



The CITY of
EDINA

700I France Avenue

Tax Increment Financing Project Update

Report to:

Edina Housing & Redevelopment Authority

June 2, 2022

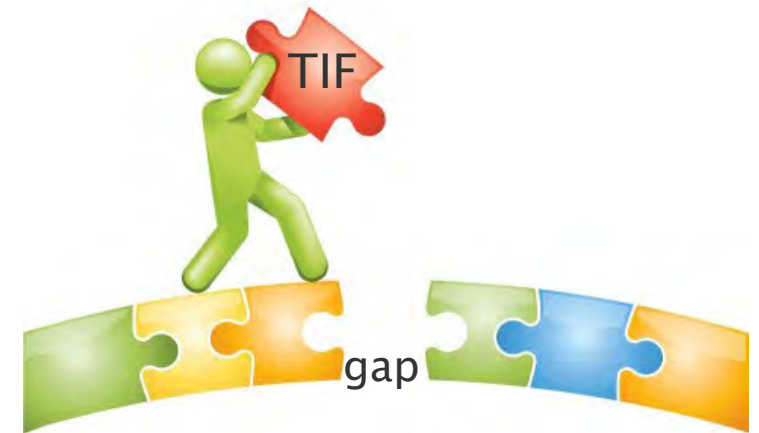
Summary



The CITY of
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Significant progress in past 3 months

Staff continues to recommend TIF Notes up to \$5 and \$17 million to make mixed-use redevelopment project of this scale and quality financially viable to achieve public benefits

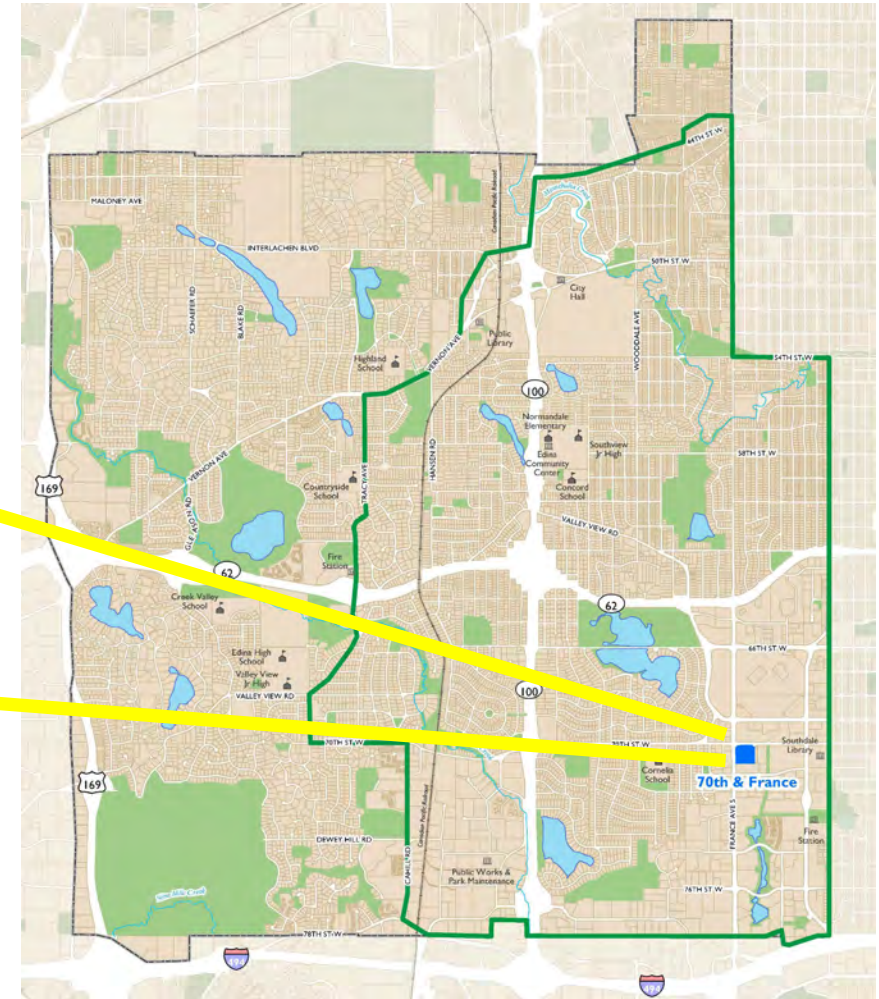


Progress update for information purposes only

Project Location



The CITY of
EDINA



Developers



The CITY of
EDINA



Brent Webb, Development Executive

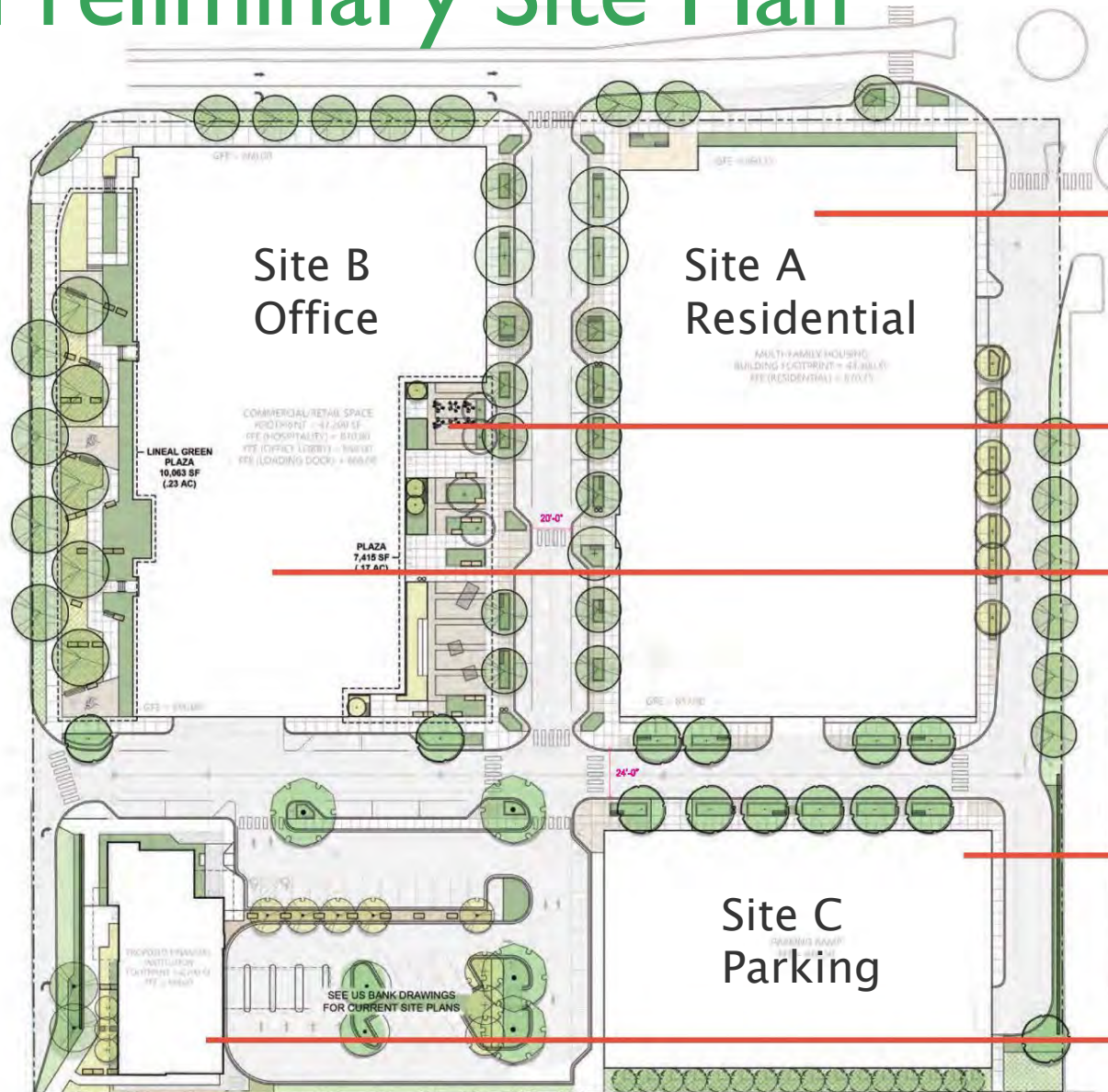


Ted Carlson, Founder, CIO

Preliminary Site Plan



The CITY of
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SITE A
~490,000 GROSS SF
~267 DWELLING UNITS
317 RESIDENTIAL PARKING STALLS
127 COMMERCIAL PARKING STALLS

PLAZA & POCKET PARK
~7,500 SF

SITE B
~275,000 GROSS SF
~165,000 SF OFFICE
~35,000 SF COMMERCIAL OFFICE
128 BELOW GRADE PARKING STALLS

SITE C
~170,000 GROSS SF
~1,300 SF BICYCLE FACILITY
540 PARKING STALLS

SITE D - US BANK (PHASE 1)
- SITE PLAN APPROVED

Preliminary
Zoning
Approved
November
16, 2021

Preliminary Site Rendering



The CITY of
EDINA



Recommended Terms *(approved 2-10-2022)*

- Private Investment



The CITY of
EDINA

1. Developer secures debt and equity
 - Phase I = \$136.1 million
 - Phase II = \$115.5 million
2. Developer to pursue grants from DEED and Met. Council
3. Developer bears all financial risk
4. Finance and build in two phases, if necessary
 - Phase I begins in 2023
 - Phase II begins approx. 2023

Progress To Date (Feb to May 2022)



The CITY of
EDINA

- Mortenson purchased land
- Awarded DEED grant
- Identified equity investor for Phase I
- Orion under contract to buy Phase 2 sites
- Marketing for office & retail in Phase 2 continues
- Cost escalation continues

Construction Activity

- Abatement began
- Demolition underway
- Site work for new bank underway

Entitlement and TIF Financing

- Final zoning & site plans under review
- TIF Agreements underway
- Anticipated to be presented June 21 & 30

Development Strategy Refined

- deliver benefits cognizant of market conditions



The CITY of
EDINA

- 1) Separate Phase 1 and Phase 2 projects
- 2) Extend deadline for Phase 2
- 3) Increase flexibility if Phase 2 is re-scoped in future
- 4) Refine site plans to reflect public use of parking structures

All other terms as described February 10, 2022

- lookback, returns, schedule, public benefits, etc.

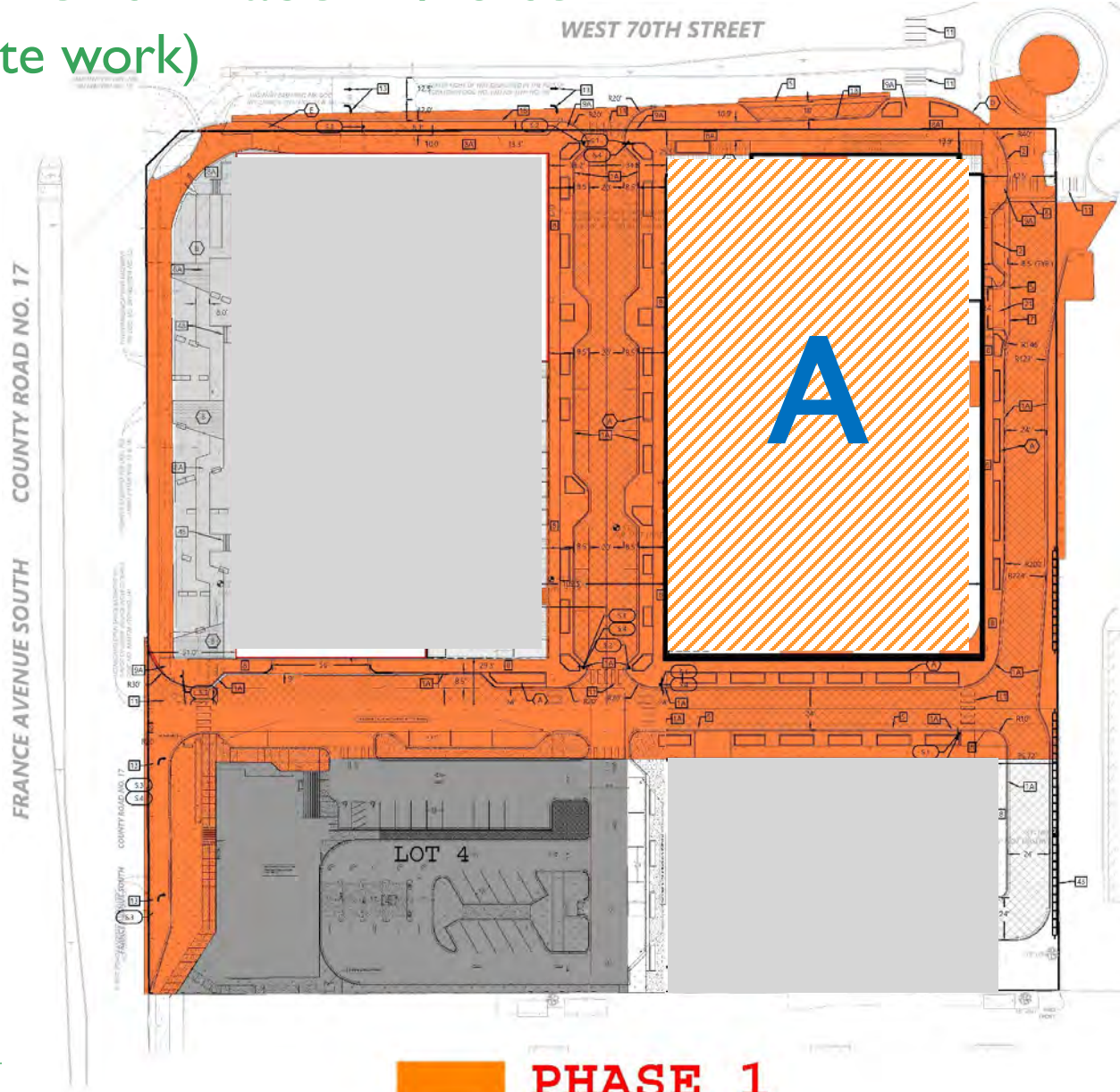
I) Development Phase I / Site A (residential & site work)



The CITY of
EDINA

Two separate
and stand-
alone TIF
Agreements
being prepared.

Provisions
added in case
Phase 2 is
delayed
– conditions of
Site B / C



Phase 1 Residential and site work

- Demo: March '22 to July '23
- Site prep: Jan '23 to Oct '23
- Construction March '23 to June '25
- Occupancy: Dec '24 to Aug '25

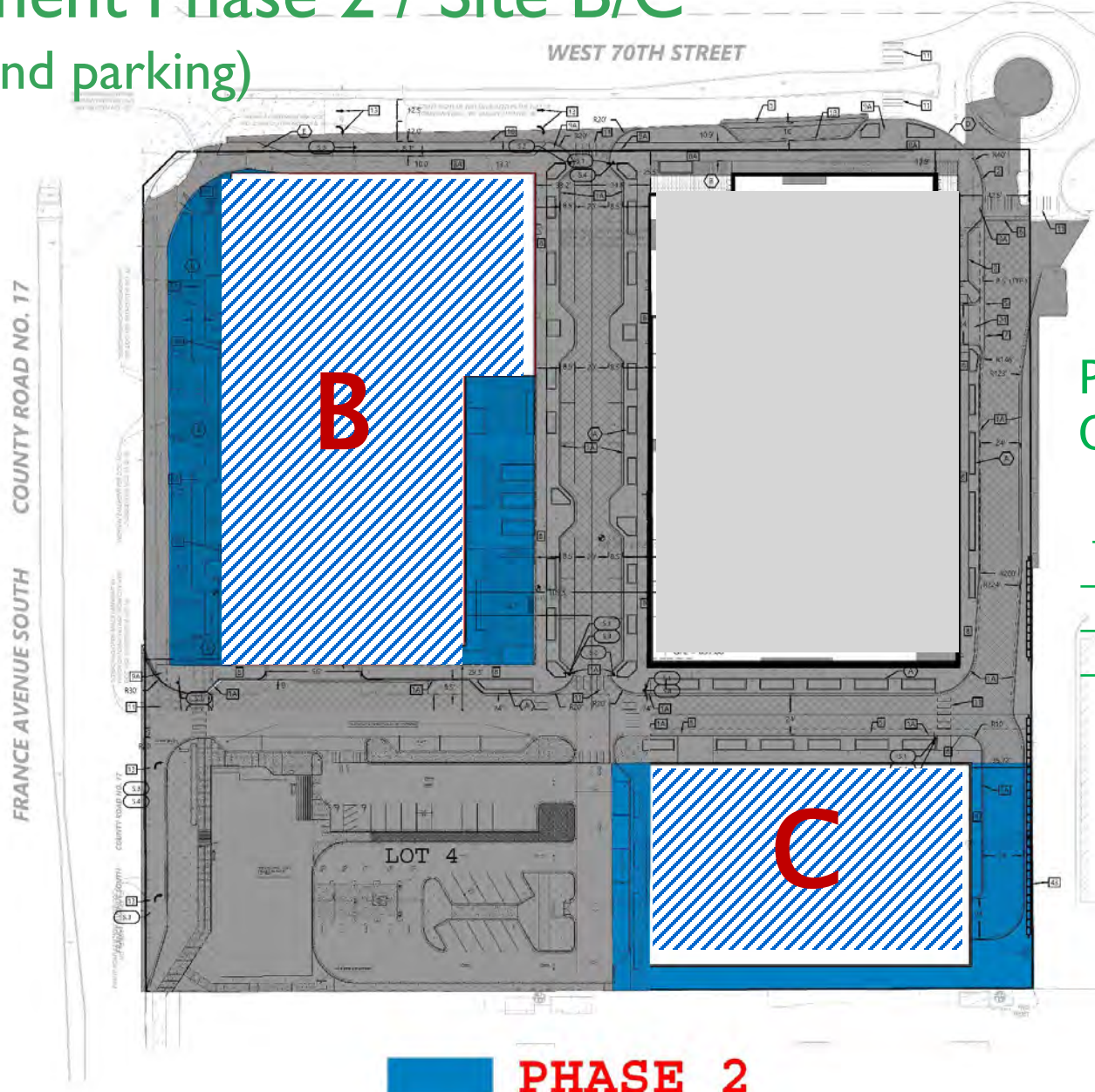
PHASE 1

2) Development Phase 2 / Site B/C

- (office, plaza and parking)



The CITY of
EDINA



Phase 2
Office, parking and plaza

- Site Prep: July '23 to June '25
- Construction: March '23 to June '25
- Occupancy: Oct '24 to June '25
- Full tenant buildout TBD

Add 12-months to
original deadline

PHASE 2

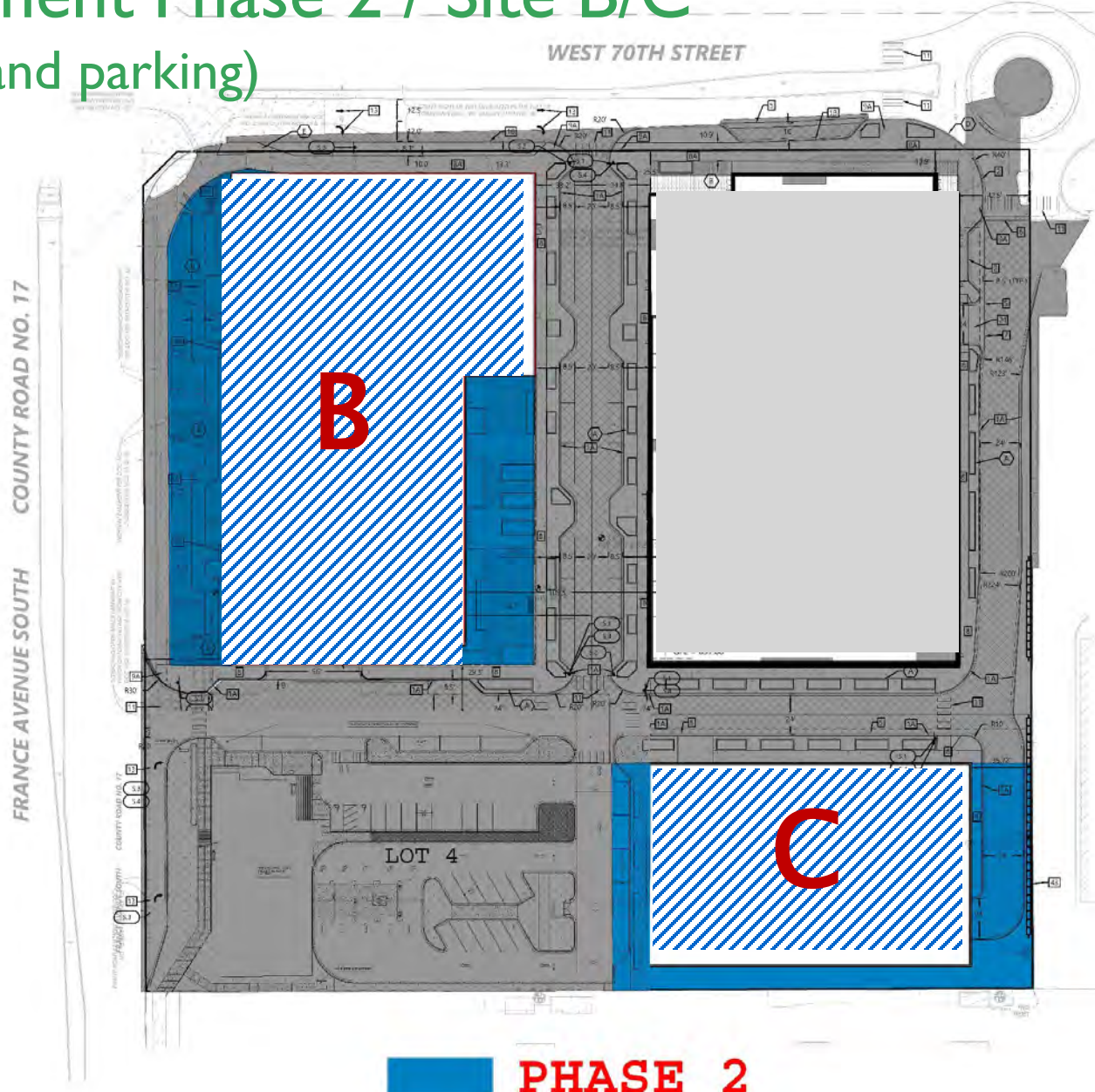
3) Development Phase 2 / Site B/C

- (office, plaza and parking)



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Modify HRA
limitations on
future re-
scoping of Site
B to grant more
flexibility to
address market
conditions.



Provisions added to
uphold HRA's vision for
new jobs and new
commercial in case Site
B/C needs to be rescoped

- Limitations on Site C
- Purchase Option for Site C

PHASE 2

4) Refine Operations of Public Parking



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4 -VIEW FROM EAST (DREW AVE), DAY

Working with developer,
architect and engineers to refine
operations of the Public Parking

- Enhance safety & security
- Improve functionality
- Refine aesthetics



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Staff intends to present two complete
TIF Redevelopment Agreements for final
consideration on June 21 and June 30

Any Questions?