

**PRELIMINARY DEVELOPMENT AGREEMENT  
(Alatus 4300 Central Avenue Project)**

THIS AGREEMENT, dated this \_\_\_ day of \_\_\_\_\_, 2021, by and between the Columbia Heights Economic Development Authority, a body politic and corporate under the laws of Minnesota (the “Authority”), and Alatus LLC, a Minnesota limited liability company, or permitted successors or assigns (the “Developer”):

WITNESSETH:

WHEREAS, the Authority desires to promote redevelopment of certain property within the City of Columbia Heights (the “City”), consisting of property owned by a third party and located at 4300 Central Avenue NE (the “Third-Party Parcel”), and property adjacent to the Third-Party Parcel and currently owned by the City (the “City Parcel”), which property is legally described in Exhibit A attached hereto and hereinafter known as the “Property”; and

WHEREAS, the Developer desires to acquire the Property for purposes of constructing a mixed-use (multi-family residential and commercial) development on the Property (the “Development”), and has submitted a proposal outlining its general development terms and goals, a portion of which is attached hereto as Exhibit B; and

WHEREAS, the Developer has requested that the Authority explore the use of tax increment financing under Minnesota Statutes, Sections 469.174 to 469.1794, as amended (the “Tax Increment Act”) or other public financial assistance to offset a portion of the public costs of the Development, including without limitation the costs of acquisition of and demolition of substandard buildings on the Property (the “Redevelopment Costs”); and

WHEREAS, the Authority and the Developer are willing and desirous to undertake the Development if (i) a satisfactory agreement can be reached regarding the Authority’s commitment for public assistance necessary for the Development; (ii) satisfactory mortgage and equity financing, or adequate cash resources for the Development can be secured by the Developer; (iii) the economic feasibility and soundness of the Development and other necessary preconditions have been determined to the satisfaction of the parties; (iv) the parties reach a satisfactory resolution of zoning, land use, site design, and engineering issues; and (v) the Developer successfully negotiates the purchase of the Third-Party Parcel; and

WHEREAS, the Authority is willing to evaluate the Development and work toward all necessary agreements with the Developer if the Developer agrees to reimburse the Authority for its costs relating to the Development even if the Development is abandoned or necessary agreements are not reached under the terms of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and obligations set forth herein, the parties agree as follows:

1. During the term of this agreement, the Authority agrees to negotiate solely with the Developer relative to the acquisition and development of the Property by the Developer, in an attempt to formulate a definitive Purchase and Redevelopment Contract (“Contract”) based on the following:

(a) the Developer’s proposal (when submitted) together with any changes or modifications required by the Authority;

(b) such documentation regarding economic feasibility of the Project as the Authority may wish to undertake during the term of this Agreement; and

(c) other terms and conditions of this Agreement.

2. It is the intention of the parties that this Agreement: (a) documents the present understanding and commitments of the parties; and (b) will lead to negotiation and execution of a mutually satisfactory Contract for the Development prior to the termination date of this Agreement. The Contract (together with any other agreements entered into between the parties hereto contemporaneously therewith) when executed, will supersede all obligations of the parties hereunder.

3. During the term of this Agreement, the Developer shall:

(a) Submit a proposal to the Authority, which proposal must show the location, size, and nature of the proposed Development, including sample floor layouts, renderings, elevations, and other graphic or written explanations of the Development. The proposal shall be accompanied by a preliminary schedule for the starting and completion of all phases of the Development.

(b) Submit an over-all cost estimate for the design and construction of the Development.

(c) Submit a final time schedule for all phases of the Development.

(d) Undertake and obtain such other preliminary economic feasibility studies, income and expense projections, and such other economic information as the Developer may desire to further confirm the economic feasibility and soundness of the Development.

(e) Submit to the Authority the Developer’s financing plan showing that the proposed Development is financially feasible.

(f) Furnish satisfactory, financial data to the Authority evidencing the Developer’s ability to undertake the Development.

4. During the term of this Agreement, the Authority agrees to:

(a) Commence the process necessary to undertake such public assistance as is necessary pursuant to the terms of the proposal.

(b) Work with the Developer to seek all necessary information with regard to the anticipated public costs associated with the Development.

(c) Estimate the Authority's level and method of financial participation, if any, in the Development and develop a financial plan for the Authority's participation.

(d) Grant to the Developer, its agents, employees, officers, and contractors (the "Authorized Parties") a right of entry on the City Parcel for the purpose of performing all due diligence work and inspections deemed necessary by the Developer to fulfill its obligations under this Agreement (the "Permitted Activities"). The Authorized Parties shall have access to the City Parcel seven (7) days a week between the hours of 7:00 a.m. and 7:00 p.m. Developer hereby agrees to be responsible for any and all costs related to the Permitted Activities conducted on the City Parcel, and to restore the Property to its original condition upon completion of the Permitted Activities. Developer agrees to indemnify, save harmless, and defend the City, the Authority, and their officers and employees, from and against any and all claims, actions, damages, liability and expense in connection with personal injury and/or damage to the City Parcel arising from or out of any occurrence in, upon or at the City Parcel caused by the act or omission of the Authorized Parties in conducting the Permitted Activities on the City Parcel, except (a) to the extent caused by the negligence, gross negligence, willful misrepresentation or any willful or wanton misconduct by the City or Authority, their officers, employees, agents or contractors; and (b) to the extent caused by a "Pre-Existing Condition" as defined in this paragraph 4. "Pre-Existing Condition" shall mean any condition caused by the existence of hazardous substances or materials in, on, or under the City Parcel, including without limitation hazardous substances released or discharged into the drainage systems, soils, groundwater, waters or atmosphere, which condition existed as of the date of this Agreement and became known or was otherwise disclosed or discovered by reason of the Authorized Parties' entry onto the City Parcel.

5. It is expressly understood that execution and implementation of the Contract shall be subject to:

(a) A determination by the Authority in its sole discretion that its undertakings are feasible based on (i) the projected tax increment revenues and any other revenues designated by the Authority; (ii) the purposes and objectives of any tax increment, development, or other plan created or proposed for the purpose of providing financial assistance for the Development; and (iii) the best interests of the Authority.

(b) A determination by the Developer that the Development is feasible and in the best interests of the Developer.

6. This Agreement is effective from the date hereof through October 31, 2021. After such date, neither party shall have any obligation hereunder except as expressly set forth to the contrary herein.

7. The Developer shall be solely responsible for all costs incurred by the Developer. In addition, the Developer shall reimburse the Authority for the following costs:

(a) As of the date of execution of this Agreement, the Developer has deposited with the Authority funds in the amount of \$10,000, receipt of which the Authority hereby acknowledges. The Authority may apply such deposit to pay any "Authority Costs," which means: reasonable and necessary out-of-pocket-costs incurred by the Authority, as evidenced by itemized bills and invoices for (i) the Authority's financial advisor in connection with the Authority's financial participation in redevelopment of the Property, including without limitation the establishment of a tax increment financing district and/or the issuance of any debt by the Authority of City in connection therewith, (ii) the Authority's legal counsel in connection with negotiation and drafting of this Agreement and any related agreements or documents, and any legal services related to the Authority's or City's participation in redevelopment of the Property, including without limitation all legal costs related to the establishment of any tax increment financing district and/or the issuance of any debt by the Authority or City in connection therewith; (iii) any other costs of issuance by the Authority or City for any debt in connection with the redevelopment of the Property, to the extent not paid from the proceeds of such debt; and (iv) consultants retained by the Authority or City for planning, environmental review, and traffic engineering for redevelopment of the Property. At Developer's request, but no more often than monthly, the Authority will provide Developer with a written report on current and anticipated expenditures for Authority Costs, including invoices or other comparable evidence.

(b) If the City or Authority issue any debt obligations on behalf of the Developer, including without limitation any general obligation tax increment revenue bonds (the "Debt"), the Developer will be solely responsible for the payment of all principal and interest on such Debt.

(c) If at any time during the term of this Agreement the Authority determines that the amounts deposited by Developer are insufficient to pay Authority Costs, the Authority may notify the Developer in writing as to any additional amount required to be deposited. The Developer must deposit such additional funds within 30 days after receipt of the Authority's notice.

(d) Upon termination of this Agreement in accordance with its terms, the Authority will return to the Developer the balance of any funds deposited under this section that are on hand as of the date of receipt of the notice of termination, less \$1,000 representing a nonrefundable application fee, and less any Authority Costs incurred through the date of receipt of the notice of termination. For the purposes of this paragraph, Authority Costs are considered to be incurred if they have been paid, relate to services performed, or are payable under a contract entered into, on or before the date of

receipt of the notice of termination.

This Section 7 shall survive termination of this Agreement and shall be binding on the Developer regardless of the enforceability of any other provision of this Agreement.

8. This Agreement may be terminated upon 5 days written notice by the Authority to the Developer if:

(a) an essential precondition to the execution of a contract cannot be met; or

(b) if, in the sole discretion of the Authority, an impasse has been reached in the negotiation or implementation of any material term or condition of this Agreement or the Contract; or

(c) The Authority determines that its Administrative Costs will exceed the amount initially deposited for such purpose under Section 7(a), and the Developer does not deliver additional security to the Authority pursuant to Section 7(c) of this Agreement.

If the Authority terminates the Agreement under this Section 8, the Developer shall remain liable to the Authority under Section 7 of this Agreement for Administrative Costs incurred by the Authority through the effective date of termination.

9. The Developer is designated as sole developer of the Property during the term of this Agreement. The Authority makes no representations or warranties as to control, access or ownership of any portion of the Property, but agrees that during the term of this Agreement the Authority will not enter into agreements with any other party to facilitate redevelopment of the Property.

10. In the event that the Developer, its heirs, successors or assigns, fail to comply with any of the provisions of this Agreement, the Authority may proceed to enforce this Agreement by appropriate legal or equitable proceedings, or other similar proceedings, and the Developer, its heirs, successors or assigns, agree to pay all costs of such enforcement, including reasonable attorneys' fees.

11. If any portion of this Agreement is held invalid by a court of competent jurisdiction, such decision shall not affect the validity of any remaining portion of the Agreement.

12. In the event any covenant contained in this Agreement should be breached by one party and subsequently waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach. This Agreement may not be amended nor any of its terms modified except by a writing authorized and executed by all parties hereto.

13. Notice or demand or other communication between or among the parties shall be sufficiently given if sent by mail, postage prepaid, return receipt requested or delivered personally:

(a) As to the Authority:  
Columbia Heights Economic Development Authority  
590 40th Avenue NE  
Columbia Heights, MN 55421  
Attn: Community Development Director

(b) As to the Developer:  
Alatus LLC  
800 Nicollet Mall, Suite 2850  
Minneapolis, MN 55402  
Attn: Director of Development

14. This Agreement may be executed simultaneously in any number of counterparts, all of which shall constitute one and the same instrument.

15. This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

16. The Developer hereby agrees to protect, defend and hold the Authority and its officers, elected and appointed officials, employees, administrators, commissioners, agents, and representatives harmless from and indemnified against any and all loss, cost, fines, charges, damage and expenses, including, without limitation, reasonable attorneys fees, consultant and expert witness fees, and travel associated therewith, due to claims or demands of any kind whatsoever arising out of (i) the development, marketing, sale or leasing of all or any part of the Property, including, without limitation, any claims for any lien imposed by law for services, labor or materials furnished to or for the benefit of the Property, or (ii) any claim by the state of Minnesota or the Minnesota Pollution Control Agency or any other person pertaining to the violation of any permits, orders, decrees or demands made by said persons or with regard to the presence of any pollutant, contaminant or hazardous waste on the Property; and (iii) or by reason of the execution of this Agreement or the performance of this Agreement. The Developer, and the Developer's successors or assigns, agree to protect, defend and save the Authority, and its officers, agents, and employees, harmless from all such claims, demands, damages, and causes of action and the costs, disbursements, and expenses of defending the same, including but not limited to, attorneys fees, consulting engineering services, and other technical, administrative or professional assistance. This indemnity shall be continuing and shall survive the performance, termination or cancellation of this Agreement. Nothing in this Agreement shall be construed as a limitation of or waiver by the Authority of any immunities, defenses, or other limitations on liability to which the Authority is entitled by law, including but not limited to the maximum monetary limits on liability established by Minnesota Statutes, Chapter 466.

17. The Developer, for itself, its attorneys, agents, employees, former employees, insurers, heirs, administrators, representatives, successors, and assigns, hereby releases and forever discharges the Authority, and its attorneys, agents, representatives, employees, former employees, insurers, heirs, executors and assigns of and from any and all past, present or future claims, demands, obligations, actions or causes of action, at law or in equity, whether arising by statute, common law or otherwise, and for all claims for damages, of whatever kind or nature, and for all claims for attorneys' fees, and costs and expenses, including but not limited to all claims of any kind arising out of the negotiation, execution, or performance of this Agreement between the parties.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Authority has caused this Agreement to be duly executed in its name and behalf and its seal to be duly affixed hereto and the Developer has caused this Agreement to be duly executed as of the day and year first above written.

**ALATUS LLC**

By \_\_\_\_\_  
Chris Osmundson  
Its Director of Development

**COLUMBIA HEIGHTS ECONOMIC  
DEVELOPMENT AUTHORITY**

By \_\_\_\_\_  
Marlaine Szurek  
Its President

By \_\_\_\_\_  
Kelly Bourgeois  
Its Executive Director



## **EXHIBIT A**

### **Description of Property**

#### **Third-Party Property**

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), and Twelve (12), Block One (1), and the East 107.3 feet of Lots One (1), Two (2), Three (3), Four (4), Five (5), and Six (6), Block Two (2),

All in Rearrangement of Block "A", Columbia Heights Annex to Minneapolis, according to the recorded plat thereof on file in the office of the Register of Deeds in and for Anoka County, Minnesota, together with that part of vacated Jackson Street on said plat described as follows: Commencing at a point 10 feet North of the Southeast corner of said Lot 6, Block 2; thence North a distance of 590 feet, more or less, to the Northeast corner of said Lot 1, Block 2; thence East a distance of 30 feet, more or less, to the Northwest corner of said Lot 12, Block 1; thence South a distance of 590 feet, more or less to a point 10 feet North of the Southwest corner of said Lot 7, Block 1; thence West a distance of 30 feet, more or less, to the point of beginning and there terminating.

#### **City Parcel**

Lots 1, 2, 3, 4, 5, and 6, Block 2, Rearrangement of Block "A", Columbia Heights Annex to Minneapolis (except for the East 107.3 feet thereof), Anoka County, Minnesota.

## EXHIBIT B

### Developer's Proposal - Summary

#### INTRODUCTION TO 4300 CENTRAL AVE. NE MIXED-USE DEVELOPMENT

- 4300 Central Ave. NE (the "Redevelopment Site") is a 13.03-acre site located along the Columbia Heights central business corridor with frontage along the west side of Central Avenue NE.
- The Redevelopment Site will include approximately 400-600 multi-family units, 20,000 – 40,000 sq. ft. of retail/commercial space, substantial public infrastructure and outdoor community space, and a single-family home concept to help blend with the adjacent neighborhoods.
- The different housing projects on the Redevelopment Site will offer a wide range of housing lifestyles and unit types at varying price points.
- The Redevelopment Site will include enough parking to satisfy the demand of all planned uses. Current plans include at least one level of underground parking where necessary, but the plans are subject to change as the site's uses are more concretely understood.
- Sustainability goals for the site include VRF heating/cooling systems and the construction of solar arrays within the multi-family projects.

