

**ASSIGNMENT AND ASSUMPTION OF
CONTRACT FOR PRIVATE DEVELOPMENT AND TIF NOTE**

Lakewood Apartments of Grand Rapids, LLC, a Minnesota limited liability company (the “**Assignor**”), and Lakewood Heights Apartments LLC, a Minnesota limited liability company (the “**Assignee**”), make this Assignment and Assumption of Contract for Private Development and TIF Note (this “**Agreement**”) dated effective as of _____, 20____ (the “**Effective Date**”).

RECITALS

A. Assignor and the City of Grand Rapids, Minnesota (the “**City**”), entered into that certain Contract for Private Development dated December 6, 2010, and subsequent First Amendment to Contract for Private Development dated October 11, 2011 (collectively, the “**Development Agreement**”), relating to certain real property described in the Development Agreement (the “**Property**”), and the Assignor desires to assign all of its interest in the Development Agreement to Assignee pursuant to this Agreement’s terms.

B. Pursuant to the Development Agreement, the City issued a Tax Increment Revenue Note, a copy of which is attached as **Exhibit B** (together with any replacements or amendments thereto, the “**TIF Note**”), in favor of Assignor, and Assignor desires to assign its interest in the TIF Note to the Assignee pursuant to this Agreement.

C. Assignor desires to assign and transfer to Assignee all of Assignor’s obligations and rights under the Development Agreement and the TIF Note and be released from all of Assignor’s duties, obligations and responsibilities under the Development Agreement and TIF Note arising or accruing on and after the Effective Date, and Assignee is willing to accept and assume such rights, duties, obligations and responsibilities under the Development Agreement and TIF Note arising or accruing on and after the Effective Date.

In consideration of the premises and of the mutual covenants and agreements set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties agree as follows:

1. **Assignment and Assumption.** Assignor grants, transfers, and assigns to Assignee all of Assignor’s rights, duties, obligations and responsibilities under the Development Agreement and the TIF Note arising or accruing on and after the Effective Date. Assignee accepts such rights and assumes such

duties, obligations and responsibilities under the Development Agreement and the TIF Note arising or accruing on and after the Effective Date. Assignor shall be released from all of its duties, obligations, liabilities and responsibilities under the Development Agreement and TIF Note as of the Effective Date. The Assignor has delivered the original TIF Note to the City and the TIF Note has been registered in the name of the Assignee as the new registered owner thereof and the Assignee has delivered to the City an investment letter as required by . Section 3.3(d) of the Agreement. The City is authorized and directed to recognize Assignee as the sole owner of the TIF Note. Assignor acknowledges the TIF Note payments will be made to Assignee.

2. **Assignor's Covenants.** Assignor represents, warrants and covenants to Assignee as follows:

- (a) Assignor is a limited liability company duly organized, existing and in good standing under Minnesota law with the requisite power and authority to enter into and perform this Agreement.
- (b) Assignor is the "Developer" under the Development Agreement and TIF Note.
- (c) The Development Agreement and TIF Note are valid and in full force and effect in accordance with their terms.

3. **Assignee's Covenants.** Assignee represents, warrants and covenants to Assignor as follows:

- (a) Assignee is a limited liability company duly organized, existing and in good standing under Minnesota law with all requisite power and authority to enter into and perform this Agreement.
- (b) As of the Effective Date, Assignee expressly assumes all duties, obligations, liabilities and responsibilities of the Assignor under the Development Agreement and TIF Note and agrees that Assignee is subject to all conditions and restrictions to which Assignor is subject.
- (c) Assignee certifies that it has the qualifications and financial responsibility necessary and adequate to fulfill the obligations of "Developer" in the Development Agreement.

4. **Indemnification.** Assignee shall defend, indemnify and hold Assignor harmless from and against any and all claims for any offsets, payments, costs, claims, lawsuits, causes of action, or any other expenses including, without limitation reasonable attorneys' fees arising under the Development Agreement and the TIF Note associated with facts and circumstances occurring on and after the Effective Date.

5. **Binding Effect.** This Agreement shall be binding upon the parties' successors and assigns, and the parties shall deliver such further and additional instruments, agreements and other documents as may be necessary to carry out this Agreement's provisions.

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

7. **Partial Invalidity.** The invalidity or unenforceability of any provision of this Agreement will not affect or impair the validity of any other provision.

8. **Entire Agreement.** This Agreement contains the parties' entire agreement regarding its subject matter and supersedes all prior agreements and understandings.

9. **Amendment.** The parties may amend this Agreement only by a written instrument duly executed by all parties.

10. **Headings.** The section and paragraph headings contained in this Agreement are for reference purposes only and will not affect this Agreement's meaning or interpretation.

11. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Emailed, PDF and electronic signatures shall be sufficient for all purposes.

[Remainder of page intentionally left blank. Signature page follows.]

**SIGNATURE PAGE TO
ASSIGNMENT AND ASSUMPTION OF
CONTRACT FOR PRIVATE DEVELOPMENT AND TIF NOTE**

Assignor has executed and delivered this Agreement as of the Effective Date.

ASSIGNOR:

Lakewood Apartments of Grand Rapids, LLC

By _____

Steven D. Kuepers
Its Chief Manager

STATE OF MINNESOTA)
) SS
COUNTY OF _____)

On this ____ day of _____, 20____, before me, a Notary Public for this County, personally appeared Steven D. Kuepers, who, being by me duly sworn, did say that he is Chief Manager of Lakewood Apartments of Grand Rapids, LLC, and that this instrument was signed on behalf of said limited liability company by authority of its Members and acknowledged said instrument to be the free act and deed of said limited liability company.

Notary Public

**SIGNATURE PAGE TO
ASSIGNMENT AND ASSUMPTION OF
CONTRACT FOR PRIVATE DEVELOPMENT AND TIF NOTE**

Assignee has executed and delivered this Agreement as of the Effective Date.

ASSIGNEE:

Lakewood Heights Apartments LLC

By _____
Its _____

STATE OF MINNESOTA)
) SS
COUNTY OF _____)

On this ____ day of _____, 20____, before me, a Notary Public for this County, personally appeared _____, who, being by me duly sworn, did say that he is the _____ of Lakewood Heights Apartments LLC, and that this instrument was signed on behalf of said limited liability company by authority of its Members and acknowledged said instrument to be the free act and deed of said limited liability company.

Notary Public

THIS INSTRUMENT DRAFTED BY:

Rinke Noonan (HAM)
1015 W. St. Germain St., Suite 300
P.O. Box 1497
St. Cloud, MN 56302-1497
(320) 251-6700
File No. 29887-0002

**CITY'S CONSENT AND ACKNOWLEDGEMENT TO
ASSIGNMENT AND ASSUMPTION OF
CONTRACT FOR PRIVATE DEVELOPMENT AND TIF NOTE**

The City, by its undersigned representatives, expressly consents to the assignment of the Development Agreement and TIF Note by Assignor pursuant to this Agreement. Upon the Effective Date, Assignor shall be released from all of its duties, obligations, liabilities and responsibilities under the Development Agreement. The City has executed and delivered this Consent and Acknowledgment as of the Effective Date.

CITY:

City of Grand Rapids

By _____

Dale Christy
Its Mayor

And,

By _____

Tom Pagel
Its City Administrator

STATE OF MINNESOTA)
) SS
COUNTY OF _____)

This instrument was acknowledged before me this ____ day of _____, 20____, by Dale Christy, the Mayor of the City of Grand Rapids, Minnesota, a Minnesota municipal corporation, on behalf of said municipal corporation.

Notary Public

STATE OF MINNESOTA)
) SS
COUNTY OF _____)

This instrument was acknowledged before me this ____ day of _____, 20____, by Tom Pagel, the City Administrator of the City of Grand Rapids, Minnesota, a Minnesota municipal corporation, on behalf of said municipal corporation.

Notary Public

EXHIBIT A

TIF NOTE

(See attached)

UNITED STATE OF AMERICA
STATE OF MINNESOTA
COUNTY OF ITASCA
CITY OF GRAND RAPIDS

No. R-1

\$350,000

TAX INCREMENT REVENUE NOTE
SERIES 2010

<u>Rate</u>	<u>Date of Original Issue</u>
5.0%	August 1, 2013

The City of Grand Rapids, Minnesota (the "City"), for value received, certifies that it is indebted and hereby promises to pay to Lakewood Apartments of Grand Rapids LLC or registered assigns (the "Owner"), the principal sum of \$350,000.00 and to pay interest thereon at the rate of five percent (5.0%) per annum, but solely from the sources and to the extent set forth herein.

1. Payments. Principal and interest ("Payments") shall be paid on August 1, 2013 and each February 1 and August 1 thereafter to and including February 1, 2039 ("Payment Dates") in the amounts and from the sources set forth in Section 3 herein. Payments shall be applied first to accrued interest, and then to unpaid principal.

Payments are payable by mail to the address of the Owner or such other address as the Owner may designate upon 30 days written notice to the City. Payments on this Note are payable in any coin or currency of the United States of America which, on the Payment Date, is legal tender for the payment of public and private debts.

2. Interest. Simple, non-compounding interest at the rate stated herein shall accrue on the unpaid principal, commencing as of August 1, 2011. Interest shall be computed on the basis of a year of 360 days consisting of twelve 30-day months, and shall be charged for actual days principal is unpaid.

3. Available Tax Increment. Payments on this Note are payable on each Payment Date in the amount of and solely payable from "Available Tax Increment," which shall mean, on each Payment Date, ninety (90) percent of the Tax Increment attributable to the Development Property and paid to the City by Itasca County in the six months preceding the Payment Date, all as such terms are defined in the Contract for Private Development between the City and Owner dated as of December 6, 2010, as amended (the "Agreement"). Available Tax Increment shall not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default under the Agreement.

The City shall have no obligation to pay principal of and interest on this Note on each Payment Date from any source other than Available Tax Increment, and the failure of the City to pay the entire amount of principal or interest on this Note on any Payment Date shall not constitute a default hereunder as long as the City pays principal and interest hereon to the extent of Available Tax Increment. The City shall have no obligation to pay unpaid balance of principal or accrued interest that may remain after the final Payment on February 1, 2039.

4. Optional Prepayment. The principal sum and all accrued interest payable under this Note is prepayable in whole or in part at any time by the City without premium or penalty. No partial prepayment shall affect the amount or timing of any other regular payment otherwise required to be made under this Note.

5. Termination. At the City's option, this Note shall terminate and the City's obligation to make any payments under this Note shall be discharged upon the occurrence of an Event of Default on the part of the Developer as defined in Section 9.1 of the Agreement, but only if the Event of Default has not been cured in accordance with Section 9.2 of the Agreement.

6. Nature of Obligation. This Note is one of an issue in the total principal amount of \$350,000.00 all issued to aid in financing certain public development costs and administrative costs of a Project undertaken by the City pursuant to Minnesota Statutes, Sections 469.125 through 469.134, and is issued pursuant to an authorizing resolution (the "Resolution") duly adopted by the City on August 23, 2010 and ratified on December 6, 2010, and pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Sections 469.174 to 469.179. This Note is a limited obligation of the City which is payable solely from Available Tax Increment pledged to the payment hereof under the Resolution. This Note and the interest hereon shall not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the City. Neither the State of Minnesota, nor any political subdivision thereof shall be obligated to pay the principal of or interest on this Note or other costs incident hereto except out of Available Tax Increment, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof is pledged to the payment of the principal of or interest on this Note or other costs incident hereto.

7. Registration and Transfer. This Note is issuable only as a fully registered note without coupons. As provided in the Resolution, and subject to certain limitations set forth therein, this Note is transferable upon the books of the City kept for that purpose at the principal office of the City Administrator, by the Owner hereof in person or by such Owner's attorney duly authorized in writing, upon surrender of this Note together with a written instrument of transfer satisfactory to the City, duly executed by the Owner. Upon such transfer or exchange and the payment by the Owner of any tax, fee, or governmental charge required to be paid by the City with respect to such transfer or exchange, there will be issued in the name of the transferee a new Note of the same aggregate principal amount, bearing interest at the same rate and maturing on the same dates.


This Note shall not be transferred to any person other than an Affiliate, or other related entity, of the Owner unless the City has been provided with an opinion of counsel or a certificate of

the transferor, in a form satisfactory to the City, that such transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to exist, to happen, and to be performed in order to make this Note a valid and binding limited obligation of the City according to its terms, have been done, do exist, have happened, and have been performed in due form, time and manner as so required.

IN WITNESS WHEREOF, the City Council of the City of Grand Rapids, Minnesota has caused this Note to be executed with the manual signatures of its Mayor and City Administrator, all as of the Date of Original Issue specified above.

CITY OF GRAND RAPIDS, MINNESOTA



City Administrator



Mayor

REGISTRATION PROVISIONS

The ownership of the unpaid balance of the within Note is registered in the bond register of the City Administrator, in the name of the person last listed below.

Date of
Registration

Registered Owner

Signature of
City Administrator

7/22/13

Lakewood Apartments of Grand Rapids LLC
Federal Tax ID No. 80-0799960

