

**Council Study Session**  
City Hall Council Chambers  
March 27, 2023

## **AGENDA**



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1. **City Council Discussion of Agenda Items and Questions - 6 p.m.**
  2. **Miscellaneous**
  3. **Discussion of Work Session Agenda Item as Time Permits**
  4. **Adjourn**

**Council/EDA Work  
Session**

City Hall Council Chambers  
March 27, 2023

**AGENDA**



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**ACTIVE DISCUSSION ITEMS**

1. Wangstad Commons Rental Housing Development Project  
Please provide direction to City Staff regarding the Wangstad Commons Development.
2. Opportunity Site Phase 1 Financing  
Please provide direction to City Staff regarding the Opportunity Site.

**PENDING LIST FOR FUTURE WORK SESSIONS**

1. Upcoming Items
  - Grant Discussion (*referred to Financial Commission*)
  - Special Assessment Policy/Franchise Fees (*referred to Financial Commission*)
  - Emerald Ash Borer Policy Review (*referred to Park & Rec Commission*)
  - Memorial Policy (*referred to Park & Rec Commission*)
  - Establishing a Beautification and Public Art Commission
  - Liquor Store 2 - (*April*)
  - 252/94 Report - (potential separate work session)
  - Organizational Chart
  - Rental License Review (*referred to Housing Commission*)
  - Tenant Protection Data presentation
  - THC Moratorium



## Council/EDA Work Session

DATE: 3/27/2023

TO: City Council

FROM: Dr. Reggie Edwards, City Manager

THROUGH: Jesse Anderson, Interim Community Development Director

BY: Jason Aarsvold, EDA Project Management - Ehlers

SUBJECT: Wangstad Commons Rental Housing Development Project

### **Requested Council Action:**

Please provide direction to City Staff regarding the Wangstad Commons Development.

### **Background:**

Since 2019, The EDA has been working with JO Companies to develop four EDA-owned parcels at 61<sup>st</sup> Avenue N and Brooklyn Boulevard. The proposed project includes a 54-unit low-income housing tax credit (LIHTC) rental project. In June of 2022, the EDA entered into an option agreement with the developer to sell the EDA-owned land and approved a resolution of support to provide Tax Increment Financing (TIF) for the project. Both actions were necessary for the developer to successfully apply to MN Housing for an allocation of tax credits. In 2022, the developer received an allocation of tax credits through MN Housing's competitive process.

The original option agreement and resolution of support for TIF included a purchase price for the land of \$225,000 and a pay-as-you-go TIF note in the amount of \$482,000. In this case, the City would create a new Housing Tax Increment Financing District for the project. The new TIF district would allow the City to capture most of the increased tax revenues from the proposed new development over the life of the TIF district (26 year maximum duration).

In a PAYGO financing, the developer is responsible for raising and/or financing 100% of the project costs. The City does not provide any funding up front. Instead, once the project is complete, the City issues a PAYGO promissory note to the developer. Tax increment generated within the TIF district goes to the City, and the City makes payments on the note to the developer using TIF collected in the district.

If TIF collections in the district are less than anticipated, the City is not responsible for making up the difference. This is the developer's risk. At the end of the term of district/note, if a balance remains on the note, the City is again not responsible for making up the difference.

Like many other projects in our region, the Wangstad project is also experiencing cost inflation and interest rate increases. Since action on the term sheet in June of 2022, the financing gap in the project has increased by approximately \$600,000. To achieve financial feasibility, the developer is requesting some additional assistance from the City to help solve a portion of the gap.

City staff and Ehlers reviewed the developer's current pro forma and considered options to help off-set the increased gap in the project. The options considered were as follows:

- Increase the amount of the PAYGO TIF note. The currently approved TIF note can be repaid in an estimated 17 years, so there are potentially 9 more years of increment collection in the TIF district being created.
- Write-down the cost of the land further
- Provide an additional up-front grant from the City's TIF District #3 (housing portion)

- Some combination of the above

Staff and Ehlers determined writing down the land to \$1 would be the most efficient and least impactful option to provide additional assistance to the project. This would help solve \$225,000 of the new gap. The developer has indicated an ability to solve the remaining portion of the gap.

This is the recommended option for two reasons. First, the goal is to have the project come out of the new TIF district as soon as possible. When this happens, the new tax base from the project is available for the City (and other taxing jurisdictions). Increasing the PAYGO portion of assistance would keep the project in the district longer, which was not desirable. Second, since the land for this project was purchased by the EDA using TIF funds, any land sale proceeds would need to go back into TIF district #3. For this reason, it makes more sense to write-down the cost of the land, rather than making a grant from TIF District #3, then putting the land sale proceeds back into the district.

#### Next Steps:

If the council wishes to proceed, staff will begin working with the developer to create a new Housing Tax Increment Financing District and prepare a formal TIF agreement for the project based on the revised terms.

The current schedule for the creation of the district and TIF agreement approval are attached. Based on this schedule, the TIF district and TIF agreement would be brought back for City Council and EDA consideration on May 8, 2023.

#### Budget Issues:

This item is for discussion only will have no immediate effect on the budget.

#### Antiracist/Equity Policy Effect:

#### Strategic Priorities and Values:

Resident Economic Stability, Targeted Redevelopment

#### ATTACHMENTS:

| Description               | Upload Date | Type            |
|---------------------------|-------------|-----------------|
| TIF District 10 Schedule  | 3/20/2023   | Backup Material |
| Approved Term Sheet       | 3/20/2023   | Backup Material |
| Approved Option Agreement | 3/20/2023   | Backup Material |
| presentation              | 3/28/2023   | Presentation    |

## Schedule of Events

### Brooklyn Center Economic Development Authority Hennepin County, Minnesota

#### For the proposed Modification to the Development Program for Housing Development and Redevelopment Project No. 1 & the proposed establishment of Tax Increment Financing District No. 10: Wangstad Commons (a housing district)

**March 13, 2023**

|                |                                                                                                                                                                                                                                                                |
|----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| March 10, 2023 | TIF Application, project information, property identification numbers, fiscal impacts and maps sent to Ehlers for drafting documentation.<br><br>Ehlers confirms whether building permits have been issued on the property to be included in the TIF District. |
| March 20, 2023 | Letter received by County Commissioner giving notice of potential housing TIF district (at least 30 days prior to publication of public hearing notice). [Ehlers will distribute.]                                                                             |
| March 20, 2023 | Ehlers conducts internal review of Plans.                                                                                                                                                                                                                      |
| March 23, 2023 | Fiscal/economic implications received by School Board Clerk and County Auditor (at least 30 days prior to public hearing) and County receives information for review of county road impacts. [Ehlers will distribute.]                                         |
| March 27, 2023 | City Council work session to review revised/current request for assistance.                                                                                                                                                                                    |
| April 20, 2023 | Publication of hearing notice and map in the Brooklyn Center Brooklyn Park Sun Post (at least 10 days but not more than 30 days prior to hearing). [Ehlers will submit notice, map and instructions. Publication deadline: April 12, 2023.]                    |

May 8, 2023

EDA meets at approximately 8:00 PM (immediately following the City Council Meeting) to consider the Plans, resolution adopting the Plans in connection with the TIF District. [Attorney provides resolution by May 1, 2023.]

EDA considers approval of TIF agreement.

EDA considers an Interfund Loan resolution in connection with the TIF District.

May 8, 2023

City Council holds public hearing at 7:00 PM on the modification to the Development Program for Housing Development and Redevelopment Project No. 1 and the proposed Establishment of Tax Increment Financing District No. 10: Wangstad Commons and considers a resolution approving the Plans. [Ehlers and attorney provide packet information May 1, 2023.]

May 9, 2023

City may issue building permits.

Before June 30, 2023

Ehlers files the Plans with the MN Department of Revenue, Office of the State Auditor, and requests certification of the TIF District with the County.

An action under subdivision 1, paragraph (a), contesting the validity of a determination by an authority under section 469.175, subdivision 3, must be commenced within the later of:

(1) 180 days after the municipality's approval under section 469.175, subdivision 3; or

(2) 90 days after the request for certification of the district is filed with the county auditor under section 469.177, subdivision 1.



## Preliminary Term Sheet

This Term Sheet, dated as of \_\_\_\_\_, 2021, is intended to set forth the general terms upon which the Developer (as defined below) and the Economic Development Authority of Brooklyn Center, Minnesota (the "EDA") may be willing to enter into a Development Agreement (the "Development Agreement").

1. Developer: JO Companies, LLC, a Minnesota limited liability company (or a limited partnership or other entity to be formed thereby or affiliated therewith)
2. Property: Four parcels comprising approximately 1.8 acres of land at the northwest intersection of Brooklyn Boulevard and 61st Avenue N in Brooklyn Center, Minnesota identified as property numbers (1) 34-119-21-43-0049, (2) 34-119-21-43-0050, (3) 34-119-21-43-0051, and (4) 34-119-21-43-0052, subject to a final plat of the Property.
3. Developer Conditions, as determined to date:
  - a. Execution of Development Agreement
  - b. Secure necessary financing for the construction of the Minimum Improvements
  - c. Site Control
  - d. Satisfaction of all Buyer's Contingencies under the Option Agreement
4. EDA Conditions, as determined to date:
  - a. EDA approval of the sale of the Property after all proceedings required by law
  - b. EDA approval of Construction Plans
  - c. City Council approval of Planning Application
  - d. Execution of a Development Agreement
  - e. Satisfaction of all Seller's Contingencies under the Option Agreement
5. Minimum Improvements: Improvements to the Property will include the construction and equipping of a multi-story, approximately 54-unit apartment with at least 40% of the units occupied or held for occupancy by persons and families whose incomes do not exceed 60% of area median income, and underground and surface parking stalls.
6. Construction Schedule: Commence construction on the Minimum Improvements within 30 days after the closing date on the Property under the Option Agreement and substantially complete construction by December 31, 2025. For the purpose hereof, "Commence" shall mean beginning of physical improvement to the Property, including grading, excavation, or other physical site preparation work; and "Complete" shall mean that the Minimum Improvements are sufficiently complete for the issuance of a Certificate of Occupancy. Upon Completion the EDA will issue, if requested by the Developer, a "Certificate of Completion" in recordable form.
7. Public Assistance: Subject to all terms and conditions of the Development Agreement and satisfaction of the requirements of applicable law including a final "but for" analysis, the EDA will reimburse the Developer for costs of construction of the Minimum Improvements as follows:
  - a. in the form of a pay-as-you-go (PAYGO) note in the amount of up to \$790,000, bearing simple, non-compounding interest at a rate per annum of up to the lesser of 4.625% or the rate of interest on the first lien mortgage financing for the Minimum Improvements. The PAYGO note will be payable from 90% of the tax increment generated from the Minimum Improvements for a period of up to 15 years; and

- b. in the form of a reduction of the cash payment of the purchase price of the Property by an amount equal to 1.1% of the total project costs for the Minimum Improvements as set forth in the Buyer's HTC-1 Workbook submitted to Minnesota Housing (currently estimated to be \$214,000.00) in exchange for the delivery of a promissory Note by the Developer in favor of the EDA, payable, together with interest at the rate of 4% per annum, solely from the tax increments from the housing tax increment financing district generated by the Minimum Improvements after the final payment of the PAYGO note.

The PAYGO note will be issued upon completion of the Minimum Improvements and proof of expenditures related to the construction of affordable housing.

- 8. Fees: Within two (2) weeks of approval of this Term Sheet by the EDA, Developer shall deposit to the EDA the sum of Ten Thousand Dollars (\$10,000.00) to pay for the reasonable out-of-pocket legal, financial consultant and administrative fees associated with this transaction. Unexpended funds will be returned to the Developer and if, additional funds are needed to pay such expenses, the Developer will deposit such additional funds upon request by the EDA.
- 9. Minimum Assessment Agreement: the Developer will execute and record against the Property a Minimum Assessment Agreement pursuant to which the Property and Minimum Improvements will be assessed based on a minimum market value of
  - a. \$2,430,000 as of January 2, 2024; and
  - b. \$7,290,000 as of January 2, 2025; and
  - c. \$9,720,000 as of January 2, 2026:

The Developer acknowledges that except for Section 8 above which shall be binding upon the Developer, this Term Sheet shall not be deemed conclusive or legally binding upon either the Developer or the EDA, and neither the Developer nor the EDA shall have any obligations regarding the Property, the Minimum Improvements or the Public Assistance described herein, unless and until a definitive Development Agreement is approved by the EDA board and executed by both the Developer and the EDA.

JO COMPANIES, LLC, A MINNESOTA LIMITED  
LIABILITY COMPANY

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

## OPTION AGREEMENT

THIS OPTION AGREEMENT (this “**Agreement**”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2022 (the “**Effective Date**”), by and between the Economic Development Authority of Brooklyn Center, Minnesota, a public body corporate and politic under the laws of Minnesota (the “**Seller**”) and JO Companies, LLC, a Minnesota limited liability company (the “**Buyer**”)(together with the Seller and the Buyer referred to herein as the “**Parties**” or individually as a “**Party**”).

### RECITALS

A. The Buyer intends to purchase the parcels legally described on Exhibit A attached hereto and hereby made a part hereof (the “**Option Property**”) from the Seller and to develop the Option Property into a multi-story, approximately 54-unit apartment building with at least 40 percent of the units occupied or held for occupancy by persons and families whose incomes do not exceed 60 percent of the area median income, and underground and surface parking stalls (the “**Development**”); and

B. The Seller wishes to grant the Buyer an option to acquire the Option Property, under the terms and conditions hereunder; and

C. The Seller believes that the development of the Option Property is vital and is in the best interests of the Seller and City of Brooklyn Center, Minnesota (the “**City**”), will result in preservation and enhancement of their tax base, provide additional affordable housing options in the City, and is in accordance with the public purpose and provisions of the applicable state and local laws and requirements under which the Development will be undertaken.

NOW, THEREFORE, in consideration of mutual covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller and the Buyer agree as follows:



## Terms of the Agreement

1. Recitals. The recitals as set forth above are hereby incorporated into this Agreement.

2. The Option. The Seller hereby grants to the Buyer the exclusive right and option to purchase the Option Property, during the Option Period defined below, subject to the conditions set forth below (the “**Option**”).

3. Option Payment. Within five business days after the date hereof, the Buyer shall pay and deliver to Commercial Partners Title, located at 200 S. Sixth Street, Suite 1300, Minneapolis, MN 55402 (the “**Title Company**”), the sum of Two Thousand Five Hundred and No/100 dollars (\$2,500), which shall constitute the option payment (the “**Option Payment**”) hereunder. The Option Payment shall be refundable if, at the end of the Option Period (as defined below), the contingencies set forth in either Section 13(c)(ii) or 13(c)(iii) are not satisfied. In the event that the Buyer purchases the Option Property pursuant to this Agreement, the Option Payment shall be credited against the Purchase Price payable for the Option Property as set forth in Section 6 herein. In the event the Buyer does not exercise the Option or Closing (as defined below) does not occur for any reason whatsoever other than the Seller’s default hereunder or failure of the contingencies set forth in Sections 13(c)(ii) or 13(c)(iii) to be satisfied, the Option Payment shall be retained by the Seller as consideration for granting the Option.

4. Option Period.

- a. The period during which the Option may be exercised by the Buyer (the “**Option Period**”) shall commence upon the Effective Date of this Agreement and shall expire on the earlier of 60 days after the Buyer receives an allocation of tax credits for the Development the Minnesota Housing Finance Agency from (“MHFA”) or January 1, 2024 (the “**Expiration Date**”). During the Option Period, the Seller agrees it will not advertise, list, negotiate for the sale of or sell the Option Property to a third party.
- b. If the Buyer does not timely exercise the Option, the Option shall lapse, and the Option Payment shall be applied as provided in Section 3 herein and the Buyer shall have no further rights with respect to the Option Property.

5. Exercise of Option. This Option shall be deemed exercised if, within the Option Period, the Buyer gives written notice to the Seller of the Buyer’s intent to exercise the Option and the Buyer will deposit with the Title Company for the benefit of the Seller the sum of Ten Thousand and No/100 dollars (\$10,000.00), as earnest money (“**Earnest Money**”). The Earnest Money shall become nonrefundable at the end of the Due Diligence Period (defined below). In the event that Seller breaches the terms of this Agreement, the Seller shall refund the Earnest Money to the Buyer. Nothing in this Agreement shall entitle the Buyer to make any claim against the Seller or the City for any damages whatsoever and the Buyer’s remedies are strictly limited to the foregoing. Nothing in this Agreement shall be construed as a limitation of or waiver by the Seller of any immunities, defenses, or other limitations on liability to which the Seller is entitled by law.



6. Previous Option Agreement. The Parties agree and acknowledge that the previous option agreement dated \_\_\_\_\_, 2021 by and between the Parties and related term sheet are terminated and superseded in their entirety by this Agreement and the Preliminary Term Sheet dated as of the date hereof.

7. Purchase Price. The total purchase price for the Option Property shall be \$975,000, less a land write-down in the amount of \$750,000 as set forth in the Buyer's HTC-1 Workbook submitted to MHFA (the "**Purchase Price**"). The Purchase Price less the Earnest Money and the Option Payment shall be paid to the Seller from the Buyer on the Closing Date.

8. Closing. Subject to the terms of this Agreement, the closing of the purchase and sale of the Option Property contemplated by this Agreement (the "**Closing**") shall occur at the office of the Title Company, or at another location mutually agreed upon by the Parties, on the date 30 days after the expiration of the Due Diligence Period or such other date as agreed to by the Parties in writing (the "**Closing Date**").

9. Due Diligence Investigation. Commencing on the date that the Buyer exercises this Option, the Buyer, at its sole cost and expense, shall have a due diligence period of 180 days ("**Due Diligence Period**") to make all such investigations as the Buyer, in its sole and absolute discretion, deems reasonable and necessary in determining the suitability of the Option Property for the Buyer's needs including:

- a. To examine and inspect the Option Property, to review the Due Diligence Documents, to conduct feasibility studies with regard to the ownership and operation of the Option Property, including, but not limited to, environmental reviews, soil condition testing, surveying, engineering studies, appraisals and any other physical inspections of the Option Property as determined by the Buyer, and to investigate all physical aspects of the Option Property, and to review all other due diligence matters related to the Option Property. The Buyer may enter upon the Option Property to inspect the same, and may conduct tests and examinations with regard thereto, provided that the Buyer's activities do not unreasonably interfere with the ongoing operation of the Option Property. The Buyer shall promptly restore the Option Property to substantially the same condition in which it existed immediately prior to any physical tests conducted by or on behalf of the Buyer.
- b. To investigate all zoning, code and governmental regulations or requirements in place at the Option Property, and to obtain all land use and rezoning approvals and permits determined necessary by the Buyer for the Buyer's intended development and use of the Option Property, including but not limited to all Development Approvals defined herein.
- c. To secure funding for the purchase and development of the Option Property on terms acceptable to the Buyer, in the Buyer's sole discretion. The Parties contemplate that such funding may include, without limitation, one or more of the following:

- i. MHFA Affordable Housing Tax Credits;
  - ii. Tax Increment Financing assistance from the Seller;
  - iii. Commercial loans for the purchase and/or development of the Option Property.
- d. To obtain, at the Buyer's sole cost, an appraisal of the Option Property that is satisfactory to the Buyer and all of the Buyer's funding sources.
  - e. The Buyer shall have until the last day of the Due Diligence Period to provide written notice to the Seller of the Buyer's intention to terminate this Agreement for any reason. If the Buyer terminates this Agreement within the Due Diligence Period, the transactions contemplated herein shall be considered terminated and the Earnest Money will be returned immediately to the Buyer.

10. Right of Entry. During the Due Diligence Period, the Buyer shall have the right to enter upon the Option Property for the purpose of taking soil tests and borings, making surveys and maps, and performing investigative work, including environmental testing and assessment, as the Buyer may deem necessary; provided, however, the Buyer shall indemnify, defend, and hold the Seller harmless from any mechanics' liens or claims arising out of such investigative work by the Buyer. The Buyer may assign this right to its agents, employees, or contractors at its sole discretion. Nothing in this Agreement shall be deemed a waiver of defenses or limitations available to the Seller under Minnesota Statutes Chapter 466.

- a. In consideration for such right of entry, the Buyer agrees to:
  - i. Notify the Seller at least 48 hours in advance of the date and time that the Buyer, its agents, employees, or contractors, will enter the Option Property for the purpose for the entry, in order to permit the Seller to be present during the time any work is being done by the Buyer, its agents, employees, or contractors;
  - ii. Provide to the Seller a copy of all test results and reports prepared by the Buyer or its consultants evaluating the conditions present on the Option Property, as soon as reasonably possible following final completion thereof;
  - iii. Dispose of all solid waste generated during the course of the Buyer's sampling activities and other work on the Option Property in accordance with applicable federal, state and local laws, rules and regulations;
  - iv. Coordinate activities with the Seller so as to avoid unnecessary disruption to or interference with the Seller's use of the Option Property;
  - v. Do no unnecessary damage to the Option Property and restore the Option Property to substantially the same condition as the condition in



which it was found by the Buyer at the time of entry by the Buyer, its agents, employees, or contractors; and

- vi. Hold the Seller harmless from and indemnify and defend the Seller from any and all claims, damages, judgments or obligations, including the cost of defense of suit, arising out of damage to the Option Property or arising out of injury to anyone incurred or alleged to have been incurred in connection with or as a result of any work done pursuant to this right of entry, or as a result of the intentional torts or negligence of the Buyer, its agents, employees, or contractors.

11. Title Review and Objections. Within 15 days after exercising the Option, the Seller shall obtain and provide a copy to the Buyer a commitment for an ALTA owner's title insurance policy which shall be periodically updated in accordance with the Development Documents as subsequently defined herein. Within 30 days after receipt of the title commitment, the Buyer shall notify the Seller in writing of any objections to title, or the objections shall be deemed waived. If any objections are so made, the Seller may be allowed until the Closing Date to cure such objections and make the title to the Option Property good and marketable of record in the Seller. Notwithstanding the foregoing, the Seller shall have no obligation to cure any title objections. If a timely objection has been made by the Buyer pursuant to this Section and title to the Option Property remains unmarketable on the Closing Date, the Buyer, as its sole and exclusive remedy, may either: (A) terminate this Agreement by giving written notice to the Seller; or (B) elect to accept the title in its unmarketable condition and without reduction of the Purchase Price by giving written notice to the Seller.

12. Preliminary Plat & Final Plat. The Buyer, at the Buyer's expense, shall obtain within 60 days of exercising the Option, a preliminary plat of the Option Property prepared by a licensed land surveyor (the "**Preliminary Plat**"). The Buyer, at the Buyer's sole expense, shall comply with all subdivision processes as required by the City Code of the City in order to accomplish the platting of the Option Property.

13. Conveyance Subject to Right of Re-entry. The Seller's conveyance of the Option Property to the Buyer pursuant to this Agreement shall be made in the form of a quit claim deed (the "**Deed**"). The Deed shall include a right of re-entry for breach of a condition subsequent in favor of the Seller (the "**Right of Re-entry**"). The condition subsequent shall be determined by the Seller in accordance with Minnesota Statutes Section 469.105 and set forth in the Deed conveying the Option Property to the Buyer in the form attached to the Development Agreement (as defined below). If the Buyer breaches such condition subsequent, the Buyer shall re-convey the Option Property back to the Seller. If the Buyer fails to re-convey the Option Property to the Seller, the Seller may elect to exercise its right of reentry by commencing an action in Hennepin County District Court to establish the breach of the condition subsequent. If the Seller establishes a breach of the condition subsequent, title to and the right to possession of the Option Property and title to all improvements located thereon reverts to the Seller, and the Buyer is not entitled to any compensation from the Seller for the Option Property or the value of any improvements the Buyer has made to the Option Property. The Buyer must record any certificate of completion or certificate of release of the Right of Re-entry in the proper County land records at its expense.

14. Contingencies.

- a. Buyer's Contingencies. If the Buyer exercises the Option, the Buyer's obligation to purchase the Option Property shall be contingent on the following:
  - i. By the end of the Due Diligence Period, the Buyer shall have determined, in its sole and absolute discretion, that it is satisfied with the results and matters disclosed by the Buyer's investigation of the Option Property pursuant to Section 9 of this Agreement.
  - ii. By the Closing Date, the Buyer shall have obtained, or caused to be obtained, in a timely manner, all required permits, licenses and approvals, including without limitation zoning and land use approvals, final plat approval, and all other approvals which must be obtained for the Development.
  - iii. By the Closing Date, the Buyer shall have obtained approvals from the Seller and the City, following a duly noticed public hearing and the satisfaction of all other conditions required by Minnesota law, of the creation of a housing tax increment financing district that includes the Option Property within its boundaries.
  - iv. By the Closing Date, the Buyer shall have obtained all necessary financing for the Development.
  - v. By the Closing Date, the condition of title shall be satisfactory to the Buyer following the Buyer's examination of title as provided herein.
- b. The contingencies set forth above are for the benefit of the Buyer and may be waived by the Buyer in the Buyer's sole discretion. Notwithstanding any other provision in this Agreement, a waiver of a contingency must be in writing to be effective. At the end of the Due Diligence Period, the Buyer will give written notice to the Seller of the contingencies that have been waived, satisfied, or neither waived nor satisfied.
- c. Seller's Contingencies. If the Buyer exercises the Option, the Seller's obligation to convey the Option Property shall be contingent on the following:
  - i. By the Closing Date, the Buyer shall have obtained, or cause to be obtained, in a timely manner and at its sole and absolute expense, all required permits, licenses and approvals, and shall have met, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met for the Development including without limitation a building permit, any needed variances, final plat or subdivision approval, and zoning and land use approvals;
  - ii. The Buyer shall have obtained approval from the Seller of the sale of the Option Property pursuant to this Agreement following a duly noticed



public hearing and the satisfaction of all other conditions required by Minnesota law;

- iii. By the Closing Date, the Buyer shall have obtained approvals from the Seller and the City, following a duly noticed public hearing and the satisfaction of all other conditions required by Minnesota law, of the creation of a housing tax increment financing district that includes the Option Property within its boundaries;
- iv. The Buyer and the Seller shall have negotiated and mutually agreed to, the Board of Commissioners of the EDA shall have approved following the satisfaction of all conditions required by Minnesota law, and the Seller and the Buyer shall have executed, effective not later than the Closing Date, a Development Agreement (the “**Development Agreement**”), providing, among other things, for (i) the platting of the Option Property including, but not limited to, the preliminary plat, final plat, and site plan; (ii) the construction of the Development by the Buyer in accordance with plans, specifications and a timeline approved by the Seller, (iii) the use of up to 90% of the tax increment from the housing tax increment financing district generated from the minimum improvements for the Development for a period of up to 15 years to reimburse the Buyer for a portion of the costs of constructing the Development on the Option Property pursuant to a pay-as-you-go tax increment revenue note, bearing simple, non-compounding interest at a rate per annum of up to the lesser of 6.125 percent or the rate of interest on the first lien mortgage financing for the minimum improvements for the Development (the “**PAYGO Note**”) in the amount of up to \$482,000 subject to a final determination in accordance with applicable law, and (iv) the terms and conditions of the Right of Re-entry in accordance with Section 12 and the form of the Deed to be executed and delivered by the Seller at closing and containing the terms of the Right of Re-entry; and any documents ancillary thereto (collectively, the “**Development Documents**”);
- v. The Buyer shall have performed all of the obligations required to be performed by the Buyer under this Agreement or the Development Documents as of the Closing Date and any further contingencies to Closing set forth in such Development Documents shall have been satisfied as provided therein;
- vi. The Buyer shall have delivered to the Seller all of the Buyer’s Documents described in Section 19.
- vii. The Buyer shall have submitted the construction plans for the Development to the Seller and the City, and the Seller and the City shall have approved the construction plans pursuant to the Development Documents;

- viii. By the Closing Date, the Buyer shall have obtained and provided to the Seller evidence of all necessary financing for the Development; and
  - ix. The Seller shall have determined that the Development to be undertaken by the Buyer on the Option Property is in conformance with this Agreement and the development objectives set forth in resolutions of the City and the Seller authorizing the housing tax increment financing district and the Development Documents.
- d. The contingencies set forth in Section 13(c) are for the benefit of the Seller and may be waived only by the Seller in its sole and absolute discretion. Notwithstanding any other provision in this Agreement, a waiver of a contingency must be in writing to be effective. At the end of the Due Diligence Period, the Seller will give written notice to the Buyer of the contingencies that have been waived, satisfied, or neither waived nor satisfied.
- e. Seller's and Buyer's Options. In the event that any of the foregoing contingencies fail to be satisfied on or before the Closing Date:
- i. the applicable party may terminate this Agreement, and the Buyer and the Seller shall execute and deliver to each other documentation effecting the termination of this Agreement and the Seller shall return the Earnest Money to the Buyer; or
  - ii. the applicable party may waive such failure and proceed to Closing; provided that the contingencies in Section 13(a) are solely for the benefit of the Buyer and may be waived only by the Buyer as provided in Section 13 (b) and the contingencies in Section 13(c) are solely for the benefit of the Seller and may be waived only by the Seller as provided in Section 13(d); or
  - iii. The Buyer and the Seller may mutually agree to extend the Closing Date.
- f. If Closing does not occur due to the failure of any of the above contingencies which is not waived by the applicable party, the Seller shall be entitled to retain the Option Payment, except as otherwise provided in Section 3 of this Agreement.
- g. If the above contingencies are satisfied at the end of the Due Diligence Period or the applicable party elects to waive any unsatisfied contingencies and proceed to Closing, then the Earnest Money shall become non-refundable to the Buyer except in the event of the Seller's default.

15. Real Estate Taxes and Special Assessments. The Seller shall not be responsible for the payment of any real estate taxes due or special assessments due with respect to the Option Property. The Buyer shall be responsible for all real estate taxes special assessments due with respect to the Option Property which have not been paid prior to Closing.

16. Representations and Warranties of the Seller. The Option Property is sold AS-IS. Except as provided herein, the Seller makes no representations or warranties regarding the condition of the Option Property, its use, or the marketability of its title. The Buyer shall be satisfied solely on the basis of its own investigation. Notwithstanding the foregoing, the Seller represents and warrants to the Buyer:

- a. Unrecorded Agreements. To the Seller's knowledge, there are no unrecorded agreements, undertakings or restrictions which affect the Option Property.
- b. Leases. There are no leases or possessory rights of others regarding the Option Property.
- c. No Default Notice. The Seller has not received notice of a default or breach of any agreement related to the Option Property and is not aware of any facts that would result in the Seller being in default or breach of any such agreement.
- d. Due Diligence Documents. The Due Diligence Documents delivered or to be delivered to the Buyer hereunder are to the Seller's actual knowledge correct and complete and, to the Seller's actual knowledge, do not contain any false information.
- e. Operations. The Seller has not received any notice of any violation of any laws, ordinances, or regulations relating to the Option Property.
- f. Condition. To Seller's actual knowledge, the Option Property complies with all applicable laws, ordinances, regulations, permits, and any applicable restrictive covenants.
- g. FIRPTA. The Seller is not a "foreign person," "foreign partnership," "foreign trust," or "foreign estate," as those terms are defined in Internal Revenue Code Section 1445 and the regulations promulgated thereunder.
- h. No Proceedings. No legal or administrative proceeding is pending or, to the Seller's actual knowledge, threatened (i) which would adversely affect the Seller's right to convey the Option Property to the Buyer as contemplated in this Agreement, or (ii) affecting the Option Property. There are no condemnation or eminent domain proceedings pending or, to the Seller's knowledge, threatened with respect to the Option Property.
- i. Private Sewage Systems; Wells. There are no private sewage systems or wells of any kind located on the Option Property. Sewage generated at the Option Property goes to a facility permitted by the Minnesota Pollution Control Agency.
- j. Use of Property. To the Seller's actual knowledge, no methamphetamine production has occurred on the Option Property.



k. Unpaid Labor and Materials. The Seller is not indebted for labor or material that might give rise to the filing of notice of mechanic's lien against any portion of the Option Property.

l. The obligations of the Buyer under this Agreement are contingent upon the representations and warranties of the Seller contained in this Agreement being true as of the Effective Date and on the Closing Date as if made on the Closing Date. Each of the foregoing representations and warranties shall be deemed remade as of the Closing Date and, as so remade, shall survive the Closing.

17. Due Diligence Documents. Within 10 days after the Effective Date, the Seller shall deliver to the Buyer copies of the documents set forth on **Exhibit B** attached hereto and incorporated herein (the "**Due Diligence Documents**").

18. Closing Costs.

a. The Buyer shall pay all costs of the preparation of a title commitment, including the abstracting fees, if required by the title company and all recording fees and charges related to the filing of any instrument required to make title marketable. The Buyer shall also pay the cost of obtaining any title evidence desired by Buyer, including a title commitment, the fees for standard searches with respect to the Seller and the Property, all premiums required for issuance of a title insurance policy any survey costs and all Closing fees charged by the title company and any escrow fees charged by any escrow agent engaged by the parties in connection with this Agreement.

b. Buyer shall also pay the following costs: (1) all costs for obtaining government approvals that may be required in order to close on the Property or as required for the Buyer's intended use of the Property; (2) the cost of preparation of any necessary platting or other subdivision documents, (3) the filing fee to record the deed, (4) the premium for any owner's or lender's title insurance policies obtained by or for the benefit of Buyer, (5) Mortgage Registration Tax, (6) any state deed tax, conservation fee or other federal, state or local documentary or revenue stamps or transfer tax with respect to the Deed to be delivered by the Sellers; recording fees and charges related to the filing of the Deed; (7) Buyer's attorney's fees; (8) the Seller's legal, accounting fees and other out of pocket costs incurred in connection with this Agreement and the Development Documents as further provided in Section 25 hereof and in the Development Documents; and (9) all other costs as outlined in the Development Documents entered into between the Parties.

19. Seller's Closing Documents. At Closing, the Seller shall execute and deliver to the Buyer the following documents (collectively, the "**Seller's Closing Documents**"):

a. A Quit Claim Deed conveying the Option Property to the Buyer.

- b. A closing statement prepared by the Title Company to be executed by the Seller, Buyer, and the Title Company at the Closing that accurately describes the economic terms of the transaction described this Agreement.
- c. An Assignment of any Due Diligence Documents that are consented to and approved by the Buyer, and miscellaneous documents conveying the Seller's interest to the Buyer together with the consent of all parties having a right to consent to such assignment.
- d. A non-foreign affidavit, properly executed, containing such information as is required by Code Section 1445(b)(2) and the regulations promulgated thereunder.
- e. A Designation Agreement designating the "reporting person" for purposes of completing Internal Revenue Service ("IRS") Form 1099 and, if applicable, IRS Form 8594.

20. Documents to be Delivered by the Buyer. The Buyer agrees to deliver to the Seller the following documents (the "**Buyer's Documents**"), duly executed as appropriate, at Closing:

- a. The Purchase Price.
- b. Such affidavits of Buyer, Certificates of Value or other documents as may be reasonably required in order to complete the transaction contemplated by this Agreement.
- c. The final plat of the Option Property as approved by the Seller and the City, to be recorded contemporaneously with Closing contemplated herein.
- d. Any documentary evidence required to satisfy the contingencies set forth herein.
- e. The Development Agreement and any documents required pursuant to the terms of the Development Documents.
- f. A minimum assessment agreement pursuant to which the Option Property and the minimum improvements as defined by the Development Agreement will be assessed based on a minimum market value of:
  - i. \$2,632,500 as of January 2, 2024; and
  - ii. \$7,897,500 as of January 2, 2025; and
  - iii. \$10,530,000 as of January 2, 2026.
- g. Such other documents as shall be required to carry out the intent of this Agreement.

21. Casualty or Condemnation. If before the recording of the Deed any substantial part of the Option Property is taken by condemnation (including a deed given in lieu thereof), the

Buyer shall have the option of (i) enforcing this Agreement (and in such event the insurance proceeds or condemnation award shall belong to the Buyer) or (ii) canceling the Agreement by written notice given within 30 days after the Buyer receives notice of such casualty or condemnation from the Seller. If this Agreement is canceled under this Section, the Earnest Money shall be returned to the Buyer, this Agreement shall be null and void, and the Parties' obligations hereunder shall be of no further force and effect.

22. Remedies. If either Party defaults under this Agreement, the non-defaulting party shall have the right to terminate this Agreement by giving written notice to the defaulting party. If the defaulting party fails to cure such default within 14 days of the date of such written notice, this Agreement will terminate. The termination of this Agreement shall be the sole and absolute remedy available to the non-defaulting Party for such default.

23. Commissions. Each party represents that it has not engaged any broker in connection with the transactions contemplated by this Agreement and agrees to indemnify and hold the other harmless from anyone claiming a commission/fee through them.

24. Notices. Any notices required herein shall be deemed given when sent in the U.S. Mail, either registered or certified, return receipt requested, or by Federal Express or other overnight delivery service requiring a signature upon receipt, to the parties at the following addresses:

**SELLER:** Economic Development Authority of Brooklyn Center, Minnesota  
6301 Shingle Creek Parkway  
Brooklyn Center, MN 55430  
Attn: Executive Director

With a copy to: Sarah Sonsalla  
Kennedy and Graven, Chartered  
Fifth Street Towers  
150 South Fifth Street, Suite 700  
Minneapolis, MN 55402

**BUYER** JO Companies  
250 East 6<sup>th</sup> Street #636  
St. Paul, M 55101  
Attn: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



25. Reimbursement of Costs. Upon execution of this Agreement by both parties, the Buyer shall deposit with the Seller the sum of Ten Thousand Dollars (\$10,000.00) to pay for the Seller's reasonable out-of-pocket legal, financial consultant, and administrative fees associated with this transaction. Unexpended funds will be returned by the Seller to the Buyer and if, additional funds are needed by the Seller to pay such expenses, the Buyer will deposit such additional funds upon request by the Seller.

26. Survival. All representations, warranties, and indemnities set forth herein shall survive the Closing, except as otherwise provided herein.

27. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

28. Assignment. The Buyer shall have the right to assign its interest to this Agreement to an entity in which the Buyer has an ownership interest, is a member or is otherwise affiliated with. The consent of the Seller shall be required if the Buyer assigns this Agreement to any third party with which the Buyer has no connection.

29. Binding Effect. This Agreement is binding upon the Parties and their respective permitted successors and assigns.

30. Construction. This Agreement shall not be construed more strictly against one Party than the other, merely by virtue of the fact that it may have been prepared primarily by counsel for one of the Parties, it being recognized that both the Buyer and the Seller have contributed substantially and materially to the preparation of this Agreement.

31. Headings. The headings preceding the text of the sections and subsections hereof are inserted solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect.

32. Severability. The invalidity or unenforceability of any term or terms of this Agreement shall not invalidate, make unenforceable or otherwise affect any other term of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted, and in such event, the remaining terms of this Agreement shall remain in full force and effect.

33. Computation of Time. In computing any period of time pursuant to this Agreement, the day of the act or event from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, Sunday, or federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or federal holiday.

34. Time of the Essence. All times, wherever specified herein for the performance by the Seller or the Buyer of their respective obligations hereunder, are of the essence of this Agreement.

35. Complete Agreement. This instrument and any exhibits, schedules or addendums attached hereto contain the entire Agreement of the Parties regarding the subject matter hereof, and supersedes all prior negotiations, agreements, or understandings, whether oral or in writing. This Agreement may not be changed orally but only by an Agreement in writing signed by the Parties.

36. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original but all of which, taken together, shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the undersigned have signed this Option Agreement as of the day and year first written above.

**SELLER:**

**ECONOMIC DEVELOPMENT AUTHORITY  
OF THE CITY OF BROOKLYN CENTER**

By: \_\_\_\_\_  
Mike Elliott  
Its: President

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

STATE OF MINNESOTA            )  
                                          ) ss.  
COUNTY OF HENNEPIN        )

The foregoing instrument was acknowledgment before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by Mike Elliott and \_\_\_\_\_, the President and Executive Director, respectively of the Economic Development Authority of Brooklyn Center, Minnesota, a public body corporate and politic in the State of Minnesota on behalf of the Authority.

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



**BUYER:**

**JO COMPANIES, LLC**

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

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

STATE OF MINNESOTA            )  
                                                  ) ss.  
COUNTY OF HENNEPIN        )

The foregoing instrument was acknowledgment before me this \_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, the \_\_\_\_\_ of JO Companies, LLC, a Minnesota limited liability company on behalf of the company.

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

This document was drafted by:

Kennedy & Graven, Chartered (SJS)  
150 South 5<sup>th</sup> Street, Suite 700  
Minneapolis, MN 55402  
(612) 337-9300

## **EXHIBIT A**

### **LEGAL DESCRIPTIONS OF THE OPTION PROPERTY**

#### **Parcel 1**

6017 Brooklyn Boulevard

Lot 1, Block 6, Wangstad's Brooklyn Terrace, according to the recorded plat thereof, County of Hennepin, State of Minnesota.

PID 34-119-21-43-0049

#### **Parcel 2**

6101 Brooklyn Boulevard

Lot 2, Block 6, Wangstad's Brooklyn Terrace, according to the recorded plat thereof, County of Hennepin, State of Minnesota.

PID 34-119-21-43-0050

#### **Parcel 3**

3600 61<sup>st</sup> Avenue N.

Lot 3, Block 6, Wangstad's Brooklyn Terrace, according to the recorded plat thereof, County of Hennepin, State of Minnesota.

PID 34-119-21-43-0051

#### **Parcel 4**

3606 61<sup>st</sup> Avenue N.

Lot 4, Block 6, Wangstad's Brooklyn Terrace, according to the recorded plat thereof, County of Hennepin, State of Minnesota.

PID 34-119-21-43-0052

## **EXHIBIT B**

### **Due Diligence Documents**

Copies of the following in the Seller's possession and related to the Option Property:

1. Copies of real estate tax bills and special assessments (if any), and payment status for the preceding three full calendar years;
2. Statements of any and all expenses related to the Option Property for the preceding three full calendar years;
3. Copies of all agreements affecting the Option Property;
4. All studies and reports in the possession of the Seller relating to environmental status, soil tests, and any other information regarding the environmental and soil conditions;
5. Copies of any written citations from any governmental entities pertaining to the Option Property including those pertaining to any uncured violations of any applicable laws and codes or compliance with the same;
6. All site plans, construction documents, engineer reports, and property assessments performed to date for the Option Property;
7. Any existing surveys of the Option Property; and
8. All certificates of insurance relating to the Option Property and claims made in the last three years.



# Wangstad Commons Project Update



Brooklyn Center City Council March 27, 2023

Jesse Anderson, Interim Community Development Director and Jason Aarsvold, Ehlers

## Presentation Purpose

- Revisit terms approved in June of 2022 for public assistance to the Wangstad housing project
- Review updated status and increased financial gap
- Consider option to help solve the project's gap
  - **GOAL: get direction from council about proceeding under revised terms**
- Next steps



## June 2022 Action

- City/EDA approved a Term Sheet and purchase agreement option
  - Land would be sold for \$225,000
  - TIF commitment for the project totaled \$482,000
  - TIF assistance was pay-as-you-go, meaning the developer finances 100% of TIF portion and is reimbursed with increment generated by the project ONLY
- City/EDA support was necessary for the developer to successfully obtain tax credits through MN Housing's competitive process
- Wangstad Commons received an allocation of tax credits at the end of 2022 after multiple attempts.



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## Current Project Status

- Like other projects, Wangstad is challenged with inflation in projects and increasing interest rate environment.
- The developer is working to solve for this and has managed deal with most of these challenges, but is still coming up short of full financing
- The developer approached the City to request assistance to close the remaining gap in excess of \$600,000
- City staff and Ehlers worked with the developer to consider option to assist with the remaining gap



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## Solving for the Project's Gap

- The developer worked to solve much of the gap
  - Assumption of additional tax credits from MN Housing
    - Still requires approval from MN Housing
  - Increasing first mortgage proceeds based on updated financials
- Based on a review of updated financials, staff and Ehlers concluded that the project does have a financial gap and that additional assistance for the project is warranted



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## Solving for the Project's Gap

- Proposed City contribution to solve the gap includes writing down the cost of the land to \$1
  - Provides a \$225,000 benefit to the project
  - Any land sale proceeds would have to be put back into TIF #3 and used for a project like this anyway – viewed as most efficient and least impactful (to city) strategy
  - Helps solve some, but not all the gap
  - Keeps new TIF assistance at previously agreed upon level
    - Increasing the TIF amount from the NEW district means the project would have to stay in the district longer – goal was to be sure the project could come out ASAP to help tax base



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## Solving for the Project's Gap

| SOURCES                                   |                   |             |                | JUNE 2022 |  |  |  | MARCH 2023        |             |                |  |
|-------------------------------------------|-------------------|-------------|----------------|-----------|--|--|--|-------------------|-------------|----------------|--|
|                                           | Amount            | Pct.        | Per Unit       |           |  |  |  | Amount            | Pct.        | Per Unit       |  |
| First Mortgage                            | 2,689,000         | 13.8%       | 49,796         |           |  |  |  | 3,174,000         | 16.3%       | 58,778         |  |
| TIF Mortgage                              | 482,000           | 2.5%        | 8,926          |           |  |  |  | 482,180           | 2.5%        | 8,929          |  |
| Low Income Housing Tax Credits            | 14,749,525        | 75.9%       | 273,139        |           |  |  |  | 17,464,526        | 89.8%       | 323,417        |  |
| Energy Rebate                             | 15,000            | 0.1%        | 278            |           |  |  |  | 15,000            | 0.1%        | 278            |  |
| Developer Cash                            | 50,100            | 0.3%        | 928            |           |  |  |  | 50,100            | 0.3%        | 928            |  |
| Hennepin County HOME                      | 550,000           | 2.8%        | 10,185         |           |  |  |  | 550,000           | 2.8%        | 10,185         |  |
| Hennepin County ARPA                      | 569,463           | 2.9%        | 10,546         |           |  |  |  | 569,463           | 2.9%        | 10,546         |  |
| 45L Credits                               | 0                 | 0.0%        | -              |           |  |  |  | 118,800           | 0.6%        | 2,200          |  |
| Deferred Developer Fee (14% of Total Fee) | 339,120           | 1.7%        | 6,280          |           |  |  |  | 394,126           | 2.0%        | 7,299          |  |
| <b>TOTAL SOURCES</b>                      | <b>19,444,208</b> | <b>100%</b> | <b>360,078</b> |           |  |  |  | <b>22,818,195</b> | <b>117%</b> | <b>422,559</b> |  |

| USES                           |                   |             |                | JUNE 2022 |  |  |  | MARCH 2023        |             |                |  |
|--------------------------------|-------------------|-------------|----------------|-----------|--|--|--|-------------------|-------------|----------------|--|
|                                | Amount            | Pct.        | Per Unit       |           |  |  |  | Amount            | Pct.        | Per Unit       |  |
| Acquisition Costs              | 225,000           | 1.2%        | 4,167          |           |  |  |  | 1                 | 0.0%        | 0              |  |
| Construction Costs             | 14,388,990        | 74.0%       | 266,463        |           |  |  |  | 17,416,220        | 89.6%       | 322,523        |  |
| Professional Services          | 833,643           | 4.3%        | 15,438         |           |  |  |  | 1,114,750         | 5.7%        | 20,644         |  |
| Financing Costs                | 1,124,575         | 5.8%        | 20,825         |           |  |  |  | 1,436,224         | 7.4%        | 26,597         |  |
| Developer Fee                  | 2,470,000         | 12.7%       | 45,741         |           |  |  |  | 2,470,000         | 12.7%       | 45,741         |  |
| Cash Accounts/Escrows/Reserves | 402,000           | 2.1%        | 7,444          |           |  |  |  | 381,000           | 2.0%        | 7,056          |  |
| <b>TOTAL USES</b>              | <b>19,444,208</b> | <b>100%</b> | <b>360,078</b> |           |  |  |  | <b>22,818,195</b> | <b>117%</b> | <b>422,559</b> |  |



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## Next Steps

- If Council wishes to continue based on revised terms, staff will continue with the following steps
  - Final land use approvals for the project
    - Planning Commission on April 13, 2023
    - City Council consideration on May 8, 2023
  - Creation of a new TIF district for the project
    - Initial notices sent for this district to keep schedule
    - TIF district would need approval by EDA and City Council – currently scheduled for May 8, 2023
  - Draft a final purchase and development agreement to sell property and outline the specifics of City/EDA assistance
    - Requires EDA approval – planned for May 8, 2023



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## Council/EDA Work Session

DATE: 3/27/2023

TO: City Council

FROM: Dr. Reggie Edwards, City Manager

THROUGH: Jesse Anderson, Acting Community Development Director

BY: Jason Aarsvold, EDA Project Management - Ehlers

SUBJECT: Opportunity Site Phase 1 Financing

### **Requested Council Action:**

Please provide direction to City Staff regarding the Opportunity Site.

### **Background:**

On September 26, 2022, the EDA approved a Term Sheet with Alatus for development of a first phase within the Opportunity Site. The term sheet includes construction of multiple buildings containing approximately 613 multi-family rental units with varying levels of affordability within each building, inclusion of space for an Entrepreneurial Market Plaza (EMP) building, construction of an approximately 26,500 sq. ft. privately owned conference center, construction of approximately \$13.9 million in infrastructure, and related structured and surface parking.

Since approval of the Term Sheet, staff and the developer worked together to finalize plans and details for the project to get construction started. The Term Sheet contemplated Alatus financing 100% of the public *and* private costs for the project. These costs totaled an estimated \$152 million at the time of Term Sheet approval. Alatus would in turn receive approximately \$31 million in pay-as-you-go (PAYGO) TIF solely from the tax increment generated by construction of the project.

Tax increment financing allows the City to capture most of the increased tax revenues from the proposed new development over the life of the TIF district. The City already created a redevelopment TIF district on this site known as TIF district #7. This TIF district would provide the source of revenue to repay to \$31 million developer PAYGO.

In a PAYGO financing, the developer is responsible for raising and/or financing 100% of the project costs. The City does not provide any funding up front. Instead, once the project is complete, the City issues a PAYGO promissory note to the developer. Tax increment generated within the TIF district goes to the City, and the City makes payments on the note to the developer using TIF collected in the district.

If TIF collections in the district are less than anticipated, the City is not responsible for making up the difference. This is the developer's risk. At the end of the term of district, if a balance remains on the note, the City is again not responsible for making up the difference.

Since that time, the estimated costs for the project have increased to over \$159 million, and interest rates have increased dramatically. Both factors are negatively affecting the project's financial feasibility. These broader economic factors mean Alatus is currently unable to raise 100% of the total development costs

privately to get the project built.

Project costs and interest rate increases are jeopardizing many of the projects in our region that are in this stage of development. Alatus remains committed, however, to delivering the project as envisioned in Brooklyn Center. Through their engagement with funding partners, Alatus feels they can still make the project work if they can remove some of the total development costs from their private financing package.

To accomplish this, Alatus proposes the City issue bonds repaid with a special assessment and/or the tax increment generated by the project. These bond proceeds would pay for a portion of the total development costs that Alatus previously planned to fund privately, reducing the overall size of their financing. As currently proposed, this would mean bonds totaling approximately \$17 million likely split between two phases of development. Based on our initial review, the projects can support repayment of these bonds.

But this alternative development scenario obviously shifts some of the risk to the City and represents a significant change from the original Term Sheet conditions.

Unlike PAYGO financing, if the City issues general obligation debt, the City is responsible for making the debt payments if the special assessments and/or tax increments are not received as planned. Any final structure of assistance would seek to mitigate these risks and ensure repayment from the project, but more risk fundamentally remains in this scenario.

In addition to the concerns around financing the project, there are challenges with the specific program, development costs, and financing associated with the proposed EMP. The approved Term Sheet assumes a 30,000 sq. ft. EMP building turned over to the EDA for operations. Based on refined costs estimates and financing assumptions around the EMP project, it has become clear the project cannot feasibly support the cost of building an EMP of this size without significant additional public assistance. Since the City's public assistance sources are already exhausted for this project, alternatives need to be considered.

Also, the operating models for the 30,000 sq. ft. facility show the project is likely to run a significant annual operating deficit. There is currently no annual funding source identified to pay for an annual operating deficit. For this reason, a redesign is necessary that both reduces up front capital costs and shows the project can operate without requiring an annual operating subsidy.

City staff and Ehlers will present details around Alatus' proposal to finance some of the project costs with City-issued bonds. This presentation will include a review of the pro and cons of this approach with the goal of seeking direction from the Council about whether additional exploration of this alternative is supported.

In addition, City staff and Ehlers will present the alternatives under consideration for the EMP project. The goal to date has been to continue assuming inclusion of an EMP in the project, but one that is sized and operated for financial feasibility. This will serve as a check in with the council to be sure the project is still meeting City Council goals and expectations.

#### **Next Steps:**

Following the work session, staff and Alatus will continue working together to deliver the project in a manner consistent with City Council direction.

#### **Budget Issues:**

This item is for discussion only will have no immediate effect on the budget.

**Antiracist/Equity Policy Effect:**

**Strategic Priorities and Values:**

Targeted Redevelopment

**ATTACHMENTS:**

| Description                   | Upload Date | Type            |
|-------------------------------|-------------|-----------------|
| Approved Term Sheet           | 3/20/2023   | Backup Material |
| Cost Breakdown                | 3/20/2023   | Backup Material |
| 9-26-2022 EDA Term Sheet Memo | 3/20/2023   | Backup Material |
| presentation                  | 3/28/2023   | Presentation    |

## Term Sheet

This Term Sheet as of this 26th day of September, 2022 by and between Alatus Brooklyn Center MD LLC, (the “Developer”) and the Economic Development Authority of Brooklyn Center (the “EDA”) and is intended to set forth the general terms upon which the parties hereto may be willing to enter into a definitive tax increment financing assistance and purchase agreement (whether one or more separate agreements, the “Definitive Agreement”).

1. Developer: Alatus Brooklyn Center MD LLC  
IDS Center  
80 South 8<sup>th</sup> Street, Suite 4155  
Minneapolis, MN 55402  
Attn: Robert Lux

The Developer will have the right to assign its rights and obligations under the Definitive Agreement with respect to each Building described below (together with the applicable related Property, each a “Phase”) to another developer (each an “Applicable Developer”) so long as certain conditions set forth in the Definitive Agreement are satisfied; provided, however, the Developer’s assignment of its rights and obligations (i) with respect to a Phase to an affiliate of Developer, (ii) with respect to the Building 2 Phase to Resurrecting Faith World Ministries (or an affiliate thereof), and (iii) with respect to the Building 4 Phase and/or Building 5 Phase to Project for Pride in Living (or an affiliate thereof), shall be pre-approved. Upon a valid assignment of rights and obligations of a Phase to an Applicable Developer, the assigning Developer will be released from its obligations with respect to such Phase.

2. Site: Parcel #1: 2500 County Road 10 (PID# 02-118-21-24-0019)  
Parcel #2: 5900 Shingle Creek Parkway (PID#02-118-21-24-0020)
3. Legal Description of Site: A portion of the property legally described below:

**PARCEL 1:**

Lot 2, Block 2 Brookdale Square Addition

**PARCEL 2:**

Lot 1, Block 1, Brookdale Square Addition

Property will be re-platted as follows:

Lot 1, Block 1 Opportunity Site Addition  
Lot 1, Block 2 Opportunity Site Addition  
Lot 1, Block 3 Opportunity Site Addition  
Lot 1, Block 4 Opportunity Site Addition  
Lot 2, Block 4 Opportunity Site Addition  
Lot 1, Block 5 Opportunity Site Addition  
Lot 2, Block 5 Opportunity Site Addition  
Outlot A Opportunity Site Addition  
Outlot B Opportunity Site Addition



4. Acquisition of Property: Parcel #1 and Parcel #2 are currently owned by the EDA. The Developer proposes to purchase the following portion of such re-platted property (the “Property”):

Lot 1, Block 1 Opportunity Site Addition  
 Lot 1, Block 2 Opportunity Site Addition  
 Lot 1, Block 3 Opportunity Site Addition  
 Lot 1, Block 4 Opportunity Site Addition  
 Lot 2, Block 4 Opportunity Site Addition  
 Outlot A Opportunity Site Addition

The purchase price for such Property is as set forth below:

| Building                  | Legal Description                      | Cash At Closing     | Housing Trust Fund Contribution | EMP Start Up Contribution | Seller Note/Land Write Down | Total               |
|---------------------------|----------------------------------------|---------------------|---------------------------------|---------------------------|-----------------------------|---------------------|
| 1(a) - Market Rate        | Lot 1, Block 1, Opportunity Site Addit | \$ 2,780,000        | \$ 1,000,000                    |                           | \$ -                        | \$ 3,780,000        |
| 1(b) - EMP                | Lot 1, Block 1, Opportunity Site Addit | \$ -                | \$ -                            |                           | \$ -                        | \$ -                |
| 2 - Conference Center     | Lot 1, Block 2, Opportunity Site Addit | \$ 1                | \$ -                            |                           | \$ -                        | \$ 1                |
| 3 - Mixed Rate            | Lot 1, Block 3, Opportunity Site Addit | \$ 2,050,000        | \$ 1,000,000                    | \$ 750,000                | \$ -                        | \$ 3,800,000        |
| 4 - PPL & RFWM Affordable | Lot 1, Block 4, Opportunity Site Addit | \$ -                | \$ -                            |                           | \$ 1,060,000                | \$ 1,060,000        |
| 5 - PPL Affordable        | Lot 2, Block 4, Opportunity Site Addit | \$ -                | \$ -                            |                           | \$ 1,050,000                | \$ 1,050,000        |
| <b>Total</b>              |                                        | <b>\$ 4,830,001</b> | <b>\$ 2,000,000</b>             | <b>\$ 750,000</b>         | <b>\$ 2,110,000</b>         | <b>\$ 9,690,001</b> |

The Developer will have the right to acquire the entire Property in one closing. The Developer also will have the option to acquire one or more parcels of the Property in separate closings, provided that either Lot 1, Block 1 Opportunity Site Addition or Lot 1, Block 3 Opportunity Site Addition is part of the first closing.

The Definitive Agreement will give the Developer a purchase option or right of first refusal to acquire the portion of the Site proposed to be re-platted as Lots 1 and 2, Block 5 Opportunity Site Addition (the “Additional Property”), provided that, as a condition to accepting the Developer’s exercise of the purchase option, the EDA will have the right to review and approve the Developer’s proposed plan of development for the Additional Property. Except for the terms of such purchase option or right of first refusal, the disposition and development of the Additional Property will be governed by a future agreement and not subject to the Definitive Agreement described herein.

5. Conveyance Subject to Right of Re-entry. The EDA’s conveyance of the Property to the Developer pursuant to the Definitive Agreement shall be made in the form of a quit claim deed (the “Deed”). The Deed shall include a right of re-entry for breach of a condition subsequent in favor of the EDA (the “Right of Re-entry”) on a Phase-by-Phase basis. The condition(s) subsequent shall be determined by the EDA in accordance with Minnesota Statutes Section 469.105 and set forth in the Deed conveying the Property to the Developer in the form attached to the Definitive Agreement. If the Developer breaches such condition(s) subsequent with respect to a Phase, the Developer shall re-convey the applicable Phase (or applicable portion thereof) back to the EDA. If the Developer fails to re-convey such applicable Phase to the EDA, the EDA may elect to exercise its right of reentry by commencing an action in Hennepin County District Court to establish the breach of the condition subsequent. If the EDA establishes a breach of the condition subsequent, title to and the right to possession of such applicable Phase and title to all improvements located thereon reverts to the EDA, and the Developer is not entitled to any compensation from the EDA for such applicable Phase or the value of any improvements the Developer has made to such applicable Phase. The Developer must record any certificate of completion or certificate of release of the Right of Re-entry in the proper County land records at its expense.

6. Minimum Improvements: Construction of multiple Buildings containing approximately 613 multi-family rental units with affordable levels within each Building noted in the table below, inclusion of an approximately 30,000 sq. ft. of space for an Entrepreneurial Market, construction of an approximately 26,500 sq. ft. privately owned conference center, construction of approximately \$13.9 million in public infrastructure, and related structured and surface parking.

| Building                       | Use                                                                                                                                                                                                                                                                                                                                                                           |
|--------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Building 1<br>(Lot 1, Block 1) | Single 6-Story multi-family rental Building consisting of approximately 278-units of market rate apartments (Unit/Tract A). Building will include approximately 30,000 sq. ft. of space built-out for use by an Entrepreneurial Market (Unit/Tract B). The Developer shall pursue New Market Tax Credits (NMTC) as a potential funding source for the Entrepreneurial Market. |
| Building 2<br>(Lot 1, Block 2) | One single-story 26,500 sq. ft. Conference Center with 24-hour childcare and wellness and barber suites. The Developer shall pursue New Market Tax Credits (NMTC) as a potential funding source for this Building.                                                                                                                                                            |
| Building 3<br>(Lot 1, Block 3) | Single 6-Story multi-family rental Building consisting of approximately 205-units of market rate apartments, in which 41 units (approximately 20%) are affordable to persons at or below 80% AMI                                                                                                                                                                              |
| Building 4<br>(Lot 1, Block 4) | 4-Story Building with approximately 60 Low Income Housing Tax Credit (LIHTC) apartments. Approximately 16 units are affordable at or below 30% AMI and 44 units are affordable at or below 50% AMI                                                                                                                                                                            |
| Building 5<br>(Lot 2, Block 4) | 4-Story Building with approximately 70 Low Income Housing Tax Credit (LIHTC) apartments. Approximately 15 units are affordable at or below 50% AMI and 55 units are affordable at or below 60% AMI                                                                                                                                                                            |

The affordability within the project is summarized in the table below:

|                         | Building 1 | Building 3 | Building 4<br>LIHTC | Building 5<br>LIHTC | Total      | %<br>Affordable |
|-------------------------|------------|------------|---------------------|---------------------|------------|-----------------|
| <b>Number of Units</b>  | <b>278</b> | <b>205</b> | <b>60</b>           | <b>70</b>           | <b>613</b> |                 |
| 30% AMI                 | 0          | 0          | 16                  | 0                   | 16         | 3%              |
| 50% AMI                 | 0          | 0          | 44                  | 15                  | 59         | 10%             |
| 60% AMI                 | 0          | 0          | 0                   | 55                  | 55         | 9%              |
| 80% AMI                 | 0          | 41         | 0                   | 0                   | 41         | 7%              |
| <b>Total Affordable</b> | <b>0</b>   | <b>41</b>  | <b>60</b>           | <b>70</b>           | <b>171</b> | <b>28%</b>      |

7. Construction Schedule: Commence construction of each Building by the Commencement Date, and substantially complete construction of each Building by the Completion Date as set forth below. For the purpose hereof, "Commence" shall mean beginning of physical improvement to the Property for the respective Building, including excavation, or footings. "Complete" shall mean that the Minimum Improvements are sufficiently complete for the issuance of a Certificate of Occupancy.



| <b>Building</b>          | <b>Legal Description</b>                 | <b>Commencement Dates: Estimated Outside Date</b> |
|--------------------------|------------------------------------------|---------------------------------------------------|
| 1(a) - Market Rate       | Lot 1, Block 1, Opportunity Site Additio | 6/30/2023                                         |
| 1(b) - EMP               | Lot 1, Block 1, Opportunity Site Additio | 6/30/2023                                         |
| 2 - Conference Center    | Lot 1, Block 2, Opportunity Site Additio | 6/30/2023                                         |
| 3 - Mixed Rate           | Lot 1, Block 3, Opportunity Site Additio | 12/31/2023                                        |
| 4 - PPL & RFWMAffordable | Lot 1, Block 4, Opportunity Site Additio | 12/31/2023                                        |
| 5 - PPL Affordable       | Lot 2, Block 4, Opportunity Site Additio | 12/31/2024                                        |

The Developer and the EDA propose that the dates for each Building of the construction schedule may be revised based upon timing of actual construction schedules, financing, market conditions, etc. Revisions to the dates of each Building of the construction schedule shall not require approval or further action by the EDA and may be approved administratively by staff and legal counsel, so long as such revisions are no more than 18 months from each Building of the construction schedule as noted above. Any revision to the dates beyond 18 months for each Building in the construction schedule shall require renegotiation between the parties.

8. Affordability Covenants Buildings 3, 4, and 5: Developer proposes that the Minimum Improvements are subject to the following affordability covenants:

(a) The Developer expects that the Building 3, 4, and 5 Minimum Improvements will include the mix of rental housing units as noted in the table above. The affordable units in Building 3 will be “fixed” units, and income verification will be performed at initial occupancy only.

(b) With respect to Buildings 4 and 5 only:

1. The Developer will apply to Metropolitan Council HRA and/or Hennepin County for project based housing choice vouchers. The Developer will be required to enter into a Declaration of Restrictive Covenants that will cause the affordable restrictions to remain in effect for a thirty (30) year period. On the date of execution of the Definitive Agreement, the Developer will deliver an executed Declaration to the EDA in recordable form.
2. During the term of the Declaration, the Developer shall not adopt any policies specifically prohibiting or excluding rental to tenants holding certificates/vouchers under Section 8 of the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq., or its successor because of such prospective tenant’s status as such a certificate/voucher holder.
3. The Developer will promptly notify the EDA if at any time during the term of the Declaration the number of Rental Housing Units in Buildings 4 and 5 occupied by Qualifying Tenants (as defined in the Declaration) or held vacant and available for occupancy by Qualifying Tenants pursuant to the Declaration are fewer than the number required by the terms of the Declaration.
4. The Developer must submit evidence of tenant incomes, showing that the Building 4 and 5 Minimum Improvements meet the income requirements set forth in the Declaration by April 1<sup>st</sup> of each year. The EDA will review the submitted evidence

related to the income restrictions and to the extent the thresholds are not met, the EDA will withhold the TIF payment related to such Building for that time period.

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

9. Affordable Housing Reporting Buildings 4 and 5: At least annually, no later than April 1 of each year commencing on the April 1 first following the issuance of the Certificate of Completion for the applicable Building Minimum Improvements, the Developer shall provide a report to the EDA evidencing that the Developer complied with the income affordability covenants during the previous calendar year. The income affordability reporting shall be on the form entitled “Tenant Income Certification” from the Minnesota Housing Finance Agency (MHFA HTC Form 14), or if unavailable, any similar form. The EDA may require the Developer to provide additional information reasonably necessary to assess the accuracy of such certification. Unless earlier excused by the EDA, the Developer shall send affordable housing reports to the EDA until the Declaration terminates.
10. Change in Construction Plans: If the Developer desires to make any material change in the Construction Plans after their approval by the EDA, the Developer shall submit the proposed change to the EDA for its approval. The term “material” means a change in the exterior elements of the applicable Building that affects the original character, purpose as described in Section 6 hereof, and visual preference that was approved by the City.
11. City Public Improvements: The Developer will construct the following public infrastructure improvements, as further outlined below. Final Construction documents of all public infrastructure will be provided by the City to the Developer to be used by the Developer for construction. After certificate of construction completion is issued and a determination of acceptance by the City engineer, the Developer will turn over infrastructure back to control of the City.
  - a. Shingle Creek Parkway improvements including roadway enhancements, and rebuilt curb, boulevard, sidewalk, and landscaping.
  - b. Signal and intersection improvements at Shingle Creek and new Parkway roadway.
  - c. Construction of new Parkway roadway and associated utilities, connecting Shingle Creek Parkway to John Martin Drive.
  - d. Regional Stormwater Pond system and associated utilities.
12. Community Benefits: The Developer will deliver, through construction of the Minimum Improvements, the Community Benefits as further outlined in Exhibit B.
13. Restrictive Covenants: The EDA acknowledges that the Developer may utilize reciprocal easement agreements, deed restrictions, covenants, agreements, architectural controls, master associations and/or other means to control the use and to ensure the maintenance of the land within the Project. No such instruments shall adversely affect the rights of the City or EDA under the Definitive Agreement, without their consent, which consent shall not be unreasonably



withheld. The Developer shall submit any such instruments to the City and EDA for their review and comment.

14. Maintenance: The Developer and the EDA propose that the Applicable Developer or Association shall be responsible for all maintenance (including snow and ice removal) and repair costs associated with the Minimum Improvements on the Property including:

- Driveways and service drives to Buildings 1-5, and surface parking stalls.
- Parking structure
- Sidewalks
- Streetlights
- Landscaping
- Streetscape improvements
- Bicycle Parking
- Plazas
- Greenway commons

The costs of such maintenance and repairs will be allocated among the owners/users of the Phases (or applicable portion thereof), including, without limitation, the owner/user of the Entrepreneurial Market. The City (and not the Developer) shall be responsible for the maintenance and repair of the Parkway roadway and the other City Public Improvements described in Section 11 above.

15. Reciprocal Easement and Operating Agreement: The Developer and City will enter into a mutually acceptable reciprocal easement and operating agreement (the “REOA”) or other easement agreements to include, without limitation, the following key terms:

a. Developer and/or City responsibility for maintenance and operation of the private applicable Building Minimum Improvements, road network, and other City Public Improvements, with such costs being allocated to and among Developer, the City and/or any other owners of applicable Building Minimum Improvements;

b. perpetual public access easements and perpetual drainage and utility easements, in each case, over the applicable City Public Improvements and at no cost to the City;

c. perpetual license or public access easements for greenway commons, or other private areas that provide public benefit that the City and Developer deem appropriate.

16. TIF District: The City established TIF District 7 on March 28, 2016. Eligible costs to be reimbursed with tax increments must be incurred not later than June 29, 2026.

17. Public Assistance: Subject to all terms and conditions of the Definitive Agreement, the EDA proposes to provide the Developer with up to \$30,209,000 in public assistance for Qualified Costs and Public Improvements noted in Section 11. Currently it is anticipated that the EDA will reimburse the Developer with a percentage of Tax Increment generated from TIF District #7 for each Building within the Minimum Improvements up to a principal amount of up to \$30,209,000 (Present Value). The EDA will complete an analysis of the applicable Building the earliest of (i) when construction is ready to commence, (ii) final GMP pricing is obtained to determine the amount and term of the assistance to be provided to that Building, or (iii) such earlier time as may be mutually agreed upon by the EDA and the Developer with respect to a particular Phase. The

EDA's analysis will take into account any additional grants and subsidies (including New Markets Tax Credits) committed to the applicable Building as well as such Building/Phase's applicable portion of the aggregate Gap Amount (as defined in and as may be adjusted by Section 17 below). The allocation of the amount and term of the assistance to be provided to a Building shall not require approval or further action by the EDA and can be completed administratively by staff and legal counsel. Payments from TIF District 7 will be made through one or more TIF Notes (the "Notes") issued on a pay-as-you-go basis for an applicable Building assuming a percentage of increment from TIF District #7 at the lesser of 5% or the Developer's actual financing rate for such Building. The Notes will be issued upon completion of the Public Improvements related to the applicable Building, issuance of a CO for the applicable Building and proof of expenditure related to the Qualified Costs for the applicable Building.

Prior to entering into the Definitive Agreement, the EDA may substitute other funding sources for the TIF assistance contemplated in this section. These sources of funds include, but are not limited to, grants, utility or other EDA funds, pooled TIF, and land write-down. After entering into the Definitive Agreement, the EDA may propose substitute other funding sources for the TIF assistance, but such substitution would be subject to the Applicable Developer's approval.

18. Look Back: The EDA will complete a lookback for each applicable Building that receives TIF assistance. The lookback will be completed upon stabilization and upon any sale of a Building in that occurs within five (5) years after such Building's certificate of occupancy, and there will be no lookback for Buildings 4 and 5.
19. Fees: The City acknowledges the Developer made an escrow deposit of \$129,327.13 for out-of-pocket expenses for legal and financial consultant services related to TIF district creation, drafting, negotiation and approval of the Definitive Agreement, analysis, and administrative fees associated with this transaction. This includes costs related to the above incurred to date as well as future expenditures.

The current escrow balance is -\$171,413.75 and the Developer will be required to repay this escrow upon approval of this Term Sheet by the EDA. The Developer will deposit additional funds as necessary for completion of the entire project. The Developer shall pay all other normal and customary City fees and expenses for the approval and construction of the Minimum Improvements.

20. Minimum Assessment Agreement: The Developer and EDA will enter into a Minimum Market Value Assessment Agreement ("MAA") setting a minimum property tax value for the rental portions of the various Buildings as noted below:

| Phase      | Amount       | Date                             |
|------------|--------------|----------------------------------|
| Building 1 | \$63,600,000 | January 2, 2025 for payable 2026 |
| Building 2 | \$9,000,000  | January 2, 2025 for payable 2026 |
| Building 3 | \$49,945,000 | January 2, 2025 for payable 2026 |
| Building 4 | \$11,700,000 | January 2, 2025 for payable 2026 |
| Building 5 | \$13,650,000 | January 2, 2026 for payable 2027 |

The Developer and the EDA propose that the dates for the applicable Building MAA may be revised based upon timing of actual construction schedules. Revisions to the dates of the applicable Building MAA and execution thereof shall not require approval or further action by the EDA and can be completed administratively by staff and legal counsel, so long as such revision is no more



than 18 months from the applicable Building MAA as noted in the above schedule. Any revisions to the dates beyond 18 months for the applicable Building MAA shall require renegotiation between the parties.

Each MAA shall terminate on the Termination Date of the applicable TIF Note.

21. 4d Tax Classification: The Developer will be applying for 4d tax classification status for 100% of Buildings 4 and 5.
22. Taxes: The Developer will covenant to pay property taxes and maintain customary insurance. Developer will agree for itself and its successors and assigns that prior to the end term of the applicable TIF Note it will not:
  - (a) Cause a reduction in real property taxes paid;
  - (b) Transfer the property or any Phases to an entity that would result in the Minimum Improvements being exempt from property taxes;
  - (c) Will not seek tax exemption, deferral or abatement for the Minimum Improvements;
  - (d) If Developer brings a petition challenging a Market Value determination exceeding the minimum value established in the Assessment Agreement, the Developer must inform the EDA of such petition. The EDA will pay principal and interest on the TIF Note only to the extent of Available Tax Increment attributable to the minimum value under the applicable MAA until final resolution of such petition. Upon resolution of Developer's tax petition, any Available Tax Increment deferred and withheld will be paid, without interest thereon, to the extent payable under the assessor's final determination of Market Value.
23. Public Art: The Developer is obligated to expend or cause to be expended at least \$275,000.00 for public artwork to be placed in prominent locations on the Property and/or on the exterior of the Minimum Improvements. Prior to its installation, the public artworks shall be approved by the City, which approval shall not be unreasonably withheld.
24. Stormwater: The Developer will agree to construct the Regional Stormwater Pond system and associated utilities in accordance with Section 11 above and subject to City review of project design and City approval of construction costs (and public bidding, if required by law). In connection therewith, the City proposes to pay for the cost of such public infrastructure improvements as follows: (a) by providing a waiver of stormwater impact fees that would otherwise be payable by the Developer of \$97,250.18 per acre (approximately \$1,600,000.00), and (b) by paying the Developer, in legally available funds from the City's stormwater fund and TIF District #3, the difference between the actual out-of-pocket cost of such public infrastructure improvements, less the amount of the stormwater impact fee waiver, in an aggregate amount not to exceed \$1,100,000 without City written consent prior to the commencement of construction of the stormwater pond. The Developer further acknowledges the City of Brooklyn Center may establish a storm sewer improvement taxing district pursuant to MN Statutes 444 for purposes of funding the on-going maintenance of such public infrastructure improvements. The proposed district will include the property acquired by the Developer described herein, the cost of which is not to be included in the project cost proposed to be reimbursed by the City as provided in this Section.



25. Business Subsidy: The Developer and the EDA expect that any assistance provided to the Developer under the Contract will not constitute a “business subsidy” under Minnesota Statutes because the assistance is for redevelopment in which the Developer’s investment in the purchase of the Property and in site preparation is 70% or more of the assessor's current year's estimated market value.
26. No Cross-Default: No default or Event of Default by Applicable Developer with respect to one Phase shall constitute a default or Event of Default by another Applicable Developer for any other Phase, and the EDA may not seek any remedies against an Applicable Developer whose actions did not give rise to the default or Event of Default, and the rights of an Applicable Developer shall not be limited, impaired or revoked under the Definitive Agreement or the respective TIF Note issued or to be issued to such non-defaulting Applicable Developer.
27. Miscellaneous:
- a. Grants: The EDA, the Developer, RFWM and/or PPL have applied for various grants, the status of which is set forth in the table below.

| Grant Name                      | Grant Applicant    | Grant Amount | Grant Status                       |
|---------------------------------|--------------------|--------------|------------------------------------|
| Hennepin County TOD             | BC EDA             | \$ 595,000   | Awarded                            |
| Hennepin County CII             | BC EDA & Developer | \$ 750,000   | Awarded                            |
| Metropolitan Council TOD        | BC EDA & Developer | \$ 2,000,000 | Applied for                        |
| Metropolitan Council LCDA       | BC EDA & Developer | \$ 1,500,000 | Applied for                        |
| Hennepin County TOD             | BC EDA & Developer | TBD          | Expected Application Jan 2023      |
| MN DEED Redevelopment           | BC EDA & Developer | TBD          | Expected Application Jan 2023      |
| Main Street                     | RFWM               | TBD          | Expected Application 2023          |
| Child Care Economic Development | BC EDA & RFWM      | \$ 150,000   | Applied for                        |
| MHFA Deferred Loan Request      | PPL                | \$ 173,400   | Expected Application at later date |

- (b) These grants have been accounted for in the Developer’s Proforma for purposes of Section 17 above. Assuming these grants are obtained and projected costs remain constant, the Developer estimates the remaining aggregate financing gap to be \$7,000,000 (the “Gap Amount”). The Gap Amount shall increase or decrease as project costs are confirmed on a Phase by Phase basis. To the extent additional grants are obtained with respect to a Phase and/or New Market Tax Credit funding is obtained to support the Entrepreneurial Market component of the project and/or Building 2 are obtained, and such amounts are in excess of the Gap Amount (as may be adjusted) applicable to such Phase, such excess amount will reduce the principal amount of the TIF Note(s) for the applicable Phase.
- (c) Additional conditions of assistance remain under consideration.
28. Nonbinding. The Developer acknowledges that except for Section 19 above which shall be binding upon the Developer, this Term Sheet shall not be deemed conclusive or legally binding upon either the Developer or the EDA, and neither the Developer nor the EDA shall have any obligations regarding the Property, the Minimum Improvements or the Public Assistance described herein, unless and until a Definitive Agreement is approved by the EDA board and executed by both the Developer and the EDA.

Exhibit A

[Reserved]

Exhibit B

Community Benefits

24753585v2

## **EXHIBIT B – COMMUNITY BENEFITS**

### **CODES**

|    |                           |
|----|---------------------------|
| CG | Community Good            |
| GS | Green Space               |
| HS | Housing                   |
| PA | Public Artwork            |
| TR | Trails and Transportation |



| DIRECT COMMUNITY BENEFITS |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |               |
|---------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| Code                      | Name & Benefit Description                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | SF            |
| <b>CG-1</b>               | <b>Entrepreneur Marketplace ("EMP")</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | <b>27,000</b> |
|                           | Approximately 27,000 sf entrepreneurial market, constructed and turned over to CITY, as mutually agreed upon between Developer and CITY                                                                                                                                                                                                                                                                                                                                                                             |               |
|                           | The Developer has committed to pay \$750,000.00 for EMP startup costs (shown within the purchase price for land for the Mixed Income development - Site 3 - and paid at closing on the land for that site).                                                                                                                                                                                                                                                                                                         |               |
|                           | Use of contractors that are part of a registered building trades apprenticeship program and work with those trades to provide job opportunities to local workers.<br>GC shall have a goal for 25% of committed MBE/WBE spend<br>GC shall have a goal to hold meet and greet sessions for local subcontractors a minimum of 60 days prior to the start of each phase of construction. Developer, City and GC agree to develop a plan for who to engage and where to hold meetings to most effectively meet this goal |               |
|                           | Hiring goals of 30% People of color, and Indigenous people and 10% Women.<br>All contractors will work in alignment with Minnesota State and County (Hennepin) workforce goals. Developer, City and GC agree to develop a plan for who to engage and where to hold meetings to most effectively meet this goal                                                                                                                                                                                                      |               |
| <b>CG-2</b>               | <b>RFWM [Conference] Center</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <b>16,449</b> |
|                           | Delivery of an approximately 16,500 sf community event center that is available to community for rent                                                                                                                                                                                                                                                                                                                                                                                                               |               |
|                           | The Conference Center will be available to the City of Brooklyn Center to rent at no cost, no less than 6 times a year. The City will be required to provide at least 3 months' notice and will not take priority over other events that have already been booked for a specific date/time.                                                                                                                                                                                                                         |               |
|                           | Hiring goals of 30% People of color, and Indigenous people and 10% Women.<br>All contractors will work in alignment with Minnesota State and County (Hennepin) workforce goals. Developer, City and GC agree to develop a plan for who to engage and where to hold meetings to most effectively meet this goal                                                                                                                                                                                                      |               |
| <b>CG-3</b>               | <b>24 - hour Child Care Center</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | <b>6,106</b>  |
|                           | 24-hour childcare [center]                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |               |

|             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |               |
|-------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| <b>CG-6</b> | <b>Regional Stormwater Mgmt System</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | <b>74,200</b> |
|             | Hiring goals of 30% People of color, and Indigenous people and 10% Women. All contractors will work in alignment with Minnesota State and County (Hennepin) workforce goals. Developer, City and GC agree to develop a plan for who to engage and where to hold meetings to most effectively meet this goal                                                                                                                                                                                                         |               |
|             | Use of contractors that are part of a registered building trades apprenticeship program and work with those trades to provide job opportunities to local workers. GC shall have a goal for 25% of committed MBE/WBE spend<br>GC shall have a goal to hold meet and greet sessions for local subcontractors a minimum of 60 days prior to the start of each phase of construction. Developer, City and GC agree to develop a plan for who to engage and where to hold meetings to most effectively meet this goal    |               |
|             | Construction of regional stormwater ponding elements, to be turned over to the City upon completion, to serve stormwater needs of approx. 65% of the full Opportunity Site                                                                                                                                                                                                                                                                                                                                          |               |
| <b>CG-7</b> | <b>Public Street Connecting Shingle Creek to John Martin Dr</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <b>68,400</b> |
|             | Fully ADA compliant development                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |               |
|             | Use of contractors that are part of a registered building trades apprenticeship program and work with those trades to provide job opportunities to local workers.<br>GC shall have a goal for 25% of committed MBE/WBE spend<br>GC shall have a goal to hold meet and greet sessions for local subcontractors a minimum of 60 days prior to the start of each phase of construction. Developer, City and GC agree to develop a plan for who to engage and where to hold meetings to most effectively meet this goal |               |
|             | Integrated site design that connects to existing trail and sidewalk system to connect new development with existing community                                                                                                                                                                                                                                                                                                                                                                                       |               |
|             | Construction of a new east-west roadway that connects Shingle Creek Parkway with John Martin Drive, to be turned over to the City upon completion.                                                                                                                                                                                                                                                                                                                                                                  |               |
|             | Reconstruction and improvements of the intersection and signal at Shingle Creek Parkway and the new east-west roadway, and Shingle Creek Parkway improvements to the roadway, curb, boulevard, sidewalk, and landscaping, to be turned over to the City upon completion.                                                                                                                                                                                                                                            |               |

|             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                        |
|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| <b>CG-8</b> | <b>Street Lighting</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>65 total lights</b> |
|             | Hiring goals of 30% People of color, and Indigenous people and 10% Women. All contractors will work in alignment with Minnesota State and County (Hennepin) workforce goals. Developer, City and GC agree to develop a plan for who to engage and where to hold meetings to most effectively meet this goal                                                                                                                                                                                                            |                        |
|             | Use of contractors that are part of a registered building trades apprenticeship program and work with those trades to provide job opportunities to local workers.<br>GC shall have a goal for 25% of committed MBE/WBE spend<br>GC shall have a goal to hold meet and greet sessions for local subcontractors a minimum of 60 days prior to the start of each phase of construction.<br>Developer, City and GC agree to develop a plan for who to engage and where to hold meetings to most effectively meet this goal |                        |
| <b>GS-1</b> | <b>Stormwater Park And Trail System</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <b>222,900</b>         |
|             | Hiring goals of 30% People of color, and Indigenous people and 10% Women. All contractors will work in alignment with Minnesota State and County (Hennepin) workforce goals. Developer, City and GC agree to develop a plan for who to engage and where to hold meetings to most effectively meet this goal                                                                                                                                                                                                            |                        |
|             | Use of contractors that are part of a registered building trades apprenticeship program and work with those trades to provide job opportunities to local workers. GC shall have a goal for 25% of committed MBE/WBE spend<br>GC shall have a goal to hold meet and greet sessions for local subcontractors a minimum of 60 days prior to the start of each phase of construction.<br>Developer, City and GC agree to develop a plan for who to engage and where to hold meetings to most effectively meet this goal    |                        |
|             | Integrated site design that connects to existing trail and sidewalk system to connect new development with existing community                                                                                                                                                                                                                                                                                                                                                                                          |                        |

|             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |               |
|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| <b>GS-3</b> | <b>Entrepreneur Market Plaza</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <b>12,000</b> |
|             | Hiring goals of 30% People of color, and Indigenous people and 10% Women. All contractors will work in alignment with Minnesota State and County (Hennepin) workforce goals. Developer, City and GC agree to develop a plan for who to engage and where to hold meetings to most effectively meet this goal                                                                                                                                                                                                            |               |
|             | Use of contractors that are part of a registered building trades apprenticeship program and work with those trades to provide job opportunities to local workers.<br>GC shall have a goal for 25% of committed MBE/WBE spend<br>GC shall have a goal to hold meet and greet sessions for local subcontractors a minimum of 60 days prior to the start of each phase of construction.<br>Developer, City and GC agree to develop a plan for who to engage and where to hold meetings to most effectively meet this goal |               |
| <b>GS-4</b> | <b>Community Flex Street</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <b>34,700</b> |
|             | Hiring goals of 30% People of color, and Indigenous people and 10% Women. All contractors will work in alignment with Minnesota State and County (Hennepin) workforce goals. Developer, City and GC agree to develop a plan for who to engage and where to hold meetings to most effectively meet this goal                                                                                                                                                                                                            |               |
|             | Use of contractors that are part of a registered building trades apprenticeship program and work with those trades to provide job opportunities to local workers.<br>GC shall have a goal for 25% of committed MBE/WBE spend<br>GC shall have a goal to hold meet and greet sessions for local subcontractors a minimum of 60 days prior to the start of each phase of construction.<br>Developer, City and GC agree to develop a plan for who to engage and where to hold meetings to most effectively meet this goal |               |
| <b>PA-1</b> | <b>Public Art - Master Developer Commitment</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <b>TBD</b>    |
|             | Integrated public art – commitment to seeking out and utilizing a BIPOC artist(s) that is culturally responsive to the Brooklyn Center community and demonstrated by having a preference to selecting a Brooklyn Center artist to create the public artwork.                                                                                                                                                                                                                                                           |               |



|             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                |
|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| <b>TR-1</b> | <b>Connection to Shingle Creek Regional Trail</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <b>12,300</b>  |
|             | Hiring goals of 30% People of color, and Indigenous people and 10% Women. All contractors will work in alignment with Minnesota State and County (Hennepin) workforce goals. Developer, City and GC agree to develop a plan for who to engage and where to hold meetings to most effectively meet this goal                                                                                                                                                                                                            |                |
|             | Use of contractors that are part of a registered building trades apprenticeship program and work with those trades to provide job opportunities to local workers.<br>GC shall have a goal for 25% of committed MBE/WBE spend<br>GC shall have a goal to hold meet and greet sessions for local subcontractors a minimum of 60 days prior to the start of each phase of construction.<br>Developer, City and GC agree to develop a plan for who to engage and where to hold meetings to most effectively meet this goal |                |
| <b>TR-2</b> | <b>Connection to Pedestrian and Bicycle Bridge</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <b>11,300</b>  |
|             | Hiring goals of 30% People of color, and Indigenous people and 10% Women. All contractors will work in alignment with Minnesota State and County (Hennepin) workforce goals. Developer, City and GC agree to develop a plan for who to engage and where to hold meetings to most effectively meet this goal                                                                                                                                                                                                            |                |
| <b>TR-4</b> | <b>Public Bike Parking</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                |
|             | Explore multi-modal transportation options such as electric scooters, shared bicycles, shared vehicles, and other "pay per use" transportation options                                                                                                                                                                                                                                                                                                                                                                 |                |
|             | <b>Environmental Work (CCP, test pits, testing, etc)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>693,475</b> |
|             | Compliance with any and all MPCA requirements pertaining to soil contamination and clean-up                                                                                                                                                                                                                                                                                                                                                                                                                            |                |
|             | Comply with all recommendations identified in the adopted Environmental Assessment Worksheet (EAW )                                                                                                                                                                                                                                                                                                                                                                                                                    |                |
|             | <b>LEED or equivalent - Market-Rate + Entrepreneurial Market Place</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                |
|             | Sustainable design practices: commitment to green building standards                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                |
|             | <b>LEED or equivalent - "Mixed-Income"</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                |
|             | Sustainable design practices: commitment to green building standards                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                |
|             | <b>Solar Array - Market-Rate</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                |
|             | Sustainable design practices: commitment to green building standards                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                |
|             | <b>Solar Array - "Mixed-Income"</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                |
|             | Sustainable design practices: commitment to green building standards                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                |

| INDIRECT COMMUNITY BENEFITS |                                                                                                                                                                                                                                                       |            |
|-----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
|                             | Name & Benefit Description                                                                                                                                                                                                                            | Unit Count |
|                             | The Developer has committed to pay a total of \$2,000,000.00 (\$1M at close of the Market Rate and \$1M at close of the Mixed Income land) as part of the purchase price of the land, to the City of Brooklyn Center's affordable housing trust fund. |            |
|                             | <b>Alatus (via PPL) – Affordable Building #1 -<br/>total unit count, unit mix, and affordability levels:</b>                                                                                                                                          | <b>60</b>  |
|                             | 0BR/Eff - 2 units @ 50% MTSP<br>1BR - 7 units @ 50% MTSP<br>2BR - 22 units @ 50% MTSP<br>3 BR - 9 units @ 50% MTSP<br>4 BR - 4 units @ 50% MTSP                                                                                                       |            |
|                             | 0BR/Eff - 3 units @ 30% MTSP<br>1BR - 3 units @ 30% MTSP<br>2BR - 8 units @ 30% MTSP<br>3 BR - 1 unit @ 30% MTSP<br>4 BR - 1 unit @ 30% MTSP                                                                                                          |            |
|                             | <b>Alatus (via PPL) – Affordable Building #2 -<br/>total unit count, unit mix, and affordability levels:</b>                                                                                                                                          | <b>70</b>  |
|                             | 0BR/Eff - 7 units @ 50% MTSP<br>1BR - 6 units @ 50% MTSP<br>2BR - 2 units @ 50% MTSP                                                                                                                                                                  |            |
|                             | 0BR/Eff - 8 units @ 60% MTSP<br>1BR - 24 units @ 60% MTSP<br>2BR - 23 units @ 60% MTSP                                                                                                                                                                |            |
|                             | <b>Crime Prevention Through Environmental Design (CPTED) review of each development phase to maximize public safety and inhibit crime</b>                                                                                                             |            |

**Exhibit B - 1**





Brooklyn Center, MN - Opportunity Site  
Market- Rate + Mixed-Income

"Bondable" Costs Breakdown + TDC Re-Allocation

| Units / Asset                                            | Market Rate          | Mixed Income         |
|----------------------------------------------------------|----------------------|----------------------|
| "Fully Loaded" Total Development Cost - Current Models   | 293<br>\$ 93,681,571 | 223<br>\$ 65,519,997 |
| Less:                                                    |                      |                      |
| Structured Parking                                       | (2,850,000)          | -                    |
| Land Acquisition Cost - Purchase Price                   | (2,780,000)          | (4,980,000)          |
| Land Acquisition Cost - Ocean Buffet Buyout              | (300,000)            | -                    |
| Impact Fees - Stormwater                                 | (500,000)            | (400,000)            |
| Impact Fees - Infrastructure                             | (900,000)            | (1,200,000)          |
| Impact Fees - SAC/WAC                                    | (741,730)            | (555,355)            |
| Total Bonded Costs                                       | \$ (8,071,730)       | \$ (7,135,355)       |
| Current Est. Total Development Costs Net Pledged Subsidy | \$ 85,609,841        | \$ 58,384,642        |
| Net Total Development Costs / Unit                       | \$ 292,183.76        | \$ 261,814.54        |
| Required Yield on Cost ("YOC")                           | 6.10%                | 6.00%                |
| Imputed Net Operating Income ("NOI")                     | \$ 5,222,200.00      | \$ 3,503,100.00      |

|                                                                         |              |              |
|-------------------------------------------------------------------------|--------------|--------------|
| Bonded Costs Breakdown - Market-Rate + Mixed-Income                     | \$ 8,072,000 | \$ 7,135,000 |
| Add: Origination Fee, Administrative Fees, Underwriting Fees, Etc.      | 249,600      | 220,700      |
| Add: Capitalized Interest Reserve - Assuming 24 Months                  | 645,800      | 570,800      |
| Total Bonding Proceeds                                                  | \$ 8,967,400 | \$ 7,926,500 |
| Estimated Bonding Underwriting                                          |              |              |
| Interest Rate                                                           | 4.00%        | 4.00%        |
| Period(s) - 20 Years                                                    | 44           | 44           |
| Present Value                                                           | \$ 8,967,400 | \$ 7,926,500 |
| Bi-Annual Payment                                                       | \$ 308,400   | \$ 272,600   |
| Annual Payment                                                          | \$ 616,800   | \$ 545,200   |
| Required DSCR                                                           | 1.15         | \$ 626,980   |
| Available TIF Reimbursement                                             |              |              |
| Market-Rate - Net TIF Reimbursement - 94.64% (Admin + State Surcharge)  | \$ 1,012,800 | \$ -         |
| Mixed-Income - Net TIF Reimbursement - 94.64% (Admin + State Surcharge) | \$ -         | \$ 727,300   |
| Total Available TIF Reimbursement                                       | \$ 1,012,800 | \$ 727,300   |
| Remainder - TIF Reimbursement LESS Annual Bond Debt Service             | \$ 303,480   | \$ 100,320   |

|                              |               |
|------------------------------|---------------|
| Total Approved "TIF Package" | \$ 30,209,000 |
|------------------------------|---------------|



# Economic Development Authority

DATE: 9/26/2022

TO: City Council

FROM: Dr. Reggie Edwards, City Manager

THROUGH: N/A

BY: Meg McMahan, Community Development Director

SUBJECT: Resolution approving a Term Sheet between the Economic Development Authority of Brooklyn Center (the “EDA”) and Alatus Brooklyn Center MD LLC (the “Developer”)

## Requested Council Action:

*- Motion to approve a Resolution approving a Term Sheet between the Economic Development Authority of Brooklyn Center (the “EDA”) and Alatus Brooklyn Center MD LLC (the “Developer”)*

## Background:

In April, 2018 The EDA entered into a Preliminary Development Agreement with the Developer to allow time for exploration of development feasibility within the area generally referred to as the Opportunity Site. The agreement has since been amended and extended as work progressed on the project.

In August, 2022, the Developer received approval of Planning Commission Application 2022-003 for a re-plat, amendment to the City's Zoning Code, and establishment of a Planned Unit Development to allow for a Phase I redevelopment of the City's Opportunity Site.

The project will also require public assistance for financial feasibility and include a broader array of community benefits commitments. These items will be detailed in a Contract for Private Redevelopment between the EDA and the Developer.

City staff, consultants and the Developer worked over the past several months to outline the contents of a Contract for Private Redevelopment related to the first phase of the project. This outline took the form of a Term Sheet that is prepared for review and consideration by the EDA. The Term Sheet details the primary deal points to be included in the final Contract for Private Redevelopment.

Consideration of the Term Sheet is intended to provide an opportunity for discussion and amendment of the primary deal points before the final Contract for Private Redevelopment is brought back to the EDA for final consideration.

## *Term Sheet Contents*

The term sheet details the specifics around what the Developer intends to build, the benefits that will accrue to Brooklyn Center and the public assistance necessary to make the project happen. The key items in the term sheet are as follows:

- The site includes Lot 1, Blocks 1-4 and Lot 2 Block 4 of the Opportunity Site Addition
- The purchase price for the EDA owned land on the site will be \$9,690,000. \$2.11 million of this amount will be deferred by the EDA for the affordable housing units, \$2 million will be

a contribution to an EDA Housing Trust Fund, and \$750,000 will come in the form of startup capital for the Entrepreneurial Marketplace. The remaining \$4.83 million will be cash paid to the EDA

- The Developer agrees to construct, or cause to be constructed, the following:
  - One 6-Story multi-family rental building consisting of approximately 278-units of market rate apartments with approximately 30,000 sq. ft. of space built-out for use by an Entrepreneurial Market
  - One single-story 26,500 sq. ft. Conference Center with 24-hour childcare and wellness and barber suites.
  - Single 6-Story multi-family rental building consisting of approximately 205-units of market rate apartments, in which 41 units (approximately 20%) are affordable to persons at or below 80% AMI
  - 4-Story Building with approximately 60 Low Income Housing Tax Credit (LIHTC) apartments. Approximately 16 units are affordable at or below 30% AMI and 44 units are affordable at or below 50% AMI
  - 4-Story Building with approximately 70 LIHTC apartments. Approximately 15 units are affordable at or below 50% AMI and 55 units are affordable at or below 60% AMI
- Developer will maintain and report on affordability for 30 years
- Construction will commence in 2023 and 2024 by phase as outlined in the Term Sheet
- The Developer will construct the public infrastructure necessary for the project, including:
  - Shingle Creek Parkway improvements including roadway enhancements, and rebuilt curb, boulevard, sidewalk, and landscaping
  - Signal and intersection improvements at Shingle Creek and new Parkway roadway.
  - Construction of new Parkway roadway and associated utilities, connecting Shingle Creek Parkway to John Martin Drive
  - Regional Stormwater Pond system, and associated utilities
- The Developer will deliver the community benefits as outlined in Exhibit B of the term sheet
- Maintenance responsibilities are detailed – the Developer will maintain the private portions of the project. The City will maintain the items identified in section 11 of the term sheet. These responsibilities will be refined and detailed in a more formalized Reciprocal Easement and Operating Agreement to be approved as a future date.
- The EDA will provide up to \$30,209,000 in public assistance to offset the costs of constructing public infrastructure, delivering affordable housing, and providing for the other community benefits within the project. Assistance will be in the form of pay as you go Tax Increment Financing (TIF) with notes issued for different phases of the project. The assistance is subject to further refinement and potential substitution of other city funding sources.
  - Assistance for each phase, except the LIHTC projects, will be subject to a look-back once completed to ensure the assistance was necessary based on actual project performance.
- The Developer will reimburse the EDA for its actual out of pocket expenses in getting the project to completion
- Standard minimum assessment and tax payment provisions will apply
- The City will credit the Developer for the stormwater fees it would normally incur since it is anticipated the Developer will construct the regional stormwater pond
- The Developer will continue to seek grants and other outside funding to help reduce the financing gap in the project and lessen the amount of City assistance necessary for the project.

**Budget Issues:****Inclusive Community Engagement:**

The term sheet and attached community benefits schedule represents four years of intensive and inclusive community-lead engagement that resulted in a community benefits plan drafted by a citizen advisory taskforce, informed by a community-driven engagement model.

**Antiracist/Equity Policy Effect:**

The community benefits plan is intended to promote investment in community without displacement and includes provisions for deeply affordable housing units as well as funding to support existing renters in the community through the preservation of existing naturally occurring affordable properties by funding a NOAH preservation fund.

**Strategic Priorities and Values:**

Targeted Redevelopment

**ATTACHMENTS:**

| Description                                | Upload Date | Type              |
|--------------------------------------------|-------------|-------------------|
| Term Sheet and Community Benefits Schedule | 9/19/2022   | Backup Material   |
| Resolution                                 | 9/20/2022   | Resolution Letter |

# Opportunity Site - Alatus Phase 1 Update



Brooklyn Center City Council March 27, 2023

Jesse Anderson, Interim Community Development Director and Jason Aarsvold, Ehlers

## Presentation Purpose

- Review of approved Term Sheet for public assistance to Alatus' Opportunity Site Project
- Outline of financing changes proposed by Alatus
- Discussion and direction from City Council





# Term Sheet Provisions



Term Sheet  
Parcels



## Property Acquisition

| Building/Parcel                 | Acquisition Price  |                                 |                           |                               | TOTAL              |
|---------------------------------|--------------------|---------------------------------|---------------------------|-------------------------------|--------------------|
|                                 | Cash at Closing    | Housing Trust Fund Contribution | EMP Start Up Contribution | Seller Note / Land Write-Down |                    |
| Building 1: Market Rate and EMP | \$2,780,000        | \$1,000,000                     | \$0                       | \$0                           | \$3,780,000        |
| Building 2: Conference Center   | \$1                | \$0                             | \$0                       | \$0                           | \$1                |
| Building 3: Mixed-Income        | \$2,050,000        | \$1,000,000                     | \$750,000                 | \$0                           | \$3,800,000        |
| Building 4: PPL Affordable      | \$0                | \$0                             | \$0                       | \$1,060,000                   | \$1,060,000        |
| Building 5: PPL Affordable      | \$0                | \$0                             | \$0                       | \$1,050,000                   | \$1,050,000        |
| <b>Total</b>                    | <b>\$4,830,001</b> | <b>\$2,000,000</b>              | <b>\$750,000</b>          | <b>\$2,110,000</b>            | <b>\$9,690,001</b> |



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## Developer Improvements

| Building                                 | Use                                                                                                                                                                                                                    |
|------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Building 1<br/>(6-30-2023 Start)</b>  | 6-Story multi-family rental Building consisting of approximately 278-units of market rate apartments and approximately 30,000 sq. ft. of space built-out for use by an Entrepreneurial Market and delivered to the EDA |
| <b>Building 2<br/>(6-30-2023 Start)</b>  | One single-story 26,500 sq. ft. Conference Center with 24-hour childcare and wellness and barber suites.                                                                                                               |
| <b>Building 3<br/>(12-31-2023 Start)</b> | Single 6-Story multi-family rental Building consisting of approximately 205-units of market rate apartments, in which 41 units (approximately 20%) are affordable to persons at or below 80% AMI                       |
| <b>Building 4<br/>(12-31-2023 Start)</b> | 4-Story Building with approximately 60 Low Income Housing Tax Credit (LIHTC) apartments. Approximately 16 units are affordable at or below 30% AMI and 44 units are affordable at or below 50% AMI                     |
| <b>Building 5<br/>(12-31-2023 Start)</b> | 4-Story Building with approximately 70 Low Income Housing Tax Credit (LIHTC) apartments. Approximately 15 units are affordable at or below 50% AMI and 55 units are affordable at or below 60% AMI                     |



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## Housing Affordability

|                         | Building 1 | Building 3 | Building 4<br>LIHTC | Building 5<br>LIHTC | Total      | %<br>Affordable |
|-------------------------|------------|------------|---------------------|---------------------|------------|-----------------|
| <b>Number of Units</b>  | <b>278</b> | <b>205</b> | <b>60</b>           | <b>70</b>           | <b>613</b> |                 |
| 30% AMI                 | 0          | 0          | 16                  | 0                   | 16         | 3%              |
| 50% AMI                 | 0          | 0          | 44                  | 15                  | 59         | 10%             |
| 60% AMI                 | 0          | 0          | 0                   | 55                  | 55         | 9%              |
| 80% AMI                 | 0          | 41         | 0                   | 0                   | 41         | 7%              |
| <b>Total Affordable</b> | <b>0</b>   | <b>41</b>  | <b>60</b>           | <b>70</b>           | <b>171</b> | <b>28%</b>      |

\*Building 1 proposed to increase to 293 Units



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## Infrastructure

- Alatus will construct all public and private infrastructure, including:
  - Shingle Creek Parkway Improvements
  - Construction of new east/west parkway connecting Shingle Creek Parkway to John Martin Drive.
  - Signal and intersection improvements at Shingle Creek and new east/west Parkway
  - Regional Stormwater Pond system and associated utilities.
- EDA will waive Alatus' stormwater impact fee (\$1.6 million estimate) and reimburse Alatus for portion of stormwater pond attributable to future development parcels (\$1.1 million estimate)
- Total infrastructure costs currently estimated at \$14.8 million



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## Community Benefits

- Detailed in Appendix B of Term Sheet
- Delivery of all the project elements
- Cash contributions for EMP and Housing
- Contractor goals
  - Local workers, 25% of committed MBE/WBE spend
- Hiring goals
  - 30% People of color, and Indigenous people and 10% Women
- Lighting, infrastructure, public art, Park and Trail enhancements
- Sustainability elements



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## Maintenance

- Developer will be responsible for maintenance of all the private areas and infrastructure around the buildings
  - Will be specified in a formal agreement
- City will maintain public infrastructure, including parkway and regional stormwater pond
  - City can create a storm sewer improvement taxing district
  - Need to plan for future maintenance of parkway



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## Public Assistance

- EDA would provide up to \$30,209,000 for Qualified Costs and Public Improvements
  - Funding source is TIF District #7
  - Separate Pay As You Go TIF notes anticipated for each building
  - Other funding will be sought and can substitute for the TIF
  - Defined further in future Contract for Private Redevelopment
- Contract will contain a “look back” provision to ensure assistance amount is accurate based on actual project costs
- Alatus will contribute to escrow account to cover EDA costs



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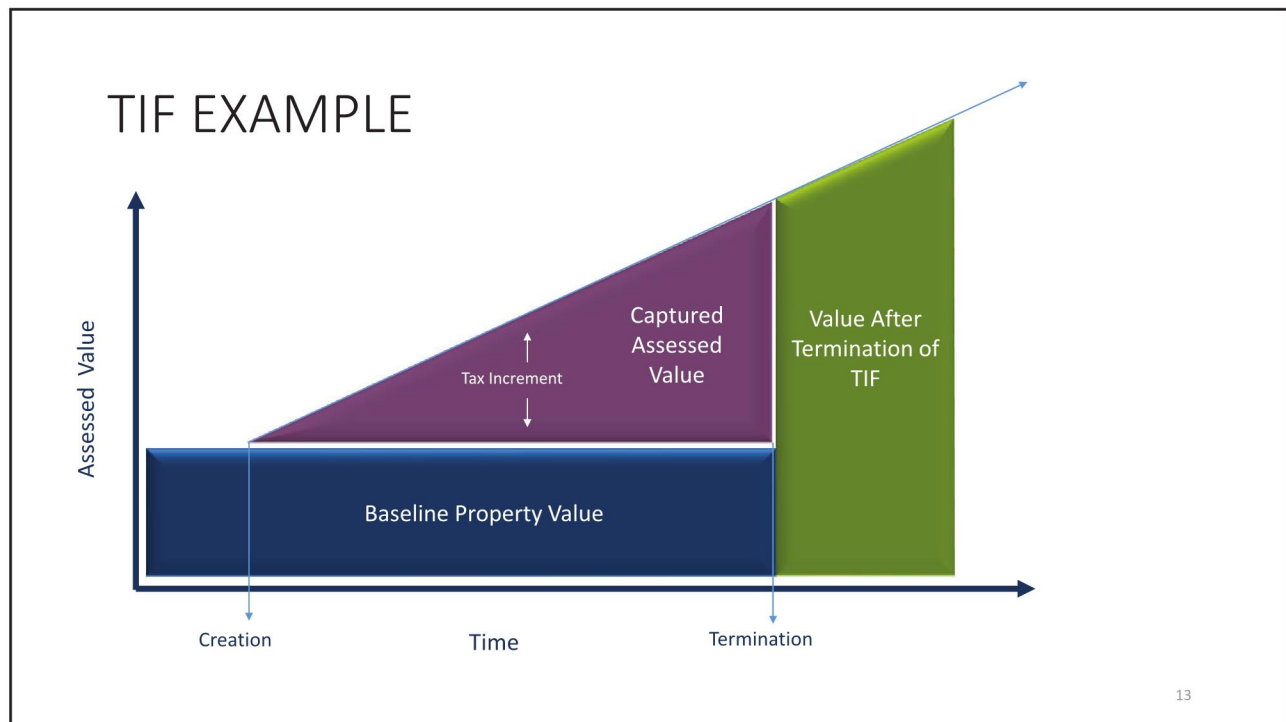
## What is Tax Increment Financing?

### Tax Increment Financing (TIF):

The ability to capture and use most of the increased local property tax revenues from new development within a defined geographic area for a defined period of time without approval of the other taxing jurisdictions.



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## TIF / Abatement Financing Options

- Pay-as-you-go TIF Note
  - ✓ No up-front funds from the City
  - ✓ Developer funds eligible expenses and is repaid with interest, over time, from available tax increment / abatement
  - ✓ No risk to TIF / abatement authority if term expires before note is retired
- G.O. or Revenue Bonds
  - ✓ Bond proceeds fund up-front project costs and TIF revenue is used to repay bonds
  - ✓ Higher-risk to City for G.O. debt

# Revised Alatus Proposal



## Current Financing Challenges

- Inflation on development costs (public and private) are affecting the Alatus project
- Increasing interest rates eroding sources for the project
- Ability to raise funds for the project from investors is diminished
- Alatus feels it can still raise most of the funding for the project, but cannot raise 100% as originally envisioned
  - Alatus is committed to the project, but cannot proceed as approved
- Their request is for some up-front financing from the City to help pay for project costs



## Alternative City Financing

- Only feasible source for up-front assistance would be issuance to General Obligation TIF bonds
  - Current ask is \$8-\$9 million for Alatus' market rate building and \$7-\$8 million for the mixed-income building
- The bonds would still be paid back with revenue from the project, but if the revenue does not materialize, then the City must pay the bonds from other City sources
- This shifts some of the risk of the project to the City



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## Alternative City Financing

- Details would need to be negotiated and approved by the Council, but generally this risk would be mitigated in the following manner:
  - Start with one building first
  - Defer the \$3,780,000 land payment for building 1 (reduces size of bond need)
    - This can be paid back over time, rather than up front
  - Include a special assessment for the public improvements on Alatus' property
  - Use special assessments and (potentially) some of the tax increment to repay bonds – no additional tax levy necessary to repay debt in this scenario
  - City would have first priority on tax increment
  - A pay-as-you-go TIF note would still be issued to Alatus



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## Potential Benefits of This Approach

- The project is more likely to proceed this year
  - It will be put on hold indefinitely under the current financing scenario
- Assuming the project gets built as planned, special assessments and TIF will repay the bonds and there will be no additional City or taxpayer risk
- Public infrastructure is also installed along with Alatus' buildings, providing for the additional development envisioned in Phase 1 of the Opportunity Site.



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## Potential Risks of This Approach

- Issuance of general obligation bonds does shift some of the risk on to the City
- If the City issued bonds and the project did not get built, there would be no assessment revenue or TIF to repay the bonds – the City would then need to repay the bonds from another City source
  - This risk will be mitigated through the agreement with Alatus – no city debt until we are certain they have all the other funding to build the project
  - Investment would not be “lost” as the City funding would be paying for installation of new infrastructure needed to rebuild the site.



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## Alternative City Financing

- This financing model is conceptual at this point
- The Council is not being asked to approve anything this evening
- Before proceeding further with Alatus on this financing alternative, staff wanted to check with Council about willingness to consider this option
- If given the okay to continue, a full, detailed financing plan with necessary agreements would be brought back for Council consideration
  - All the detailed assumptions and specific numbers would be presented at that time



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## Entrepreneurial Market Changes

- Listed as a 30,000 sq. ft. building in the approved Term Sheet
  - Staff began working on financing details following term sheet approval
  - Capital costs for a 30,000 sq. ft. building are more than the project can support
  - Building size and inefficiency also led to a projected operating cost subsidy of between \$100,000 and \$250,000 annually
- Size and design needed to change for feasibility
  - Size is reduced to just around 17,000 sq. ft – about 3,000 of which could be for a market rate anchor tenant
  - Shell would be built and delivered by Alatus to the EDA with tenant allowance
  - Interior buildout will rely on 3<sup>rd</sup> party expertise for operational efficiency



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## Council/EDA Work Session

DATE: 3/27/2023

TO: City Council

FROM: Dr. Reggie Edwards, City Manager

THROUGH: N/A

BY: Dr. Reggie Edwards, City Manager

SUBJECT: Upcoming Items

### **Requested Council Action:**

- Grant Discussion (*referred to Financial Commission*)
- Special Assessment Policy/Franchise Fees (*referred to Financial Commission*)
- Emerald Ash Borer Policy Review (*referred to Park & Rec Commission*)
- Memorial Policy (*referred to Park & Rec Commission*)
- Establishing a Beautification and Public Art Commission
- Liquor Store 2 - (*April*)
- 252/94 Report - (potential separate work session)
- Organizational Chart
- Rental License Review (*referred to Housing Commission*)
- Tenant Protection Data presentation
- THC Moratorium

### **Background:**

### **Budget Issues:**

### **Antiracist/Equity Policy Effect:**

### **Strategic Priorities and Values:**