

Authorizing the issuance of a tax increment limited revenue note in substantially the form recited herein in a principal amount not exceeding \$595,000 in connection with the Van Cleve Apartments West Housing Project.

Whereas, the City of Minneapolis (the "City"), acting pursuant to Laws of Minnesota 2003, Chapter 127, Article 12, Sections 31-34, and Minneapolis Code of Ordinances, Chapter 415, has certain powers, including without limitation the powers set forth in Minnesota Statutes, Sections 469.001 through 469.047, as amended (the "HRA Act") and Minnesota Statutes, Sections 469.174 through 469.179, as amended (the "TIF Act"); and

Whereas, in furtherance of the objectives of the HRA Act, the City has undertaken programs for the clearance and reconstruction or rehabilitation of blighted, deteriorated, deteriorating, vacant, unused, underused or inappropriately used, areas of the City, and the development of housing for persons of low and moderate incomes, and in this connection the City is carrying out a housing development project known as the Van Cleve Apartments West Housing Project (the "Project") pursuant to the Van Cleve Redevelopment Plan dated March 16, 2007, and adopted May 11, 2007 (the "Redevelopment Plan"); and

Whereas, pursuant to the TIF Act and in furtherance of the Redevelopment Plan, the City has approved the Van Cleve Apartments West Tax Increment Finance Plan dated March 16, 2007 and adopted May 11, 2007 (the "TIF Plan"); and

Whereas, pursuant to the TIF Plan and the TIF Act, specifically Minnesota Statutes, Section 469.178, subd. 4, the City is authorized to issue its tax increment limited revenue note(s) to finance the public redevelopment costs of the Project; and

Whereas, the City has entered or will enter into a redevelopment contract (the "Redevelopment Contract") with Van Cleve Apartments West, LLC, a Minnesota limited liability company (the "Developer"), pursuant to which the City will provide tax increment financing assistance and the Developer will develop a 35-unit rental housing project, with 35 affordable housing units, and related site and public improvements;

Now, Therefore, Be It Resolved by The City Council of The City of Minneapolis:

1. That it is desirable that the City issue a tax increment limited revenue note (the "Note") in substantially the following form:

[FORM OF NOTE]

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF HENNEPIN
CITY OF MINNEAPOLIS

TAX INCREMENT LIMITED REVENUE NOTE
(Van Cleve Apartments West Project)

The City of Minneapolis (the "City"), hereby acknowledges itself to be obligated and, for value received, promises to pay to the order of Van Cleve Apartments West, LLC, a Minnesota limited liability company (the "Developer"), solely from the source, to the extent, and in the manner hereinafter provided, the principal amount of this Note, being Five Hundred Ninety-Five Thousand and No/100 Dollars (\$595,000.00) or such lesser amount as may equal the certified Public Costs, with interest at the Note Rate, in the installments specified in this Note, on the Payment Dates.

Capitalized terms not defined elsewhere in this Note shall have the meanings below:

“Approximately” means give or take a difference of not more than 10% of the number of Units or parking spaces.

“Available Tax Increment” means the Tax Increment received by the City during the period preceding each Payment Date, less (i) the amount of Tax Increment, if any, which the City must pay to the school district, the county and the state pursuant to *Minnesota Statutes*, Sections 469.177, Subds. 9, 10, and 11; 469.176, Subd. 4h; and 469.175, Subd. 1a, as the same may be amended from time to time; and (ii) actual administrative costs of the City in an amount not to exceed 10% of the Tax Increment.

“Certificate of Completion” means a Certificate issued by the City to the Developer pursuant to Section 5.04 of the Contract certifying that Minimum Improvements have been substantially completed.

“Contract” means that certain Redevelopment Contract by and between the City and the Developer dated *[insert date]*, 2007.

“Declaration of Restrictive Covenants” means the Declaration of Restrictive Covenants executed by the Developer in favor of the City dated _____, 2007 that is filed against the property.

“Development Project” means the Van Cleve Development Project, which includes the Property.

"District" means the Van Cleve Apartments West Tax Increment Financing District within the Development Project.

"Maturity Date" means the earlier of (i) February 1 of the year following the final year of Tax Increment collection from the District; and (ii) the date when the principal and interest amount of this Note has been paid in full.

"Minimum Improvements" means Approximately new construction of 35 rental housing units, including one level of underground parking with 38 parking stalls and related improvements as described in the Contract.

"Note Rate" means six and one half percent (6.5%) per annum.

"Payment Date" means August 1 of the year of first increment collection from the District and each August 1 and February 1 thereafter until the Maturity Date, provided that in no event will any payment date occur before the City's issuance of the Certificate of Completion under the terms of the Contract.

"Property" means the real property legally described in the attached **Exhibit A**, upon which the Minimum Improvements will be constructed.

"Public Costs" means actual Public Costs as defined in the Contract, not in excess of \$595,000 related to the Minimum Improvements and which are approved by the City pursuant to the Contract.

"Public Costs Certification" means a certificate in substantially the form attached to the Contract, by which the City certifies the Public Costs pursuant to the terms of the Contract.

"Tax Increment" means that portion of the property taxes generated by the Property and Minimum Improvements that is actually remitted to the City as tax increment under the Tax Increment Act.

"Tax Increment Act" means *Minnesota Statutes*, Section 469.174-469.1799, as amended, or any successor statutes applicable to the District.

On each Payment Date, the City shall pay the Developer an installment equal to the lesser of (i) the Available Tax Increment or (ii) the amount necessary to pay the accrued unpaid interest and the unpaid principal amount of this Note in full. If, after issuance of the Certificate of Completion the Developer is in default under the Contract or Declaration of Restrictive Covenants, and, after notice by the City to the Developer as provided in Section 9.02 of the Contract, such default has not been cured within the time period provided in the Contract, then the City may suspend payment on this Note until the default is cured or the City's obligations under this Note are terminated. If payments are suspended due to a Default under the Declaration of Restrictive Covenants, the City is not obligated to pay to the Developer the amount of the suspended payments that would otherwise have been paid to the Developer

between the date the payment is suspended and the date the default is cured. Otherwise, if the City suspends payments due under this Note, the City shall make the suspended payments to the Developer within ten (10) business days after the Developer's cure of the Default to the City's satisfaction. In no event is the City obligated to pay interest on the amount of the suspended payments between the date the payment is suspended and the last date on which the City is obligated to make the suspended payment to the Developer. To the extent that on any Payment Date there is insufficient Available Tax Increment to make a scheduled payment, such failure to make a scheduled payment shall not constitute a default under this Note. If the Developer or other Minimum Improvements' owner fails to pay all or a portion of the property taxes due and owing on the Minimum Improvements, then upon such failure to pay, no interest as required by the Note shall accrue on an amount equal to the amount of the Available Tax Increment that would have been paid to the City had such property tax amounts been paid.

Interest shall accrue on the initial principal amount of this Note from the date of issue of the Public Costs Certification. Each payment under this Note, whether a scheduled payment or any other payment, shall be applied first to current interest, then to accrued unpaid interest and then to the unpaid principal amount of this Note.

On the Maturity Date, this Note shall be deemed paid in full and the City shall have no further obligation under this Note even if the aggregate of the Available Tax Increment that has actually been paid to the Developer on the Payment Dates is less than the full principal and interest amount of this Note. The obligation of the City to make any scheduled payment shall terminate if and to the extent that the full principal and interest amount of this Note has been paid in full. This Note may be prepaid in full or in part at any time without penalty.

Each payment on this Note is payable in any coin or currency of the United States of America which on the date of such payment is legal tender for public and private debts and shall be made by wire transfer, check or draft made payable to the Developer and mailed to the Developer at 1115 Second Avenue South, , Minneapolis, MN 55403, or such other address as the Developer shall provide in writing to the City's notice address as set forth in the Contract.

The Note is a special and limited obligation and not a general obligation of the City, which has been issued by the City pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including *Minnesota Statutes*, Section 469.178, subdivision 4, to aid in financing a "project", as therein defined, of the City consisting generally of defraying certain public redevelopment costs incurred by the Developer within and for the benefit of the Project.

THE NOTE IS NOT A DEBT OF THE STATE OF MINNESOTA (THE "STATE"), OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY OF MINNEAPOLIS, MINNESOTA, EXCEPT THAT THE CITY SHALL BE OBLIGATED TO MAKE PAYMENTS FROM AVAILABLE TAX INCREMENT AS SET FORTH HEREIN, AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY, SHALL BE LIABLE ON THE NOTE, EXCEPT FOR THE CITY'S OBLIGATION TO MAKE PAYMENTS FROM AVAILABLE TAX INCREMENT AS SET FORTH HEREIN, NOR SHALL THE NOTE BE PAYABLE OUT

OF ANY FUNDS OR PROPERTIES OTHER THAN AVAILABLE TAX INCREMENT AS SET FORTH HEREIN.

This Note shall not be transferred to any person, unless the City has been provided with an opinion of counsel acceptable to the City that such transfer is exempt from registration and official statement delivery requirements of federal and applicable state securities law and an investment letter reasonably acceptable to the City.

This Note shall not be payable from or constitute a charge upon any funds of the City, and the City shall not be subject to any liability hereon or be deemed to have obligated itself to pay hereon from any funds except the Available Tax Increment, and then only to the extent and in the manner herein specified.

The Developer shall never have or be deemed to have the right to compel any exercise of any taxing power of the City or of any other public body, and neither the City nor any person executing or registering this Note shall be liable personally hereon by reason of the issuance of registration thereof or otherwise.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required by the Constitution and the laws of the State of Minnesota to be done, to have happened, and to be performed precedent to and in the issuance of this Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; that this Note is issued pursuant to the Tax Increment Act; and that this Note together with all other indebtedness of the City outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the City to exceed any constitutional or statutory limitation thereon.

IN WITNESS WHEREOF, the City of Minneapolis, by action of its City Council, has caused this Note to be executed by the manual signature of its Finance Officer, and has caused this Note to be dated _____, 2007.

CITY OF MINNEAPOLIS

By _____
Patrick Born
Its Finance Officer

Approved as to form:

Assistant City Attorney

EXHIBIT A TO NOTE

Description of the Property

Lot 1, Block 2 of VC Court, according to the recorded plat thereof, and situate in Hennepin County, Minnesota.

2. Be It Further Resolved that the form of the Note is hereby approved and shall be executed by the Finance Officer in substantially the form on file, with such changes therein not inconsistent with law as the Finance Officer may approve, which approval shall be conclusively evidenced by the execution thereof.

3. Be It Further Resolved that all actions of the members, employees and staff of the City heretofore taken in furtherance of the issuance of the Note are hereby approved, ratified and confirmed.

4. Be It Further Resolved that the sale of said Note to the Developer is hereby approved, and the Note is hereby directed to be sold to the Developer, upon the terms and conditions set forth in the Redevelopment Contract.

5. Be It Further Resolved that the Finance Officer is hereby authorized and directed to execute such other documents, agreements and certificates as may be required in connection with the Note.

6. Be It Further Resolved that no provision, covenant or agreement contained in the aforementioned documents, the Note or in any other document related to the Note, and no obligation therein or herein imposed upon the City or the breach thereof, shall constitute or give rise to any pecuniary liability of the City or any charge upon its general credit or taxing powers. In making the agreements, provisions, covenants and representations set forth in such documents, the City has not obligated itself to pay or remit any funds or revenues, other than funds and revenues derived from the tax increment revenues which are to be applied to the payment of the Note, as provided therein and in the Redevelopment Contract. The Note shall not constitute a charge, lien or encumbrance, legal or equitable upon any property or funds of the City except that revenue and proceeds pledged to the payment thereof, nor shall the City be subject to any liability thereon. The holders of the Note shall never have the right to compel any exercise of the taxing power of the City to pay the outstanding principal on the Note or the interest thereon, or to enforce payment hereon against any property of the City. The Note shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation.

7. Be It Further Resolved that the Note, when executed and delivered, shall contain a recital that it is issued pursuant to the TIF Act, and such recital shall be conclusive evidence of the validity of the Note and the regularity of the issuance thereof, and that all acts, conditions and things required by the laws of the State of Minnesota relating to the adoption of this resolution, to the issuance of the Note and to the execution of the aforementioned documents to happen, exist and be performed precedent to and in the enactment of this resolution, and precedent to

issuance of the Note and precedent to the execution of the aforementioned documents have happened, exist and have been performed as so required by law.

8. Be It Further Resolved that this resolution shall be in full force and effect from and after its date of publication.