

**FIRST AMENDMENT TO PRELIMINARY  
DEVELOPMENT AGREEMENT**

**THIS FIRST AMENDMENT TO THE PRELIMINARY DEVELOPMENT AGREEMENT (THIS “First Amendment”)**, made and entered into this ~~14th~~<sup>13th</sup> day of ~~January~~<sup>May</sup> 2025, by and between the CITY OF HINCKLEY, a public body corporate and politic under the laws of the State of Minnesota (“City”) and COMMONWEALTH REAL ESTATE ACQUISITIONS, LLC, a Wisconsin limited liability company (“Developer”):

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**RECITALS**

**WHEREAS**, the City ~~intends to acquire~~<sup>owns</sup> approximately 7.62 acres of property located within the City of Hinckley, Minnesota (the “City”), (PID No. 40.0136.000) described on the attached Exhibit A (the “Property”) ~~from the City~~; and

**WHEREAS**, the Developer has ~~submitted a letter of intent for the purchase of~~<sup>proposed to acquire</sup> the Property attached as Exhibit B (the “Proposal”) ~~to acquire the Property~~ and construct ~~44-~~<sup>units of</sup> affordable multi-family housing (the “Development”); and

**WHEREAS, the Developer and the City previously entered into a Preliminary Development Agreement, dated January 14<sup>th</sup>, 2025, pursuant to which the Developer was designated as the sole developer of the Property during the term of the Original Agreement and the parties agreed to work towards the negotiation and execution of a mutually satisfactory purchase and development agreement (the “Contract”) that will address the sale of the Property by the City to the Developer and commence with the construction of the Development; and**

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**WHEREAS, the City has determined that the processes involved in the Developer successfully applying for and being awarded Low-Income Housing Tax Credits (“LIHTC”) by MN Housing significantly extends the timeline for the proposed project; and**

**WHEREAS**, the City 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 City and the Developer are willing and desirous to undertake the Development if (i) a satisfactory agreement can be reached regarding the City’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 City 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 City;
- (b) such documentation regarding economic feasibility of the Development as the City 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 City a design proposal to be approved by the City 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 City 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 City 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 City may request.

**Section 4. City's Obligations.** During the term of this Agreement, the City 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 Developer'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, in its 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 City.
- (b) A determination by the Developer that the Development is feasible and in the best interests of the Developer.
- (c) A determination City Council that the Development is in the best interests of the City.

**Section 6. Reimbursement of Costs.** In the event that the Developer seeks public financial assistance such as Tax Increment Financing 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 City 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 City 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. The initial Administrative Costs at the time of a Business Assistance Application should not exceed \$5,000. 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 City 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 City determines that Administrative Costs will exceed \$5,000 and that additional security is required, the City 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 City the required additional security. The City and the City will utilize the funds delivered by the Developer to pay or reimburse themselves for Administrative Costs. Upon termination of this Agreement, the City will return to the Developer the funds paid by the Developer to the City pursuant to this Section 6, less an amount equal to the Administrative Costs incurred by the City and the City 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 City 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 City 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 City.

**Section 8. Term of Agreement.** This Agreement is effective ~~for one hundred and eighty~~

This Agreement may also be terminated upon ten (10) days written notice by the City 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 City, an impasse has been reached in the negotiation or implementation of any material term or condition of this Agreement or the Contract;
- (c) or the Developer has failed to provide additional funds to pay for Administrative Costs in accordance with Section 6 hereof.

If the City terminates the Agreement under this Section 8, the Developer shall remain liable to the City under Section 6 of this Agreement for administrative costs incurred by the City through the effective date of termination.

**Section 9. Remedies.** In the event that the Developer, its successors or assigns, fail to comply with any of the provisions of this Agreement, the City 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: Commonwealth Real Estate Acquisitions, LLC  
24 S. Brooke St.  
Fond du Lac, WI 54935  
Attn: Commonwealth Holdings II, LLC
- (b) As to the City: City of Hinckley  
106 1<sup>st</sup> ST SE  
PO Box 366  
Hinckley, MN 55037  
Attn: City Administrator

**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 City, 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 attorneys' 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 City, 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 City 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 City or the City of any immunities, defenses, or other limitations on liability to which the City 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 City has caused this Agreement to be duly executed in name and behalf of and its seal to be duly affixed hereto, and the developer has caused this Agreement to be duly executed as of the day and a year first above written.

COMMONWEALTH      REAL      ESTATE  
ACQUISITIONS, LLC

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

CITY OF HINCKLEY

By \_\_\_\_\_  
Its Mayor

By \_\_\_\_\_  
Its City Administrator

EXHIBIT A

**Legal Description of the Property**

That Part of the East Half of the East Half of the Northwest Quarter of the Northeast Quarter of Section 25, Township 41, Range 21, Pine County, Minnesota, described as follows:

Commencing at the northeast corner of the East Half of the East Half of the Northwest Quarter of the Northeast Quarter of said Section 25; thence on an assumed bearing of West along the North line thereof, 132.0 feet; thence on a bearing of South 274.0 feet to the point beginning of the property to be described; thence continuing on a bearing of South 56.0 feet; thence on a bearing of East 130.82 feet to the east line thereof; thence South 00 degrees 12 minutes 15 seconds West along the east line 992.91 feet to the southeast corner thereof; thence South 89 degrees 52 minutes 45 seconds West along the south line 330.14 feet to the southwest corner thereof; thence North 00 degrees 11 minutes East along the west line 990.61 feet to a point 333.0 feet South of the northwest corner thereof; thence on a bearing of east 101.04 feet; thence on a bearing of North 59.0 feet; thence on a bearing of East 98.66 feet to the point of beginning.



**EXHIBIT B**

**Proposal**

*[on following page]*



September 05, 2024

City of Hinckley  
106 1<sup>st</sup> Street SE  
Hinckley, MN 55037

ATTN:  
Mark Perry, City Planner, [planner@cityofhinckley.com](mailto:planner@cityofhinckley.com)  
Leaha Jackson, City Administrator, [cityadmin@cityofhinckley.com](mailto:cityadmin@cityofhinckley.com)

RE: Letter Of Intent For +/- 7.6 Acres at Intersection of Fire Monument Rd and McGowan Avenue, Pine County  
Parcel ID 400136000 ("Property").

Dear Mark and Leaha,

The purpose of this correspondence is to confirm that Commonwealth Real Estate Acquisitions, LLC, a Wisconsin limited liability company and/or its assigns ("Commonwealth" or "Buyer") is interested in acquiring the Property from you as Seller. This Letter of Intent will also confirm that we wish to commence negotiating a definitive written real estate purchase agreement (the "Purchase Agreement") providing for the purchase and sale of the Property. To facilitate the negotiation of a Purchase Agreement Buyer will prepare an initial draft. The execution of any Purchase Agreement would be subject to the satisfactory completion of Buyers' ongoing investigation of the Property and its intended uses. Buyer and Seller may be referred to herein individually as a "Party" or collectively as "the Parties."

#### **REAL ESTATE PURCHASE AGREEMENT TERMS AND CONDITIONS**

Based upon the information currently known to the Parties, it is proposed that the Purchase Agreement would include the following terms:

1. Basic Transaction. Seller owns the Property and shall sell the Property to Buyer, and Buyer shall have the exclusive right to purchase the Property from Seller, pursuant to the covenants, provisions and other terms and conditions contained in the Purchase Agreement. Buyer intends to use the Property as affordable multi-family housing (the "Intended Uses"). The Property commonly known as +/- 7.6 Acres at Intersection of Fire Monument Rd and McGowan Avenue, Pine County Parcel ID 400136000 (See Exhibit A).
2. Purchase Price. The purchase price for the Property is to be determined. (the "Purchase Price").

Very truly yours,

Commonwealth Real Estate Acquisitions, LLC  
and/or its assigns

Ted Goltzman, VP of Development  
EXHIBIT A  
Property



Overview



Legend

- Townships
- Roads
  - Interstate
  - Hwy
  - <all other values>
- Parcels

|                  |            |              |      |               |                    |
|------------------|------------|--------------|------|---------------|--------------------|
| Parcel ID        | 400136000  | Alternate ID | n/a  | Owner Address | CITY OF HINCKLEY   |
| Sec/Twp/Rng      | 25-041-021 | Class        | 958  |               | ATTN: TREASURER    |
| Property Address |            | Acreage      | 7.62 |               | PO BOX 366         |
|                  |            |              |      |               | HINCKLEY, MN 55037 |

District 4001

Brief Tax Description SECT-25 TWP-041 RANGE-021 7.62 AC THAT PART OF E1/2 OF E1/2 OF NW1/4 OF NE1/4 DESC AS COMM AT NE CORNER OF E1/2 OF E1/2 OF NW1/4 OF NE1/4; THENCE WEST ALONG NORTH LINE 132 FT; THEN SOUTH 274 FT TO PT OF BEG; THEN CFONTINUE SOUTH 56 FT; THEN EAST 130.82 FT TO EAST LINE THEREOF; THEN SOUTH 0D12' 15" WEST ALONG EAST LINE 992.91 FT TO SE CORNER THEREOF THEN SOUTH 89D52'45" WEST ON SOUTH LINE 330.14 FT TO SW CORNER THEREOF; THEN NORTH 0D 11' EAST ALONG WEST LINE 990.61 FT TO POINT 333 FT SOUTH OF NW CORNER THEREOF; THEN EAST 101.04 FT; THENCE NORTH 59 FT; THEN EAST 59 FT; THEN EAST 98.66 FT TO PT OF BEG MICRO #526411-417

(Note: Not to be used on legal documents)