

CITY OF FALCON HEIGHTS
Regular Meeting of the City Council
City Hall
2077 West Larpenteur Avenue
AGENDA
May 26, 2021 at 7:00 P.M.

- A. CALL TO ORDER:
- B. ROLL CALL: ANDREWS ___ GUSTAFSON___ LEEHY___
MIAZGA ___ WEHYEE___
STAFF PRESENT: THONGVANH___
- C. PRESENTATION
1. Neal Kwong Youth Citizen Award - Zane Johnson
- D. APPROVAL OF MINUTES:
1. April 28, 2021 City Council Regular Minutes
- E. PUBLIC HEARINGS:
1. Amber Union Project - Vacation
- F. CONSENT AGENDA:
1. General Disbursements through: 5/20/21 \$35,570.33
Payroll through: 5/15/21 \$18,130.46
- G. POLICY ITEMS:
1. Amber Union Project - Encroachment Agreements and Easement
2. Amber Union Project - Accept Metropolitan Livable Communities Act Grant Agreement for the Tax Base Revitalization Account Contamination Cleanup Grant Program (TBRA) and Adopt Fair Housing Policy
3. Alley Improvements - Accept Feasibility Report & Order Plans and Specifications
- H. INFORMATION/ANNOUNCEMENTS:
- I. COMMUNITY FORUM:
Please limit comments to 3 minutes per person. Items brought before the Council will be referred for consideration. Council may ask questions for clarification, but no council action or discussion will be held on these items.
- J. ADJOURNMENT:

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ITEM FOR DISCUSSION

Meeting Date	May 26, 2021
Agenda Item	Presentation C1
Attachment	Resolution and Application Materials
Submitted By	Ashleigh Walter Administrative & Communications Coordinator

Item	Neal Kwong Youth Citizen Award – Zane Johnson
Description	<p>The Neal Kwong Youth Citizenship Award was established September 2000 in memory of Neal Kwong. Neal Kwong, a youth leader and Eagle Scout, died suddenly early in August while at Boy Scout camp. Neal was an active coach, volunteer, and great young citizen. In his memory, we wish to establish the Neal Kwong Youth Citizenship Award to recognize outstanding youth leaders, volunteers, and citizens in their work here in Falcon Heights.</p> <p>We recommend that the award be granted annually to one person between the age of 12 and 21, who displays outstanding leadership, volunteerism, or citizenship while making contributions to the Falcon Heights community. The recipient would be recognized by the City Council, receive acknowledgement on a plaque at City Hall, and be highlighted in the city newsletter. These youth could be recommended through the schools, a nomination process, or by individual citizens of Falcon Heights.</p> <p>Mr. Gary Kwong would recommend awarding the Neal Kwong Citizenship Award to Zane Johnson.</p>
Budget Impact	No significant impact on the adopted 2020 budget.
Attachment(s)	<ul style="list-style-type: none"> • Resolution 21-22 Awarding the Neal Kwong Youth Citizen Award to Zane Johnson • Nomination Letter & Application
Action(s) Requested	Motion to approve the attached resolution and award the Neal Kwong Youth Citizen Award to Zane Johnson.

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Submission # 892343
IP Address
Submission Recorded On 04/21/2021 10:14 PM
Time to Take Survey 33 minutes, 37 seconds

Page 1

"I will love life more than anybody I will ever know." Neal Kwong, 1990

Please nominate a person between the ages of 12 and 19 who either lives in Falcon Heights or has volunteered within Falcon Heights. Nominators are encouraged to attach extra pages if required.

Name of Nominee ?

ZANE JOHNSON

***Age** ?

18

Phone

Full Address ?

1576 Snelling Drive
Minnesota Falcon Heights 55108

Name of Nominator ?

Jennifer Johnson

Phone ?

***Email** ?

***Your Relationship to the Nominee** ?

parent

***How has the nominee demonstrated outstanding leadership, volunteerism, or citizenship?**

Please see "Additional Attachments" for information on his exceptional leadership and history of volunteerism. Zane has a strong start to quality citizenship through his community involvement that is explained in the attached letter.

***Is there anything you would like us to know about the nominee that will help us understand why you are nominating him or her (e.g. personal qualities, challenges, or interests)?**

Please see "additional attachments". Zane is a young man who is calm and collected in most situations. From a young age he has been known to be a friend to all. His phone contacts and instagram include the majority of his class. Others trust him and ask him for help when they are in need. He doesn't think twice about sharing with a friend. Teachers have depended on him. His word is his bond. He follows through on commitments without complaint or concern. Also Past Mayor Peter Lindstom was kind enough to speak at Zane's Eagle Scout Court of Honor.

Resume (Optional)

SKIPPED

Additional Attachments (Optional)

neal kwong scholarship.docx

April 10, 2021
Falcon Heights City Hall
2077 W. Larpenteur Avenue
Falcon Heights MN 55113

Dear Falcon Heights City Hall:

Zane Johnson of 1576 Snelling Drive, Falcon Heights, MN 51508, would be an excellent choice for the Neal Kwong Youth Citizenship Award. He is an 18-year-old in his Senior year at Nova Classical Academy, which is a St. Paul charter school. He has been a lifelong member of the City of Falcon Heights. Zane attended Falcon Heights Elementary until second grade. He has spent many hours playing in Curtis Field and walking through the neighborhood.

Over the years he has shown incredible leadership, volunteerism and citizenship. Since kindergarten, Zane has been active in the Boy Scouts of America. Zane was selected to attend Leadership training at Grey Wolf Youth Leadership Training. This selective experience is offered to one scout in a troop per year (on average). Also, Zane was awarded a full scholarship (non-need based) to attend a Society of Military Engineers (SAME) event after his freshman year. He joined a group of 15–19-year-olds at Scott Air Force Base for an opportunity to work on base with military engineers. Again, he was selected from a nation full of promising candidates. Zane earned his Eagle Scout Rank in 2018 with Troop 297, and has earned three Eagle “palm awards” for continued service to the troop. He is also an Ordeal member in the Order of the Arrow (which is a philanthropic/honor society section of the scouts). Both of these activities require many hours of service to the community and troop. He has completed several hundred hours of community service that is well above the required minimum to graduate from his high school. Examples of these activities include helping to found a girl’s troop of Boy Scouts, scout leadership as an assistant patrol leader and Senior Patrol leader, yearly church festival children’s booth worker, church food server (he has participated in ALL of the church’s drive-up food events during the COVID lockdown), as needed volunteer for US Figure Skating events, participated for several years in the Halloween event set up at the RANC, regular clean-up of Reservoir Woods with the troop, bake sales, and other similar fundraisers. Some one-time opportunities include: helper at various Eagle Scout projects, and created the rain garden on Lindau avenue for the City of Falcon Heights. Many volunteer coordinators over the years have asked again for Zane’s help, claiming he is a preferred volunteer for them.

Additionally, there are a few of Zane’s additional attributes that make my recommendation stand out. Until COVID, Zane was on his Debate and track team at school. He enjoys outdoor activities and building things. He is willing to serve quietly and dependably when asked. Zane’s high school years have gone exceptionally well and he continues to improve himself. Zane currently has a 3.5 GPA, and takes a challenging course load, including mostly AP and Honors coursework. He is ahead of schedule for graduation and has taken college LOGIC, ASTRONOMY, COMPOSITION, FILM STUDIES and ETHICS. Zane will complete his college career at the University of Minnesota, Twin Cities campus next year.

As you can see, Zane is immersed already as a productive and helpful citizen. He holds the Scout Law, “A Scout is Trustworthy, Loyal, Helpful, Friendly, Courteous, Kind, Obedient, Cheerful, Thrifty, Brave, Clean, and Reverent”, in high regard. It seems that Zane is well defined by the twelve attributes listed in the law and we expect that to only improve over the next several years. I nominate Zane Johnson for this award because I believe he meets the traits of an excellent citizen.

Sincerely,
Jennifer Marker Johnson. Parent of Nominee

**CITY OF FALCON HEIGHTS
COUNCIL RESOLUTION**

May 26, 2021

No. 21-22

**RESOLUTION AWARDING THE NEAL KWONG YOUTH CITIZENSHIP AWARD TO ZANE
JOHNSON**

WHEREAS, the Neal Kwong Citizenship Award was established in September 2000 in memory of Neal Kwong who passed away suddenly at a Boy Scout Camp; and

WHEREAS, the award will be granted annually to one person between the age of 12 and 21, who displays outstanding leadership, volunteerism, or citizenship while making contributions to the Falcon Heights; and

WHEREAS, the recipient would be recognized by the City Council, receive acknowledgement on a plaque at city hall, and be highlighted in the city newsletter; and

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Falcon Heights, Minnesota award Zane Johnson the Neal Kwong Youth Citizenship Award.

Moved by:

Approved by: _____
Randall C. Gustafson
Mayor

GUSTAFSON _____ In Favor
MIAZGA
ANDREWS _____ Against
LEEHY
WEHYEE

Attested by: _____
Sack Thongvanh
City Administrator

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CITY OF FALCON HEIGHTS
Regular Meeting of the City Council
City Hall
2077 West Larpenteur Avenue
MINUTES
April 28, 2021 at 7:00 P.M.

NOTE: THIS MEETING WAS HELD BY WEB CONFERENCE

- A. CALL TO ORDER: 7:00PM
- B. ROLL CALL: ANDREWS _X_ GUSTAFSON _X_ LEEHY ___
MIAZGA ___ WEHYEE _X_
STAFF PRESENT: THONGVANH _X_
- C. PRESENTATION
 - 1. Northeast Youth and Family Services (NYFS) Annual Report

Tara Jebens-Singh, Executive Director

NYFS is a community-based, trauma-informed, nonprofit mental health and human services agency. We partner with 15 municipalities and 3 school districts. We support low-income, under and uninsured youth, families, and adults and we have been serving the northern suburbs for 45 years. We offer mental health clinics in Shoreview and White Bear Lake, we offer telehealth services and school-based mental health services in three different school districts. Our community-based human services include our diversion program, senior chore program. Our community advocate is our newest program and connects community health agencies with local law enforcement agencies to allow them to refer residents for these services.

The City of Falcon Heights contract for services was \$10,038, and the cost of services provided was \$11,423. We had 4 individuals utilize our mental health services, 2 seniors who received senior chore services, and we had 1 youth who received services through the NETS program.

Looking ahead, we are anticipating a return to in-home senior services, greater return to in-person mental health counseling, with telehealth remaining as an option. We are looking to grow our community connections program, expand our online presence, and culturally responsive care.

Council Member Wehyee

What impact has COVID-19 had on demand for services?

Tara Jebens-Singh

Initially our capacity to provide resources was decreased, but after we shifted many services to online platforms, we did a lot of work to train people on how to access services in this way. Our numbers are now back up, most of our practitioners have full case-loads. Both the pandemic and the death of George Floyd have amplified issues that were already in existing. We've also seen an increase in the number of individuals with financial needs.

We had a very bold ask for our contract fees in 2021 and it was pretty universally accepted and supported throughout our municipalities, so we appreciate that. The other thing that is helpful is that to make our services more visible. Promotion of our services is always appreciated.

Council Member Andrews

Our City newsletter would be a great way to promote this work, either through regular content or occasional information.

- D. APPROVAL OF MINUTES:
1. April 7, 2021 City Council Workshop Minutes
 2. April 14, 2021 City Council Regular Minutes

Motion to approve the minutes by Council Member Wehyee;
Approved 3-0.

E. PUBLIC HEARINGS:

- F. CONSENT AGENDA:
1. General Disbursements through: 4/22/21 \$64,601.41
Payroll through: N/A
 2. Approval of City License(s)
 3. Department of Employment and Economic Development Grant Extension Request #2 for the Amber Union Project
 4. 2021 Pavement Management Project (PMP) Construction Materials Testing Quote
 5. Surplus City Property

Motion to approve the consent agenda by Council Member Andrews;
Approved, 3-0.

- G: POLICY ITEMS:
1. Amendment to Section 105-25 and 105-26 of the Building Code in the City Code

Administrator Thongvanh

The City adopted the MN Building Code by reference. The building code is updated periodically, and in 2020 a new version was updated and published. These changes include language updates in our permits and fees section, and it updates requirements for R-1 and R-2 fire protection. There is updates to the flood proofing and grading. The building official Steve Westerhaus sent a memo advising the city to adopt the new provisions to remain current with standards.

Motion to approve the Amendment to Section 105-25 and 105-26 of the Building Code in the City Code by
Council Member Wehyee;
Approved, 3-0.

H. INFORMATION/ANNOUNCEMENTS:

Council Member Wehyee

The Environment Commission met Thursday, April 15. Topics included projects and seeking potential funding opportunities. We discussed CARES funding uses, and I did advise the commission to wait until Council has a better sense of what those funds will be used for.

Council Member Andrews

The Parks and Recreation Commission will meet on Monday. Just a reminder that we are accepting registration for parks programming.

Mayor Gustafson

The Community Engagement Commission met last week and discussed a number of possible events for the City. We're hopeful that the ice cream social will happen in July.

Administrator Thongvanh

I am working on a number of items regarding Amber Union, including an encroachment agreement on the east side of the building. The tax increment financing has been completed and notices have been sent out. Staff and I continue to explore options for the park building renovation or construction.

I. COMMUNITY FORUM:

Please limit comments to 3 minutes per person. Items brought before the Council will be referred for consideration. Council may ask questions for clarification, but no council action or discussion will be held on these items.

Sharon Castle

I live on Pascal Street and I'm a member of the Landscape Committee for the Philando Castile Peace Garden, which is located near the North entrance to the State Fair grounds on Larpenteur Avenue. It's going to be a nice addition to that spot. It will have permanent structures that allow for the display of artwork as well as plants and a bench. Construction will tentatively begin in the next month. This year will be the 5 year anniversary of Philando's death.

J. ADJOURNMENT: 7:46PM

Randall C. Gustafson, Mayor

Dated this 28th day of April, 2021

Sack Thongvanh, City Administrator

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REQUEST FOR COUNCIL ACTION

Meeting Date	May 26, 2021
Agenda Item	Public Hearing E1
Attachment	Resolution, Mailed Notice, and Quit Claim Deed
Submitted By	Stephanie Smith, Asst. City Engineer Sack Thongvanh, City Administrator

Item	Public Hearing to Consider Easement Vacation at Amber Union
Description	<p>The developer for the property at 1667 Snelling Ave, the Amber Union development, has requested the City vacate a portion of the Snelling Ave right-of-way. The vacation would assist the developer with financing for the proposed parking lot improvements at this location, by removing the right-of-way encumbrance on the property.</p> <p>Staff reviewed this request and determined the right-of-way is no longer needed for City operations and maintenance once the Amber Union development is completed. The right-of-way was originally a turnback from MnDOT, and has been used as a snowplow turnaround when staff removes snow on West Snelling Drive. The proposed Amber Union parking lot will allow sufficient room for plows to turnaround, so this right-of-way will no longer be needed. <u>As a condition of approval, a new turnaround easement would be dedicated in an appropriate location over the proposed parking lot.</u></p> <p>A mailing was sent to surrounding properties and is included as an attachment along with the public hearing notice. Staff received a few resident calls with questions, but no opinions for or against the vacation were expressed to staff at this time. An update will be provided at the meeting if additional comments are received.</p> <p><u>Since this is a City-initiated vacation rather than a petition, a four-fifths vote is required to complete the vacation.</u></p>
Budget Impact	No budget impact is anticipated for this vacation.
Attachment(s)	<ul style="list-style-type: none"> • Mailing • Resolution 21- Approving the Vacation of Excess Snelling Drive North Right-of-Way at 1667 Snelling Avenue North • Quit Claim Deed

Action(s) Requested	Motion to approve the attached resolution and authorize the Mayor and City Administrator to execute all necessary documents.
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May 14, 2021

«PrimaryTaxName1»
«PrimaryTaxName2»
«PrimaryTaxAddress»
«PrimaryTaxCityStateZIP»

RE: Public Hearing Notice

Dear Property Owner,

This letter serves as mailed notice of a public hearing for the purposes of vacating a portion of excess Snelling Drive North right-of-way located, on, over, and across the real property at 1667 Snelling Ave. N. as described below:

The part of the North Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, Section 21, Township 29, Range 23, Ramsey County, Minnesota described as follows: The West 57.00 feet of the East 107.00 feet of said North Half, which lies 33.00 feet north of the following described line: Commencing at the northeast corner of said Section 21; thence on an assumed bearing of South 00 degrees 19 minutes 16 seconds West along the east line of said Section 21, a distance of 275.00 feet to the point of beginning; thence North 89 degrees 40 minutes 44 seconds West 107.00 feet and said line there terminating.

Staff recommends this right-of-way be vacated as shown on the enclosed map, because the City has no use for this right-of-way and new public easements will be dedicated for future use.

All properties within 500 feet of the vacation area are receiving this notice. The details of the public hearing are as follows:

Time & Location: The City Council will meet at 7:00 p.m. on Wednesday, May 26, 2021, in the City Hall Council Chambers, 2077 Larpenteur Avenue West, Falcon Heights.

Purpose: Review a request by adjacent property owners to vacate a portion of excess Snelling Drive North right-of-way located, on, over, and across the real property at 1667 Snelling Ave. N.

Three ways you can learn more and participate:

1. Review the staff report (available May 21) at: www.falconheights.org/government/city-council/city-council-agendas (select May 26, 2021 Agenda).
2. Call or email Stephanie Smith, Asst. City Engineer, at 651-792-7048 or stephanie.smith@cityofroseville.com prior to the hearing.
3. Attend the public hearing (virtual) and address the City Council, or view it on Cable Channel 15.

Public Hearing Notice
May 14, 2021
Page 2

- a. Attend or view the meeting at this link:
www.falconheights.org/government/ctv-north-suburbs

Sincerely,



Stephanie Smith, P.E.
Assistant City Engineer

Enclosures:
Public Hearing Notice
Vacation Exhibit
Proposed Vacation Resolution

CITY of FALCON HEIGHTS
PUBLIC HEARING NOTICE

Notice is given that the **City Council** will hold a meeting **at City Hall**, 2077 Larpenteur Avenue West, at 7:00 p.m. on **May 26, 2021**, to consider:

A request by adjacent property owners for approval of the **Vacation** of a portion of excess Snelling Drive North right-of-way located, on, over, and across the real property at 1667 Snelling Ave. N. as described below:

The part of the North Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, Section 21, Township 29, Range 23, Ramsey County, Minnesota described as follows: The West 57.00 feet of the East 107.00 feet of said North Half, which lies 33.00 feet north of the following described line: Commencing at the northeast corner of said Section 21; thence on an assumed bearing of South 00 degrees 19 minutes 16 seconds West along the east line of said Section 21, a distance of 275.00 feet to the point of beginning; thence North 89 degrees 40 minutes 44 seconds West 107.00 feet and said line there terminating.

Published on May 12, 2021 and May 19, 2021 in the Pioneer Press.

Vacation Easement

April 30, 2021

The part of the North Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, Section 21, Township 29, Range 23, Ramsey County, Minnesota described as follows:

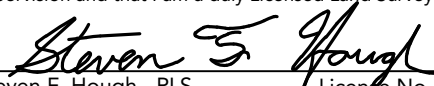
The West 57.00 feet of the East 107.00 feet of said North Half, which lies 33.00 feet north of the following described line:

Commencing at the northeast corner of said Section 21; thence on an assumed bearing of South 00 degrees 19 minutes 16 seconds West along the east line of said Section 21, a distance of 275.00 feet to the point of beginning; thence North 89 degrees 40 minutes 44 seconds West 107.00 feet and said line there terminating.

W:\2011\11273D\CADD DATA\SURVEY\dwg Sheet Files\11273D-EXH-EASTPRKNG_VAC

Sheet 1 of 2 Sheets

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.


Steven F. Hough - PLS License No. 54850 04/30/21 Date



Loucks Project No. 11273D

EXHIBIT



SCALE IN FEET



Easement Area =
1,881± SF or 0.04± Acres

3 Story Office Building
1667 Snelling Ave. N

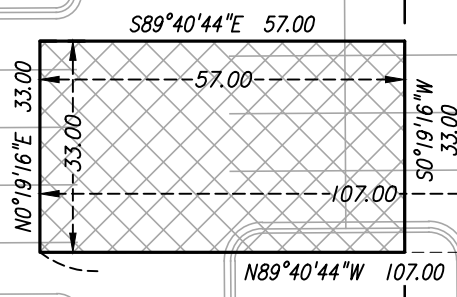
Point Of
Commencement
NE Cor. Sec 21,
Twp 29, Rng 23

S. Line Of N 1/2, NE 1/4, NE 1/4,
NE 1/4, Sec 21, Twp 29, Rng 23

Snelling Dr.
(Publicly Traveled Roadway)

(State Hwy 51-125)

Snelling Avenue
(Publicly Traveled Roadway)



Point Of
Beginning

(EXCEPTION
PARCEL 5)

S. Line Of N 1/2, NE 1/4, NE 1/4,
NE 1/4, Sec 21, Twp 29, Rng 23

Sheet 2 of 2 Sheets

I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Steven F. Hough

Steven F. Hough - PLS

License No. 54850

04/30/21

Date



Loucks Project No. 11273D

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**CITY OF FALCON HEIGHTS
COUNCIL RESOLUTION**

May 26, 2021

No. 21-xx

**RESOLUTION APPROVING THE VACATION OF EXCESS SNELLING DRIVE NORTH
RIGHT-OF-WAY AT 1667 SNELLING AVENUE NORTH**

BE IT RESOLVED by the City Council of the City of Falcon Heights, as follows:

WHEREAS, pursuant to Minnesota Statutes § 412.851 the City Council of the City of Falcon Heights has conducted a hearing on _____, 2021, preceded by the statutorily required two (2) weeks published and posted notice and mailed notice to the abutting property owners, to consider the vacation of that portion of an easement for right of way purposes created by the Grant of Highway Easement dated March 16, 1987 and recorded with the Ramsey County Recorder's Office as Document No. 2380416 on May 15, 1987 and legally described as follows:

That part of the North Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, Section 21, Township 29, Range 23, Ramsey County, Minnesota described as follows:

The West 57.00 feet of the East 107.00 feet of said North Half, which lies 33.00 feet north of the following described line:

Commencing at the northeast corner of said Section 21; thence on an assumed bearing of South 00 degrees 19 minutes 16 seconds West along the east line of said Section 21, a distance of 275.00 feet to the point of beginning; thence North 89 degrees 40 minutes 44 seconds West 107.00 feet and said line there terminating.

(hereinafter "Roadway Easement");

WHEREAS, following the hearing and consideration of the proposed vacation of the Roadway Easement, the City Council has determined the Roadway Easement is not needed for purposes of a public street and that it is in the public interest to vacate the Roadway Easement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Falcon Heights, Ramsey County, Minnesota:

1. The Roadway Easement described herein is hereby vacated, conditioned upon the City obtaining an access easement from the owner of the property located at 1667 Snelling Drive, Minnesota 55018 with a Parcel Identification Number of 212923110030 for vehicle turnaround off of Snelling Avenue, in a location and form approved by the City Council.

2. The City Clerk is directed to file a certified copy of this Resolution with the County Auditor, County Recorder and the Registrar of Titles in and for Ramsey County, Minnesota when the condition under Paragraph 1 has been met.

Moved by:

Approved by: _____
Randy Gustafson
Mayor
May 26, 2021

GUSTAFSON ___ In Favor
LEEHY
MIAZGA ___ Against
ANDREWS
WEHYEE

Attested by: _____
Sack Thongvanh
City Administrator
May 26, 2021

(Top 3 inches reserved for recording data)

QUIT CLAIM DEED
Business Entity to Business Entity

Minnesota Uniform Conveyancing Blanks
Form 10.3.5 (2011)

DEED TAX DUE: \$ 0.00

DATE: _____, 2021
(month/day/year)

FOR VALUABLE CONSIDERATION, the City of Falcon Heights, Minnesota
(insert name of Grantor)

a municipal corporation organized and existing under the laws of Minnesota, ("Grantor"),

hereby conveys and quitclaims to Buhl GTA, LP
(insert name of Grantee)

a limited partnership under the laws of Minnesota, ("Grantee"),

real property in Ramsey County, Minnesota, legally described as follows:

The part of the North Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, Section 21, Township 29, Range 23, Ramsey County, Minnesota described as follows:

The West 57.00 feet of the East 107.00 feet of said North Half, which lies 33.00 feet north of the following described line:

Commencing at the northeast corner of said Section 21; thence on an assumed bearing of South 00 degrees 19 minutes 16 seconds West along the east line of said Section 21, a distance of 275.00 feet to the point of beginning; thence North 89 degrees 40 minutes 44 seconds West, 107.00 feet and said line there terminating.

Check here if all or part of the described real property is Registered (Torrens)

together with all hereditaments and appurtenances belonging thereto.

THIS DEED IS EXEMPT FROM MN DEED TAX PURSUANT TO MINN. STAT. SEC. 287.22, SUBD. 13.

Check applicable box:

- The Seller certifies that the Seller does not know of any wells on the described real property.
- A well disclosure certificate accompanies this document. (If electronically filed, insert WDC number: _____.)
- I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

**CITY OF FALCON HEIGHTS
COUNCIL RESOLUTION**

May 26, 2021

No. 21-23

**RESOLUTION APPROVING THE VACATION OF EXCESS SNELLING DRIVE
NORTH RIGHT-OF-WAY AT 1667 SNELLING AVENUE NORTH**

BE IT RESOLVED by the City Council of the City of Falcon Heights, as follows:

WHEREAS, pursuant to Minnesota Statutes § 412.851 the City Council of the City of Falcon Heights has conducted a hearing on May 26, 2021, preceded by the statutorily required two (2) weeks published and posted notice and mailed notice to the abutting property owners, to consider the vacation of that portion of an easement for right of way purposes created by the Grant of Highway Easement dated March 16, 1987 and recorded with the Ramsey County Recorder's Office as Document No. 2380416 on May 15, 1987 and legally described as follows:

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(hereinafter "Roadway Easement");

WHEREAS, following the hearing and consideration of the proposed vacation of the Roadway Easement, the City Council has determined the Roadway Easement is not needed for purposes of a public street and that it is in the public interest to vacate the Roadway Easement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Falcon Heights, Ramsey County, Minnesota:

1. The Roadway Easement described herein is hereby vacated, conditioned upon the City obtaining an access easement from the owner of the property located at 1667 Snelling Drive, Minnesota 55018 with a Parcel Identification Number of 212923110030 for vehicle turnaround off of Snelling Avenue, in a location and form approved by the City Council.

2. The City Clerk is directed to file a certified copy of this Resolution with the County Auditor, County Recorder and the Registrar of Titles in and for Ramsey County, Minnesota when the condition under Paragraph 1 has been met.

ADOPTED this 26th day of May, 2021 by the City Council of Falcon Heights, Minnesota.

Moved by:

Approved by: _____

Randall C. Gustafson
Mayor

GUSTAFSON
LEEHY
MIAZGA
ANDREWS
WEHYEE

___ In Favor
___ Against

Attested by: _____

Sack Thongvanh
City Administrator



REQUEST FOR COUNCIL ACTION

Meeting Date	May 26, 2021
Agenda Item	Consent F1
Attachment	General Disbursements and Payroll
Submitted By	Roland Olson, Finance Director

Item	General Disbursements and Payroll
Description	General Disbursements through: 5/20/21 \$35,570.33 Payroll through: 5/15/21 \$18,130.46
Budget Impact	The general disbursements and payroll are consistent with the budget.
Attachment(s)	<ul style="list-style-type: none"> • General Disbursements and Payroll
Action(s) Requested	Staff recommends that the Falcon Heights City Council approve general disbursements and payroll.

*Payroll has not been processed

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PACKET: 02298 MAY 20PAYABLES

VENDOR SET: 01 City of Falcon Heights

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----			GROSS	P.O. #		
POST DATE	BANK CODE	-----DESCRIPTION-----	DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION
=====						
01-03103	CANON FINANCIAL SERVICES					
I-26727132		COPIER CHRG MAY	122.39			
5/18/2021	APBNK	DUE: 5/18/2021 DISC: 5/18/2021		1099: N		
		COPIER CHRG MAY		101 4131-87010-000	CITY HALL MAINTENANCE	122.39
		=== VENDOR TOTALS ===	122.39			
=====						
01-03110	CENTURY LINK					
I-202105187837		LAND LINES PARKS	64.89			
5/18/2021	APBNK	DUE: 5/18/2021 DISC: 5/18/2021		1099: N		
		LAND LINES PARKS		101 4141-85011-000	TELEPHONE - LANDLINE	64.89
		=== VENDOR TOTALS ===	64.89			
=====						
01-03122	CITY OF ST PAUL					
I-IN00045440		MTCE AREA LIGHTS	150.00			
5/20/2021	APBNK	DUE: 5/20/2021 DISC: 5/20/2021		1099: N		
		MTCE AREA LIGHTS		209 4209-85020-000	STREET LIGHTING POWER	150.00
I-45441		LIGHTING MATERIALS	12.75			
5/20/2021	APBNK	DUE: 5/20/2021 DISC: 5/20/2021		1099: N		
		LIGHTING MATERIALS		209 4209-85020-000	STREET LIGHTING POWER	12.75
		=== VENDOR TOTALS ===	162.75			
=====						
01-04000	EHLERS AND ASSOCIATES					
I-86898		ANALYSIS AMBER UNION	2,500.00			
5/18/2021	APBNK	DUE: 5/18/2021 DISC: 5/18/2021		1099: N		
		ANALYSIS AMBER UNION		428 4428-81900-000	OTHER PROFESSIONAL SERVI	2,500.00
		=== VENDOR TOTALS ===	2,500.00			
=====						
01-05042	GERTENS					
I-P76298/1		PLANTS AROUND CITY HALL	96.00			
5/20/2021	APBNK	DUE: 5/20/2021 DISC: 5/20/2021		1099: N		
		PLANTS AROUND CITY HALL		101 4131-87010-000	CITY HALL MAINTENANCE	96.00
		=== VENDOR TOTALS ===	96.00			

PACKET: 02298 MAY 20PAYABLES

VENDOR SET: 01 City of Falcon Heights

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----		GROSS	P.O. #		
POST DATE	BANK CODE	DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION

01-05263 MID CITY SERVICES- INDUSTRIAL

I-54827		FLOOR MAT SVC	42.15		
5/20/2021	APBNK	DUE: 5/20/2021 DISC: 5/20/2021		1099: N	
		FLOOR MAT SVC		101 4131-87010-000	CITY HALL MAINTENANCE 42.15
=== VENDOR TOTALS ===			42.15		

01-05843 MN NCPERS LIFE INSURANCE

I-458800062021		2021 LIFE INS MAY	48.00		
5/18/2021	APBNK	DUE: 5/18/2021 DISC: 5/18/2021		1099: N	
		2021 LIFE INS MAY		101 21709-000	OTHER PAYABLE 24.64
		2021 LIFE INS MAY		204 21709-000	OTHER PAYABLE 1.60
		2021 LIFE INS MAY		601 21709-000	OTHER PAYABLE 15.52
		2021 LIFE INS MAY		602 21709-000	OTHER PAYABLE 6.24
=== VENDOR TOTALS ===			48.00		

01-06030 OLSON,ROLAND

I-202105187838		FLEX REIMB	298.42		
5/18/2021	APBNK	DUE: 5/18/2021 DISC: 5/18/2021		1099: N	
		FLEX REIMB		101 21712-000	MEDICAL FLEX SAVINGS PAY 247.69
		FLEX REIMB		601 21712-000	MEDICAL FLEX SAVINGS PAY 44.76
		FLEX REIMB		602 21712-000	MEDICAL FLEX SAVINGS PAY 5.97
=== VENDOR TOTALS ===			298.42		

01-06024 ON SITE SANITATION

I-1125744		HAND SANTIZER/PORTABEL TOILET	75.00		
5/20/2021	APBNK	DUE: 5/20/2021 DISC: 5/20/2021		1099: N	
		HAND SANTIZER/PORTABEL TOILET		601 4601-85080-000	PORTABLE TOILET PARKS 75.00
I-1125745		HAND SANITIZER/PORTABLE TOILE	160.00		
5/20/2021	APBNK	DUE: 5/20/2021 DISC: 5/20/2021		1099: N	
		HAND SANITIZER/PORTABLE TOILET		601 4601-85080-000	PORTABLE TOILET PARKS 160.00
=== VENDOR TOTALS ===			235.00		

01-06185 RAMSEY COUNTY

I-PUBW 019131		SALT FOR ROADS SINCE JAN 1	3,726.00		
5/18/2021	APBNK	DUE: 5/18/2021 DISC: 5/18/2021		1099: N	
		SALT FOR ROADS SINCE JAN 1		101 4132-83030-000	SNOW REMOVAL 3,726.00
=== VENDOR TOTALS ===			3,726.00		
=== PACKET TOTALS ===			7,295.60		

PACKET: 02298 MAY 20PAYABLES

VENDOR SET: 01 City of Falcon Heights

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

**** T O T A L S ****

INVOICE TOTALS 7,295.60
 DEBIT MEMO TOTALS 0.00
 CREDIT MEMO TOTALS 0.00

BATCH TOTALS 7,295.60

**** G/L ACCOUNT TOTALS ****

BANK	YEAR	ACCOUNT	NAME	AMOUNT	=====LINE ITEM=====			=====GROUP BUDGET=====		
					ANNUAL BUDGET	BUDGET AVAILABLE	OVER BUDG	ANNUAL BUDGET	BUDGET AVAILABLE	OVER BUDG
2021		101-20200-000	ACCOUNTS PAYABLE	4,323.76-*						
		101-21709-000	OTHER PAYABLE	24.64						
		101-21712-000	MEDICAL FLEX SAVINGS PAY	247.69						
		101-4131-87010-000	CITY HALL MAINTENANCE	260.54	8,500	1,684.18				
		101-4132-83030-000	SNOW REMOVAL	3,726.00	30,000	26,274.00				
		101-4141-85011-000	TELEPHONE - LANDLINE	64.89	1,000	866.86				
		204-20200-000	ACCOUNTS PAYABLE	1.60-*						
		204-21709-000	OTHER PAYABLE	1.60						
		209-20200-000	ACCOUNTS PAYABLE	162.75-*						
		209-4209-85020-000	STREET LIGHTING POWER	162.75	31,000	20,636.17				
		428-20200-000	ACCOUNTS PAYABLE	2,500.00-*						
		428-4428-81900-000	OTHER PROFESSIONAL SERVI	2,500.00	0	4,950.00- Y				
		601-20200-000	ACCOUNTS PAYABLE	295.28-*						
		601-21709-000	OTHER PAYABLE	15.52						
		601-21712-000	MEDICAL FLEX SAVINGS PAY	44.76						
		601-4601-85080-000	PORTABLE TOILET PARKS	235.00	3,600	2,190.00				
		602-20200-000	ACCOUNTS PAYABLE	12.21-*						
		602-21709-000	OTHER PAYABLE	6.24						
		602-21712-000	MEDICAL FLEX SAVINGS PAY	5.97						
		999-13100-000	DUE FROM OTHER FUNDS	7,295.60 *						
			** 2021 YEAR TOTALS	7,295.60						

PACKET: 02296 MAY 14 PAYABLES

VENDOR SET: 01 City of Falcon Heights

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----			GROSS	P.O. #		
POST DATE	BANK CODE	-----DESCRIPTION-----	DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION
=====						
01-03025	COLIN CALLAHAN					
I-202105137833		REIMB: STEEL TOE BOOTS	202.01			
5/13/2021	APBNK	DUE: 5/13/2021 DISC: 5/13/2021		1099: N		
		REIMB: STEEL TOE BOOTS		101 4132-77000-000	CLOTHING	202.01
		=== VENDOR TOTALS ===	202.01			
=====						
01-03001	CAMPBELL KNUTSON					
I-282		APRIL LEGALS	3,368.00			
5/14/2021	APBNK	DUE: 5/14/2021 DISC: 5/14/2021		1099: Y		
		APRIL LEGALS		101 4114-80200-000	LEGAL FEES	1,300.50
		APRIL LEGALS		428 4428-81900-000	OTHER PROFESSIONAL SERVI	2,067.50
		=== VENDOR TOTALS ===	3,368.00			
=====						
01-03089	CASH					
I-202105137834		PERMIT REFUND/POSTAGE	24.30			
5/13/2021	APBNK	DUE: 5/13/2021 DISC: 5/13/2021		1099: N		
		PERMIT OVERPAYMT REFUND		101 32230-000	PLUMBING PERMITS	15.75
		POSTAGE		101 4112-70500-000	POSTAGE	8.55
		=== VENDOR TOTALS ===	24.30			
=====						
01-03110	CENTURY LINK					
I-202105137832		TELEPHONE SS	72.87			
5/13/2021	APBNK	DUE: 5/13/2021 DISC: 5/13/2021		1099: N		
		TELEPHONE AUTO DIALER		601 4601-85011-000	TELEPHONE - LANDLINE	72.87
		=== VENDOR TOTALS ===	72.87			
=====						
01-03122	CITY OF ST PAUL					
I-IN45372		ASPHALT MIX FOR STREETS	140.44			
5/13/2021	APBNK	DUE: 5/13/2021 DISC: 5/13/2021		1099: N		
		ASPHALT MIX FOR STREETS		101 4132-75000-000	BITUMINOUS PATCHING	140.44
		=== VENDOR TOTALS ===	140.44			
=====						
01-05119	GFOA					
I-2152001		GFOA MEMBERSHIP THRU MAY 2022	170.00			
5/13/2021	APBNK	DUE: 5/13/2021 DISC: 5/13/2021		1099: N		
		GFOA MEMBERSHIP THRU MAY 2022		101 4113-86100-000	CONFERENCES/EDUCATION/AS	170.00
		=== VENDOR TOTALS ===	170.00			

PACKET: 02296 MAY 14 PAYABLES

VENDOR SET: 01 City of Falcon Heights

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----			GROSS	P.O. #		
POST DATE	BANK CODE	-----DESCRIPTION-----	DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION
=====						
01-05440	LOFFLER COMPANIES, INC					
I-3611977		COPIER OVERAGE CHRGS	63.37			
5/13/2021	APBNK	DUE: 5/13/2021 DISC: 5/13/2021		1099: N		
		COPIER OVERAGE CHRGS		101 4112-87000-000	REPAIR OFFICE EQUIPMENT	63.37
=====						
I-3712961		COPIER MONTHLY CHRGS	23.97			
5/13/2021	APBNK	DUE: 5/13/2021 DISC: 5/13/2021		1099: N		
		COPIER MONTHLY CHRGS		101 4112-87000-000	REPAIR OFFICE EQUIPMENT	23.97
		=== VENDOR TOTALS ===	87.34			
=====						
01-05273	MN PUBLIC EMPLOYEES INSURANCE					
I-1087345		JUNE HEALTH INSURANCE	9,911.90			
5/13/2021	APBNK	DUE: 5/13/2021 DISC: 5/13/2021		1099: N		
		JUNE HEALTH INSURANCE		101 4112-89000-000	MISCELLANEOUS	9,911.90
		=== VENDOR TOTALS ===	9,911.90			
=====						
01-06112	PIONEER PRESS					
I-121572540		LEGALS	61.49			
5/13/2021	APBNK	DUE: 5/13/2021 DISC: 5/13/2021		1099: N		
		LEGALS		101 4111-70410-000	LEGAL NOTICES	61.49
		=== VENDOR TOTALS ===	61.49			
=====						
01-06185	RAMSEY COUNTY					
I-PRRRFV 01574		1ST QTR ELECTION CONTRACT	5,450.00			
5/13/2021	APBNK	DUE: 5/13/2021 DISC: 5/13/2021		1099: N		
		1ST QTR ELECTION CONTRACT		101 4115-80300-000	ELECTION CONTRACT	5,450.00
		=== VENDOR TOTALS ===	5,450.00			
=====						
01-06184	RAMSEY COUNTY - POLICE AND 911					
I-EMCOM 009264		APR DISPATCH	2,546.43			
5/13/2021	APBNK	DUE: 5/13/2021 DISC: 5/13/2021		1099: N		
		APR DISPATCH		101 4122-81200-000	911 DISPATCH FEES	2,546.43
=====						
I-EMCOM 009281		APRIL CAD	348.81			
5/13/2021	APBNK	DUE: 5/13/2021 DISC: 5/13/2021		1099: N		
		APRIL CAD		101 4122-81200-000	911 DISPATCH FEES	348.81
		=== VENDOR TOTALS ===	2,895.24			

PACKET: 02296 MAY 14 PAYABLES

VENDOR SET: 01 City of Falcon Heights

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----		GROSS	P.O. #		
POST DATE	BANK CODE	-----DESCRIPTION-----	DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME----- DISTRIBUTION

01-06303	REPUBLIC SERVICES				

I-0923-004629400		STREET SWEEPINGS	2,297.53		
5/13/2021	APBNK	DUE: 5/13/2021 DISC: 5/13/2021		1099: N	
		STREET SWEEPINGS		602 4602-84000-000	STREET SWEEPINGS 2,297.53
=== VENDOR TOTALS ===			2,297.53		

01-06301 SAMS CLUB MC/SYNCB

I-202105147836		PIONEER PRESS PAPER	304.58		
5/14/2021	APBNK	DUE: 5/14/2021 DISC: 5/14/2021		1099: N	
		PIONEER PRESS PAPER		101 4131-70110-000	SUPPLIES 32.00
		ZOOM VIRTUAL		101 4116-85040-000	VIRTUAL COMMUNICATIONS 220.11
		WIRELESS KEYBOARD & MOUSE		101 4112-70100-000	SUPPLIES 52.47
=== VENDOR TOTALS ===			304.58		

01-07069 VIKING AUTOMATIC SPRINKLER COM

I-1025-F159118		SPRINKLER TEST CITY HALL	300.00		
5/13/2021	APBNK	DUE: 5/13/2021 DISC: 5/13/2021		1099: N	
		SPRINKLER TEST CITY HALL		101 4131-87010-000	CITY HALL MAINTENANCE 300.00
=== VENDOR TOTALS ===			300.00		

01-05870 XCEL ENERGY

I-202105137835		ELECT/GAS	2,989.03		
5/13/2021	APBNK	DUE: 5/13/2021 DISC: 5/13/2021		1099: N	
		GAS		101 4131-85030-000	NATURAL GAS 526.13
		ELECT		101 4141-85020-000	ELECTRIC/GAS 28.93
		ELECT		101 4141-85020-000	ELECTRIC/GAS 107.89
		ELECT		101 4141-85020-000	ELECTRIC/GAS 25.11
		ELECT		209 4209-85020-000	STREET LIGHTING POWER 0.82
		ELECT		209 4209-85020-000	STREET LIGHTING POWER 29.64
		ELECT		209 4209-85020-000	STREET LIGHTING POWER 15.06
		ELECT		209 4209-85020-000	STREET LIGHTING POWER 27.71
		ELECT		209 4209-85020-000	STREET LIGHTING POWER 57.22
		ELECT		209 4209-85020-000	STREET LIGHTING POWER 120.61
		ELECT		209 4209-85020-000	STREET LIGHTING POWER 2,049.91
=== VENDOR TOTALS ===			2,989.03		
=== PACKET TOTALS ===			28,274.73		

MP #	NAME	AMOUNT
	SACK THONGVANH	4,048.91
	ASHLEIGH WALTER	1,563.04
	VANDARA THAMMAVONGSA	1,544.21
	ROLAND O OLSON	2,861.89
	TIMOTHY J PITTMAN	2,259.27
	DAVE TRETSEVEN	1,813.02
	COLIN B CALLAHAN	1,990.77

TOTAL PRINTED: 7 16,081.11

5-11-2021 7:26 AM PAYROLL CHECK REGISTER
PAYROLL NO: 01 City of Falcon Heights

PAGE: 1
PAYROLL DATE: 5/11/2021

EMPLOYEE NAME	TYPE	CHECK DATE	CHECK AMOUNT	CHECK NO.
MORETTO, PAUL A	R	5/11/2021	2,049.35	090466

11-2021 7:26 AM PAYROLL CHECK REGISTER
ROLL NO: 01 City of Falcon Heights

PAGE: 2
PAYROLL DATE: 5/11/2021

*** REGISTER TOTALS ***

REGULAR CHECKS:	1	2,049.35
DIRECT DEPOSIT REGULAR CHECKS:	7	16,081.11
MANUAL CHECKS:		
PRINTED MANUAL CHECKS:		
DIRECT DEPOSIT MANUAL CHECKS:		
VOIDED CHECKS:		
NON CHECKS:		
TOTAL CHECKS:	8	18,130.46

*** NO ERRORS FOUND ***

END OF REPORT **

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REQUEST FOR COUNCIL ACTION

Meeting Date	May 26, 2021
Agenda Item	Policy G1
Attachment	Agreements and Easements
Submitted By	Sack Thongvanh, City Administrator

Item	Amber Union Project - Encroachments and Easements
Description	See Memorandum from the City Attorney.
Budget Impact	N/A
Attachment(s)	<ul style="list-style-type: none"> • Memorandum from City Attorney • Encroachment Agreement for Green Space • Encroachment Agreement for Parking Improvements • Easement Agreement for City • Site Map • Parking Access Easement Agreement (West Parking Lot) • Resolution 21-24 Approving Encroachment Agreements, Easement, and Conveyance of Property with Buhl, GTA, LP, Limited Partnership
Action(s) Requested	Motion to approve resolution, encroachment agreements, easement and authorize the Mayor and City Administrator to execute all necessary documents.

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MEMORANDUM

FROM: ANDREA POEHLER, CITY ATTORNEY
TO: CITY OF FALCON HEIGHTS
DATE: MAY 26, 2021
RE: AMBER UNION



CAMPBELL KNUTSON
PROFESSIONAL ASSOCIATION

Background

The City previously approved a PUD for the property owned by BUHL GTA, LP, located at 1667 Snelling Avenue North for development of a multi-family development consisting of approximately 125 affordable apartments and 930 square feet of retail space (“Project”).

Grant and Loan Documents

In connection with the Project, Buhl has requested assistance with the costs for contamination cleanup. The city applied for and received \$962,200 in grant funds through the Tax Base Revitalization Account established within the Metropolitan Livable Communities Fund (“Grant Funds”). As a condition to the issuance of the Grant Funds, the City is required to enter into the Metropolitan Livable Communities Act Grant Agreement.

In order to provide the Grant Funds to Buhl, the City is proposing to enter into a 41.5 year loan secured by a promissory note and mortgage, which mortgage will be subject to a subordination agreement which subordinates the City’s loan to the Senior Lender, Colliers Mortgage LLC, which Senior Note is insured or held by HUD as part of FHA Project No. 092-35853.

Encroachment Agreements

In addition to the grant funding, Buhl has requested encroachment agreements for 10 parking stalls and open space over portions of City right of way for Snelling Drive. The encroachment for the 10 parking spaces was identified as a requirement in the PUD Agreement for the Project. The encroachment for open space is based on a requirement by the National Historic Registry in order for Buhl to receive a historic tax credit for the Project. Each of these documents allows the City to terminate the encroachments in the event the City requires the use of the encroachment areas after 5 years. The encroachment agreements also require that Buhl pay up to \$60,000 to return the areas to the current conditions. In addition, the Parking Encroachment Agreement requires that Buhl install conduit for a future public EVCS station in an amount up to \$20,000 in connection with the construction of the parking lot.

Deed and Easement Documents

Buhl has also requested that the City convey to Buhl a small rectangular portion of City property that is located in the middle of the proposed parking lot. This portion has historically been used by the City for a turnaround of City vehicles. In exchange for the conveyance, Buhl will grant a permanent easement within the parking lot for a City vehicle turnaround. The area to be conveyed to Buhl will also require vacation of right of way in the property, which is also before the City Council for approval at the meeting tonight.

I have reviewed the proposed agreements referenced herein and have approved the form of the agreements.

Attachments

Resolution No. _____ - A Resolution Approving Metropolitan Livable Communities Act Grant Agreement

Attachment: Metropolitan Livable Communities Act Grant Agreement

Resolution No. _____ - A Resolution Approving LCDA Loan Documents with Buhl GTA, LP, Limited Partnership

Attachments: Loan Agreement
Promissory Note
Mortgage
Subordination Agreement

Resolution No. _____ - A Resolution Approving Encroachment Agreements, Easement and Conveyance of Property with Buhl GTA, LP

Attachments: Parking Encroachment Agreement
Green Space Encroachment Agreement
Quit Claim Deed
Easement Grant (Turnaround Lane)

(reserved for recording information)

ENCROACHMENT, USE, AND MAINTENANCE AGREEMENT (Green Space)

THIS ENCROACHMENT, USE, AND MAINTENANCE AGREEMENT is made and entered into this _____ day of _____, 2021, by and between the **CITY OF FALCON HEIGHTS**, a Minnesota municipal corporation ("City"), and **BUHL GTA, LP**, a Minnesota limited partnership (referred to as "Property Owner").

1. BACKGROUND. The Property Owner owns property legally described on the attached Exhibit "A" ("Subject Property"). The City owns certain real property presently used as a publicly traveled roadway known as Snelling Drive, legal described on the attached Exhibit "B" (the "City Property"). The Property Owner seeks permission from the City to construct, use, and maintain certain green space, including lawn areas, landscaping, and paved walkways on the City Property, as such improvements are depicted on the site plan attached hereto as Exhibit "C" (the "Green Space Improvements"). The Subject Property and City Property abut.

2. ENCROACHMENT AUTHORIZATION. The City hereby approves the encroachment on the City property for the Green Space Improvements, and the City hereby approves

the construction, maintenance, and use of the Green Space Improvements by the Property Owner and its successors and assigns, and their respective tenants and other invitees.

3. MAINTENANCE, REPAIR AND REPLACEMENT. Property Owner shall be solely responsible for all costs relating to the maintenance, repair and replacement of the Green Space Improvements, including any damage to the Green Space Improvements caused in whole or in part by the City's use and maintenance of the City Property. This maintenance obligation is a personal obligation of Property Owner and shall be binding upon the executors, administrators, successors, heirs, and assigns of Property Owner.

4. HOLD HARMLESS AND INDEMNITY. In consideration of being allowed to encroach in the City Property and to use the City Property for the Green Space Improvements as contemplated herein, Property Owner, its successors and assigns, hereby agrees to indemnify and hold the City harmless from all costs and expenses, claims and liability, including attorney's fees, relating to or arising out of this grant to Property Owner of permission for the Green Space Improvements encroaching on the City Property. Notwithstanding the foregoing, if the United States Department of Housing and Urban Development ("HUD") is ever deemed the "Owner" of all or part of the property Subject Property, HUD shall not be subject to the indemnification provisions contained in this Section 4. HUD prohibits and does not authorize any expenditure which would violate 31 USC 1341 (the "Anti-Deficiency Act"). Any provision of this Agreement which violate(s)(d) the Anti-Deficiency Act, in the past, present or future, will not be enforced against HUD. Notwithstanding any other provision of this Agreement, HUD whether in the capacity of subsidy provider, loan insurer, lender, owner, lessee or mortgagee in possession, shall have no obligation of reimbursement, indemnity, or holding harmless, of any nature whatsoever, to any governmental entity, private entity, person or party, either now or in the future. Additionally, for so long as HUD is the insurer or holder of a

mortgage on the Subject Property, any indemnification obligation of Property Owner shall be limited to available liability insurance proceeds, Surplus Cash and/or non-Project Assets, as each such term is defined in the Regulatory Agreement for Multifamily Projects by and between Property Owner and HUD.

5. TERMINATION OF AGREEMENT. Following an initial period of forty-eight (48) months after the date that the Property Owner obtains a final Certificate of Occupancy allowing the Subject Property to be used and occupied as a multifamily apartment building, the City may thereafter terminate this Agreement at any time by giving the Property Owner or its successor owner of the Subject Property at least twelve (12) months advance written notice. The Property Owner shall remove the Green Space Improvements within City Property to the effective date of the termination of this Agreement and return the City Property to its current condition by installing a 4" SP 9.5 Bituminous Wearing Course in two 2" lifts over 6" of class V and installing curb and gutter to match existing curb on West Snelling Service Drive; provided, however, that the total out-of-pocket costs required to be incurred by the Property Owner pursuant to this provision, in the aggregate with any such restoration costs to be incurred by the Property Owner upon termination of that certain Encroachment, Use, and Maintenance Agreement (Parking Improvements) by and between the Property Owner and the City, effective as of even date herewith, shall not exceed \$60,000, and the City and the Property Owner agree to work cooperatively and in good faith in determining the scope of restoration of the City Property. If the Property Owner fails to do so, the City may remove the Green Space Improvements within the City Property and charge the cost of removal back to the Property Owner for reimbursement, which Property Owner is required to pay within 30 days of invoicing, subject to the foregoing limitation that the Property Owner's total out-of-pocket costs under this provision shall not exceed \$60,000.

6. **RECORDING.** This Agreement shall be recorded against the title to the Subject Property and the City Property and shall be binding upon the Property Owner, the City, and their successors, heirs and assigns.

7. **COSTS.** Property Owner shall be responsible for all reasonable City costs incurred by the City related to this Agreement, including any consultant costs and will reimburse the City within 30 days of invoicing.

[Remainder of Page Intentionally Left Blank.]
[Signature Pages Follow.]

CITY OF FALCON HEIGHTS

BY: _____
Randall Gustafson, Mayor

AND _____
Sack Thongvanh, City Administrator/Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Randall Gustafson and by Sack Thongvanh, respectively the Mayor and City Administrator/Clerk of the City of Falcon Heights, a Minnesota municipal corporation, on behalf of the municipal corporation and pursuant to the authority granted by its City Council.

Notary Public

BUHL GTA, LP,

a Minnesota limited partnership

By: Buhl GTA GP, LLC, a Minnesota limited liability company

Its: General Partner

By: _____
Peter Deanovic, its Chief Executive Officer

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ___ day of _____, 2021, by Peter Deanovic, the Chief Executive Officer of Buhl GTA GP, LLC, a Minnesota limited liability company, the general partner of Buhl GTA, LP, a Minnesota limited partnership, on behalf of the limited partnership.

Notary Public

DRAFTED BY:
CAMPBELL KNUTSON, P.A.
860 Blue Gentian Road, Suite 290
Eagan, Minnesota 55121
Telephone: (651) 452-5000

EXHIBIT "A"

Description of Subject Property:

That part of the West 133.00 feet of the Northeast quarter of the Northeast quarter of the Northeast quarter of Section 21, Township 29, Range 23, which lies South of the North 318.00 feet thereof and which lies North of the South 330.00 feet.

and

The Westerly 133 feet of the Northerly 318 feet excepting therefrom that part taken for Larpenteur Avenue, of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, Section 21, Township 29, Range 23, Ramsey County, Minnesota.

and

The North Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, except the West 133 feet thereof, in Section 21, Township 29, Range 23, Ramsey County, Minnesota, except that part taken for Snelling and Larpenteur Avenues.

EXHIBIT "B"

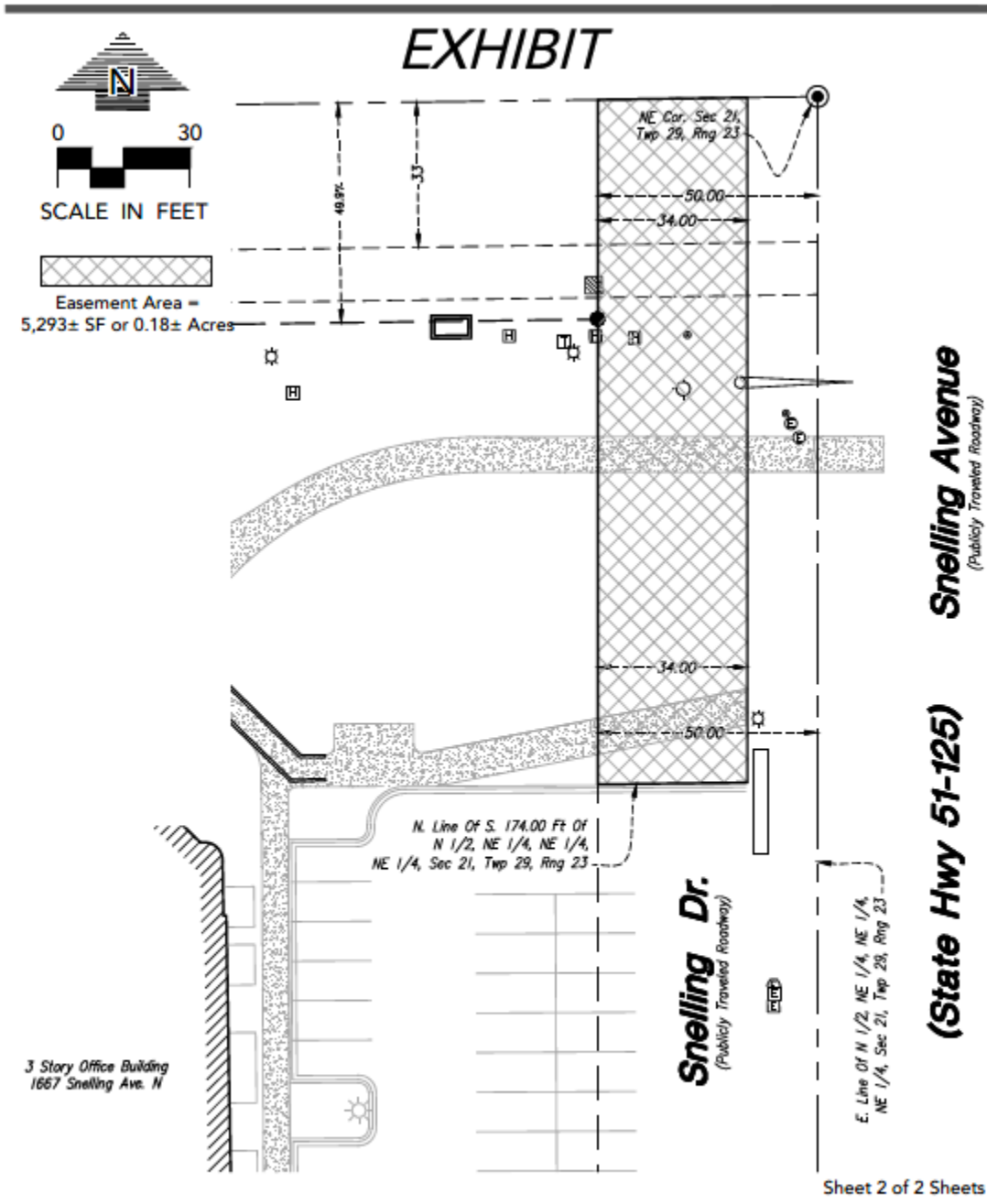
Description of City Property:

That part of the North Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, Section 21, Township 29, Range 23, Ramsey County, Minnesota described as follows:

The West 34.00 feet of the East 50.00 feet lying north of the South 174.00 feet of said North Half.

EXHIBIT "C"

Site Plan Depicting the Green Space Improvements and "City Property"



I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Steven F. Hough
Steven F. Hough - PLS License No. 54850

05/06/21
Date

LOUCKS
Loucks Project No. 11273D

(reserved for recording information)

ENCROACHMENT, USE, AND MAINTENANCE AGREEMENT (Parking Improvements)

THIS ENCROACHMENT, USE, AND MAINTENANCE AGREEMENT is made and entered into this _____ day of _____, 2021, by and between the **CITY OF FALCON HEIGHTS**, a Minnesota municipal corporation ("City"), and **BUHL GTA, LP**, a Minnesota limited partnership (referred to as "Property Owner").

1. BACKGROUND. The Property Owner owns property legally described on the attached Exhibit "A" ("Subject Property"). The Subject Property is improved with two buildings historically known as the Farmers Union Grain Terminal Association Headquarters and related improvements. The Grantee intends to undertake to rehabilitate the buildings to convert the Subject Property into an affordable multifamily rental apartment community containing 125 dwelling units (the "Project"). The City owns certain real property presently used as a publicly traveled roadway known as Snelling Drive, legal described on the attached Exhibit "B" (the "City Property"). The Property Owner seeks permission from the City to construct, use, and maintain certain parking improvements serving the Project including approximately 10 surface parking stalls (or portions thereof), drive lanes, curbs, and

landscaping on the City Property, as such improvements are depicted on the site plan attached hereto as Exhibit "C" (the "Parking Improvements"). The Subject Property and City Property abut.

2. ENCROACHMENT AUTHORIZATION. The City hereby approves the encroachment on the City property for the Parking Improvements, and the City hereby approves the construction, maintenance, and use of the Parking Improvements by the Property Owner and its successors and assigns, and their respective tenants and other invitees, for parking at the Project. The authorization provided under this Agreement shall not prevent the City from installing an Electric Vehicle Charging Station ("EVCS") for use by the public within the City Property or access by the public to an EVCS installed by the City within City Property. Provided that the City has notified the Property Owner by April 1, 2022 of its desire to pursue the EVCS, and the Property Owner and the City have agreed upon the location and specifications, the Property Owner shall install conduit as per such mutually agreed specifications for the EVCS during construction of the Parking Improvements at a maximum cost to the Property Owner of \$20,000.00.

3. MAINTENANCE, REPAIR AND REPLACEMENT. Property Owner shall be solely responsible for all costs relating to the maintenance, repair and replacement of the Parking Improvements, including any damage to the Parking Improvements caused in whole or in part by the City's use and maintenance of the City Property. This maintenance obligation is a personal obligation of Property Owner and shall be binding upon the executors, administrators, successors, heirs, and assigns of Property Owner.

4. HOLD HARMLESS AND INDEMNITY. In consideration of being allowed to encroach in the City Property and to use the City Property for the Parking Improvements as contemplated herein, Property Owner, its successors and assigns, hereby agrees to indemnify and hold the City harmless from all costs and expenses, claims and liability, including attorney's fees, relating to or arising out of this grant to Property Owner of permission for the Parking Improvements encroaching on the City Property. Notwithstanding the foregoing, if the United States Department of Housing and Urban Development ("HUD") is ever deemed the "Owner" of all or part of the property Subject Property, HUD shall not be

subject to the indemnification provisions contained in this Section 4. HUD prohibits and does not authorize any expenditure which would violate 31 USC 1341 (the "Anti-Deficiency Act"). Any provision of this Agreement which violate(s)(d) the Anti-Deficiency Act, in the past, present or future, will not be enforced against HUD. Notwithstanding any other provision of this Agreement, HUD whether in the capacity of subsidy provider, loan insurer, lender, owner, lessee or mortgagee in possession, shall have no obligation of reimbursement, indemnity, or holding harmless, of any nature whatsoever, to any governmental entity, private entity, person or party, either now or in the future. Additionally, for so long as HUD is the insurer or holder of a mortgage on the Subject Property, any indemnification obligation of Property Owner shall be limited to available liability insurance proceeds, Surplus Cash and/or non-Project Assets, as each such term is defined in the Regulatory Agreement for Multifamily Projects by and between Property Owner and HUD.

5. TERMINATION OF AGREEMENT. Following an initial period of forty-eight (48) months after the date that the Property Owner obtains a final Certificate of Occupancy allowing the Subject Property to be used and occupied as a multifamily apartment building, the City may thereafter terminate this Agreement at any time by giving the Property Owner or its successor owner of the Subject Property at least twelve (12) months advance written notice. The Property Owner shall remove the Parking Improvements within City Property to the effective date of the termination of this Agreement and return the City Property to its current condition, except for improvements for the City EVCS, by installing a 4" SP 9.5 Bituminous Wearing Course in two 2" lifts over 6" of class V and installing curb and gutter to match existing curb on West Snelling Service Drive; provided, however, that the total out-of-pocket costs required to be incurred by the Property Owner pursuant to this provision, in the aggregate with any such restoration costs to be incurred by the Property Owner upon termination of that certain Encroachment, Use, and Maintenance Agreement (Green Space) by and between the Property Owner and the City, effective as of even date herewith shall not exceed \$60,000, and the City and the Property Owner agree to work cooperatively and in good faith in determining the scope of restoration of the City Property. If the Property Owner fails to do

so, the City may remove the Green Space Improvements within the City Property and charge the cost of removal back to the Property Owner for reimbursement, which Property Owner is required to pay within 30 days of invoicing, subject to the limitation that the Property Owner's total out-of-pocket costs under this provision shall not exceed \$60,000. In the event that the City should elect to exercise its termination rights provided herein, the City shall reasonably cooperate with the Property Owner to prevent a violation of the City's zoning ordinances applicable to the Subject Property.

6. RECORDING. This Agreement shall be recorded against the title to the Subject Property and the City Property and shall be binding upon the Property Owner, the City, and their successors, heirs and assigns.

7. COSTS. Property Owner shall be responsible for all reasonable City costs incurred by the City related to this Agreement, including any consultant costs and will reimburse the City within 30 days of invoicing.

[Remainder of Page Intentionally Left Blank.]
[Signature Pages Follow.]

CITY OF FALCON HEIGHTS

BY: _____
Randall Gustafson, Mayor

AND _____
Sack Thongvanh, City Administrator/Clerk

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Randall Gustafson and by Sack Thongvanh, respectively the Mayor and City Administrator/Clerk of the City of Falcon Heights, a Minnesota municipal corporation, on behalf of the municipal corporation and pursuant to the authority granted by its City Council.

Notary Public

EXHIBIT "A"

Description of Subject Property:

That part of the West 133.00 feet of the Northeast quarter of the Northeast quarter of the Northeast quarter of Section 21, Township 29, Range 23, which lies South of the North 318.00 feet thereof and which lies North of the South 330.00 feet.

and

The Westerly 133 feet of the Northerly 318 feet excepting therefrom that part taken for Larpenteur Avenue, of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, Section 21, Township 29, Range 23, Ramsey County, Minnesota.

and

The North Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, except the West 133 feet thereof, in Section 21, Township 29, Range 23, Ramsey County, Minnesota, except that part taken for Snelling and Larpenteur Avenues.

EXHIBIT "B"

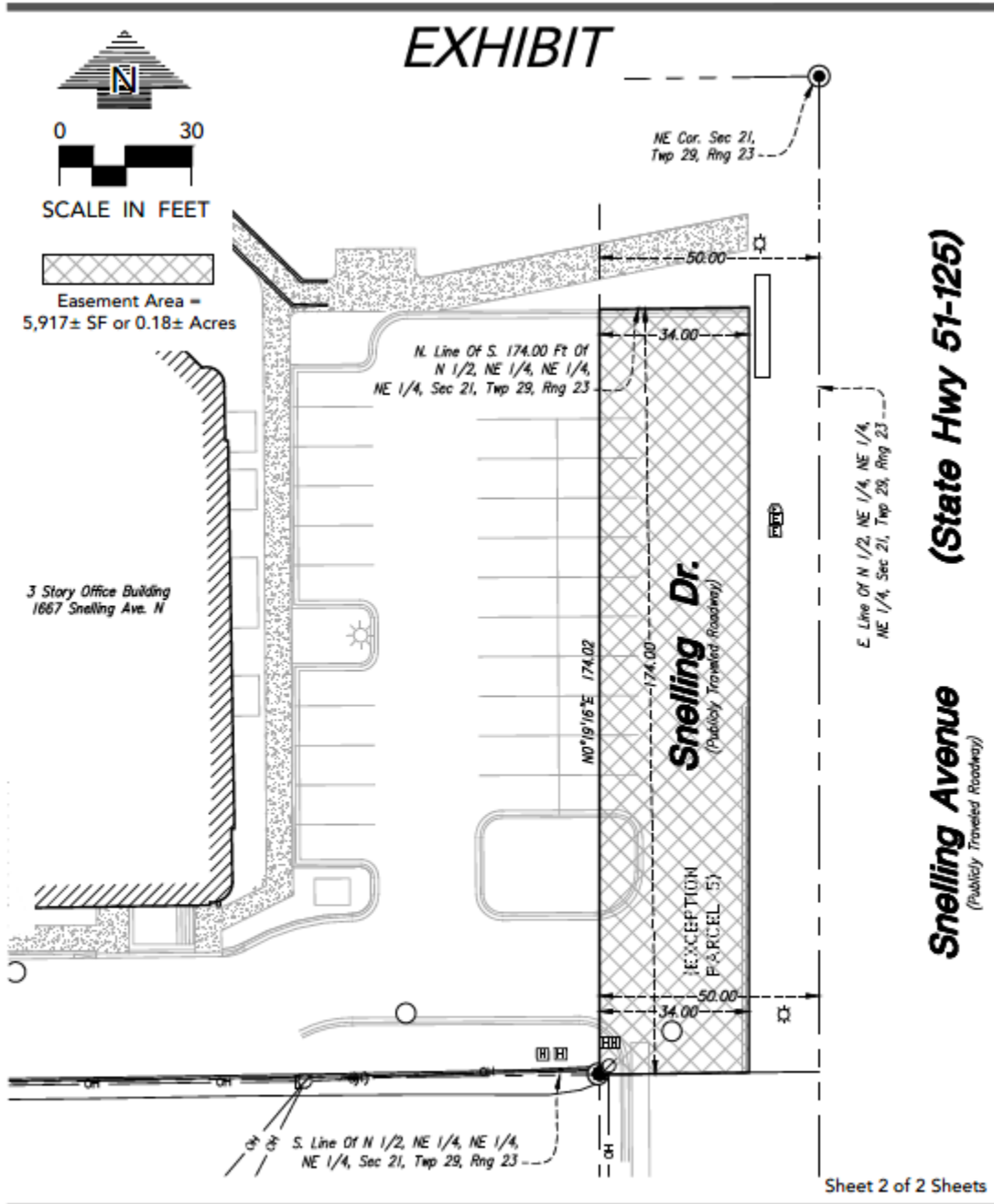
Description of City Property:

The part of the North Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, Section 21, Township 29, Range 23, Ramsey County, Minnesota described as follows:

The West 34.00 feet of the East 50.00 feet of the South 174.00 feet of said North Half.

EXHIBIT "C"

Site Plan With Illustration of "City Property"



I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Steven F. Hough
Steven F. Hough - PLS License No. 54850

05/06/21
Date

LOUCKS
Loucks Project No. 11273D

EASEMENT GRANT
(Turnaround Lane)

THIS EASEMENT GRANT (hereinafter referred to as the “**Grant**”) is made as of _____, 2021 by **BUHL GTA, LP**, a Minnesota limited partnership (hereinafter referred to as “**Buhl**”) to and in favor of the **CITY OF FALCON HEIGHTS, MINNESOTA**, a Minnesota municipal corporation (hereinafter referred to as the “**City**”).

The following recitals of fact are a material part of this instrument:

- A. Buhl is the owner of a tract of land described legally described on attached Exhibit 1 (hereinafter referred to as the “**Parcel**”).
- B. Buhl wishes to grant and convey to City a permanent right-of-way over and across those parts of the Parcel legally described on attached Exhibit 2 and depicted on attached Exhibit 3 (hereinafter referred to as the “**Easement Area**”), for the purposes described herein.

NOW, THEREFORE, the following grants, covenants and restrictions are made:

1. **GRANT OF EASEMENT.** Buhl hereby grants to the City a perpetual, non-exclusive easement for right-of-way over and across the Easement Area, for the purpose of allowing for a turnaround area for City snow plows and other City vehicles or machinery (hereinafter referred to as the “**Easement**”).
2. **IMPROVEMENTS.** Buhl further agrees not to place any permanent structure upon the Easement Area that will interfere with the City’s use of the Easement for the purposes set forth herein.
3. **WARRANTIES OF TITLE.** Buhl represents and warrants that it has good and indefeasible fee simple title to the Parcel and Buhl warrants that it has full authority to grant the Easement.
4. **RUNNING OF BENEFITS AND BURDENS.** All provisions of this instrument, including the benefits and burdens, run with the Parcel and are binding upon and inure to the heirs, assigns, successors, tenants and personal representatives of the parties hereto.
5. **SATISFACTION OF CONDITION.** This Grant and the Easement created hereby are expressly given in satisfaction of that the condition set forth in that certain Resolution

No. _____ adopted by the City of Falcon Heights on _____, 2021, authorizing the vacation of a Grant of Highway Easement dated March 16, 1987 and recorded with the Ramsey County Recorder's Office as Document No. 2380416 on May 15, 1987 and legally described as follows:

That part of the North Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, Section 21, Township 29, Range 23, Ramsey County, Minnesota described as follows:

The West 57.00 feet of the East 107.00 feet of said North Half, which lies 33.00 feet north of the following described line:

Commencing at the northeast corner of said Section 21; thence on an assumed bearing of South 00 degrees 19 minutes 16 seconds West along the east line of said Section 21, a distance of 275.00 feet to the point of beginning; thence North 89 degrees 40 minutes 44 seconds West 107.00 feet and said line there terminating

The City hereby accepts this Grant in satisfaction of said condition.

[The remainder of this page is intentionally left blank]

EXHIBIT 1

Buhl Parcel

That part of the West 133.00 feet of the Northeast quarter of the Northeast quarter of the Northeast quarter of Section 21, Township 29, Range 23, which lies South of the North 318.00 feet thereof and which lies North of the South 330.00 feet.

and

The Westerly 133 feet of the Northerly 318 feet excepting therefrom that part taken for Larpenteur Avenue, of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, Section 21, Township 29, Range 23, Ramsey County, Minnesota.

and

The North Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, except the West 133 feet thereof, in Section 21, Township 29, Range 23, Ramsey County, Minnesota, except that part taken for Snelling and Larpenteur Avenues.

EXHIBIT 2

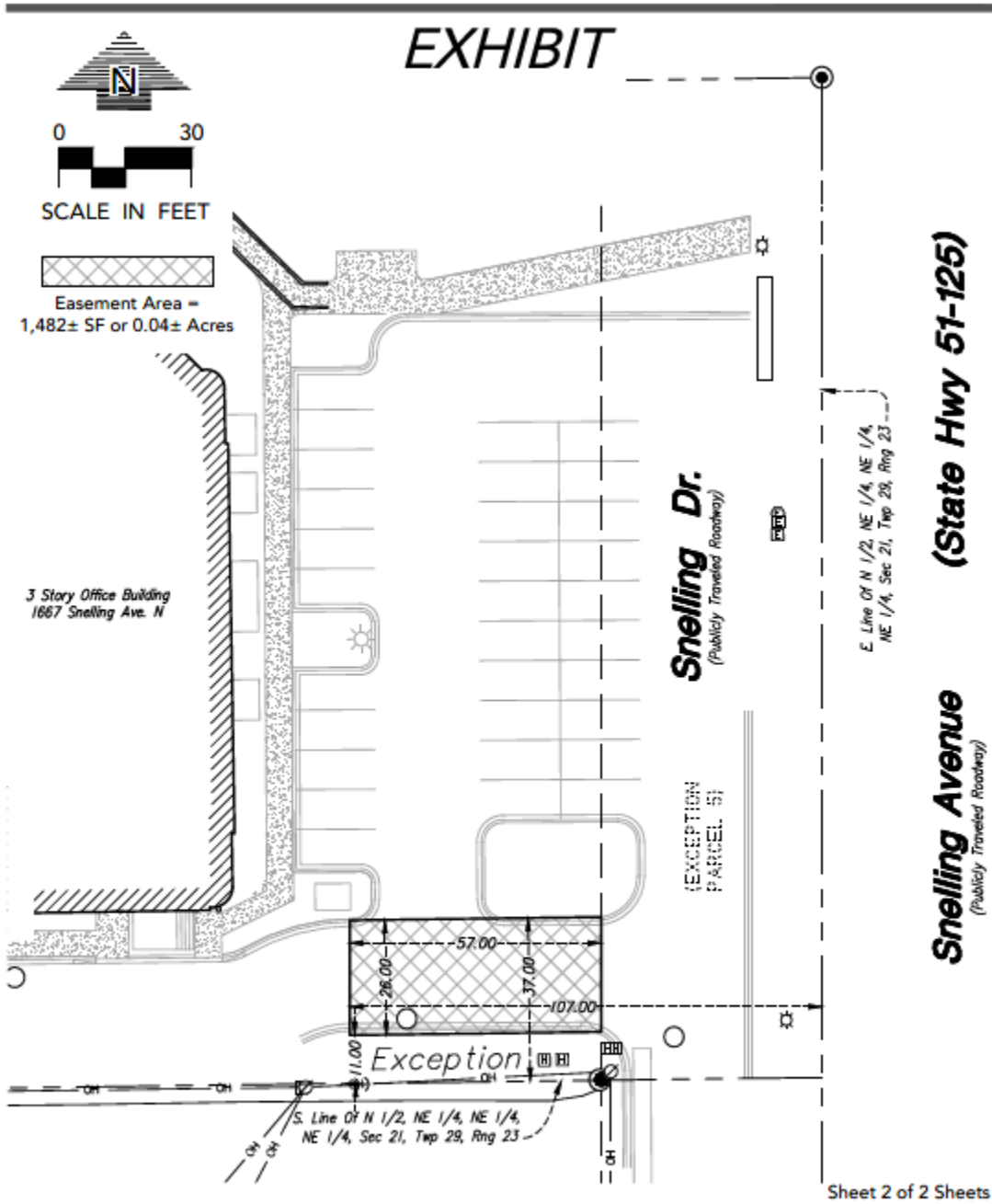
Legal Description of Easement Area

That part of the North Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, Section 21, Township 29, Range 23, Ramsey County, Minnesota described as follows:

The West 57.00 feet of the East 107.00 feet of the South 37.00 feet of said North Half, except the south 11.00 feet thereof.

EXHIBIT 3

Illustration of Easement Area



I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

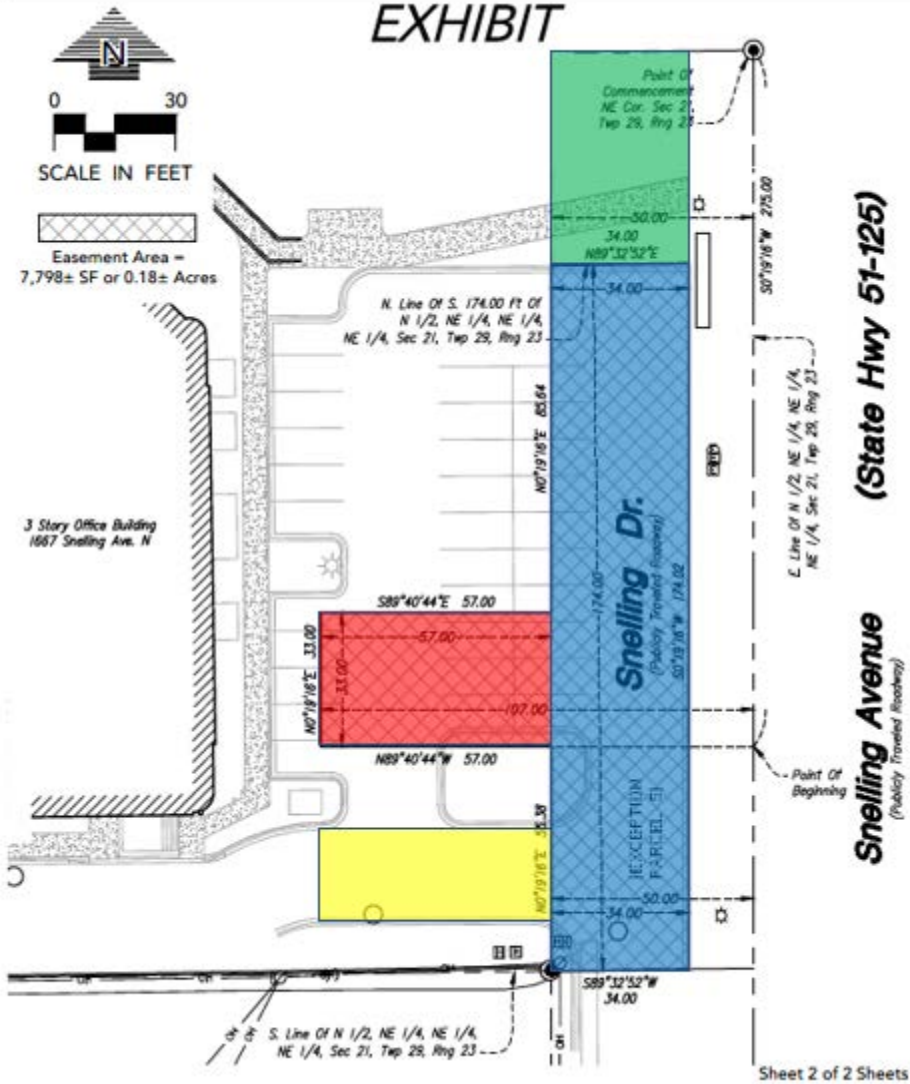
Steven F. Hough
Steven F. Hough - PLS License No. 54850

05/06/21
Date

LOUCKS
Loucks Project No. 11273D

21690895v3

EXHIBIT



[Reserved for Recording Data]

EASEMENT AGREEMENT
(Parking and Ingress/Egress)

THIS EASEMENT AGREEMENT (this “*Agreement*”) is made as of the ____ day of _____, 2021, by and between BUHL LARPEN TEUR WEST, LLC, a Minnesota limited liability company (“*Grantor*”), and BUHL GTA, LP, a Minnesota limited partnership (“*Grantee*”).

RECITALS:

- A. Grantor is the fee owner of certain real property located at 1644 Larpenteur Avenue West in the City of Falcon Heights, Ramsey County, Minnesota, as more particularly described below (the “*Grantor Property*”):

The East 250 feet of the North 500 feet except the West 150 feet of the East 160 feet of the North 283 feet of the Northwest quarter of the Northeast quarter of the Northeast quarter of Section 21, Township 29, Range 23.

and

The West 150 feet of the East 160 feet of the North 283 feet of the Northwest quarter of the Northeast quarter of the Northeast quarter of Section 21, Township 29, Range 23, West of the Fourth Principal Meridian.

- B. The Grantor Property is improved with an existing paved surface parking lot and related drive lanes, landscaping, curbs and similar improvements.
- C. Grantee is the fee owner of certain real property east of and adjacent to the Grantor Property located at 1667 Snelling Avenue North in the City of Falcon Heights, Ramsey County, Minnesota as more particularly described below (the “*Grantee Property*”):

That part of the West 133.00 feet of the Northeast quarter of the Northeast quarter of the Northeast quarter of Section 21, Township 29, Range 23, which lies South of the North 318.00 feet thereof and which lies North of the South 330.00 feet.

and

The Westerly 133 feet of the Northerly 318 feet excepting therefrom that part taken for Larpenteur Avenue, of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, Section 21, Township 29, Range 23, Ramsey County, Minnesota.

and

The North Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, except the West 133 feet thereof, in Section 21, Township 29, Range 23, Ramsey County, Minnesota, except that part taken for Snelling and Larpenteur Avenues.

- D. The Grantee Property is improved with two buildings historically known as the Farmers Union Grain Terminal Association Headquarters and related improvements. The Grantee intends to undertake to rehabilitate the buildings to convert the Grantee Property into an affordable multifamily rental apartment community containing 125 dwelling units (the “**Project**”). Grantor and Grantee contemplate that when the Project is completed, it will share in the use of the existing paved driveways located on a portion of the Grantor Property, and Grantee will have the exclusive right to access and use (i) forty-one (41) surface parking stalls located on a portion of the paved parking lot on the Grantor Property, plus (ii) those certain thirteen (13) surface parking stalls located partially on the Grantee Property and partially on the Grantor Property.
- E. Grantor desires to create and grant to Grantee, under the terms of this Agreement, a certain non-exclusive appurtenant easement benefiting the Grantee Property for vehicular and pedestrian ingress and egress, as well as for parking purposes, over a portion of the Grantor Property as more particularly described in Exhibit A hereto (the “**Easement Parcel**”), which easement is a condition of approval of the Planned Unit Development by the City of Falcon Heights for the Grantee Property.
- F. On or about the date of this Agreement, Grantee is entering into a certain Encroachment, Use, and Maintenance Agreement (Parking Improvements) (the “**Parking Encroachment Agreement**”) with the City of Falcon Heights, a Minnesota municipal corporation (the “**City**”). Pursuant to the Parking Encroachment Agreement, the Grantee is obtaining the right to encroach upon and use certain City property for the purpose of providing ten (10) surface parking stalls to the Project, provided, however, that after an initial period of forty-eight (48) months following completion of the Project, the City may terminate the Parking Encroachment Agreement with twelve (12) months advance, written notice.

- G. In the event of termination of the Parking Encroachment Agreement by the City, the Grantor desires to create and grant the Grantee, under the terms of this Agreement, the right to an easement for up to ten (10) additional surface parking stalls on the Grantor Property.

NOW, THEREFORE, Grantor and Grantee hereby agree as follows:

1. **Parking Easement.** Grantor hereby grants a perpetual exclusive appurtenant easement (the “*Parking Easement*”) for the benefit of the Grantee Property for parking purposes for up to 54 surface parking stalls upon the Easement Parcel (41 such stalls being entirely on the Grantor Property, and 13 of such stalls being partially on the Grantor property and partially on the Grantee Property), for use by the Grantee, its tenants, agents, employees, and invitees; provided, however, that such parking shall only be permitted over such portions of the Easement Parcel as are currently or are hereafter paved for use as a parking lot, and provided further that all such use of the Easement Parcel shall be subject to the same reasonable rules as the Grantor or a future fee owner of the Grantor Parcel may from time to time establish governing all parties’ use of the Easement Parcel.
2. **Vehicular Ingress/Egress Easement.** Grantor hereby grants a perpetual non-exclusive appurtenant easement (the “*Vehicular Access Easement*”) for the benefit of the Grantee Property for vehicular access, ingress, and egress purposes upon the Easement Parcel, for use by the Grantee, its tenants, agents, employees, and invitees; provided, however, that such vehicular access, ingress, and egress shall only be permitted over such portions of the Easement Parcel as are currently or are hereafter paved for use as a driveway or parking lot, and provided further that all such use of the Easement Parcel shall be subject to the same reasonable rules as the Grantor or a future fee owner of the Grantor Parcel may from time to time establish governing all parties’ use of the Easement Parcel.
3. **Pedestrian Ingress/Egress Easement.** Grantor hereby grants a perpetual non-exclusive appurtenant easement (the “*Pedestrian Easement*”) for the benefit of the Grantee Property for pedestrian access, ingress and egress over, upon, and across the Easement Parcel, for use by the Grantee, its tenants, agents, employees, and invitees; provided that all such use of the Easement Parcel shall be subject to the same reasonable rules as the Grantor or a future fee owner of the Grantor Parcel may from time to time establish governing all parties’ use of the Easement Parcel.
4. **Springing Easement.** Subject to the occurrence of the conditions set forth in this Section 4, Grantor hereby grants a perpetual exclusive appurtenant easement (the “*Springing Easement*”) for the benefit of the Grantee Property for parking purposes for up to 10 parking stalls to be located on the Grantor Property, in a location selected by Grantor in Grantor’s sole discretion, together with a perpetual non-exclusive appurtenant easement providing reasonable vehicular access, ingress, and egress to such parking stalls on the Grantor Property. The Springing Easement shall only become effective if, within twenty (20) years of the date of this Agreement, all of the following conditions have occurred:
 - a. The City has terminated the Parking Encroachment Agreement; and

- b. But for the Springing Easement becoming effective as to a number of parking stalls less than or equal to ten (10) parking stalls, the Grantee Property would be in violation of applicable zoning regulations governing the Grantee Property; and
- c. Grantee has given Grantor at least ninety (90) days' written notice of the termination of the Parking Encroachment Agreement and the number of parking stalls, less than or equal to ten (10) parking stalls, that are strictly required to comply with applicable zoning regulations.

If all of the foregoing conditions have been satisfied, then Grantor and Grantee will execute an amendment to this Agreement memorializing that the Springing Easement has become effective, as well as the location chosen by Grantor for the required number of parking stalls. Grantee's use of the Springing Easement shall be subject to the same reasonable rules as the Grantor or a future fee owner of the Grantor Parcel may from time to time establish governing all parties' use of parking improvements on the Grantor Parcel.

5. **Construction, Maintenance, Repair and Replacement.**

- a. Improvements by Grantee. In the event any modifications to the existing paved parking lot and paved driveways are necessary to allow for Grantee's use of such improvements, Grantee shall so notify Grantor and obtain Grantor's consent to such modifications, which consent will not be unreasonably withheld. Upon Grantor giving such consent, Grantee, along with its agents, assigns and contractors, shall have a right of entry onto the Easement Parcel with such personnel, equipment and materials as are necessary for constructing such modifications. Any such modifications by Grantee shall be constructed in a good and workmanlike manner to a condition suitable for their intended use and in accordance with all applicable laws, ordinances and regulations.
- b. Modifications by Grantor. In the event that the Grantor shall undertake to develop and construct any buildings or other improvements on the Grantor Property, then the Grantor may relocate the Easement Parcel to any other location on the Grantor Property, with the consent of both the Grantee and the Grantee's limited partner, RBC Community Investments, LLC, an Illinois limited liability company (the "**Limited Partner**"), and its successors and/or assigns, which consent will not be unreasonably withheld, provided that the number of parking stalls available for use by the Grantee Property, on a nonexclusive basis, shall not be less than 54 (including the 13 spaces located partially on the Grantee Property), plus any number of parking stalls required pursuant to the Springing Easement. In the event of any modifications to the parking improvements pursuant to this Section 5(b), such modifications by Grantor shall be constructed in a good and workmanlike manner to a condition suitable for their intended use and in accordance with all applicable, laws ordinances and regulations. In the event that such modifications result in a temporary reduction in the number of parking stalls available for use by the Grantee and its licensees within the bounds of the Easement Parcel, the Grantor shall permit the Grantee and its licensees to utilize a

number of parking stalls on the Grantor Property that is equivalent to the number of parking stalls temporarily made unavailable on the Easement Parcel. In the event that such modifications are anticipated to result in a permanent reduction in the number of parking stalls available for use by the Grantee and its licensees within the bounds of the Easement Parcel, Grantor and Grantee shall amend this Agreement to modify Exhibit A hereto such that the total amount The Grantor shall provide Grantee and the Limited Partner with written notice of any such planned modifications, and provide Grantee and the Limited Partner thirty (30) days to evidence consent to such modifications. Notice to the Limited Partner shall be provided consistent with Section 11 hereof.

- c. **Maintenance, Repair and Replacement.** All costs of construction undertaken by Grantee pursuant to Section 5(a) or Grantor pursuant to Section 5(b) shall be borne by the party undertaking construction of the improvements. Otherwise, Grantor and Grantee shall divide equally the cost of all required maintenance, repair, and replacement of the improvements (including the paved surface parking lot and drive lanes) located on the Easement Parcel. If a party hereto pays for such maintenance on behalf of the other party, the payor party shall be promptly reimbursed by the opposite party.
6. **Obstructions.** Neither Grantor nor Grantee or their respective successors or assigns, shall construct, install, or place any barrier, curbing, fence or obstruction on any portion of the Easement Parcel so as to obstruct the use and enjoyment of the Easement Parcel by either party as contemplated by this Agreement.
7. **Insurance.** Each party to this Agreement shall maintain comprehensive general liability insurance against claims for bodily injury, death and property damage occurring in or upon such party's property and appurtenant easements, including contractual liability coverage for claims made pursuant to the provisions of this Agreement, in such amounts as may be carried from time to time by prudent owners of similar properties in the area, but in all events to afford protection for limits of not less than \$1,000,000.00 combined single limit for bodily injury or property damage. Grantor and Grantee shall each name each other as an additional insured under all such policies.
8. **Covenants to Run with Land.** Grantor and Grantee hereby agree that the easements set forth herein shall run with the land and shall be binding on all parties having any right, title or interest to the Grantor Property and the Grantee Property, their heirs, successors and assigns.
9. **Waiver.** Any waiver by any party of any default of the other party hereunder shall not affect or impair any right arising from any subsequent default.
10. **Right of Limited Partner to Cure.** In the event of a default of a party hereto, the Limited Partner shall have the right, but not the obligation, to cure such default. The parties hereto shall accept the Limited Partner's cure as if undertaken by the defaulting party.

11. **Notice to Limited Partner.** Any notice required to be given by the provisions of this Agreement to shall be addressed as follows:

a. To the Limited Partner:

RBC Community Investments, LLC
600 Superior Avenue, Suite 2300
Cleveland, Ohio 44114
Attention: President and General Counsel

b. To the Grantor:

Buhl Larpenteur West, LLC
5100 Eden Avenue, Suite 317
Edina, Minnesota 55436

c. To the Grantee:

Buhl GTA, LP
5100 Eden Avenue, Suite 317
Edina, Minnesota 55436

12. **Indemnification.** Each party hereto agrees to indemnify, defend and hold harmless the other party from and against any and all cost, liability, loss, damage or expense, including, without limitation, reasonable attorney's fees and expenses, arising out of or in any way related to the easements created by this Agreement. Notwithstanding the foregoing, if the United States Department of Housing and Urban Development ("HUD") is ever deemed the "Owner" of all or part of the Grantee Property, HUD shall not be subject to the indemnification provisions contained in this Section 12. HUD prohibits and does not authorize any expenditure which would violate 31 USC 1341 (the "Anti-Deficiency Act"). Any provision of this Agreement which violate(s)(d) the Anti-Deficiency Act, in the past, present or future, will not be enforced against HUD. Notwithstanding any other provision of this Agreement, HUD whether in the capacity of subsidy provider, loan insurer, lender, owner, lessee or mortgagee in possession, shall have no obligation of reimbursement, indemnity, or holding harmless, of any nature whatsoever, to any governmental entity, private entity, person or party, either now or in the future. Additionally, for so long as HUD is the insurer or holder of a mortgage on the Grantee Property, any indemnification obligation of Grantee shall be limited to available liability insurance proceeds, Surplus Cash and/or non-Project Assets, as each such term is defined in the Regulatory Agreement for Multifamily Projects by and between Grantee and HUD.

13. **Severability.** If any clause, provision or portion of this Agreement is deemed to be illegal, invalid, or unenforceable under present or future laws, then the remainder of the Agreement shall remain unaffected but the illegal, invalid or unenforceable provision

shall be modified in such a way that effectuates the intention of this Agreement but complies with all applicable laws.

14. **Captions.** The caption of each paragraph of this Agreement is for convenience only and shall not be considered in the interpretation or construction of any provision of this Agreement.
15. **Amendment or Modification.** This Agreement and any of the rights, licenses and easements created hereby may not be modified or terminated except by a written instrument executed by all parties with a fee interest in the Grantor Property and the Grantee Property, and consented to by the City of Falcon Heights if required in connection with the Planned Unit Development for the Grantee Property.
16. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.
17. **Merger Not Intended.** Common ownership of the Grantor Property and the Grantee Property or any portions thereof shall not cause this Agreement to be extinguished by operation of merger.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement as of the day and year first written above.

GRANTOR:

BUHL LARPENTEUR WEST, LLC,
a Minnesota limited liability company

By: _____
Peter Deanovic, its Chief Executive Officer

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ___ day of _____, 2021, by Peter Deanovic, the Chief Executive of Buhl Larpenteur West, LLC, a Minnesota limited liability company, on behalf of the limited liability company.

Notary Public

GRANTEE:

BUHL GTA, LP,
a Minnesota limited partnership

By: Buhl GTA GP, LLC, a Minnesota limited liability company
Its: General Partner

By: _____
Peter Deanovic, its Chief Executive Officer

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ___ day of _____, 20___, by Peter Deanovic, the Chief Executive Officer of Buhl GTA GP, LLC, a Minnesota limited liability company, the general partner of Buhl GTA, LP, a Minnesota limited partnership, on behalf of the limited partnership.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Winthrop & Weinstine, P.A. (KMM)
225 South Sixth Street, Suite 3500
Minneapolis, Minnesota 55402
(612) 604-6400

EXHIBIT A

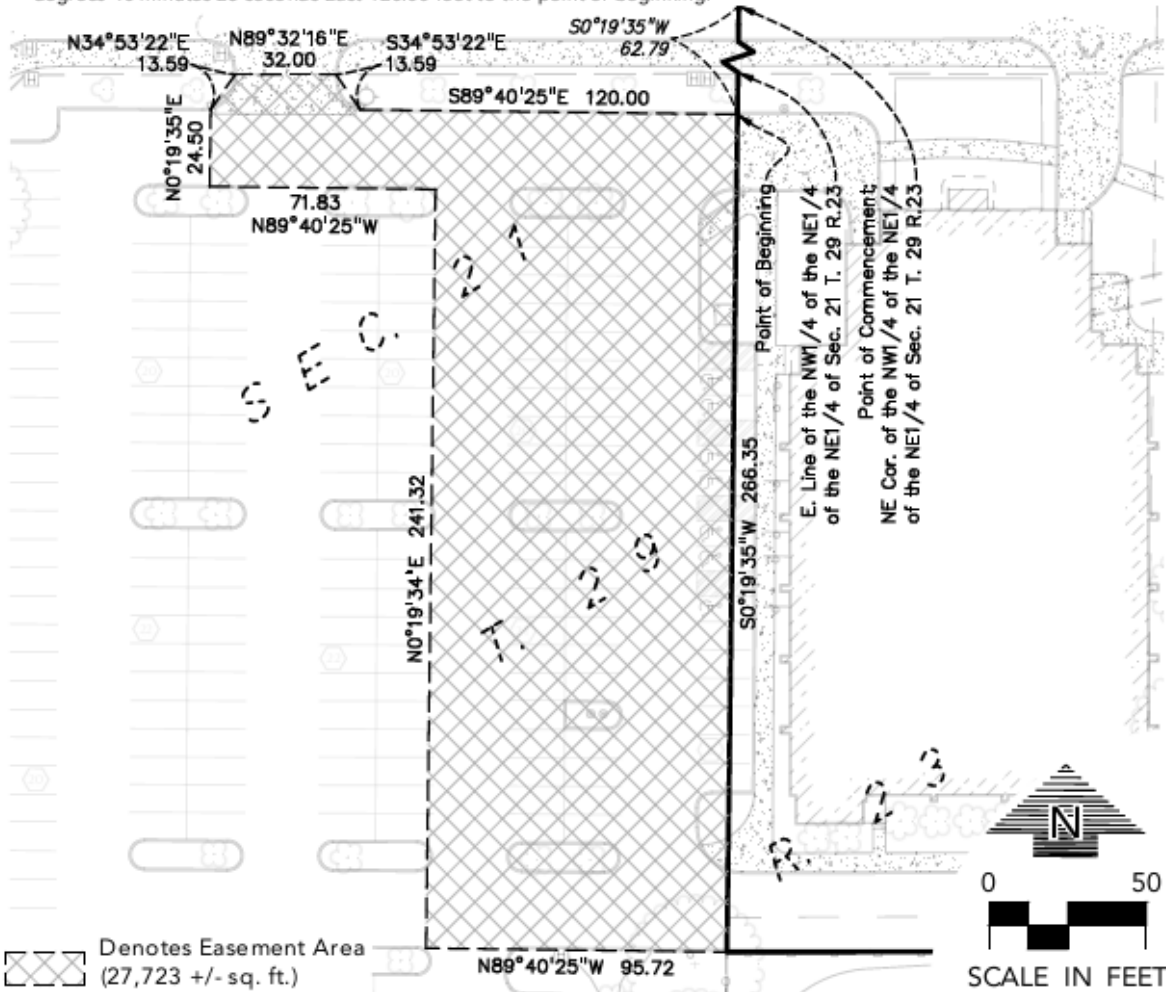
(Legal Description, and Depiction, of Easement Parcel)

EXHIBIT

Parking Easement
March 22, 2021

That part of the East 250 feet of the North 500 feet of the Northwest quarter of the Northeast quarter of the Northeast quarter of Section 21, Township 29, Range 23, Ramsey County, Minnesota, described as follows:

Commencing at the northeast corner of the Northwest quarter of the Northeast quarter of the Northeast quarter of said Section 21; thence on an assumed bearing South 00 degrees 19 minutes 35 seconds West, along the east line of said Northwest quarter, 62.79 feet to the point of beginning; thence continue South 00 degrees 19 minutes 35 seconds West 266.35 feet; thence North 89 degrees 40 minutes 25 seconds West 95.72 feet; thence North 00 degrees 19 minutes 35 seconds East 241.32 feet; thence North 89 degrees 40 minutes 25 seconds West 71.83; thence North 00 degrees 19 minutes 35 seconds East 24.50 feet; thence North 34 degrees 53 minutes 22 seconds East 13.59 feet; thence North 89 degrees 32 minutes 16 seconds East 32.00 feet; thence South 34 degrees 53 minutes 22 seconds East 13.59 feet; thence South 89 degrees 40 minutes 25 seconds East 120.00 feet to the point of beginning.



I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

Steven F. Hough
Steven F. Hough - PLS License No. 54850

03/22/21
Date

LOUCKS

Locks Project No. 11273D

18075960v5

**CITY OF FALCON HEIGHTS
COUNCIL RESOLUTION**

May 26, 2021

No. 21-24

**A RESOLUTION APPROVING ENCROACHMENT AGREEMENTS,
EASEMENT AND CONVEYANCE OF PROPERTY WITH BUHL, GTA,
LP**

WHEREAS, Buhl GTA, LP, limited partnership (“Buhl”) is proposing to construct a 125-unit multi-family rental housing project (“Project”) to be located on the property legally described in Exhibit A (“Property”);

WHEREAS, Buhl has requested an encroachment agreement over certain City Property for 10 parking stalls (“Parking Encroachment Agreement”), which encroachment was contemplated as part of the PUD for the project and an additional encroachment agreement for green space over certain City Property (“Green Space Encroachment Agreement”) which is required in connection with certain funding for the Project (collectively, the “Parking Encroachment Agreement” and “Green Space Encroachment Agreement” are referred to herein as the “Encroachment Agreements”). The proposed forms of Encroachment Agreements are attached hereto as Exhibits A and B, respectively;

WHEREAS, Buhl has also requested conveyance of a portion of City property as provided in the Quit Claim Deed attached hereto as Exhibit C (“City Parcel”), which City Parcel is located in the middle of the proposed parking area for the Project and which is used for a City vehicle turnaround. In exchange for the Quit Claim Deed for the City Parcel, Buhl has agreed to provide an easement to the City over the Property for a comparable turnaround for City vehicles in the form attached hereto as Exhibit D (“Easement”);

WHEREAS, Minn. Stat. § 462.356, subd. 2 requires that the Planning Commission review the City's proposed acquisitions and dispositions of property, and;

WHEREAS, Minn. Stat. § 462.356, subd. 2 provides for an exception from the Planning Commission review requirement upon 2/3 vote of the City Council dispensing with the requirement and finding that the acquisition or disposal of the property has no relationship to the comprehensive municipal plan.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Falcon Heights, Minnesota:

1. The City Council finds that the disposition of the City Parcel has no relationship to the comprehensive municipal plan and review by the Planning Commission is hereby dispensed with;

2. That the Encroachment Agreements, Quit Claim Deed and Easement documents are hereby in all respects approved, subject to modifications that do not alter the substance of the transaction and that are approved by the Mayor, City Administrator and City Attorney, conditioned upon Buhl paying for all costs associated with the preparation and recording of the documents.

3. That the Mayor and City Administrator are hereby authorized to execute the Encroachment Agreements, Quit Claim Deed and Easement on behalf of the City in accordance with terms of this Resolution.

ADOPTED this 26th day of May, 2021 by the City Council of Falcon Heights, Minnesota.

Moved by:

Approved by: _____

Randall C. Gustafson
Mayor

GUSTAFSON ___ In Favor
LEEHY
MIAZGA ___ Against
ANDREWS
WEHYEE

Attested by: _____

Sack Thongvanh
City Administrator

EXHIBIT A
PARKING ENCROACHMENT AGREEMENT

EXHIBIT B
GREEN SPACE ENCROACHMENT AGREEMENT

EXHIBIT C
QUIT CLAIM DEED

EXHIBIT D
EASEMENT



REQUEST FOR COUNCIL ACTION

Meeting Date	May 26, 2021
Agenda Item	Policy G2
Attachment	Document(s)
Submitted By	Sack Thongvanh, City Administrator

Item	Amber Union Project – Accept Metropolitan Livable Communities Act Grant Agreement for the Tax Base Revitalization Account Contamination Cleanup Grant Program (TBRA) and Adopt Fair Housing Policy
Description	<p>In 2020, the City submitted an application to the Metropolitan Council TBRA Contamination Cleanup Grant Program on behalf of Buhl for contaminate (Asbestos) abatement and removal.</p> <p>The City was awarded \$962, 200 by the MetCouncil on January 13, 2020. The grant will expire December 31, 2023.</p> <p>Buhl GTA, LP, Limited Partnership has requested that the grant be converted to a loan instead of a grant.</p>
Budget Impact	The loan will be a balloon payment at the end of the term that the City will turn back to the MetCouncil. The terms of the loan will be 41.5 years.
Attachment(s)	<ul style="list-style-type: none"> • Memorandum from City Attorney • Fair Housing Policy • Metropolitan Livable Communities Act Grant Agreement • Resolution 21-25 Approving TBRA Grant with the MetCouncil • Resolution 21-26 Approving TBRA Loan Documents with Buhl GTA, LP, Limited Partnership • TBRA Loan Agreement with Buhl • TBRA Loan – Subordination Agreement • TBRA Mortgage • TBRA Promissory Note
Action(s) Requested	Staff recommends approval of attached resolution, Fair Housing Policy and authorize the Mayor and City Administrator to execute all necessary documents.

*Payroll has not been processed

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MEMORANDUM

FROM: ANDREA POEHLER, CITY ATTORNEY
TO: CITY OF FALCON HEIGHTS
DATE: MAY 26, 2021
RE: AMBER UNION



CAMPBELL KNUTSON
PROFESSIONAL ASSOCIATION

Background

The City previously approved a PUD for the property owned by BUHL GTA, LP, located at 1667 Snelling Avenue North for development of a multi-family development consisting of approximately 125 affordable apartments and 930 square feet of retail space (“Project”).

Grant and Loan Documents

In connection with the Project, Buhl has requested assistance with the costs for contamination cleanup. The city applied for and received \$962,200 in grant funds through the Tax Base Revitalization Account established within the Metropolitan Livable Communities Fund (“Grant Funds”). As a condition to the issuance of the Grant Funds, the City is required to enter into the Metropolitan Livable Communities Act Grant Agreement.

In order to provide the Grant Funds to Buhl, the City is proposing to enter into a 41.5 year loan secured by a promissory note and mortgage, which mortgage will be subject to a subordination agreement which subordinates the City’s loan to the Senior Lender, Colliers Mortgage LLC, which Senior Note is insured or held by HUD as part of FHA Project No. 092-35853.

Encroachment Agreements

In addition to the grant funding, Buhl has requested encroachment agreements for 10 parking stalls and open space over portions of City right of way for Snelling Drive. The encroachment for the 10 parking spaces was identified as a requirement in the PUD Agreement for the Project. The encroachment for open space is based on a requirement by the National Historic Registry in order for Buhl to receive a historic tax credit for the Project. Each of these documents allows the City to terminate the encroachments in the event the City requires the use of the encroachment areas after 5 years. The encroachment agreements also require that Buhl pay up to \$60,000 to return the areas to the current conditions. In addition, the Parking Encroachment Agreement requires that Buhl install conduit for a future public EVCS station in an amount up to \$20,000 in connection with the construction of the parking lot.

Deed and Easement Documents

Buhl has also requested that the City convey to Buhl a small rectangular portion of City property that is located in the middle of the proposed parking lot. This portion has historically been used by the City for a turnaround of City vehicles. In exchange for the conveyance, Buhl will grant a permanent easement within the parking lot for a City vehicle turnaround. The area to be conveyed to Buhl will also require vacation of right of way in the property, which is also before the City Council for approval at the meeting tonight.

I have reviewed the proposed agreements referenced herein and have approved the form of the agreements.

Attachments

Resolution No. _____ - A Resolution Approving Metropolitan Livable Communities Act Grant Agreement

Attachment: Metropolitan Livable Communities Act Grant Agreement

Resolution No. _____ - A Resolution Approving LCDA Loan Documents with Buhl GTA, LP, Limited Partnership

Attachments: Loan Agreement
Promissory Note
Mortgage
Subordination Agreement

Resolution No. _____ - A Resolution Approving Encroachment Agreements, Easement and Conveyance of Property with Buhl GTA, LP

Attachments: Parking Encroachment Agreement
Green Space Encroachment Agreement
Quit Claim Deed
Easement Grant (Turnaround Lane)

City of Falcon Heights

Fair Housing Policy

1. Purpose/Vision

Title VIII of the Civil Rights Act establishes federal policy for providing fair housing throughout the United States. The intent of Title VIII is to assure equal housing opportunities for all citizens. Furthermore, the City of Falcon Heights, as a recipient of federal community development funds under Title I of the Housing and Community Development Act of 1974, is obligated to certify that it will affirmatively further fair housing. Finally, the City of Falcon Heights endeavors to ensure that all people feel welcomed, treated fairly, and provided resources for fair housing when looking to reside in our city.

2. Fair Housing Policy Statement

It is the policy and commitment of the City of Falcon Heights to ensure that fair and equal housing opportunities are granted to all persons in all housing opportunities and development activities funded by the city regardless of race, color, religion, gender, sexual orientation, marital status, status with regard to public assistances, familial status, national origin, or disability. This shall be done through strong external policies that provide meaningful access to all constituents and fair housing informational and referral services; and internal practices and procedures do not discriminate and that affirmatively further fair housing.

3. External Practices

a. Reference Organizations

The City of Falcon Heights does not claim to have all the resources needed to solve diverse fair housing issues, therefore the City believes utilizing external organizations along with City resources will provide significant assistance to individuals' housing needs. If contacted by current or potential residents of Falcon Heights, the City will request that the individual complete a Concern Report, the City will access the report, then determine if they could be assisted by the City or by reference organizations. The list below of organizations is not an exhausted list but a starting place for assistance.

-U.S. Department of Housing and Urban Development-Minnesota

-Minnesota Department of Human Rights

-Mid-Minnesota Legal Aid

-Housing Justice Center

-Home Line Minnesota

-Southern Minnesota Regional Legal Services

b. Meaningful Access

i. Online Access

The City of Falcon Heights will provide information about fair housing displayed on the City website under the heading "Resources for Residents." The website will also have links to fair housing resources such as those listed in part 3. a. of

this policy. In addition, Information on the website will also include the City staff contract for fair housing concerns. Finally, this policy will be posted on the City's website.

ii. In-Person Information

Upon inquiries about fair housing policies, that individual will be directed to the Zoning Administrator who will then provide them information about the City's list of reference organizations and inform them of City practices to ensure fair housing.

c. Languages

The City of Falcon Heights is committed to providing information in the native language of its residents. Therefore, if requested, the City of Falcon Heights will connect the individual to an organization that can assist with translation of fair housing policies.

d. Rental Licensing Program

The City of Falcon Heights administers a rental licensing program that requires property owners of rental dwellings and multifamily rental dwellings to obtain an annual license from the City and submit the property to an inspection by the Fire Marshal. The City will provide information on this fair housing policy to licensees. The City will also consider hosting a training session for landlords that provides information on fair housing and other relevant landlord/tenant issues.

4. Internal Practices

The City of Falcon Heights commits to the following steps to promote awareness and sensitivity to fair housing issues in all government functions.

a. Reporting

If an individual contacts City Hall to voice a fair housing concern, a Concern Report form will be requested to be complete. Once the report is completed, City staff will connect the individual to organizations that can assist the individual. The Concern Report would then be on file at City Hall. Staff will follow-up as needed to ensure the individual has received assistance.

b. Financial & Zoning Considerations

Developers who seek financial assistance and/or zoning to Planned Unit Development must adhere to the City's Fair Housing Policy. Information on this policy will be provided to Developers at the onset of conversations regarding assistance or zoning change.

c. Housing Analysis

The City will review its housing inventory to examine the affordability of both rental and owner-occupied housing and whether all reasonable actions have

been taken to remove barriers to ensure adequate housing choices for all city residents.

d. Code Analysis

The City will review its municipal code, with specific focus on ordinances related to zoning, buildings and occupancy standards, to identify any potential for disparate impact or disparate treatment. New ordinance will also be evaluated in the context of fair housing.

e. Project Planning and Analysis

When reviewing proposed housing developments, the City will consider fair housing issues, including whether potential projects may perpetuate segregation or lead to displacement of protected classes. The City is committed to working with other agencies to remedy any displacement or segregation that may occur.

f. Community Engagement

The City commits to ongoing community engagement. Specifically, the City commits to robust conversations with the community regarding potential housing projects, zoning changes, and other land use planning decisions.

The City of Falcon Heights City Council will review and revise, if necessary, the Fair Housing Policy on an annual basis.

**CITY OF FALCON HEIGHTS
COUNCIL RESOLUTION**

May 26, 2021

No. 21-25

**A RESOLUTION APPROVING METROPOLITAN LIVABLE
COMMUNITIES ACT GRANT AGREEMENT**

WHEREAS, the City of Falcon Heights (“City”) applied for Tax Base Revitalization Account grant funds through the Metropolitan Livable Communities Fund in the amount of \$962,200 (“Grant Funds”) to assist with contamination cleanup for the development of the Buhl GTA, LP (“Buhl”) development of a multifamily rental housing facility which includes 125 affordable apartments (“Project”) within the City;

WHEREAS, the City has been awarded the Grant Funds for the Project and, as a condition of funding, is required to enter into the Metropolitan Livable Communities Act Grant Agreement attached hereto (“Grant Agreement”);

WHEREAS, the City agrees to the terms and obligations contained in the Grant Agreement and desires to enter into the Grant Agreement;

WHEREAS, the City has the institutional, managerial and financial capability to ensure adequate administration of the Project;

WHEREAS, the City will comply with all applicable laws and regulations as stated in the Grant Agreement governing the Grant Funds;

WHEREAS, the City will require that Buhl execute the necessary loan documents as a condition of release of the Grant Funds for the Project; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Falcon Heights, Minnesota, that the Grant Agreement is hereby in all respects approved and that the Mayor and City Administrator are hereby authorized to execute the Grant Agreement on behalf of the City and to carry out, on behalf of the City, the City’s obligations thereunder.

ADOPTED this 26th day of May, 2021 by the City Council of Falcon Heights, Minnesota.



Moved by:

Approved by: _____

Randall C. Gustafson
Mayor

GUSTAFSON
LEEHY
MIAZGA
ANDREWS
WEHYEE

_____ In Favor
_____ Against

Attested by: _____

Sack Thongvanh
City Administrator

**CITY OF FALCON HEIGHTS
COUNCIL RESOLUTION**

May 26, 2021

No. 21-26

**A RESOLUTION APPROVING LCDA LOAN DOCUMENTS WITH BUHL
GTA, LP, LIMITED PARTNERSHIP**

WHEREAS, Buhl GTA, LP, limited partnership (“Buhl”) is proposing to construct a 125-unit multi-family rental housing project (“Project”) to be located on the property legally described in Exhibit A (“Property”);

WHEREAS, the City has previously applied for and received a TBRA grant from the Metropolitan Council in the amount of \$962,000.00 in connection with the Developer’s construction of the Project, and approved execution of a grant agreement for the TBRA grant on May 26, 2021; and

WHEREAS, the Developer has requested and the City has agreed to provide the TBRA grant funding in the form of a loan, and the parties have negotiated a TBRA loan agreement, promissory note, mortgage and subordination agreement (the “TBRA Loan Documents”) in the form attached as Exhibit B;

WHEREAS, the City has reviewed the LCDA Loan Documents and finds that the execution of the same and the City’s performance of its obligations thereunder are in the best interest of the City and its residents;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Falcon Heights, Minnesota, that the TBRA Loan documents are hereby in all respects approved, subject to modifications that do not alter the substance of the transaction and that are approved by the Mayor, City Administrator and City Attorney, provided that execution of the TBRA Loan Documents shall be conclusive evidence of their approval.

FURTHER, be it resolved that the Mayor and City Administrator are hereby authorized to execute the LCDA Loan Documents on behalf of the City and to carry out, on behalf of the city, the City’s obligations thereunder.

ADOPTED this 26th day of May, 2021 by the City Council of Falcon Heights, Minnesota.

Moved by:

Approved by: _____

Randall C. Gustafson
Mayor

GUSTAFSON ____ In Favor
LEEHY
MIAZGA ____ Against
ANDREWS
WEHYEE

Attested by: _____

Sack Thongvanh
City Administrator

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Real property in the City of Falcon Heights, County of Ramsey, State of Minnesota, described as follows:

That part of the West 133.00 feet of the Northeast quarter of the Northeast quarter of the Northeast quarter of Section 21, Township 29, Range 23, which lies South of the North 318.00 feet thereof and which lies North of the South 330.00 feet.

and

The Westerly 133 feet of the Northerly 318 feet excepting therefrom that part taken for Larpenteur Avenue, of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, Section 21, Township 29, Range 23, Ramsey County, Minnesota.

and

The North Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, except the West 133 feet thereof, in Section 21, Township 29, Range 23, Ramsey County, Minnesota, except that part taken for Snelling and Larpenteur Avenues.

EXHIBIT B
TBRA LOAN DOCUMENTS

LOAN AGREEMENT (TBRA Loan)

This Loan Agreement (“Agreement”) is made this ____ day of June 2021, between BUHL GTA, LP, a Minnesota limited partnership ("Borrower") and the City of Falcon Heights, a Minnesota municipal corporation ("Lender").

RECITALS

A. The Lender and the Metropolitan Council (the “Council”) have entered into a Metropolitan Livable Communities Act Grant Agreement approved by the Council on January 13, 2020 (the “Grant Agreement”), committing grant funds from the Council’s Tax Base Revitalization Account (the “Grant”) to the Lender, to be used by the Lender to assist the Borrower with the costs of asbestos and lead-based paint abatement, and related environmental oversight (the “Project Costs”) on certain property located in the City of Falcon Heights described in Exhibit A (the “Property”).

B. In order to facilitate the use of low income tax credits for affordable multifamily rental housing on the Property (the “Affordable Housing”), the Borrower has requested that the Grant by the Lender to the Borrower be structured as a loan.

C. Lender agrees to loan to Borrower the proceeds of the Grant to finance a portion of the Project Costs on the Property, pursuant to the terms and conditions of this Agreement.

D. In consideration for the loan contemplated by this Agreement, Borrower is executing and delivering to Lender this Agreement.

ACCORDINGLY, to induce Lender to make the Loan (as defined hereinafter) to Borrower, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Loan Amount. Subject to and upon the terms and conditions of this Agreement and the Grant Agreement, Lender agrees to loan to Borrower the sum of Nine Hundred Sixty-Two Thousand Two Hundred and no/100 Dollars (\$962,200.00), or so much thereof as may have been advanced to Borrower (the “Loan”). The Loan shall be evidenced by a promissory note ("Note") payable by Borrower to Lender and substantially in the form of Exhibit B attached to this Agreement, which shall be dated as of the date of closing on the Loan (the “Loan Closing Date”). Proceeds of the Loan shall be disbursed in accordance with Section 3 hereof.

2. Repayment of Loan. The Loan shall be repaid without interest as follows:

(a) No interest shall accrue on the Note.

(b) The entire amount of principal of the Loan shall be due and payable on January 1, 2063. The Borrower may prepay the Loan, in whole or in part, on any date, subject to the terms provided in the Note.

3. Disbursement of Loan Proceeds.

(a) The proceeds of the Loan shall be disbursed by the Lender to the Borrower in accordance with the terms and conditions of the Grant Agreement and the terms of this Agreement. Notwithstanding anything to the contrary contained herein, the Lender shall only be obligated to make the disbursements hereunder to pay proceeds of the Loan in an amount up to or equal to the lesser of the amount of the Loan or the amount actually disbursed by the Council to the Lender under the Grant Agreement. Notwithstanding anything to the contrary herein, any excess of the Project Costs over the principal amount of the Loan shall be the sole responsibility of the Borrower.

(b) Disbursement of the proceeds of the Loan will be made subject to the conditions precedent that on or prior to the Loan Closing Date:

(i) The Lender has received from Borrower, without expense to Lender, executed copies of this Agreement and the Note, and Borrower further having caused to be executed and delivered to Lender a mortgage in substantially the form set forth hereto at Exhibit C (the "Mortgage");

(ii) The Borrower has presented the Lender with evidence that the Loan funds are being allocated solely to the Affordable Housing on the Property; and

(iii) No Event of Default under this Agreement or the Grant Agreement shall have occurred and be continuing.

4. No Business Subsidy. The parties agree and acknowledge that the Loan is not a business subsidy as defined in Minnesota Statutes, Section 116J.993, because the assistance is for housing.

5. Covenants, Representations, Warranties, and Agreements. Borrower covenants, represents, warrants to Lender, and agrees that:

(a) Borrower is duly authorized and empowered to execute, deliver, and perform this Agreement and to borrow money from Lender.

(b) The execution and delivery of this Agreement, and the performance by Borrower of its obligations hereunder, do not and will not violate or conflict with any provision of law and do not and will not violate or conflict with, or cause any default or event of default to occur under, any agreement binding upon Borrower.

(c) The execution and delivery of this Agreement has been duly approved by all necessary action of Borrower, and this Agreement has in fact been duly executed and delivered by Borrower and constitutes its lawful and binding obligation, legally enforceable against it.

(d) Borrower warrants that it shall keep and maintain books, records, and other documents relating directly to the receipt and disbursements of Loan proceeds and that any duly authorized representative of Lender shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all such books, records, and other documents of Borrower pertaining to the Loan disbursements until the completion of all closeout procedures and the final settlement and conclusion of all issues arising out of this Loan.

(e) Borrower warrants that it has fully complied with all applicable state and federal laws pertaining to its business and will continue to comply throughout the terms of this Agreement. If at any time Borrower receives notice of noncompliance from any governmental entity, Borrower agrees to take any necessary action to comply with the state or federal law in question.

(f) Borrower warrants that it will use the proceeds of the Loan made by Lender solely for the Project Costs.

(g) Borrower warrants that it will not create, permit to be created, or allow to exist any liens, charges, or encumbrances prior to the obligation created by this Loan Agreement, except as otherwise authorized in writing by Lender and except as may be allowed pursuant to the Mortgage.

(h) Borrower shall obey and comply with all federal, state and local laws, rules and regulations in connection with the Project.

(i) Borrower is bound by all the terms and conditions of the Grant Agreement to the same extent as the Lender, subject to Section 10 hereof.

(j) Borrower shall comply with all requirements of the Grant Agreement applicable to the Lender, subject to Section 10 hereof.

6. Event of Default by Borrower. The following shall be Events of Default under this Agreement, subject to any cure or grace periods contained in the Loan Documents:

(a) failure to pay any principal or interest on the Loan when due;

(b) any material representation or warranty made by Borrower herein or in any document, instrument, or certificate given in connection with this Agreement, the Note, or the Mortgage (the "Loan Documents") which is materially false when made;

(c) Borrower fails to pay its debts as they become due, makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, files a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, becomes "insolvent" as that term is generally defined under the Federal Bankruptcy Code, files an answer admitting insolvency or inability to pay its debts as they become due in any involuntary bankruptcy case commenced against it, or fails to obtain a dismissal of such case within thirty (30) days after its commencement or convert the

case from one chapter of the Federal Bankruptcy Code to another chapter, or be the subject of an order for relief in such bankruptcy case, or be adjudged a bankrupt or insolvent, or has a custodian, trustee, or receiver appointed for, or has any court take jurisdiction of its property, or any part thereof, in any proceeding for the purpose of reorganization, arrangement, dissolution, or liquidation, and such custodian, trustee, or receiver is not discharged, or such jurisdiction is not relinquished, vacated, or stayed within thirty (30) days of the appointment;

(d) a garnishment summons or writ of attachment is issued against or served upon Lender for the attachment of any property of Borrower in Lender's possession or any indebtedness owing to Borrower, unless appropriate papers are filed by Borrower contesting the same within thirty (30) days after the date of such service or such shorter period of time as may be reasonable in the circumstances;

(e) Borrower breaches or fails to perform any other term or condition of this Agreement not specifically described as an Event of Default in this Agreement and such breach or failure continues for a period of thirty (30) days after Lender has given written notice to Borrower specifying such default or breach, unless Lender agrees in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lender will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Borrower within the applicable period and is being diligently pursued until the Default is corrected, but no such extension shall be given for an Event of Default that can be cured by the payment of money (i.e., payment of taxes, insurance premiums, or other amounts required to be paid hereunder); or

(g) any breach by Borrower of any other agreement between Borrower and Lender.

Notwithstanding anything to the contrary in the Loan Documents, the limited partner of the Borrower ("Investor") shall have the right, but not the obligation, to cure any default of Borrower, and Lender agrees to accept cures tendered by Investor as follows: (i) with respect to any monetary default, Lender shall notify Investor in writing of such monetary default, and Investor shall have ten (10) days after the receipt of such notice of such monetary default to cure such monetary default; and (ii) with respect to any non-monetary default, Lender shall notify Investor in writing of such non-monetary default, and Investor shall have thirty (30) days after the receipt of such notice of such non-monetary default to cure such non-monetary default; provided, however, that if such non-monetary default cannot be cured within such thirty- (30-) day cure period, then Lender shall permit additional time to cure such non-monetary default as long as Investor is diligently pursuing such cure.

Notwithstanding anything to the contrary contained in the Loan Documents, the following transfers of interests in Borrower (or in the interests of the partners or members of Borrower or its general partner) shall be expressly permitted under the Loan Documents, and shall not be deemed an Event of Default or trigger any due on sale or other similar provisions in the Loan Documents: (a) the sale, transfer, conveyance or pledge of the Investor's or of any limited partner of the Borrower's ("Special Limited Partner") interest in Borrower; (b) the sale, transfer, conveyance or pledge of any interests within the Investor or Special Limited

Partner; (c) the removal of the general partner of Borrower for cause under the terms of the Borrower's then current partnership agreement and the admission of a new or additional substitute general partner; (d) the sale, transfer, conveyance or pledge of the state tax credit investor member's interest in the general partner; (e) the pledge or transfer of the general partner's interest in the Borrower in connection with a tax credit equity bridge loan to the Borrower; and (f) any amendment to the limited partnership agreement or operating agreement evidencing the transfers described above.

7. Lender's Remedies upon Borrower's Default. Upon an Event of Default by Borrower and after provision by Lender of written notice, and subject to any cure or grace periods contained in the Loan Documents, Lender shall have the right to exercise any or all of the following remedies (and any other rights and remedies available to it):

- (a) declare the principal amount of the Loan and any accrued interest thereon to be immediately due and payable upon providing written notice to Borrower;
- (b) suspend its performance under this Loan Agreement;
- (c) take any action provided for at law or in equity to enforce compliance by Borrower with the terms of this Agreement and the Note or to seek repayment or reimbursement of the Loan funds disbursed to Borrower, or to otherwise compensate the Lender for any damages on account of such Event of Default;
- (d) exercise its rights under the Mortgage;
- (e) terminate this Agreement.

In addition to any other amounts due on the Loan, and without waiving any other right of Lender under any this Agreement or any other instrument securing the Loan applicable documents, Borrower shall pay to Lender a late fee of \$250 for any payment not received in full by Lender within 30 calendar days of the date on which it is due. Furthermore, interest will continue to accrue on any amount due until the date on which it is paid to Lender, and all such interest will be due and payable at the same time as the amount on which it has accrued.

No delay or omission to exercise any right or power accruing upon an Event of Default shall impair any such right and power provided herein, nor shall it 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.

8. Lender's Costs of Enforcement of Agreement. If an Event of Default has occurred as provided herein, then upon demand by Lender, Borrower shall pay or reimburse Lender for all expenses, including all reasonable attorneys' fees and expenses incurred by Lender in connection with the enforcement of this Agreement and the Note, or in connection with the protection or enforcement of the interests and collateral security of Lender in any litigation or bankruptcy or insolvency proceeding or in any action or proceeding relating in any way to the transactions contemplated by this Agreement.

9. Indemnification.

(a) Except for any claims, lawsuits, or damages arising or related to the gross negligence or willful misconduct of the Lender, Borrower shall and does hereby agree to indemnify against and to hold Lender, and its officers, agents, and employees, harmless of and from any and all liability, loss, or damage that it may incur under or by reason of this Agreement, and of and from any and all claims and demands whatsoever that may be asserted against Lender by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained herein.

(b) Should Lender, or its officers, agents, or employees incur any such liability or be required to defend against any claims or demands pursuant to this Section, or should a judgment be entered against Lender, the amount thereof, including costs, expenses, and attorneys' fees, shall bear interest thereon at the rate then in effect on the Note, shall be secured hereby, shall be added to the Loan, and Borrower shall reimburse Lender for the same immediately upon demand, and upon the failure of Borrower to do so, Lender may declare the Loan immediately due and payable.

(c) This indemnification and hold harmless provision shall survive the execution, delivery, and performance of this Agreement and the creation and payment of any indebtedness to Lender. Borrower waives notice of the acceptance of this Agreement by Lender.

(d) Nothing in this Agreement shall constitute a waiver of or limitation on any immunity from or limitation on liability to which Borrower is entitled under law.

(e) Notwithstanding the foregoing, for so long as HUD is the insurer or holder of a mortgage on the Property, any indemnification obligation of Borrower shall be limited to available liability insurance proceeds, Surplus Cash and/or non-Project Assets, as each such term is defined in the Regulatory Agreement for Multifamily Projects by and between Borrower and HUD.

10. Incorporation of Grant Agreement. Borrower acknowledges and agrees that all terms, conditions and obligations in the Grant Agreement are incorporated herein, and made a part of this Agreement. In addition to the terms, conditions and obligations described herein, the Borrower further acknowledges, accepts and assumes all of the Lender's obligations described in the Grant Agreement, unless such obligation can only be reasonably performed by the Lender.

11. Costs. Borrower shall be responsible for payment of all costs and expenses incurred by Lender in connection with the Grant Agreement, Loan Agreement and all related documents, including consultant costs. Borrower will reimburse the Lender for such costs within 30 days of invoicing by the Lender.

12. Miscellaneous.

(a) Waiver. The performance or observance of any promise or condition set forth in this Agreement may be waived, amended, or modified only by a writing signed by Borrower and Lender. No delay in the exercise of any power, right, or remedy operates as a waiver thereof, nor shall any

single or partial exercise of any other power, right, or remedy.

(b) Assignment. This Agreement shall be binding upon Borrower and its successors and assigns and shall inure to the benefit of Lender and its successors and assigns. All rights and powers specifically conferred upon Lender may be transferred or delegated by Lender to any of its successors and assigns. Borrower's rights and obligations under this Agreement may be assigned only when such assignment is approved in writing by Lender, except as provided in Section 6 hereof.

(c) Governing Law. This Agreement is made and shall be governed in all respects by the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

(d) Severability. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications that can be given effect, and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby.

(e) Notice. All notices required hereunder shall be given by depositing in the U.S. mail, postage prepaid, certified mail, return receipt requested, to the following addresses (or such other addresses as either party may notify the other):

To Lender: City of Falcon Heights, Minnesota
Attention: City Administrator
2077 Larpenteur Avenue West
Falcon Heights, MN 55113

To Borrower: Buhl GTA, LP
Attention: Peter Deanovic
5100 Eden Avenue, Suite 317
Edina, MN 55436

With a copy to: Winthrop & Weinstine, P.A.
Attn: Kevin McLain
225 South Sixth Street, Suite 3500
Minneapolis, Minnesota 55402

With a copy to: RBC Community Investments, LLC
600 Superior Avenue, Suite 2300
Cleveland, Ohio 44114
Attention: President and General Counsel

With a copy to: Nixon Peabody LLP

Exchange Place
53 State Street
Boston, MA 02109
Attention: Roger W. Holmes

(f) Termination. Subject to extensions agreed to by the Lender and Borrower and approved by the Council, if the Loan is not disbursed pursuant to this Agreement and the Grant Agreement by December 31, 2023, this Agreement shall terminate and neither party shall have any further obligation to the other, except that if the Loan is not disbursed because Borrower has failed to use its best efforts to comply with the conditions set forth in Section 3 of this Agreement then Borrower shall pay to Lender all reasonable attorneys' fees, costs, and expenses incurred by Lender in connection with this Agreement and the Note.

(g) Entire Agreement. This Agreement, together with the Exhibits hereto, which are incorporated by reference, constitutes the complete and exclusive statement of all mutual understandings between the parties with respect to this Agreement, superseding all prior or contemporaneous proposals, communications, and understandings, whether oral or written, concerning the Loan.

(h) Headings. The headings appearing at the beginning of the several sections contained in this Agreement have been inserted for identification and reference purposes only and shall not be used in the construction and interpretation of this Agreement.

(i) Survival of Agreements, Representations and Warranties. All agreements, representations and warranties made in this Agreement by the Borrower shall survive termination.

(j) Joint Venture. The relationship between the Borrower and Lender is solely that of creditor and debtor and the relationship by and between the Borrower and Lender is not, nor shall it be deemed to create a partnership or joint venture in the Project.

(k) Land Use Restriction. Notwithstanding any provision to the contrary in the Loan Documents, Lender acknowledges and agrees that (a) the Property is or will be subject to a Land Use Restriction Agreement (as defined below); (b) the recordation of the Land Use Restriction Agreement against the Property is permitted under the terms of the Loan Documents; and (c) the lien of any Loan Documents, and the terms and provision thereof, shall be subordinate to the Land Use Restriction Agreement, regardless of the order of recording of either document. "Land Use Restriction Agreement" means the extended low-income housing commitment, regulatory agreement or restrictive covenants executed or to be executed by Borrower, as may be amended, setting forth certain terms and conditions under which the Property is to be operated and which shall meet the requirements of Section 42(h)(6)(B) of the Internal Revenue Code of 1986, as amended.

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

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the proper officers thereunto duly authorized on the day and year first written above.

CITY OF FALCON HEIGHTS, MINNESOTA

By _____
Its Mayor

By _____
Its City Administrator

[SIGNATURE PAGE TO LOAN AGREEMENT – CITY OF FALCON HEIGHTS]

BUHL GTA, LP, a Minnesota limited partnership

By: Buhl GTA GP, LLC, a Minnesota limited liability company

Its: General Partner

By: _____

Name: Peter Deanovic

Title: Chief Executive Officer

[SIGNATURE PAGE TO LOAN AGREEMENT – BUHL GTA, LP]

EXHIBIT A

PROPERTY

[TO BE UPDATED WITH FINAL TITLE COMMITMENT TO ADD APPURTENANT EASEMENT(S).]

Real property in the City of Falcon Heights, County of Ramsey, State of Minnesota, described as follows:

That part of the West 133.00 feet of the Northeast quarter of the Northeast quarter of the Northeast quarter of Section 21, Township 29, Range 23, which lies South of the North 318.00 feet thereof and which lies North of the South 330.00 feet.

and

The Westerly 133 feet of the Northerly 318 feet excepting therefrom that part taken for Larpenteur Avenue, of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, Section 21, Township 29, Range 23, Ramsey County, Minnesota.

and

The North Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, except the West 133 feet thereof, in Section 21, Township 29, Range 23, Ramsey County, Minnesota, except that part taken for Snelling and Larpenteur Avenues.

EXHIBIT B

PROMISSORY NOTE

(Attached.)

EXHIBIT C
MORTGAGE
(Attached.)

21771716v4

**Subordination Agreement -
Public**

U.S. Department of Housing
and Urban Development
Office of Housing

OMB Approval No. 2502-0598
(Exp. 9/30/2021)

Public Reporting Burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

{Required with secondary financing funded by public lender and secured with a lien on the Project. Such a secured lien is only permitted pursuant to Program Obligations and must be approved by HUD.}

Project Name: Amber Union
HUD Project No: 092-35853

THIS **SUBORDINATION AGREEMENT** ("**Agreement**") is entered into this _____ day of June , 2021 by and among (i) Colliers Mortgage LLC, a Delaware limited liability company ("**Senior Lender**"), (ii) the City of Falcon Heights, a municipal corporation under the laws of Minnesota ("**Subordinate Lender**"), and (iii) Buhl GTA, LP, a Minnesota limited partnership ("**Borrower**").

Recitals

WHEREAS, Borrower is the owner of that certain 125-unit residential rental development known as "Amber Union" ("**Project**"), located at 1667 Snelling Avenue North in Falcon Heights, Minnesota. Senior Lender has made or is making the senior mortgage loan as described on Schedule A hereto to Borrower in the original principal amount(s) as shown on Schedule A, evidenced by the Note described in Schedule A ("**Senior Note**"), and secured by, among other things, the Security Instrument as described in Schedule A (collectively, "**Senior Security Instrument**"), covering the property described in Exhibit A attached hereto together with all improvements thereon and personal property used relative thereof, all as more particularly described in the Senior Security Instrument ("**Mortgaged Property**").

WHEREAS, Borrower has requested Senior Lender to permit Subordinate Lender to make a subordinate loan to Borrower in the amount of \$ 962,200.00 ("**Subordinate Loan**"), pursuant to the Subordinate Loan Documents as defined below, and secured by, among other things, a mortgage lien against the Mortgaged Property.

WHEREAS, Senior Lender, with the approval of the U.S. Department of Housing and Urban Development ("**HUD**"), has agreed to permit Subordinate Lender to make the

Subordinate Loan and to place a subordinate mortgage lien against the Mortgaged Property subject to all of the conditions contained in this Agreement and in accordance with Program Obligations. **“Program Obligations”** means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in this Agreement rather than add or delete provisions from such document. Handbooks, guides, notices, and mortgagee letters are available on HUD's official website: Handbooks, guides, notices, and mortgagee letters are available on “HUDCLIPS,” at www.hud.gov.

NOW, THEREFORE, in order to induce Senior Lender to permit Subordinate Lender to make the Subordinate Loan to Borrower and to place a subordinate mortgage lien against the Mortgaged Property, and in consideration thereof, Senior Lender, Subordinate Lender and Borrower agree as follows:

1. Definitions.

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

(a) "Affiliate" is any person or business concern that directly or indirectly controls policy of a principal or has the power to do so is an affiliate. Persons and business concerns controlled by the same third party are also affiliates.

(b) "Bankruptcy Proceeding" means any bankruptcy, reorganization, insolvency, composition, restructuring, dissolution, liquidation, receivership, assignment for the benefit of creditors, or custodianship action or proceeding under any federal or state law with respect to Borrower, any guarantor of any of the Senior Indebtedness, any of their respective properties, or any of their respective partners, members, officers, directors, or shareholders.

(c) "Borrower" means all entities identified as "Borrower" in the first paragraph of this Agreement, together with any successors, heirs, and assigns (jointly and severally). Borrower shall include any entity taking title to the Mortgaged Property, whether or not such entity assumes the Senior Note, provided that the term "Borrower" shall not include Senior Lender in the event that Senior Lender may acquire title to the Mortgaged Property. Whenever the term "Borrower" is used herein, the same shall be deemed to include the obligor of the debt secured by the Senior Security Instrument.

(d) "Business Day" means any day other than Saturday, Sunday or any other day on which Senior Lender or HUD is not open for business.

(e) "**Covenant Event of Default**" is defined in the Senior Security Instrument.

(f) "**Entity**" means an estate, trust, partnership, corporation, limited liability company, limited liability partnership, governmental department or agency or any other entity which has the legal capacity to own property.

(g) "**Monetary Event of Default**" is defined in the Senior Security Instrument.

(h) "**Non-Project Sources**" means any funds that are not derived from Project Sources.

(i) "**Project Sources**" means the Mortgaged Property (as defined in the Senior Security Instrument), any proceeds of the Senior -Indebtedness, and any reserve or deposit made with Senior Lender or any other party as required by HUD in connection with the Senior Indebtedness.

(j) "**Senior Indebtedness**" means all present and future indebtedness, obligations, and liabilities of Borrower to Senior Lender under or in connection with the Senior Loan Documents.

(k) "**Senior Lender**" means the Entity named as such in the first paragraph on page 1 of this Agreement, its successors and assigns.

(l) "**Senior Loan Documents**" means the Senior Note, the Senior Security Instrument, and the Regulatory Agreement between Borrower and HUD, as such documents may be amended from time to time and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Senior Indebtedness, as identified in Schedule A.

(m) "**Senior Security Instrument Default**" means a "Monetary Event of Default" or a "Covenant Event of Default" as defined in the Senior Security Instrument.

(n) "**Subordinate Indebtedness**" means all present and future indebtedness, obligations, and liabilities of Borrower to Subordinate Lender under or in connection with the Subordinate Loan or the Subordinate Loan Documents.

(o) "**Subordinate Lender**" means the Entity named as such in the first paragraph on page 1 of this Agreement.

(p) "**Subordinate Loan Documents**" means the Subordinate Note, the Subordinate Mortgage, and all other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness, as identified in Schedule B. The terms Subordinate Note and Subordinate Mortgage are defined in Schedule B.

(q) "**Subordinate Loan Enforcement Action**" means the acceleration of all or any part of the Subordinate Indebtedness, the advertising of or commencement of any foreclosure or trustee's sale proceedings, the exercise of any power of sale, the acceptance of a deed or assignment in lieu of foreclosure or sale, the collecting of rents, the obtaining of or seeking of the appointment of a

receiver, the seeking of default interest, the taking of possession or control of any of the Mortgaged Property, the commencement of any suit or other legal, administrative, or arbitration proceeding based upon the Subordinate Note or any other of the Subordinate Loan Documents, the exercising of any banker's lien or rights of set-off or recoupment, or the taking of any other enforcement action against Borrower, any other party liable for any of the Subordinate Indebtedness or obligated under any of the Subordinate Loan Documents, or the Mortgaged Property.

(r) "Subordinate Mortgage Default" means any act, failure to act, event, conditions, or occurrence which allows (but for any contrary provision of this Agreement), or which with the giving of notice or the passage of time, or both, would allow (but for any contrary provision of this Agreement), Subordinate Lender to take a Subordinate Loan Enforcement Action.

(s) "Surplus Cash" is defined herein to mean the same as that term is defined in the Regulatory Agreement between Borrower and HUD.

2. Permission to Place Mortgage Lien Against Mortgaged Property.

Senior Lender agrees, subject to the provisions of this Agreement, to permit Subordinate Lender to record the Subordinate Mortgage and other recordable Subordinate Loan Documents against the Mortgaged Property (which are subordinate in all respects to the lien of the Senior Security Instrument) to secure Borrower's obligation to repay the Subordinate Note and all other obligations, indebtedness and liabilities of Borrower to Subordinate Lender under and in connection with the Subordinate Loan. Senior Lender agrees that the existence of the Subordinate Loan does not create a basis for default of the Senior Indebtedness. Such permission is subject to the condition that each of the representations and warranties made by Borrower and Subordinate Lender in Section 3 are true and correct on the date of this Agreement and on the date on which the proceeds of the Subordinate Loan are disbursed to Borrower. If any of the representations and warranties made by Borrower and Subordinate Lender in Section 3 are not true and correct on both of those dates, the provisions of the Senior Loan Documents applicable to unpermitted liens on the Mortgaged Property shall apply.

3. Borrower's and Subordinate Lender's Representations and Warranties.

Borrower and, with respect to subsections (a) through (d) below, Subordinate Lender each make the following representations and warranties to Senior Lender:

(a) Subordinate Loan Documents. The Subordinate Loan is evidenced by the Subordinate Note and is secured by the Subordinate Mortgage.

(b) Terms of the Subordinate Loan. The original principal amount of the Subordinate Note is \$962,200. Interest on the Subordinate Note accrues monthly at the rate of 0% per annum. The Subordinate Note is due and payable in full on January 1, 2063, ("Maturity"). The Maturity term of the Subordinate Note does not end before the maturity term of the Senior Note, unless the Subordinate Note is forgivable as set forth below and Borrower satisfies all requirements in the Subordinate Loan Documents to result in the Subordinate

Note being eligible for forgiveness. The principal of the Subordinate Note will have a balloon principal payment of \$962,200 due at Maturity. The promissory note evidencing the Subordinate Note obligates Borrower to make payments as follows: all payments are deferred until Maturity, subject to Section 3(c) immediately below.

(c) Required HUD Language in Subordinate Note. The Subordinate Note contains the following provisions:

“As long as HUD is the insurer or holder of the Senior Note on FHA Project No. 092-35853, the following provisions (**“HUD Provisions”**) shall be in full force and effect:

(1) any payments due under the Subordinate Note shall be payable only (i) from permissible distributions from Surplus Cash of the Project; but in no event greater than seventy-five percent (75%) of the total amount of Surplus Cash; or (ii) from monies received from Non-Project Sources. In no event may payments due under all subordinate debt of Maker cumulatively exceed 75% of available Surplus Cash. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the Borrower to pay the indebtedness evidenced by the Subordinate Note;

(2) no prepayment of the Subordinate Note shall be made until after final endorsement by HUD of the Senior Note, unless such prepayment is made from Non-Project Sources and is approved in writing by HUD.

(3) this Subordinate Note is non-negotiable and may not be sold, transferred, assigned, or pledged by the Subordinate Lender except with the prior written approval of HUD;

(4) interest on the Subordinate Note shall not be compounded as long as HUD is the insurer or holder of the Note secured by the Security Instrument;

(5) Maker hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Subordinate Note;

(6) the terms and provisions of this Subordinate Note are also for the benefit of and are enforceable by HUD against any party hereto, their successors and assigns. This Subordinate Note may not be modified or amended without the written consent of HUD; and

(7) in the event of any conflict between the terms of the Subordinate Note and the HUD Provisions, the terms of the HUD Provisions shall control.”

(d) Relationship of Borrower to Subordinate Lender. Subordinate Lender is not an Affiliate of Borrower.

(e) Subordinate Loan Documents. Borrower certifies that the executed Subordinate Loan Documents are substantially in the same forms as those submitted to, and approved by, HUD prior to the date of this Agreement. Upon execution and delivery of the Subordinate Loan Documents, Borrower shall deliver to Senior Lender an executed copy of each of the Subordinate Loan Documents, certified to be true, correct and complete.

(f) Senior Loan Documents. The executed Senior Loan Documents are the same forms as approved by HUD prior to the date of this Agreement. Upon execution and delivery of the Senior Loan Documents, Borrower shall deliver to Subordinate Lender an executed copy of each of the Senior Loan Documents, certified to be true, correct and complete.

4. Deliveries.

Borrower shall submit the following items to Senior Lender and HUD at closing or not later than ten (10) Business Days after the date of the initial disbursement of proceeds of the Subordinate Loan:

(a) Title Evidence. Evidence of title (title policy or title policy endorsement, as appropriate) insuring the lien of the Senior Security Instrument which insures that (i) the lien of the Subordinate Mortgage is subordinate to the lien of the Senior Mortgage, and (ii) this Agreement has been recorded among the applicable land records.

(b) Loan Documents. A complete set of the Subordinate Loan Documents, including this Subordination Agreement.

5. Terms of Subordination.

(a) Agreement to Subordinate. Senior Lender and Subordinate Lender agree that: (i) the indebtedness evidenced by the Subordinate Loan Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement, to the prior payment of the indebtedness evidenced by the Senior Loan Documents, and (ii) the Subordinate Mortgage and the other Subordinate Loan Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Security Instrument and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Security Instrument and the other Senior Loan Documents (including but not limited to, all sums advanced for the purposes of (1) protecting or further securing the lien of the Senior Security Instrument, curing defaults by Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Security Instrument, or (2) constructing, renovating, repairing, furnishing, fixturing or equipping the

Mortgaged Property).

(b) Subordination of Subrogation Rights. Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Loan Documents, it acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this subsection) would be senior to the lien of the Senior Security Instrument, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Security Instrument.

(c) Payments Before Senior Security Instrument Default. Until Subordinate Lender receives a default notice of a Senior Security Instrument Default from Senior Lender, Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Loan Documents provided that such payments are otherwise permitted under the terms of this Agreement.

(d) Payments After Senior Security Instrument Default. Borrower agrees that, after it receives notice (or otherwise acquires knowledge) of a Senior Security Instrument Default, it will not make any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) without Senior Lender's prior written consent. Subordinate Lender agrees that, after it receives a default notice from Senior Lender with written instructions directing Subordinate Lender not to accept payments from Project Sources on account of the Subordinate Loan, it will not accept any payments under or pursuant to the Subordinate Loan Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorney's fees, or any other sums secured by the Subordinate Mortgage) unless either (i) such payment is being made solely from Non-Project Sources or (ii) such payment is made with Senior Lender's prior written consent. If Subordinate Lender receives written notice from Senior Lender that the Senior Security Instrument Default which gave rise to Subordinate Lender's obligation not to accept payments has been cured, waived, or otherwise suspended by Senior Lender, the restrictions on payment to Subordinate Lender in this Section 5 shall terminate, and Senior Lender shall have no right to any subsequent payments made to Subordinate Lender by Borrower prior to Subordinate Lender's receipt of a new default notice from Senior Lender in accordance with the provisions of this Section 5(d).

(e) Remitting Subordinate Loan Payments to Senior Lender. If, after Subordinate Lender receives a default notice from Senior Lender in accordance with subsection (d) above, Subordinate Lender receives any payments under the Subordinate Loan Documents (other than payments permitted under subsection (d) above), Subordinate Lender agrees that such payment or other distribution will be received and held in trust for Senior Lender and unless Senior Lender otherwise notifies Subordinate Lender in writing, will be promptly remitted, in kind to Senior Lender, properly endorsed to Senior Lender, to be applied to the principal of,

interest on and other amounts due under the Senior Loan Documents in accordance with the provisions of the Senior Loan Documents. By executing this Agreement, Borrower specifically authorizes Subordinate Lender to endorse and remit any such payments to Senior Lender, and specifically waives any and all rights to have such payments returned to Borrower or credited against the Subordinate Loan. Borrower and Senior Lender acknowledge and agree that payments received by Subordinate Lender, and remitted to Senior Lender under this Section 5, shall not be applied or otherwise credited against the Subordinate Loan, nor shall the tender of such payment to Senior Lender waive any Subordinate Mortgage Default which may arise from the inability of Subordinate Lender to retain such payment or apply such payment to the Subordinate Loan.

(f) Agreement Not to Commence Bankruptcy Proceeding.

Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any Bankruptcy Proceeding with respect to Borrower, without Senior Lender's prior written consent.

6. Default Under Subordinate Loan Documents.

(a) Notice of Default and Cure Rights. Subordinate Lender shall deliver to Senior Lender a default notice within five Business Days in each case where Subordinate Lender has given a default notice to Borrower. Failure of Subordinate Lender to send a default notice to Senior Lender shall not prevent the exercise of Subordinate Lender's rights and remedies under the Subordinate Loan Documents, subject to the provisions of this Agreement. Senior Lender shall have the opportunity, but not the obligation, to cure any Subordinate Mortgage Default within 60 days following the date of such notice; provided, however that Subordinate Lender shall be entitled, during such 60-day period, to continue to pursue its rights and remedies under the Subordinate Loan Documents, subject to the limitations set forth in Section 6(b) below.

(b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender. If a Subordinate Mortgage Default occurs and is continuing, Subordinate Lender agrees that it will not, for a period of one hundred eighty (180) days after giving notice of such Subordinate Mortgage Default to Senior Lender and HUD (the "**Standstill Period**"), commence foreclosure proceedings with respect to the Mortgaged Property under the Subordinate Loan Documents or exercise any other rights or remedies it may have under the Subordinate Loan Documents with respect to the Mortgaged Property, including, but not limited to accelerating the Subordinate Loan, collecting rents, appointing (or seeking the appointment of) a receiver or exercising any other rights or remedies thereunder without Senior Lender's prior written consent. During the Standstill Period, Subordinate Lender agrees to use best efforts to resolve the Subordinate Mortgage Default, in an effort to avoid the pursuit of available remedies by the Subordinate Lender. However, the preceding sentence shall not (i) limit Subordinate Lender's right to bring an action seeking recovery solely from Non-Project Sources or (ii) preclude Subordinate Lender from exercising or enforcing all the rights available to Subordinate Lender under the Subordinate Loan Documents and/or under applicable law to enforce

covenants and agreements of Borrower relating to income, rent or affordability restrictions. After the expiration of the Standstill Period and in the event Subordinate Lender forecloses on the Mortgaged Property, the purchaser must comply with HUD's Previous Participation regulations and processes, Transfer of Physical Asset requirements, and Program Obligations before it can take title to the Mortgaged Property.

7. Default Under Senior Loan Documents.

(a) Notice of Default and Cure Rights. Senior Lender shall deliver to Subordinate Lender a default notice within five Business Days in each case where Senior Lender has given a default notice to Borrower (provided that Senior Lender shall have no liability to Borrower, Subordinate Lender or to any other Entity for failure to timely give such notice). Failure of Senior Lender to send a default notice to Subordinate Lender shall not prevent the exercise of Senior Lender's right and remedies under the Senior Loan Documents, subject to the provisions of this Agreement. Borrower agrees that Subordinate Lender shall have the opportunity, but not the obligation, to cure either a Monetary Event of Default or a Covenant Event of Default within 30 days following the date of such notice, or any time prior to an assignment of the Senior Security Instrument from Senior Lender to HUD, whichever date is later. Subordinate Lender acknowledges that Senior Lender shall be entitled during such period described above to continue to pursue its remedies under the Senior Loan Documents. Subordinate Lender shall have the opportunity to cure a Covenant Event of Default during such period described above so long as there is no Monetary Event of Default under the Senior Loan Documents. All amounts paid by Subordinate Lender to Senior Lender to cure any default under the Senior Loan Documents shall be deemed to have been advanced by Subordinate Lender pursuant to, and shall be secured by the lien of, the Subordinate Mortgage.

(b) Cross Default. Subordinate Lender certifies that the Subordinate Loan Documents do not contain a cross default provision. Notwithstanding any contrary provision contained in the Subordinate Loan Documents, a Senior Security Instrument Default shall not constitute a default under the Subordinate Loan Documents if no other default occurred under the Subordinate Loan Documents.

8. Conflict.

Borrower, Senior Lender and Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate Loan Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of Senior Lender and Subordinate Lender in the Mortgaged Property; and (b) solely as between Senior Lender and Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which Senior Lender and Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Senior Security Instrument Default or

Subordinate Mortgage Default, as the case may be; give Borrower the right to notice of any Senior Security Instrument Default or Subordinate Mortgage Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Loan Documents, as applicable; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

9. Rights and Obligations of Subordinate Lender under the Subordinate Loan Documents and of Senior Lender under the Senior Loan Documents.

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Loan Documents covering the same subject matter:

(a) Protection of Security Interest. Subordinate Lender shall not, without the prior written consent of Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Loan Documents, except that Subordinate Lender shall have the right to advance funds to cure Senior Security Instrument Defaults pursuant to Section 7(a) above and advance funds pursuant to the Subordinate Mortgage for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Mortgaged Property and curing other defaults by Borrower under the Subordinate Loan Documents.

(b) Condemnation or Casualty. In the event of: a taking or threatened taking by condemnation or other exercise of eminent domain of all or a portion of the Mortgaged Property (collectively, a "Taking"); or the occurrence of a fire or other casualty resulting in damage to all or a portion of the Mortgaged Property (collectively, a "Casualty"), at any time or times when the Senior Security Instrument remains a lien on the Mortgaged Property the following provisions shall apply:

(1) Subordinate Lender hereby agrees that its rights (under the Subordinate Loan Documents or otherwise) to participate in any proceeding or action relating to a Taking and/or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Taking or a Casualty shall be and remain subordinate in all respects to Senior Lender's rights under the Senior Loan Documents with respect thereto, and Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Taking or a Casualty made by or with the written consent of Senior Lender; and

(2) all proceeds received or to be received on account of a Taking or a Casualty, or both, shall be applied (to payment of the costs and expenses of repair and restoration and/or to payment of the Senior Security Instrument) in the manner determined by Senior Lender in its sole discretion consistent with the Senior Loan Documents; provided, however, that if Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Security Instrument, any proceeds remaining after the satisfaction in full of the principal of,

interest on and other amounts payable under the Senior Security Instrument shall be paid to, and may be applied by, Subordinate Lender in accordance with the applicable provisions of the Subordinate Loan Documents. Any proceeds then remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Subordinate Loan Documents shall be paid by the Subordinate Lender to Borrower.

(c) No Modification of Subordinate Loan Documents. Borrower and Subordinate Lender each agrees that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender in each instance, increase the amount of the Subordinate Loan, increase the required payments due under the Subordinate Loan, decrease the term of the Subordinate Loan, increase the interest rate on the Subordinate Loan, or otherwise amend the Subordinate Loan terms in a manner that creates an adverse effect upon Senior Lender under the Senior Loan Documents. Any unauthorized amendment of the Subordinate Loan Documents without Senior Lender's consent shall be void ab initio and of no effect whatsoever.

10. Modification of Senior Loan Documents; Refinancing of Senior Indebtedness; Transfer of Physical Assets.

(a) Subordinate Lender consents to any agreement or arrangement in which Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money, provided however, there shall be no modification of the Senior Loan Documents without the consent of the Subordinate Lender if such modification would increase the principal amount of the Senior Indebtedness beyond the original principal amount of the Senior Indebtedness (excluding any amounts having been advanced by Senior Lender for the protection of its security interest pursuant to the Senior Loan Documents), increase the interest rate of the Senior Indebtedness, or decrease the original maturity term of the Senior Indebtedness.

(b) Subordinate Lender agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Indebtedness in accordance with Program Obligations (including reasonable and necessary costs associated with the closing and/or the refinancing); and that all the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt; and that all references to the Senior Indebtedness, the Senior Note, the Senior Security Instrument, the Senior Loan Documents and Senior Lender shall mean, respectively, the indebtedness related to the refinance loan, the refinance note, the security instrument securing the refinance note, all documents evidencing, securing or otherwise pertaining to the refinance note and the holder of the refinance note, provided however, there shall be no refinancing of the Senior Indebtedness without the consent of the Subordinate Lender if such refinancing would increase the principal amount of the Senior Indebtedness beyond the

- original principal amount of the Senior Indebtedness (excluding any amounts having been advanced by Senior Lender for the protection of its security interest pursuant to the Senior Loan Documents), increase the interest rate of the Senior Indebtedness, or decrease the original maturity term of the Senior Indebtedness.
- (c) Subordinate Lender agrees that the term of the Subordinate Indebtedness will be extended if HUD grants a deferment of amortization or forbearance that results in an extended maturity of the Senior Indebtedness.
 - (d) Subordinate Lender agrees that the term of the Subordinate Indebtedness will be extended if the Subordinate Note is due, and there are no Surplus Cash funds or Residual Receipts (if applicable) available for repayment, and the Senior Indebtedness has not been repaid in full. (The parties agree that distributions of Residual Receipts must be approved by HUD and can only be approved by the terms of a written agreement between HUD and the Borrower).
 - (e) Subordinate Lender agrees that it will approve any transfer of ownership of the Project if approved by HUD in writing. Subordinate Lender further agrees that the Subordinate Indebtedness is assumable when a sale or transfer of physical assets occurs and the Senior Indebtedness remains in place, as set forth below in subparagraph (f).
 - (f) The Subordinate Lender cannot require that more than seventy-five percent (75%) of the net proceeds of the sale or transfer be applied to the reduction of the Subordinate Indebtedness. For these instructions, net proceeds are the funds available to the original borrower after:
 - (1) correcting any default on the Senior Indebtedness;
 - (2) making required contributions to any reserve funds; and
 - (3) making needed improvements to the Property as evidenced by HUD's annual inspection reports.

11. Default by Subordinate Lender or Senior Lender.

If Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting Lender shall have the right to all available legal and equitable relief.

12. Notices.

Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which Senior Lender or Subordinate Lender is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating next Business Day delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two Business Days after mailing in the United States), addressed to the respective parties as follows:

SENIOR LENDER:

Colliers Mortgage LLC
90 South 7th Street, Ste. 4300
Minneapolis, MN 55402
Attn: FHA Servicing

With a copy to:

U.S. Department of Housing and Urban Development
Director - Office of Multifamily Asset Management
Room 6160
451 Seventh Street, S.W.
Washington, DC 20410

SUBORDINATE LENDER:

City of Falcon Heights, Minnesota
Attention: City Administrator
2077 Larpenteur Avenue West
Falcon Heights, MN 55113

Either party may, by notice given pursuant to this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses for its notices, but notice of a change of address shall only be effective upon receipt.

13. General.

(a) Assignment/Successors. This Agreement shall be binding upon Borrower, Senior Lender and Subordinate Lender and shall inure to the benefit of the respective legal successors and assigns of Senior Lender and Subordinate Lender.

(b) No Partnership or Joint Venture. Senior Lender's permission for the placement of the Subordinate Loan Documents does not constitute Senior Lender as a joint venturer or partner of Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of any other party hereto.

(c) Senior Lender's and Subordinate Lender's Consent. Wherever Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

(d) Further Assurances; UCC Financing Statements. Subordinate Lender, Senior Lender and Borrower each agree, at Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Loan Documents are subordinate to the lien, covenants and conditions of the Senior Loan Documents, or to further evidence the intent of this Agreement. Senior Lender is hereby authorized to file any and all UCC financing statement amendments required to reflect the priority of the Senior Indebtedness.

(e) Amendment. This Agreement shall not be amended except by written instrument signed by all parties hereto.

(f) Governing Law. This Agreement shall be governed by the laws of the State in which the Mortgaged Property is located, except, so long as the Senior Indebtedness is insured or held by HUD, and solely as to rights and remedies of HUD, federal jurisdiction may be appropriate pursuant to any federal requirements. The State courts, and with respect to HUD's rights and remedies, federal courts, and governmental authorities in the State in which the Mortgaged Property is located, shall have exclusive jurisdiction over all controversies which shall arise under or in relation to the Subordinate Loan Documents. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

(g) Severable Provisions. If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted

by law.

(h) Term. The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (i) the payment of all of the principal of, interest on and other amounts payable under the Senior Loan Documents; (ii) the payment of all of the principal of, interest on and other amounts payable under the Subordinate Loan Documents, other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to Section 5 hereof; (iii) the acquisition by Senior Lender of title to the Mortgaged Property pursuant to a foreclosure; or (iv) the acquisition by Subordinate Lender of title to the Mortgaged Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Mortgage, but only if such acquisition of title does not violate any of the terms of this Agreement. Notwithstanding the foregoing, in the event the Senior Indebtedness is refinanced or a transfer of physical assets occurs, the term of this Agreement shall continue and the Subordinate Indebtedness and Subordinate Loan Documents shall be subordinate to any such indebtedness related to the refinanced or transferred loan as provided in Section 10 above.

(i) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one and the same instrument.

14. Anti-Indemnity.

Notwithstanding anything to the contrary in Subordinate Loan Documents, if HUD is ever deemed the "Owner" of all or part of the Mortgaged Property, HUD shall not be subject to the indemnification provisions contained in the Subordinate Loan Documents. HUD prohibits and does not authorize any expenditure which would violate 31 USC 1341 (the "Anti-Deficiency Act"). Any provision of the Subordinate Loan Documents which violate(s)(d) the Anti-Deficiency Act, in the past, present or future, will not be enforced against HUD. Notwithstanding any other provision of the Subordinate Loan Documents, HUD whether in the capacity of subsidy provider, loan insurer, lender, owner, lessee or mortgagee in possession, shall have no obligation of reimbursement, indemnity, or holding harmless, of any nature whatsoever, to any governmental entity, private entity, person or party, either now or in the future. Additionally, for so long as HUD is the insurer or holder of a mortgage on the Mortgaged Property, any indemnification obligation of Borrower shall be limited to available liability insurance proceeds, Surplus Cash and/or non-Project Assets, as each such term is defined in the Regulatory Agreement for Multifamily Projects by and between Borrower and HUD.

Each signatory below hereby certifies that each of their statements and representations contained in this Agreement and all their supporting documentation thereto are true, accurate, and complete. This Agreement has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained

therein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

[SIGNATURES APPEAR ON SUCCEEDING PAGES.]

SENIOR LENDER:

COLLIERS MORTGAGE LLC, a Delaware limited liability company

By: _____
Timothy M. Larkin
Senior Vice President

ACKNOWLEDGMENT

STATE OF MINNESOTA)
) ss
COUNTY OF _____)

On this ____ day of _____, 2021, before me, the undersigned, personally appeared Timothy M. Larkin, Senior Vice President of COLLIERS MORTGAGE LLC, a Delaware limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the entity upon behalf of which the individual acted, executed the instrument.

Notary Public

Print Name: _____

SUBORDINATE LENDER:

CITY OF FALCON HEIGHTS, a municipal corporation under the laws of Minnesota

By _____
Its Mayor

By _____
Its City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2021, by Randall Gustafson and by Sack Thongvanh, respectively the Mayor and City Administrator/Clerk of the City of Falcon Heights, a Minnesota municipal corporation, on behalf of the municipal corporation and pursuant to the authority granted by its City Council.

Notary Public

BORROWER:

BUHL GTA, LP, a Minnesota limited partnership

By: Buhl GTA GP, LLC, a Minnesota limited liability company
Its: General Partner

By: _____
Name: Peter Deanovic
Title: Chief Executive Officer

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by Peter Deanovic, the Chief Executive Officer of Buhl GTA GP, LLC, a Minnesota limited liability company, the general partner of Buhl GTA, LP, a Minnesota limited partnership, on behalf of the limited partnership.

Notary Public

Schedule A – List of Senior Loan Documents

1. “Senior Note” means that certain Note (HUD-94001M) in the original principal amount of _____ and ___/100 Dollars (\$_____) executed by Borrower in favor of Senior Lender, dated _____ 1, 2021.
2. “Senior Security Instrument” means that certain Multifamily Mortgage, Assignment of Leases and Rents, and Security Instrument (Minnesota) (HUD-94000M) dated _____ 1, 2021 executed and delivered by Borrower to Senior Lender.
3. Regulatory Agreement for Multifamily Projects dated _____ 1, 2021 by and between Borrower and the United States Department of Housing and Urban Development (“HUD”).
4. All other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Senior Indebtedness.

Schedule B – List of Subordinate Loan Documents

1. “Subordinate Note” means the Promissory Note dated _____, 2021, in an original principal amount of \$962,200.00 by Borrower in favor of Subordinate Lender.
2. “Subordinate Mortgage” means the Mortgage dated _____, 2021 in an original principal amount of \$962,200.00 by Borrower as Mortgagor in favor of Subordinate Lender as Mortgagee.
3. Loan Agreement between Borrower and Subordinate Lender dated _____, 2021.
4. Any other documents at any time evidencing, securing, guaranteeing, or otherwise delivered in connection with the Subordinate Indebtedness.

EXHIBIT A: LEGAL DESCRIPTION

[TO BE UPDATED WITH FINAL TITLE COMMITMENT TO ADD APPURTENANT EASEMENT(S).]

Real property in the City of Falcon Heights, County of Ramsey, State of Minnesota, described as follows:

That part of the West 133.00 feet of the Northeast quarter of the Northeast quarter of the Northeast quarter of Section 21, Township 29, Range 23, which lies South of the North 318.00 feet thereof and which lies North of the South 330.00 feet.

and

The Westerly 133 feet of the Northerly 318 feet excepting therefrom that part taken for Larpenteur Avenue, of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, Section 21, Township 29, Range 23, Ramsey County, Minnesota.

and

The North Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, except the West 133 feet thereof, in Section 21, Township 29, Range 23, Ramsey County, Minnesota, except that part taken for Snelling and Larpenteur Avenues.

21777395v3

MORTGAGE
(\$962,200 TBRA Loan)

THIS MORTGAGE IS EXEMPT FROM MORTGAGE REGISTRATION TAX PURSUANT TO MINN STAT SECTION 287.04 (f) BECAUSE THIS MORTGAGE WAS MADE UNDER THE MORTGAGEE'S LOW AND MODERATE INCOME OR OTHER AFFORDABLE HOUSING PROGRAM THAT PROVIDES FOR LOANS THAT MEET THE INCOME LIMITS AND SALES PRICE LIMITS AS DETERMINED UNDER FEDERAL AND STATE LAW.

THIS MORTGAGE is made this ___ day of June 2021 by **BUHL GTA, LP**, a Minnesota limited partnership (the "Mortgagor") in favor of the **CITY OF FALCON HEIGHTS**, a municipal corporation under the laws of Minnesota (the "Mortgagee").

WHEREAS, pursuant to that Loan Agreement between the Mortgagor and Mortgagee dated as of June ___, 2021 (the "Loan Agreement"), Mortgagor executed that certain Promissory Note of even date herewith (the "Note") in the amount of Nine Hundred Sixty-Two Thousand Two Hundred and no/100 Dollars (\$962,200.00) evidencing the loan described in the Loan Agreement (the "Loan"); and

WHEREAS, pursuant to the Loan Agreement and the Note, the entire indebtedness of Mortgagor to Mortgagee of the Loan is due and payable in full on January 1, 2063; and

WHEREAS, this Mortgage is given to secure repayment of all amounts due by Mortgagor to Mortgagee under the Loan Agreement and the Note, as well as other amounts due by Mortgagor to Mortgagee under the terms of this Mortgage.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, Mortgagor hereby grants, bargains, sells and conveys to Mortgagee the following real property in Ramsey County, Minnesota (the "Premises") legally described on Exhibit A attached hereto and incorporated herein to have and to hold the same, together with all the hereditaments and appurtenances thereto belonging or in anywhere appertaining, forever.

PROVIDED NEVERTHELESS that if Mortgagor, or Mortgagor's successors or permitted assigns, shall (i) pay, or cause to be paid, to Mortgagee the principal amount of the Loan heretofore and hereafter advanced by Mortgagee to Mortgagor under the Note; (ii) pay all taxes and special assessments that are now or may be hereafter levied and assessed on and against the Premises as they shall be due and before they become delinquent; (iii) keep the improvements on the Premises continuously insured as hereinafter provided; (iv) pay the principal and interest installments on any prior mortgage or mortgages as the same or any part thereof become due; and (v) keep and perform each and every covenant herein, then this Mortgage shall be null and void;

otherwise it shall be and remain in full force and effect.

MORTGAGOR WARRANTS AND COVENANTS to and with Mortgagee as follows:

1. Mortgagor is lawfully seized of a fee simple interest in the Premises and has good right to sell and convey the same. The Premises are free from all liens and encumbrances, except any prior mortgage or mortgages of record and other matters listed in the Mortgagor's title policy. Mortgagor shall warrant and defend the title of the Premises against all lawful claims except such prior mortgage or mortgages and encumbrances of record. The foregoing covenants and warranties shall survive foreclosure of this Mortgage and shall run with the land.
2. Mortgagor shall pay the principal and interest (if any) as the same become due on any prior mortgage or mortgages on the Premises.
3. Mortgagor shall procure at Mortgagor's own expense fire and extended coverage insurance on the improvements on the Premises, payable in case of loss to Mortgagee, its successors and assigns, as its interest may appear, such insurance to be written by a reliable insurance company approved by Mortgagee in an amount at least equal to the full insurable value of such improvements.
4. Mortgagor shall pay all taxes and special assessments now and hereafter levied and assessed on the Premises before the same become delinquent, provided, however, that Mortgagor is permitted to contest the same in good faith.
5. Mortgagor shall keep the Premises in good repair, shall not remove the improvements from the Premises, unless promptly replaced with substantially similar improvements, and shall not commit waste or permit impairment or deterioration of the Premises.
6. Mortgagor shall comply with and perform all of the Mortgagor's obligations under the Loan Agreement, this Mortgage and the Note.
7. In the case of failure of Mortgagor to pay such taxes or special assessments or to keep said improvements insured as provided herein, or to pay the principal or interest (if any) on the prior mortgage or mortgages on the Premises, Mortgagee may at its option, after ten (10) days' written notice to Mortgagor, pay and discharge such taxes and assessments, effect such insurance on said improvements and pay the premiums thereon and pay the principal and interest (if any) that become due and remain unpaid on the prior mortgage or mortgages on the Premises, and the sum or sums that may be so paid by Mortgagee shall bear interest from the time of such payment at the rate of 8% per annum or the highest rate allowed by law, whichever is lower, and shall be deemed and is hereby declared to be an additional lien upon the Premises in the amount that shall be so paid, with interest thereon, as aforesaid, and shall be added to and be collectable as part of and in the same manner as the original debt which this Mortgage is given to secure.
8. Reserved.
9. The following shall be Events of Default by Mortgagor; provided, however, that

Mortgagee shall have given the Mortgagor, and the limited partner of Mortgagor (as identified in the Loan Agreement) notice of such Event of Default hereunder and at least thirty (30) days within which to cure such Event of Default, and that if such Event of Default cannot reasonably be cured within such thirty (30) days, Mortgagor or its limited partner shall have such additional time as may be reasonably necessary if Mortgagor commences to cure such Event of Default within such thirty (30) day period and thereafter diligently prosecutes such cure to completion:

- a) The failure to pay the indebtedness hereby secured, as it becomes due;
- b) The failure to pay, when due, the taxes or special assessments on the Premises;
- c) The failure to keep the improvements on the Premises insured as herein provided;
- d) The failure to keep and perform any of the covenants and agreements herein contained to be kept and performed by Mortgagor;
- e) Except as otherwise permitted in the Loan Agreement, the sale, assignment, conveyance or other transfer (whether by deed, contract for deed, lease or otherwise) of the Premises, except for leases for one year or less, not approved in advance by Mortgagee; or
- f) The failure to comply with and perform all of the requirements of the TBRA Grant Agreement (as defined in Section 18 below, and as such requirements are more specifically set forth in Section 18 below) related to the Premises, which failure results in the Mortgagee being obligated to indemnify or repay all or any portion of the TBRA grant funds to the Metropolitan Council.

Upon the occurrence of any Event of Default, Mortgagor hereby authorizes and empowers Mortgagee to declare the entire indebtedness hereby secured to be immediately due and payable, at Mortgagee's option, and to enforce the payment thereof and to foreclose this Mortgage by judicial proceedings or by sale of the Premises at public auction and convey the same to the purchaser in fee simple, pursuant to the statutes of the State of Minnesota, and out of the monies arising from said sale to retain (i) the principal which shall then be due on the indebtedness secured hereby, and interest, if any, accrued thereon, (ii) an amount equal to all taxes and special assessments paid by Mortgagee upon the Premises, or then levied and unpaid, (iii) any sum paid by Mortgagee for principal or interest on any prior mortgage or mortgages on the Premises, (iv) an amount equal to any insurance premiums paid by Mortgagee upon the Premises, (v) any other amounts payable by the Mortgagee to the Metropolitan Council as a result of the failure of the Mortgagor to comply with and perform all of the requirements of the TBRA Grant Agreement related to the Premises, and (vi) costs and disbursements of such foreclosure, including statutory attorney's fees; and to pay the surplus, if any, to Mortgagor. In the event of any default hereunder the Mortgagor agrees to pay the costs of collection including reasonable attorneys' fees.

10. So long as this Mortgage and the Note evidencing the indebtedness secured hereby are held by Mortgagee, Mortgagor will not execute or file for record any instrument which imposes a restriction upon the sale or occupancy of the Premises on the basis of race, color, religion, or sex.

11. No delay by Mortgagee in exercising any right or remedy provided herein or otherwise afforded by law or equity shall be deemed a waiver of or preclude the exercise of such right or remedy. All such rights and remedies shall be distinct and cumulative and may be exercised singularly or serially (in any order) or concurrently, and as often as the occasion therefore arises.

12. Mortgagee may at any time and from time to time, without notice, release any person liable for the payment of any indebtedness under the Note, release any property securing any indebtedness, consent to the creation of any easement on the Premises, or agree to alter or amend the terms of this Mortgage in any way, all without in any way affecting the liability of any person (other than the person so released, if any) or the validity or priority of this Mortgage (except as it covers property so released, if any).

13. The covenants and agreements contained in this Mortgage shall bind, and the rights conferred hereby shall inure to, the respective, legal representatives, successors and assigns of Mortgagor and Mortgagee. Wherever used, the singular number shall include the plural, and the plural the singular. All covenants and agreements of Mortgagor shall be joint and several.

14. Mortgagee shall furnish to Mortgagor a conformed and fully completed copy of the Note and this Mortgage at the time that this Mortgage is executed or at a reasonable time after this Mortgage is recorded.

15. The Mortgagee, for itself and its successors and assigns, covenants and agrees that it will not commence procedures to foreclose on this Mortgage without the prior written consent of any of the senior lenders.

16. The Loan is a non-recourse obligation of the Mortgagor. Neither Mortgagor nor any of its members or officers, nor any other party, shall have any personal liability for repayment of the Loan. The sole recourse of Mortgagee for repayment of the Loan shall be the exercise of its rights against the Premises and related security under this Mortgage.

17. Except for willful misrepresentation, misconduct or negligence of the Indemnified Parties (as hereafter defined), and except for any breach by any of the Indemnified Parties of their obligations under the Loan Agreement, this Mortgage or the Note, the Mortgagor agrees to protect and defend the Mortgagee and the governing body members, officers, agents, servants and employees thereof (the "Indemnified Parties"), now or forever, and further agrees to hold the Indemnified Parties harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the Loan Agreement, this Mortgage, the Note, or the transactions contemplated hereby or the acquisition, construction, improvement, ownership, and operation of the Premises. Notwithstanding the foregoing, for so long as HUD is the insurer or holder of a mortgage on

the Premises, any indemnification obligation of Mortgagor shall be limited to available liability insurance proceeds, Surplus Cash and/or non-Project Assets, as each such term is defined in the Regulatory Agreement for Multifamily Projects by and between Mortgagor and HUD.

18. Mortgagee has been awarded a \$962,200.00 TBRA grant from the Metropolitan Council pursuant to the Metropolitan Livable Communities Act Grant Agreement approved by the Council on January 13, 2020, committing grant funds from the Council's Tax Base Revitalization Account to the Mortgagee (the "TBRA Grant Agreement"), and has agreed to loan such funds to finance certain costs of the Mortgagor's development of the Premises. Mortgagee is loaning the funds to Mortgagor pursuant to the Loan Agreement, this Mortgage and the Note subject to the following conditions:

(a) Loan funds can be used to finance only the costs of asbestos and lead-based paint abatement, and related environmental oversight on the Premises, as more fully described in the TBRA Grant Agreement, and

(b) Loan funds may only be drawn down upon the Mortgagee's receipt of documentation demonstrating that the work for which the funds are being requested has been completed.

The Mortgagor shall comply with the foregoing and all other requirements of the TBRA Grant Agreement related to the Premises and if it fails to do so and the Mortgagee is obligated to repay all or any portion of the TBRA grant funds to the Metropolitan Council, the Mortgagor shall be liable to and shall pay to the Mortgagee the amount required to be repaid. The Mortgagor shall provide the Mortgagee all reports, certificates, information and documents which are necessary for the Mortgagee to comply with its obligations under the TBRA Grant Agreement.

19. Mortgagor will permit Mortgagee and its agents to enter and to authorize others to enter upon any or all of the Premises, or inspect Mortgagor's records regarding the Premises at reasonable times, to perform or observe any covenants, conditions, or terms which Mortgagor shall fail to perform, meet or comply with and which Mortgagee is authorized to perform under the terms of this Mortgage, or for any other purpose in connection with the protection or preservation of Mortgagee's security, without thereby becoming liable to Mortgagor or any person in possession under Mortgagor.

20. Mortgagee acknowledges that Mortgagor has entered into and delivered or intends to enter into and deliver concurrently with the execution and delivery of this Mortgage, a first lien mortgage ("Senior Mortgage") in favor of Colliers Mortgage LLC, a Delaware limited liability company, its successors and assigns ("Senior Lender") securing indebtedness evidenced by that certain senior Note (Multistate) ("Senior Note") payable to Senior Lender. Mortgagee agrees to subordinate the lien of this Mortgage to the Senior Mortgage and Senior Mortgage loan documents, and that this Mortgage is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Mortgage as more fully set forth in that certain Subordination Agreement – Public (HUD Form 92420M) of even date herewith between the Mortgagor, Senior Lender, and the Mortgagee.

(Execution page follows.)

IN WITNESS WHEREOF, Mortgagor has executed this Mortgage the day and year first above written.

MORTGAGOR

BUHL GTA, LP,
a Minnesota limited partnership

By: Buhl GTA GP, LLC, a Minnesota limited liability company

Its: General Partner

By: _____
Peter Deanovic
Its Chief Executive Officer

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ___ day of _____, 2021, by Peter Deanovic, the Chief Executive Officer of Buhl GTA GP, LLC, a Minnesota limited liability company, the general partner of Buhl GTA, LP, a Minnesota limited partnership, on behalf of the limited partnership.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
Winthrop & Weinstine, P.A. (KMM)
225 South Sixth Street, Suite 3500
Minneapolis, Minnesota 55402
(612) 604-6400

EXHIBIT A

LEGAL DESCRIPTION

[TO BE UPDATED WITH FINAL TITLE COMMITMENT TO ADD APPURTENANT EASEMENT(S).]

Real property in the City of Falcon Heights, County of Ramsey, State of Minnesota, described as follows:

That part of the West 133.00 feet of the Northeast quarter of the Northeast quarter of the Northeast quarter of Section 21, Township 29, Range 23, which lies South of the North 318.00 feet thereof and which lies North of the South 330.00 feet.

and

The Westerly 133 feet of the Northerly 318 feet excepting therefrom that part taken for Larpenteur Avenue, of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, Section 21, Township 29, Range 23, Ramsey County, Minnesota.

and

The North Half of the Northeast Quarter of the Northeast Quarter of the Northeast Quarter, except the West 133 feet thereof, in Section 21, Township 29, Range 23, Ramsey County, Minnesota, except that part taken for Snelling and Larpenteur Avenues.

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\$962,200.00
PROMISSORY NOTE
given by

BUHL GTA, LP,
a Minnesota limited partnership to

THE CITY OF FALCON HEIGHTS
a municipal corporation under
the laws of the State of Minnesota

Dated: June, 2021 At: Falcon Heights, Minnesota

FOR VALUE RECEIVED, the undersigned, **BUHL GTA, LP**, a Minnesota limited partnership (the “Borrower”), hereby promises to pay to the order of the **CITY OF FALCON HEIGHTS**, a municipal corporation under the laws of Minnesota (“Holder”) at the offices of the Holder or such other place as the Holder may, from time to time, designate in writing, the principal sum of Nine Hundred Sixty-Two Thousand Two Hundred and no/100 Dollars (\$962,200.00), or so much thereof as may be advanced to Borrower (the “Loan”). This Note is secured by, among other things, a Loan Agreement between Holder and Borrower dated as of the date hereof (the “Loan Agreement”) and a Mortgage dated the date hereof from Borrower, as Borrower, to the Holder, as Holder (the “Mortgage”), on property owned by Borrower (the “Project”). This Note shall not bear interest.

The entire principal balance of this Note is due and payable on the earlier of: (a) January 1, 2063, (b) upon the sale of fee title to any portion of the Property identified in the Loan Agreement without the Holder’s prior consent, or (c) upon the Borrower’s default under the Loan Agreement or Mortgage, subject to all applicable notice and cure periods. The Borrower may prepay the Loan, in whole or in part, on any date, subject to the terms provided in the Note.

This Note is issued pursuant to that certain TBRA Grant Agreement between the Metropolitan Council and Holder and defined in the Loan Agreement and Mortgage. All of the agreements, conditions, covenants, provisions and stipulations contained in the Loan Agreement and Mortgage are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein. Time is of the essence hereof. In the event of any default in the payment of any principal or other indebtedness due hereunder, or if the Borrower defaults on any of its other obligations under this Note, the Loan Agreement, or the Mortgage, the Holder may, at its right and option, declare immediately due and payable the principal balance of this Note, together with any attorneys’ fees incurred by the Holder in collecting or enforcing payment thereof, whether suit be brought or not, and all other sums due hereunder and payment thereof may be enforced and recovered in whole or in part at any time by one or more of the remedies provided in any document securing this Note, including any Mortgage.

The Borrower hereby waives demand, presentment, notice of nonpayment, protest, notice of protest, notice of dishonor and diligence in collection and agree that without any notice the Holder hereof may take and/or release additional security herefor or the Holder hereof may, from time to time, release any part or parts of security interests from Borrower in favor of Holder with

or without consideration and that in any such case the Borrower and any guarantor, surety or endorser shall remain liable to pay the unpaid balance of the indebtedness evidenced hereby as so additionally secured, extended, renewed or modified and notwithstanding any such release.

The remedies of the Holder, as provided herein and in any document securing this Note shall be cumulative and concurrent and may be pursued singly, successively or together, at the sole discretion of the Holder, and may be exercised as often as occasion therefor shall occur. The Holder may, in its discretion, waive any default hereunder and its consequences and rescind any declaration of acceleration of principal; provided, however, that no action or inaction by the Holder shall be deemed a waiver of any of the Holder's rights or remedies unless the Holder specifically agrees in writing that such action or inaction shall constitute a waiver of its rights or remedies. Any waiver shall only apply to the particular instance for which it was agreed. No delay in exercising and no failure in exercising any right or remedy hereunder or afforded by law shall be a waiver of or preclude the exercise of any right or remedy hereunder or provided by law, whether on such occasion or any future occasion, nor shall such delay be construed as a waiver of any default or acquiescence therein. The exercise or the beginning of the exercise of one right or remedy shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

In the event of any default hereunder the Borrower agrees to pay the costs of collection including reasonable attorneys' fees and court costs. If this Note is reduced to judgment, such judgment shall bear the lawful interest rate pertaining to judgments, but not to exceed 6% per annum.

This Note may be prepaid in whole or in part without penalty.

The obligations of the Borrower hereunder are unconditional except as otherwise stated herein, irrespective of any defense or any rights of setoff, recoupment or counterclaim it might otherwise have against the Holder or any governmental body or other person.

The indebtedness evidenced by this Note is and shall be subordinate in right of payment to the prior payment in full of the indebtedness evidenced by a Note (Multistate) (the "Senior Note") payable to Colliers Mortgage LLC, a Delaware limited liability company ("Senior Lender") to the extent and in the manner provided in that certain Subordination Agreement – Public (HUD Form 92420M) ("Subordination Agreement") of even date herewith between the payee of this Note, the Senior Lender, and the Holder. The Mortgage securing this Note is and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Lender mortgage securing the Senior Note as more fully set forth in the Subordination Agreement. The rights and remedies of the payee and each subsequent holder of this Note under the Mortgage securing this Note are subject to the restrictions and limitations set forth in the Subordination Agreement. Each subsequent holder of this Note shall be deemed, by virtue of such holder's acquisition of the Note, to have agreed to perform and observe all of the terms, covenants and conditions to be performed or observed by the Holder under the Subordination Agreement.

The Loan is a non-recourse obligation of the Borrower. Neither the Borrower nor any of its partners or officers, nor any other party, shall have any personal liability for repayment of the Loan. The sole recourse of Holder for repayment of the Loan shall be the exercise of its rights against the Project pursuant to the Mortgage, and related security thereunder.

This Note may not be sold, transferred, assigned or pledged without the prior written

approval of the Senior Lender and of the Investor or Special Limited Partner (as such terms are defined in the Loan Agreement) of the Borrower.

This Note shall be governed by and construed in accordance with the laws of the State of Minnesota.

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

Notwithstanding anything to the contrary herein, as long as the U.S. Department of Housing and Urban Development (“HUD”) is the insurer or holder of the Senior Note on FHA Project No. 092-35853, the following provisions (“HUD Provisions”) shall be in full force and effect:

- (1) any payments due under this Note shall be payable only (i) from permissible distributions from Surplus Cash of the Project; but in no event greater than seventy-five percent (75%) of the total amount of Surplus Cash; or (ii) from monies received from Non-Project Sources. In no event may payments due under all subordinate debt of Borrower cumulatively exceed 75% of available Surplus Cash. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of the Borrower to pay the indebtedness evidenced by the Subordinate Note;
- (2) no prepayment of this Note shall be made until after final endorsement by HUD of the Senior Note, unless such prepayment is made from Non-Project Sources and is approved in writing by HUD.
- (3) this Note is non-negotiable and may not be sold, transferred, assigned, or pledged by the Subordinate Lender except with the prior written approval of HUD;
- (4) interest on this Note (if any) shall not be compounded as long as HUD is the insurer or holder of the Note secured by the Security Instrument;
- (5) Borrower hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Note;
- (6) the terms and provisions of this Note are also for the benefit of and are enforceable by HUD against any party hereto, their successors and assigns. This Note may not be modified or amended without the written consent of HUD; and
- (7) in the event of any conflict between the terms of this Note and the HUD Provisions, the terms of the HUD Provisions shall control.

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

[Signature Page Follows]

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed by its authorized representative, all on the date and year first above written.

BORROWER:

BUHL GTA, LP, a Minnesota limited partnership

By: Buhl GTA GP, LLC, a Minnesota limited liability company

Its: General Partner

By: _____

Name: Peter Deanovic

Title: Chief Executive Officer

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REQUEST FOR COUNCIL ACTION

Meeting Date	May 26, 2021
Agenda Item	Accept Feasibility Report & Order Plans and Specifications
Attachment	Feasibility Report, Resolution
Submitted By	Jesse Freihammer, City Engineer

Item	Accept Feasibility Report & Order Plans and Specifications for Alley Improvements
Description	<p>At the May 21, 2021 Council workshop, the City Council ordered the preparation of a feasibility report for improvements in the Idaho/Iowa alleyway between Pascal St. and Arona St. This was based on a petition from 52% of adjacent property owners. The petition requests the City address problematic drainage on the alleyway, specifically where it intersects Pascal Street.</p> <p>Staff surveyed the area that holds water. In order to address the drainage issue, staff would propose re-grading a portion of the alleyway, lowering the existing catchbasin and repaving the alleyway. This would correct the drainage issues in the alley as well as the pavement condition of the alley. This cost is estimated to be \$43,000 including engineering and contingency.</p> <p>After studying the drainage issue in more detail, if the alley is re-graded and improved, the alley drainage will be corrected but the drainage on Pascal may become worse. The Pascal Street curb grade is very flat allowing water to pond at the alley intersection, particularly under freeze-thaw conditions. The pooling of water at this location requires additional work on Pascal Street to correct.</p> <p>As detailed in the feasibility report, a new catch basin installed near the alley and connect by a perforated infiltration trench/pipe north to the catchbasin/infiltration trench at Pascal/Iowa. The proposed storm sewer would be constructed in the boulevard to minimize impacts to the street. This would help eliminate some of the major standing water. The cost of this improvement is estimated to be \$27,000.</p> <p>Due to the complexity of the drainage in the area and short timeframe to add this project to this years PMP contract, engineering staff proposes to delay the project until a later date. The current PMP contract has minimal pipe work and adding that to the project may result in higher than normal prices. Additionally, this will allow staff to look into more options and to make sure the solution found will solve the problem and be cost effective.</p>

	<p>A public hearing for the project has already been set for June 9. Since the hearing is already set, staff proposes to still get feedback from the public on the need for the improvement and to get further feedback After the public hearing the Council would then have the following options to consider on June 9.</p> <ul style="list-style-type: none"> • Delay entire project until a later date. <ul style="list-style-type: none"> • Drainage issues will still be present in freeze/thaw conditions. Additional maintenance may be needed to address this in the short term. • Approve only alley improvements. <ul style="list-style-type: none"> • Pavement issues would be resolved. Some drainage issue will still be present at the alley intersection. • Approve both the alley improvements and storm sewer improvements <ul style="list-style-type: none"> • Additional City cost. Change order may result in higher than normal costs due to the added nature of the work. <p>If the Council were to order a project a draft schedule is shown below:</p> <ul style="list-style-type: none"> • June 9 - Improvement Hearing, • June 23 - Approve Plans and Spec, Approve CO • June-August - Construction • Fall - Assessment Hearing <p>A resolution accepting the feasibility report and ordering plans and specification is attached.</p>
Budget Impact	<p>The City’s Assessment Policy states that property owners are responsible for 90% of the costs for alleyway improvements. The assessment policy would have the amount split among the 23 adjacent properties based on the length of their frontage to the alleyway. The City would fund the remaining 10% of the cost with the Street Fund. The assessment cost is estimated at \$38,700 and the City’s cost would be \$4,300.</p> <p>The estimated cost for the additional storm sewer work on Pascal is \$27,000 which would be paid using storm sewer funds.</p>
Attachment(s)	Feasibility Report, resolution
Action(s) Requested	Approve resolution accepting the feasibility report and ordering plans and specifications.

**CITY OF FALCON HEIGHTS
COUNCIL RESOLUTION**

May 26, 2021

No. 21-27

**RESOLUTION RECIEVING FEASIBILITY REPORT AND ORDERING PLANS AND
SPECIFICATIONS FOR ALLEY IMPROVEMENT**

BE IT RESOLVED by the City Council of the City of Falcon Heights, as follows:

WHEREAS, pursuant to resolutions of the Council adopted May 12, 2021 a report has been prepared by the City Engineer with reference to the improvement of the following alley:

- Idaho/Iowa, between Pascal St and Arona St

WHEREAS, the City of Falcon Heights plans to assess all of a portion of the cost of the improvements to the benefited property owners, pursuant to Minnesota Statutes, Chapter 429,

WHEREAS, the report provides information regarding whether the proposed project is necessary, cost effective, and feasible; whether it should best be made as proposed or in connection with some other improvement; the estimated cost of the improvement as recommended; and a description of the methodology used to calculate individual assessments for affected parcels.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF FALCON HEIGHTS, MINNESOTA:

1. The council will consider the improvement of such streets in accordance with the report and the assessment of abutting property for all or a portion of the cost of the improvement pursuant to Minnesota Statutes, Chapter 429 at an estimated total cost of the improvement of \$70,000.00.
2. The City of Roseville Engineering Department is hereby designated as the engineer for this improvement. The engineer shall prepare plans and specifications for the making of such improvement.

Moved by:

Approved by: _____

Randall C. Gustafson
Mayor

GUSTAFSON
MIAZGA
ANDREWS
LEEHY
WEHYEE

_____ In Favor
_____ Against

Attested by: _____
Sack Thongvanh
City Administrator