

## PRELIMINARY DEVELOPMENT AGREEMENT

**THIS AGREEMENT**, made and entered into this \_\_\_ day of \_\_\_\_\_, 2024, between the GRAND RAPIDS ECONOMIC DEVELOPMENT AUTHORITY, a public body corporate and politic under the laws of the State of Minnesota (“Authority”), and UNIQUE OPPORTUNITIES GRAND RAPIDS, L.L.C., a Minnesota limited liability company (“Developer”):

### RECITALS

**WHEREAS**, the Authority owns certain property within the City of Grand Rapids, Minnesota (the “City”), described in Exhibit A attached hereto (the “Property”); and

**WHEREAS**, the Developer has submitted a letter of intent for the purchase of the Property attached as Exhibit B (the “Proposal”) to acquire the Property and construct an approximately 64-unit multifamily rental housing development with amenities including underground parking, workout room, community room and a rooftop patio (the “Development”); and

**WHEREAS**, the Authority has determined that it is in its best interest that the Developer be designated sole developer of the Property during the term of this Agreement; 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 any public assistance that may be 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 can be demonstrated; and (iv) satisfactory resolution of zoning, land use, site design, and engineering issues, and other necessary preconditions have been determined to the satisfaction of the parties; and

**WHEREAS**, the Authority is willing to evaluate the Development and work toward all necessary agreements with the Developer.

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

**Section 1. Intention of Parties.** 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 Purchase and Development Agreement (the “Contract”) 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.

**Section 2. Outline of Negotiations.** Negotiations between the parties shall proceed in an attempt to formulate a definitive Contract based on the following:

- (a) the Developer's current Proposal together with any changes or modifications required by the Authority;
- (b) such documentation regarding economic feasibility of the Development as the Authority and the Developer may wish to undertake during the term of this Agreement; and
- (c) other terms and conditions of this Agreement.

The parties agree and understand that negotiations regarding the Contract will proceed as soon as reasonably practicable after the date of this Agreement, as sufficient details for the Development become available.

**Section 3. Developer's Obligations.** During the term of this Agreement, the Developer shall:

- (a) Submit to the Authority a design proposal to be approved by the Authority showing the location, size, and nature of the proposed Development, including floor layouts, renderings, elevations, and other graphic or written explanations of the Development. The design proposal shall be accompanied by a proposed schedule for the commencement and completion of the Development.
- (b) Submit a cost estimate for the design and construction of the Development.
- (c) Submit a time schedule for all phases of the Development.
- (d) Submit to the Authority the Developer's financing plan showing that the proposed Development is financially feasible, and, to the extent Developer seeks public financial assistance in any form (including reduced land cost, waiver of fees, tax increment financing or abatement financing), evidence that such assistance is reasonably necessary to make the Development financially feasible.
- (e) Furnish satisfactory financial data to the Authority evidencing the Developer's ability to undertake the Development.
- (f) Submit zoning, land use, platting and subdivision applications for the Development, as appropriate.
- (g) 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.
- (h) Provide any other information that the Authority may request.

**Section 4. Authority's Obligations.** During the term of this Agreement, the Authority



agrees to:

- (a) Proceed to seek all necessary information with regard to the anticipated public costs associated with the Development.
- (b) Review zoning, planning and subdivision implications of the Development, as appropriate.
- (c) Analyze the Redeveloper's pro forma and estimate the amount and type of public financial assistance, if any, needed to make the Development feasible and authorized under the laws of the State of Minnesota.

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

- (a) A determination by the City and the Authority, in their sole discretion, that any public financial assistance for the Development is feasible based on the projected sources available, and that financial assistance is warranted based on the Developer's pro forma and any other information provided to the City and Authority.
- (b) A determination by the Developer that the Development is feasible and in the best interests of the Developer.
- (c) A determination City Council of the City and the Board of Commissioners of the Authority that the Development is in the best interests of the City and the Authority.

**Section 6. Reimbursement of Costs.** In the event that the Developer seeks public financial assistance for the Project, the Developer shall be solely responsible for all costs incurred by the Developer. In addition, the Developer shall reimburse the City and the Authority for Administrative Costs, as hereafter defined. For the purposes of this Agreement, the term "Administrative Costs" means out of pocket costs incurred by the City and the Authority attributable to or incurred in connection with the negotiation and preparation of this Agreement, the Contract, and other documents and agreements in connection with the Development, including without limitation all costs in connection with any planning approvals necessary for the Property and the cost of financial advisors, attorneys, engineering and planning and environmental consultants. Notwithstanding the foregoing, each party shall pay for its own costs incurred in connection with the negotiation and preparation of this Agreement.

In order to secure payment of the Administrative Costs, the Developer shall deliver to the Authority cash or a certified check in the amount of \$5,000, such delivery to occur upon delivery by the Developer of Developer's Business Assistance Application. If at any one or more times during the term of this Agreement, the Authority determines that Administrative Costs will exceed \$5,000 and that additional security is required, the Authority shall notify the Developer of the amount of such additional security. Within ten (10) calendar days of receipt of this notice, the Developer shall deliver to the Authority the required additional security. The City and the Authority will utilize the

funds delivered by the Developer to pay or reimburse themselves for Administrative Costs. Upon termination of this Agreement, the Authority will return to the Developer the funds paid by the Developer to the Authority pursuant to this Section 6, less an amount equal to the Administrative Costs incurred by the City and the Authority through the date of notice of termination. For the purposes of this paragraph, Administrative 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 the notice of termination.

This Section 6 shall survive termination of this Agreement and shall be binding on the Developer regardless of the enforceability of any other provision of this Agreement.

**Section 7. Designation As Sole Developer of Property.** The Authority hereby agrees that for the term of this Agreement it will not:

- (i) provide or enter into any agreement for the provision of financial assistance to any third party in connection with any proposed development within the Property; and
- (ii) negotiate or contract with any other party concerning the sale or development of the Property.

During such period the Developer shall have the exclusive right to work with the Authority in negotiating a definitive Contract for the Property. The Developer may not assign its rights or obligations under this Agreement to any person or entity without prior written approval by the Authority.

**Section 8. Term of Agreement.** This Agreement is effective for one hundred and eighty (180) days from the date hereof. After such date, neither party shall have any obligation hereunder except as expressly set forth to the contrary herein.

This Agreement may also be terminated upon ten (10) days written notice by the Authority to the Developer if:

- (a) an essential precondition to the execution of a definitive 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 Developer has failed to provide additional funds to pay for Administrative Costs in accordance with Section 6 hereof.

**Section 9. Remedies.** 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.

**Section 10. Severability.** 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.

**Section 11. Amendment and Waiver.** 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.

**Section 12. Notice.** 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 Developer: Unique Opportunities Grand Rapids, L.L.C.  
3155 Pioneer Road SE  
Alexandria, MN 56308
- (b) As to the Authority: Grand Rapids Economic Development Authority  
420 N. Pokegama Avenue  
Grand Rapids, MN 55744  
Attn: Executive Director

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

**Section 15. Governing Law.** 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.

**Section 16. Indemnification.** The Developer hereby agrees to protect, defend and hold the Authority, the City and their 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 attorney's fees, consultant and expert witness fees, and travel associated therewith, due to claims or demands of any kind whatsoever caused by Developer or arising out of actions of Developer with regard to (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 deposited or released by Developer; 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, the City and their members, 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 incurred by the Authority and the City as a result of the actions of Developer. 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 or the City 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.

**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.

UNIQUE OPPORTUNITIES GRAND  
RAPIDS, L.L.C.

By   
Samual Herzog  
Its: President

GRAND RAPIDS ECONOMIC  
DEVELOPMENT AUTHORITY

By \_\_\_\_\_  
Its President

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

**EXHIBIT A**

**Description of Property**

The property located in the City of Grand Rapids, Itasca County, Minnesota legally described as:

[INSERT]



## EXHIBIT B

### Proposal

April 2, 2024

Samuel Herzog  
Unique Opportunities Grand Rapids LLC  
3155 Pioneer Rd SE,  
Alexandria, MN 56308

To Whom It May Concern,

The purpose of this Letter of Intent is to outline and memorialize the proposed terms and conditions which **Unique Opportunities Grand Rapids LLC**, or its assignee (the "Purchaser") would purchase from the **Grand Rapids Economic Development Authority (GREDA)** (the "Seller") the site located in Grand Rapid, MN known as the Block 20/21 site.

1. **SELLER:** GREDA
2. **PURCHASER:** Unique Opportunities Grand Rapids LLC or assigns
3. **PREMISES:** Block 20/21 located in Grand Rapids, Minnesota.
4. **PURCHASE PRICE:** The Price shall be approximately two hundred thousand dollars and <sup>00</sup>/<sub>100</sub> (\$200,000.00).
5. **CLOSING:** Estimated closing of August 1<sup>st</sup> 2024.

**6. EARNEST MONEY:** Purchaser shall deposit Ten Thousand Dollars (\$10,000.00) in earnest money with a Title Company of the buyer's choice within ten (10) days of execution of the Purchase Agreement. Earnest Money shall be refundable through the Permitting period. Earnest Money and interest accrued shall be credited toward the Purchase Price at Closing.

**7. PURCHASE AGREEMENT:** Purchaser and Seller agree to work in earnest to execute a purchase and development agreement prior to the end of the 180-day term of the preliminary development agreement.

**8. FEASIBILITY PERIOD/CONTINGENCIES:**

The Purchaser shall have a period of up to one hundred eighty (180) days from the execution of the Purchase Agreement to accomplish its due diligence with respect to the Premises (the "Feasibility Period"). Purchaser shall have the right to conduct any/all necessary environmental assessments, geotechnical testing, title review, survey, zoning, availability of utilities, engineering studies, etc. to verify and satisfy the Purchaser's sole discretion that the Premises can be acquired, financed, and receive all government approvals for its intended use as multifamily apartment complex. Details include:

- The developer will seek approval to build a 63-unit apartment complex with units ranging in size from studios to 3 bedrooms complete with amenities including underground parking, workout room, community room, and a rooftop patio.
- The developer will seek TIF to create a viable project.
- All 63 units will be market rate with the exception of any potential TIF requirements.
- The developer is estimating the project will cost around 10 million dollars.
- The developer will target a late summer close to allow construction to commence this fall with a spring of 2026 targeting opening date.

**9. TAXES:** The real estate taxes due and payable in the year of closing will be prorated to the date of closing. All prior years' taxes and any existing, levied, or pending special assessments shall be paid in full by Seller at closing.

**10. CLOSING COSTS:** As is the custom in Minnesota, Seller will pay for a title insurance commitment and Buyer will pay the insurance premium. Seller will pay transfer taxes and state deed taxes. Buyer to pay recording costs. Escrow fees to be split 50/50.

**11. BROKER(S):** There will be no brokers in this transaction. Member of buyer's LLC, Samuel Herzog, is a licensed MN agent.

This Letter of Intent is not intended to be binding and will not give rise to any right or obligation based on any legal or equitable theory (including any right to continue the negotiations). It is intended that only a subsequent formal Purchase Agreement, executed and delivered by both parties, will bind the parties as to any matter, which is the subject of the Letter of Intent. Please review this proposal and if it meets your approval, sign and date in the space provided below.

Sincerely,

Samuel Herzog

**AGREED AND ACCEPTED**

PURCHASER: Unique Opportunities  
Grand Rapids LLC

SELLER: \_\_\_\_\_

By: [Signature]

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

Its: President

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

Date: 4-2-24

Date: \_\_\_\_\_