CONTRACT FOR PRIVATE REDEVELOPMENT

by and among

CITY OF WINDOM, MINNESOTA

and

APOLLO DEVELOPMENT LLC

dated as of

March __, 2022

This instrument was drafted by:

Fryberger, Buchanan, Smith & Frederick, P.A.
302 West Superior Street, Suite 700
Duluth, Minnesota 55802

TABLE OF CONTENTS

CONTRACT FOR PRIVATE REDEVELOPMENT

This CONTRACT FOR PRIVATE REDEVELOPMENT (this “Agreement”) is made as of ________________, 2022, by and among the CITY OF WINDOM, MINNESOTA, a municipal corporation and political subdivision, (the “City”), and APOLLO DEVELOPMENT LLC, a Minnesota limited liability company (the “Developer”).

RECITALS

A. The City is authorized to exercise development and redevelopment powers within its jurisdiction pursuant to Minnesota Statutes, Sections 469.124 through 469.133 (the “Development District Act”), and Minnesota Statutes, Sections 469.174 through 469.1794, as amended (the “TIF Act”).

B. In furtherance of the objectives of the Development District Act, the City has undertaken a program to stimulate new development in areas of the City that are already built up in order to provide employment opportunities; to improve the tax base; to improve the general economy of the State of Minnesota (the “State”); to provide impetus for commercial development; to protect pedestrians from vehicle traffic and inclement weather; to provide the necessary linkage between peripheral parking facilities and places of employment and shopping; to provide off-street parking to serve the shoppers and employees of the district; to provide open space relief within the district; and to provide other facilities as are outlined in the Development Program (the “Development Program”) for Redevelopment District No. 1, as amended, (the “Development District”) approved by the City.

C. The City has additionally established Tax Increment Financing District No. 1-22 (a Redevelopment District) located in the Development District (hereinafter referred to as the “TIF District”) pursuant to the TIF Act and adopted a Tax Increment Financing Plan therefor (hereinafter referred to as the “TIF Plan”) prepared in accordance with the TIF Act.

D. In order to further the objectives of the Development Program, the City is prepared to convey for fair market value to the Developer certain real property located in the TIF District, more particularly described in **Exhibit B** (the “Development Property”), on which the Developer intends to construct a market-rate multifamily residential rental apartment building.

E. In order to achieve the objectives of the Development Program, the City is considering providing substantial aid and assistance through tax increment financing to finance the redevelopment of the Development Property.

F. The City believes that the redevelopment of the Development Property pursuant to this Agreement, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of the applicable state and local laws and requirements.

G. This Agreement was approved by the City Council on March __, 2022.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual obligations of the parties hereto, each of them covenant and agree as follows:

ARTICLE I DEFINITIONS; EXHIBITS; RECITALS

Section 1.1 Definitions. As used in this Agreement, the following terms have the following respective meanings:

"Act" means collectively the Development District Act and the TIF Act.

"Agreement" means this Contract for Private Redevelopment, as originally executed or as it may from time to time be modified, amended or supplemented pursuant to the provisions hereof.

"Auditor-Treasurer" means the Cottonwood County Auditor-Treasurer.

"Available Tax Increment" means 90 percent of the Tax Increment received by the City from the County with respect to the Project from the TIF District during the six months preceding any Payment Date.

"Certificate of Completion" means the Certificate of Completion, in substantially the form attached hereto as **Exhibit A**, to be provided by the City to the Developer pursuant to this Agreement as set forth in Section 5.4 hereof.

"City" means the City of Windom, Minnesota, a municipal corporation and political subdivision.

"City Administrator" means the Administrator of the City.

"City Council" means the City Council of the City of Windom, Minnesota.

"Compliance Period" means 25 years from the date of receipt of the Certificate of Completion.

"Completion Date" means the date when the Developer receives a certificate of occupancy from the City for the Project, which shall occur on or before January 1, 2024. If Cemstone's Possessory Period, which is until 11:59 p.m. on May 13, 2023, ("Possessory Period") substantially impacts the build timeline, the Completion Date shall be extended to January 1, 2025.

"Construction Plans" means the plans, specifications, drawings and related documents on the construction work to be performed by the Developer on the Development Property which (a) shall be the plans and drawings and related documents in conformance with City's building and zoning requirements which documents have been or will be submitted for approval to the City's Building & Zoning Official and Development Director, and (b) shall include at least the following: (i) site plan; (ii) foundation plan; (iii) utility plan, (iv) grading and drainage plan, (v) structural, electrical, and plumbing plans for the building, (vi) floor plan for each floor; (vii)

cross sections of the building (length and width) and elevations (all sides); (viii) landscape plan; and (ix) a narrative description on exterior building materials.

"County" means Cottonwood County, Minnesota.

"Developer" means Apollo Development LLC, a Minnesota limited liability company.

"Development District" means Development District No. 1 established by the City pursuant to the Development District Act on July 31, 1984.

"Development District Act" means Minnesota Statutes, Sections 469.124 through 469.133, both inclusive, as amended.

"Development Program" means the Development Program for the Development District approved by the City for the Development District, as amended and modified and as may be further amended or modified.

"Development Property" means the real property described in **Exhibit B** of this Agreement.

"Event of Default" has the meaning provided in Section 8.1 hereof.

"Indemnified Parties" has the meaning provided in Section 6.3 hereof.

"Minimum Improvements" has the meaning provided in Section 2.3 hereof.

"Net Proceeds" means the net proceeds of any insurance award to the Developer with respect to damage of the Minimum Improvements.

"Payment Date" means on or before July 15th and December 31st of each year, which are payment dates under the TIF Note, and are expected to commence on July 15, 2024, depending on the date of completion of the Project, and continue through the earlier of (i) December 31, 2038, or (ii) the date the Developer has been paid the Reimbursement Amount.

"Project" means the Development Property, the Site Improvements and the Minimum Improvements.

"Purchase Price" means the purchase price to be paid by the Developer for the Development Property in the amount of $136,400, which shall be invoiced by the City with its final payment under the TIF Note, as determined by the City in its sole discretion.

"Reimbursement Amount" means an amount not to exceed the lesser of (i) the amount actually expended on Site Improvement Costs prior to the Completion Date; or (ii) $790,400.

"Remedial Work" has the meaning provided in Section 2.2(l) hereof.

"Site Improvements" means the activities identified on **Exhibit C** hereto.

"State" means the State of Minnesota.

"Tax Official" means any County Assessor, County or State Board of Equalization, the County Auditor-Treasurer, the Commissioner of Revenue of the State or any State or federal district court, the tax court of the State or the State Supreme Court.

"Tax Increment" means that portion of the real property taxes which are paid with respect to the Development Property and the improvements thereon, subject to Section 4.3 hereof, and which are remitted to the City as tax increment of the TIF District pursuant to the TIF Act. The term Tax Increment does not include any amounts retained by or payable to the State Auditor under Section 469.177, Subd. 11 of the TIF Act or any amounts retained or payable to the County for administrative fees.

"Termination Date" means December 31, 2044.

"TIF Act" means Minnesota Statutes, Sections 469.174 to 469.1794, as amended.

"TIF District" means Tax Increment Financing District No. 1-22 located within the Development District which qualifies as a redevelopment district under the TIF Act.

"TIF Note" means the Tax Increment Revenue Note which is expected to be executed and delivered by the City to Developer pursuant to Section 4.2 to provide the funds for payment of a portion of the Site Improvement Costs, as described in Section 4.2 hereto; the definition of the TIF Note shall include any notes thereafter issued to refund the TIF Note.

"TIF Plan" means the Tax Increment Financing Plan for the TIF District, as such plan may be amended or modified.

"Transfer" has the meaning provided in Article VI hereof.

"Unavoidable Delays" means delays, outside the control of the party claiming its occurrence, which are the direct result of strikes, other labor troubles, material shortages, severe or prolonged bad weather, acts of nature, fire or other casualty to the Minimum Improvements, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state, or local government unit (other than the City) which directly result in delays, and any delays resulting from other causes which are beyond the reasonable control of the party to be excused.

Section 1.2 Recitals. The foregoing recitals are true and accurate and incorporated by reference herein.

Section 1.3 Exhibits. The Exhibits to this Agreement are the following:

(a) Exhibit A: Form of Certificate of Completion

(b) Exhibit B: Legal Description of Development Property

(c) Exhibit C: Site Improvements

(d) Exhibit D: Form of Tax Increment Note

ARTICLE II – REPRESENTATIONS AND WARRANTIES; MINIMUM IMPROVEMENTS

Section 2.1 Representations, Warranties and Covenants by the City. The City represents, warrants and covenants that:

(a) The City has authority to exercise economic development powers under the Development District Act and the TIF Act and has the power to enter into this Agreement and to carry out its obligations hereunder.

(b) The Development District was created, adopted and approved in accordance with the terms of the Development District Act.

(c) TIF District No. 1-22 is a redevelopment district within the meaning of Section 469.174, Subdivision 10 of the TIF Act and was created, adopted and approved in accordance with the terms of the TIF Act.

(d) No part of this Agreement shall be construed as a representation or warranty of the City as to the condition (including soil condition) of the Development Property or as to its suitability for the Developer’s purposes and needs.

(e) The City will act in a timely manner, consistent with statutory and the City’s procedural requirements, with regard to all approvals required under this Agreement.

(f) Based on the information provided to the City by the Developer, the City has determined that the financial assistance contemplated by this Agreement is not considered a business subsidy under Minnesota Statutes, Sections 116J.993 through 116J.995, also commonly referred to as the State’s Business Subsidy Act, because this financial assistance is for housing.

(g) No job and wage goals are being imposed as part of this Agreement for the Project.

Section 2.2 Representations, Warranties and Covenants by the Developer. The Developer represents, warrants, covenants, acknowledges and agrees that:

(a) Apollo Development LLC is a Minnesota limited liability company duly organized and existing under the laws of the State, is qualified to do business in the State, and is not in violation of any provisions of law or regulations of the State.

(b) The Developer will construct, operate and maintain the Minimum Improvements upon the Development Property (or will cause the Project to be constructed, operated and maintained) in accordance with the terms of this Agreement, the Development Program, and all local, state, and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations).

(c) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented or limited by, or in conflict with or will result in a breach of, the terms, conditions or provisions of any evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or will constitute a default under any of the foregoing.

(d) The Developer will promptly advise the City in writing of and cooperate with the City with respect to any litigation commenced with respect to the Development Property or the Minimum Improvements, except for litigation in which the City and the Developer are adverse parties.

(e) The Developer reasonably believes that the financing commitments which are available to the Developer to finance construction and equipping of the Minimum Improvements, together with the Developer's equity, will be sufficient to enable the Developer to successfully complete the Minimum Improvements in conformance with the Construction Plans and in accordance with the schedule contemplated in this Agreement.

(f) The construction of the Minimum Improvements would not be undertaken by the Developer, and in the opinion of the Developer would not be economically feasible within the reasonably foreseeable future, without the assistance and benefit to the Developer provided for in this Agreement.

(g) The Developer expects that, barring Unavoidable Delays, the Minimum Improvements will be substantially completed in accordance with the timelines set forth in Section 5.3 hereof.

(h) The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed.

(i) The Developer has not received any notice or communication from local, state or federal officials or any private party that the Developer's activities respecting the Development Property or the construction of the Minimum Improvements on the Development Property may or will be in violation of any law or regulation (including environmental laws and regulations).

(j) The Developer has relied on its own estimate or verification of the fair market value of the Minimum Improvements and the Development Property, the estimate of taxes and the Available Tax Increment, and has not relied on any estimates provided by the City.

(k) The Developer agrees that there shall be no discrimination related to the Project because of race, sex, age, sexual orientation or religious, political or other similar affiliations.

(l) If any investigation, site monitoring, containment, clean-up, removal, restoration, or other remedial work (the "Remedial Work") of any kind is necessary under any applicable local, State or federal laws or regulations, or is required by any governmental entity or other third person because of or in connection with the presence or suspected presence of Hazardous Substance on or under the Development Property, the Developer shall assume responsibility for all such Remedial Work resulting from the Developer's activities on the Development Property and all costs and expenses of such Remedial Work shall be paid by the Developer. Without limiting the foregoing, nothing contained in this paragraph shall be construed or interpreted in such a way to adversely affect the ability of the Developer to seek reimbursement of the cost of any Remedial Work undertaken by the Developer from the federal government, State or other third party.

(m) If requested, the Developer will work with the City to coordinate reasonable pedestrian access to and from the Project to improve safety and pedestrian access. Said pedestrian accesses would work towards connections with the Windom Recreation Area and Tegel's Park.

(n) Developer will not sell or transfer the Project within 5 years from the date of receipt of the Certificate of Completion, without written consent from the City.

(o) Developer will continue to operate (or cause to be operated) the Project as a market-rate (non-subsidized) multifamily residential apartment building during the Compliance Period.

(p) Developer will promptly pay the Purchase Price for the Development Property within 30 days of receipt an invoice from the City.

Section 2.3 Minimum Improvements. The Project shall include the following minimum improvements (the "Minimum Improvements"):

(a) A market-rate (non-subsidized) multifamily residential apartment building (the "Apartment Building") with a minimum of 40 units.

(b) The quality of materials used in constructing the Apartment Building shall meet the following minimum requirements: i) quality exterior siding consisting of no-maintenance life-time product, predominately steel siding and including stone or other masonry materials; ii) roofing with a minimum 20-year guaranteed life; iii) no maintenance, quality brand windows; and iv) durable signage.

(c) The Apartment Building shall include, but not be limited to, the following common amenities: i) elevator capable of holding a regular sized gurney; and ii) utilize Windomnet fiber-optic internet access.

(d) An underground parking garage with a minimum of 35 garage stalls and comply with the City's parking requirement. (The parking requirement for multi-family housing in the City is 2 parking spots per unit which includes garage stalls.)

(e) Comply with the City's greenspace requirement. (The greenspace requirement for R-3 in the City is a minimum of 350 square feet of greenspace per unit.)

Section 2.4 Infrastructure. The Project shall include the following infrastructure:

(a) Water Main: There is an existing water main along Cottonwood Lake Drive that has a 6" service line for the Cemstone Concrete Plant. This water connection can be utilized by the Apartment Building. The water connection inspection fee for connecting to city water service is $150 per connection. Developer is responsible for the water connection inspection fee and the costs for installation of the water service line from the main to the Apartment Building.

(b) Sewer Main: There is no existing sewer main along Cottonwood Lake Drive for the Apartment Building. DVK Diversified, LLC ("DVK") is the Subdivision Developer. A sewer main for the Apartment Building shall be installed by DVK by June 1, 2023. This requirement is outlined in the Development Agreement with DVK.

If the sewer main is not completed to City specifications by June 1, 2023, a payment of $155,000 is due to Developer from the EDA by June 7, 2023. Developer is responsible for the sewer connection inspection fee of $150 per connection and the costs for installation of the sewer service line from the main to the Apartment Building.

Lift Station: Developer will make a payment of $50,000 to the EDA as a contribution towards the expenses for construction of the lift station that will serve the Apartment Building. Said payment shall be made within 60 days of the execution of the Development Agreement by all parties.

(c) Access: General access to the Apartment Building is from Cottonwood Lake Drive. The underground parking garage access will be from the new city street to be installed as part of the Subdivision improvements. DVK is the Subdivision Developer and is responsible for constructing the city street.

(d) Electric: There is existing electric service along Cottonwood Lake Drive and electric service for the Cemstone Concrete Plant. This electric service can be utilized by the Apartment Building. However, the transformer will likely need to be upgraded. Developer is responsible for the costs associated with the electric service for the apartment building.

ARTICLE III – CONDITIONS PRECEDENT; ACKNOWLEDGMENT

Section 3.1 Conditions Precedent. The City's obligation to aid and assist the Developer's proposed redevelopment of the Development Property in accordance with the Development Program, the TIF Plan and this Agreement, including through the assistance of tax increment financing to finance certain Site Improvement Costs described in Section 4.1 herein, shall be subject to the following conditions precedent:

(a) The Developer shall be in material compliance with all terms and provisions of this Agreement.

(b) The Developer shall have submitted evidence, in a form reasonably acceptable to the City, of financing for the Project for the construction and equipping of the Minimum Improvements.

(c) The Construction Plans for the Minimum Improvements have been submitted and approved pursuant to Section 5.2 hereof.

(d) The Developer shall have entered into a contract or contracts for construction of all or substantially all of the Minimum Improvements.

(e) The Project is in full compliance with all applicable planning, zoning and subdivision regulations of the City.

(f) The City Administrator has issued and delivered a Certificate of Completion to the Developer.

The Developer agrees that if the conditions precedent provided above are not satisfied by Completion Date, the City shall have no obligation under this Agreement.

Section 3.2 Payment of Administrative Costs. The Developer will reimburse the City for all out-of-pocket costs incurred by the City in connection with review and analysis of the development proposed under this Agreement and negotiation of this Agreement and any related agreements and documents (collectively, the "Administrative Costs"). The Administrative Costs include fees paid to attorneys and to the City's financial advisor. The City will be reimbursed for all costs of the City incurred with respect to administering the TIF District from Tax Increment retained by the City. Such costs include, but are not limited to legal fees, postage, publication costs, long distance telephone charges, printing and photo duplication costs, fees and disbursements of the City's financial and tax increment advisor, legal fees and recording fees, among others.

ARTICLE IV – SITE IMPROVEMENT COSTS; PAYMENTS

Section 4.1 Site Improvement Costs. In order to complete the Minimum Improvements, the Developer agrees that it will need to complete, and that it will complete, certain Site Improvements to the Development Property, including earth work (the "Site Improvements"). Before commencement of the Site Improvements to be reimbursed with the TIF Note, the Developer must furnish to the City Administrator copies of the construction contract or contracts for such Site Improvements then in existence and all subcontracts, if any, together with a list of the names and addresses of all contractors and subcontractors for the Site Improvements, and a written certificate from a licensed architect or engineer that the costs of such contracts are commercially reasonable. As the Developer enters into additional contracts for such Site Improvements, it shall provide or update the information required in the previous sentence. At reasonable intervals during construction of the Site Improvements, or at any time upon request of the City, the Developer shall submit to the City, in a form satisfactory to the City Administrator, written evidence of costs incurred and paid for Site Improvements, the presently estimated costs for which are set forth in **Exhibit C**. Such evidence shall include, at a minimum, paid invoices or comparable evidence of payment. By no later than 60 days after the date required for completion of the Minimum Improvements under Section 5.3 hereof, the Developer shall have submitted evidence for all Site Improvement Costs.

Section 4.2 Financing for Certain Site Improvement Costs.

(a) The Developer certifies that the Site Improvement and land acquisition costs will not be less than $790,400. Accordingly, and in consideration of the Developer's obligations and performance under this Agreement, and in order to defray a portion of such costs over time, the City shall execute and deliver to the Developer the TIF Note in the form attached to this Agreement as Exhibit D. The TIF Note shall be executed and delivered by the City to Developer no later than 30 days after the Developer complies with paragraph (c) of this Section 4.2 so long as no Event of Default exists which has not been cured under this Agreement:

(b) The Developer acknowledges and agrees, as provided in the TIF Note, that payments under the TIF Note are to be made only as and to the extent that the City shall be able to receive and retain Available Tax Increment on the Payment Dates specified in the TIF Note. The City shall not be obligated to make any payment or any further payment or payments as provided in the TIF Note if:

(i) There is an Event of Default by the Developer under this Agreement that has not been cured as of the Payment Date; or

(ii) There is a Transfer without prior approval from the City as provided in Article VI hereof.

(c) The Developer further acknowledges and agrees that the City has no obligation to issue and deliver to the Developer the TIF Note until:

(i) The Developer has provided the City with documentation satisfactory to the City (invoices, receipts, canceled checks, etc.) showing payment of at least $790,400 in costs authorized under the TIF Plan and Section 4.1 of this Agreement, or such lesser amount as may be approved by the City, in which case the TIF Note shall reflect a lesser amount as the maximum principal amount equal to the costs authorized herein; and

(ii) The City has issued the Certificate of Completion for the Minimum Improvements.

(d) The TIF Note will be issued without registration under the State or federal securities laws pursuant to an exemption for such issuance; and, accordingly, the TIF Note may not be assigned or transferred in whole or in part, except in accordance with applicable exemptions from such registration requirements and with the consent of the City. Each assignment or transfer of the TIF Note shall attest full compliance with applicable State and federal security laws.

Section 4.3 No Representation Regarding Available Tax Increment. The City's financial commitment for payment of the TIF Note under this Agreement is a revenue obligation only and will be paid by the City only out of Available Tax Increment for the TIF Note. The City makes no representations or warranties that the Available Tax Increment will be sufficient to pay the Developer on the TIF Note. The Developer acknowledges that Available Tax Increment is subject to calculation by the County and changes in State law and that some or all of the TIF Note may not be paid prior to the earlier of either: i) the maturity of the TIF Note; or ii) the date the TIF District ceases to qualify as such. The Developer acknowledges that the estimates of Available Tax Increment which may have been made by the City or its agents, officers or employees are estimates only, are made for the sole use and benefit of the City, and are not intended for the Developer's reliance.

ARTICLE V – CONSTRUCTION OF MINIMUM IMPROVEMENTS

Section 5.1 Construction of Minimum Improvements. The Developer agrees that it will construct the Minimum Improvements on the Development Property in conformance with approved Construction Plans. The Developer agrees that at all times it will operate and maintain, preserve and keep the Minimum Improvements or cause such improvements to be maintained, preserved and kept with the appurtenances and every part and parcel thereof in good repair and condition. The Developer agrees that the scope and scale of the Minimum Improvements to be constructed shall not be significantly less than the scope and scale of the Minimum Improvements as detailed and outlined in the Construction Plans. The City shall have no obligation whatsoever to operate or maintain the Minimum Improvements.

Section 5.2 Construction Plans.

(a) Before commencement of construction of the Minimum Improvements, the Developer shall submit to the City the Construction Plans. The Construction Plans provide for construction of the Minimum Improvements and shall be in substantial conformity with the Development Program, this Agreement, and all applicable State and local building and zoning laws and regulations. The Building & Zoning Official and Development Director, on behalf of the City, shall review and approve the Construction Plans in writing if: (i) the Construction Plans substantially conform in all material respects to all applicable federal, State and local laws, ordinances, rules, and regulations and (ii) the Construction Plans are adequate to provide for construction of the Minimum Improvements. Review of the Construction Plans includes a review of the types and quality of building materials, colors and other features on the exterior of the building or on-site. The Development Director shall verify that the Construction Plans substantially conform in all material respects to the terms and conditions of this Agreement relating thereto and no Event of Default has occurred and remains uncured. As soon as the plans for construction of the Minimum Improvements are complete, copies shall be filed with the City Building & Zoning Official.

(b) No approval by the City Building & Zoning Official or Development Director shall relieve the Developer of the obligation to comply with the terms of this Agreement or of the Development Program, applicable federal, state and local laws, ordinances, rules and regulations, or to construct the Minimum Improvements in accordance therewith. If approval of the Construction Plans is requested by the Developer in writing at the time of submission, such Construction Plans shall be deemed approved unless rejected in writing by the City Building & Zoning Official and Development Director, in whole or in part, within 30 days after the date of their receipt by the City. Such rejection shall set forth in detail the reasons therefor. If the City Building & Zoning Official or Development Director rejects any Construction Plans in whole or in part, the Developer shall submit new or corrected Construction Plans within 30 days after written notification to the Developer of the rejection. The provisions of this Section relate to approval, rejection and resubmission of corrected, amended or changed Construction Plans and shall continue to apply until the Construction Plans have been approved by the City. The City Building & Zoning Official's and Development Director's approvals shall not be unreasonably withheld. Said approvals shall constitute a conclusive determination that the Construction Plans (and the Minimum Improvements constructed in accordance with said plans) comply to the City's satisfaction with the provisions of this Agreement relating thereto.

(c) If prior to the issuance of the Certificate of Completion for the Minimum Improvements, the Developer desires to make any material change (a change proposing to decrease the construction cost of the Minimum Improvements by an amount in excess of $100,000, unless the change is due only to a decrease in the cost of a specific product or material) in the Construction Plans after their approval by the City, the Developer shall submit the proposed change to the City for its approval. The process for approval of the material change to the Construction Plans shall be as described above.

(d) The Developer certifies that the Construction Plans are in conformance with the Development Program, this Agreement and all applicable State and local building and zoning laws and regulations. The Developer agrees to indemnify, defend and hold harmless the City from any and all claims or causes of action resulting from any alleged defect in the design or construction of the Site Improvements and the Minimum Improvements, subject to the limitations imposed by law.

Section 5.3 Commencement and Completion of Construction. Subject to Unavoidable Delays, the Developer shall commence construction of the Minimum Improvements by January 1, 2024 and complete construction of the Minimum Improvements by the Completion Date, or on such other date to which the parties shall mutually agree in writing. Notwithstanding the foregoing, if physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) on the Development Property has not commenced within 180 days of closing on the conveyance of the Development Property, the Development Property will be returned to the City and the purchase price will be refunded, less closing costs.

Section 5.4 Certificate of Completion.

(a) Promptly after completion of the Minimum Improvements, in accordance with the provisions of this Agreement, and upon written request made by the Developer, the City will furnish the Developer with a Certificate of Completion in substantially the form set forth in **Exhibit A** attached hereto. Compliance by the Developer with all the terms of this Agreement shall be a condition precedent to the issuance of the Certificate of Completion. The Certificate of Completion for the Minimum Improvements shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement with respect to the obligations of the Developer to construct the Minimum Improvements. Such Certificate of Completion shall be filed with the Cottonwood County Recorder. The Developer shall pay any filing costs.

(b) If the City determines that it cannot issue the Certificate of Completion, it shall, within ten days after written request by the Developer, provide the Developer with a written statement indicating in adequate detail in what respect the Developer has failed to complete either the Minimum Improvements in accordance with the provisions of this Agreement or is otherwise in default under the terms of this Agreement, and what measures or acts it will be necessary for the Developer to take or perform in order to obtain the respective Certificate of Completion.

Section 5.5 Insurance; Destruction of the Project.

(a) The Developer will provide and maintain, or cause its contractors to provide and maintain, at all times during the process of constructing the Minimum Improvements, an All Risk Broad Form Basis Insurance Policy in amounts and with such coverages as are commercially reasonable for undertakings of similar scope and nature to the Project.

(b) The Developer agrees to notify the City immediately in the case of damage exceeding $100,000 in amount to or destruction of the Minimum Improvements or any portion thereof resulting from fire or other casualty. In such event, the Developer will forthwith repair, reconstruct and restore the Minimum Improvements to substantially the same or an improved condition or value as they existed prior to the event causing such damage; and, subject to the rights of the Developer's lender, to the extent necessary to accomplish such repair, reconstruction, and restoration, the Developer will apply the Net Proceeds received by the Developer to the payment or reimbursement of the cost thereof. The Developer shall complete the repair, reconstruction and restoration of the Minimum Improvements whether or not the Net Proceeds received by Developer for such purposes are sufficient to pay for the same. Any Net Proceeds remaining after completion of such repairs, reconstruction and restoration shall be the property of the Developer.

ARTICLE VI – PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER; INDEMNIFICATION

Section 6.1 Representation as to Redevelopment. The Developer represents and agrees that its undertakings with respect to the Development Property pursuant to the Agreement are and will be used for the purpose of redevelopment of the Development Property.

Section 6.2 Prohibitions Against Transfer of Development Property and Assignment of Agreement. The Developer represents and agrees that prior to completion of the Minimum Improvements and prior to the issuance of the Certificate of Completion for the Minimum Improvements:

(a) Except only by way of security for the purposes of obtaining financing necessary to enable the Developer or any successor in interest to the Development Property, or any part thereof, to perform its obligations with respect to completing the Minimum Improvements under this Agreement, the Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or any trust or power, or transfer in any other mode or form of or with respect to the Agreement or the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same (collectively, a "Transfer"), without the prior written approval of the City, which approval shall not be unreasonably withheld. In the event the City approves a Transfer, the City will complete a written statement indicating whether the Developer, before or at the time of the Transfer, has been or is in default as to any of the obligations of this Agreement, and stating that this Agreement is in full force and effect between the transferee and the City.

(b) In the event the Developer, upon Transfer, seeks to be released from and seeks to assign its rights and obligations under this Agreement, the City shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such approval that: (i) any proposed transferee shall have the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer; (ii) any proposed transferee, by instrument in writing satisfactory to the City and in form recordable among the land records, shall for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed all the obligations of the Developer under this Agreement; and (iii) there shall be submitted to the City for review all instruments and other legal documents involved in effectuating transfers described herein; and if approved by the City its approval shall be indicated to the Developer in writing. In the absence of specific written agreement by the City to the contrary, no such Transfer approval by the City hereof shall be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto. Nor shall the Developer or any other party bound by this Agreement be released from any obligations hereunder without the written release of the City.

(c) After issuance of the Certificate of Completion on the Minimum Improvements, the Developer may transfer or assign any portion of the Development Property or the Minimum Improvements or the Developer's interest in this Agreement without the consent of the City, provided that the transferee or assignee is bound by all the Developer's obligations remaining hereunder. The Developer shall submit to the City written evidence of any such transfer or assignment, including the transferee or assignee's express assumption of the Developer's obligations under this Agreement. If the Developer fails to provide such evidence of transfer and assumption, the Developer shall remain bound by all its obligations under this Agreement.

Section 6.3 Release and Indemnification Covenants.

(a) The Developer releases from and covenants and agrees that the City and its governing body members, officers, agents, including its independent contractors, consultants, legal counsel, and employees (hereinafter, for purposes of this Section, collectively the "Indemnified Parties") shall not be liable for and agrees to indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person resulting from any defect in the Project, except for loss or damage to property or any injury to or death of any person resulting from any defect in the Project resulting from the negligence, any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties.

(b) Except for the negligence, any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties now and forever and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project, provided that this indemnification shall not apply to the warranties made or obligations undertaken by the City in this Agreement.

(c) The City and the Indemnified Parties shall not be liable for any damage or injury to the persons or property of the Developer or officers, agents, servants, or employees or any other person who may be about the Development Property or the Minimum Improvements due to any act of negligence of any person, except the Indemnified Parties.

(d) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City, and not of any governing body member, officer, agent, servant or employee of the City.

(e) This Section 6.3 shall survive the termination of this Agreement.

ARTICLE VII – REAL ESTATE TAXES

Section 7.1 Real Estate Taxes. The Developer shall pay when due, and prior to the imposition of penalty, all real estate taxes and installments of special assessments, if any, payable with respect to the Development Property and the improvements thereon for real estate taxes due and payable in 2022 and thereafter.

Section 7.2 Tax Increment. In order to complete the Minimum Improvements, the Developer agrees that certain improvements are needed to prepare the Development Property for completion and operation of the Minimum Improvements. Accordingly, and in consideration of the Developer's obligations and performance under this Agreement, and in order to defray a portion of such costs, the City shall issue the TIF Note to reimburse the Developer for a portion of the Site Improvement Costs.

Section 7.3. Requests for Reduction of Real Estate Taxes. The Developer acknowledges that the sole source of money to make the payments on the TIF Note is the Available Tax Increment derived from the Development Property and Minimum Improvements. The Developer shall notify the City of any administrative or judicial review affecting the market value of the Development Property and the improvements thereon for real estate tax purposes. In such event, the City will continue to make payments under the TIF Note to the Developer but reduced based upon the Developer's requested reduction in assessed market value and/or real estate taxes, with any additional Tax Increment available for payment being withheld from the Developer until such time that the administrative or judicial review affecting the Development Property and the improvements thereon is finally determined.

Section 7.4 Qualification of the TIF District.

(a) The TIF District constitutes a redevelopment tax increment financing district.

(b) If the City receives notice at any time during the duration of the TIF District from the State Department of Revenue, the State Auditor, Tax Official, or any court of competent jurisdiction that the TIF District does not or ceases to qualify as a redevelopment district, this Agreement shall terminate and the Developer agrees to repay Available Tax Increment in the amounts necessary to satisfy the requirements of State Department of Revenue, the State Auditor, Tax Official, or any court of competent jurisdiction. The Developer shall indemnify the City for any costs or expenses the City incurs as a result of such non-qualification of the TIF District as a redevelopment district.

Section 7.5 Available Tax Increment Deficiencies. The Developer understands and acknowledges that the City makes no representations or warranties regarding the amount of Available Tax Increment that will be generated by the Minimum Improvements or that Available Tax Increment will be sufficient to make the payments under Section 4.2 hereunder when due. Any estimates of Available Tax Increment prepared by the City, its financial advisors, or its other officers, agents or employees in connection with the TIF District or this Agreement are for the benefit of the City and are not intended as representation on which the Developer may rely.

ARTICLE VIII – EVENTS OF DEFAULT

Section 8.1 Events of Default Defined. The following shall be “Events of Default” under this Agreement and the term “Event of Default” shall mean, whenever it is used in this Agreement, any one or more of the following events, but only if the subject event has not been cured within 30 days after receipt of written notice of such failure from the City, or if the event is by its nature incurable within 30 days, the Developer does not, within such 30-day period, provide assurances reasonably satisfactory to the City that the failure will be cured as soon as reasonably possible:

(a) Failure by the Developer to observe or perform any material covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement; or

(b) If the Developer shall:

(1) File any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or State law;

(2) Make an assignment for benefit of its creditors;

(3) Admit in writing its inability to pay its debts generally as they become due; or

(4) Be adjudicated as bankrupt or insolvent.

Section 8.2 Remedies on Default. Whenever any Event of Default referred to in Section 8.1 of this Agreement occurs and is continuing, the City may exercise the following rights under this Section 8.2:

(a) The City may suspend its performance under the Agreement and until it receives assurances from the Developer, deemed adequate by the City, that the Developer will cure its default and continue its performance under the Agreement.

(b) The City may cancel and rescind the Agreement.

(c) The City may withhold the Certificate of Completion and the payments under Section 4.2 hereof.

(d) The City may declare that the Purchase Price is immediately due and payable in full.

(e) The City may demand the Developer repay a portion of the assistance received under the TIF Note based on the percentage of non-compliance with the requirements of Section 2.2(p) during the Compliance Period.

(f) The City may take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to the City to collect any payments due under this Agreement, or to enforce the performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

Section 8.3 Modification for Benefit of Mortgagees. In order to facilitate the obtaining of financing for this construction of the Minimum Improvements, the City agrees to any reasonable modification of Section 5.5 with respect to the disposition of the Net Proceeds to accommodate the interests of the holder of a first mortgage; provided, however, that the City determines, in its reasonable judgment, that any such modification will adequately protect the legitimate interests and security of the City with respect to the Project.

Section 8.4 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 8.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party hereto, 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 hereunder.

Section 8.6 Agreement to Pay Attorneys' Fees and Expenses. Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Developer herein contained, the Developer agrees that it shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses so incurred by the City.

ARTICLE IX – ADDITIONAL PROVISIONS

Section 9.1 Restrictions on Use. The Developer agrees for itself, its successors and assigns and every successor in interest to the Development Property, or any part thereof, that the Developer and such successors and assigns shall devote and use the Development Property for market rate, non-subsidized rental housing for a minimum period of 25 years from the date of receipt of the Certificate of Completion.

Section 9.2 Titles of Articles and Sections. Any titles of the several parts, Articles and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions hereof.

Section 9.3 Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under the Agreement by one party to the others shall be sufficiently given or delivered if sent by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(a) In the case of Developer, is mailed to or delivered personally to Apollo Development LLC, Attention: David R. Harchanko, 206 Chelsea Road, Monticello, MN 55362;

(b) In the case of the City, is mailed to or delivered personally to 444 Ninth Street, P.O. Box 38, Windom, Minnesota 56101-0038; Attention: City Administrator;

Or at such other address with respect to either such party hereto as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

Section 9.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 9.5 Law Governing. This Agreement will be governed by and construed in accordance with the laws of the State of Minnesota.

Section 9.6 Amendments. This Agreement may be amended in writing upon mutual agreement of the City and the Developer.

Section 9.7 Recording. The Developer or the City on behalf of the Developer shall record this Agreement and any amendments thereto, or a Memorandum of this Agreement and any amendments thereto, with the Cottonwood County Recorder. The Developer shall pay all costs for recording.

Section 9.8 Survival. All of the terms, representations, warranties and covenants in this Agreement shall survive and remain in force for the benefit of the parties after the delivery to the Developer of the Deed and the Certificate of Completion as provided herein, except for those covenants and restrictions specifically released by the Certificate of Completion.

Section 9.9 Termination of Agreement. This Agreement shall terminate on the earlier of (i) the Termination Date; (ii) the date the Agreement is canceled and rescinded under Section 3.1 or 8.2 hereof; or (iii) such other date as is mutually agreeable to the parties hereto. Except for Section 6.3, the Developer shall have no obligations under this Agreement after the Termination Date. At the request of the Developer, the City shall provide an acknowledgment, in recordable form, that the Termination Date has occurred.

(*remainder of this page intentionally left blank*)

IN WITNESS WHEREOF, the City and the Developer have caused this Agreement to be duly executed as of the date first above written.

CITY OF WINDOM, MINNESOTA

By ____________________________________
Its Mayor

By ____________________________________
Its City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF COTTONWOOD)

The foregoing instrument was acknowledged before me on ____________, 2022, by ___________ and ___________, the Mayor and City Administrator, respectively, of the City of Windom, Minnesota, a municipal corporation and political subdivision, on behalf of the City.

____
Notary Public

(Signature page to Contract for Private Redevelopment by and between the City of Windom, Minnesota and Apollo Development LLC)

APOLLO DEVELOPMENT LLC

By ______________________________________
Its ___________________________________

STATE OF MINNESOTA)
) ss.
COUNTY OF __________)

The foregoing instrument was acknowledged before me on _______________, 2022, by ____________________, the _______________ of Apollo Development LLC, a Minnesota limited liability company, on behalf of the company.

____
Notary Public

EXHIBIT A
FORM OF CERTIFICATE OF COMPLETION

WHEREAS, the City of Windom, Minnesota, a municipal corporation and political subdivision (the "City"), has entered into a Contract for Private Redevelopment dated as of ___________, 2022, with Apollo Development LLC, a Minnesota limited liability company (the "Developer"), recorded in the Office of the County Recorder in and for the County of Cottonwood and the State of Minnesota, as Document No. ______________, regarding the land described on Attachment A attached hereto in the County of Cottonwood and the State of Minnesota (collectively, the "Property").

WHEREAS, said Contract for Private Redevelopment incorporated and contained certain covenants and restrictions with regard to the completion of the Minimum Improvements as defined therein; and

WHEREAS, the Developer has, to the present date, performed such covenants and conditions insofar as it is able in a manner deemed sufficient by the City to permit the execution and recording of this Certificate.

NOW, THEREFORE, this is to certify that (1) all building construction and other physical improvements on the Minimum Improvements specified to be done and made by the Developer on the Property have been completed; (2) the covenants and conditions in the Contract for Private Redevelopment, relating to the completion of the construction of the Minimum Improvements, have been performed by the Developer; and (3) that the provisions for completion of the Minimum Improvements contained therein are released absolutely and forever insofar as they apply to the Property; and (4) the County Recorder in and for the County of Cottonwood and State of Minnesota is authorized to accept for recording and to record this instrument as a conclusive determination of the satisfactory termination of the covenants and conditions of the Contract for Private Redevelopment relating to the completion of the construction of the Minimum Improvements.

CITY OF WINDOM, MINNESOTA

By ____________________________________
Its Mayor

By ____________________________________
Its City Administrator

STATE OF MINNESOTA)
) ss.
COUNTY OF COTTONWOOD)

The foregoing instrument was acknowledged before me on ______________, ______, by ____________________ and ____________________, the Mayor and City Administrator, respectively, of the City of Windom, Minnesota, a municipal corporation and political subdivision, on behalf of the City.

____
Notary Public

This instrument was drafted by:

Fryberger, Buchanan, Smith & Frederick, P.A.
302 West Superior Street, Suite 700
Duluth, Minnesota 55802

ATTACHMENT A
to
CERTIFICATE OF COMPLETION

(Legal Description of Apartment Building Property)

EXHIBIT B
LEGAL DESCRIPTION

The property for the Apartment Building is approximately 2.2 acres that includes the 30-foot easement around the well, the area to the south of the well, the area to bottom of the bank of the quarry, and the area between Cottonwood Lake Drive and the new street to be constructed in the Subdivision. DVK shall be responsible for submitting a plat for the South Cottonwood Lake Subdivision (the Subdivision) prepared by a registered land surveyor. The plat shall include the approximately 2.2 acre lot reserved for the Apartment Building. The approximately 2.2 acre lot will be platted as part of the larger property described in the legal description below.

<u>Legal Description</u>

Real property in the City of Windom, County of Cottonwood, State of Minnesota, described as follows: Government Lot 2 of Section 25, Township 105, Range 36, Cottonwood County, Minnesota, excepting therefrom the following described parcel: Commencing at an existing iron monument at the southeast corner of Government Lot 2 in said Section 25; thence North 00°15'17" East, bearing based on Cottonwood County Coordinate System, along the east line of said Government Lot 2, a distance of 663.37 feet to the point of beginning; thence North 89°44'43" West, a distance of 466.00 feet; thence North 00°15'17" East, parallel with the east line of said Government 2, a distance of 320 feet, more or less, to the shoreline of Cottonwood Lake; thence easterly and northeasterly, along the shoreline of said Cottonwood Lake, a distance of 500 feet, more or less, to a point that bears North 00°15'17" East from the point of beginning; thence South 00°15'17" West, along the east line of said Government Lot 2, a distance of 424 feet, more or less, to the point of beginning.

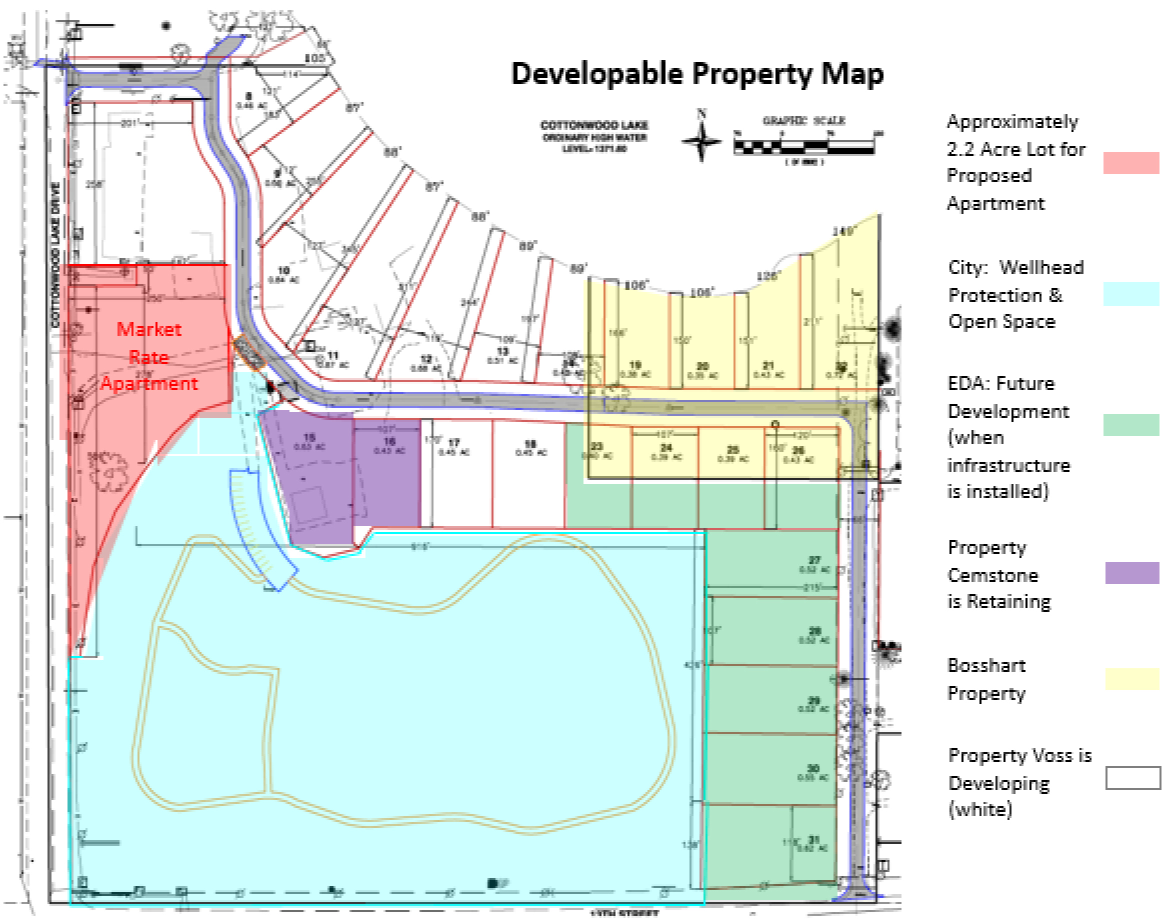

EXHIBIT C
SITE IMPROVEMENTS

Improvement	Estimated Cost

EXHIBIT D

FORM OF TAX INCREMENT REVENUE NOTE

No. R-___

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF COTTONWOOD

CITY OF WINDOM, MINNESOTA

TAX INCREMENT REVENUE NOTE, SERIES 20__

Principal Amount	**Annual Rate**
$____________	0.00%

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE FEDERAL SECURITIES ACT OF 1933 AND MAY NOT BE SOLD OR OTHERWISE DISPOSED OF FOR VALUE, OR TRANSFERRED, WITHOUT (i) AN OPINION OF COUNSEL APPROVED BY THE ISSUER THAT SUCH SALE, DISPOSITION OR TRANSFER MAY LAWFULLY BE MADE WITHOUT REGISTRATION UNDER THE FEDERAL SECURITIES ACT OF 1933 AND UNDER APPLICABLE STATE SECURITIES LAWS, OR (ii) SUCH REGISTRATION. THE TRANSFERABILITY OF THIS NOTE IS SUBJECT TO RESTRICTIONS (a) REQUIRED BY FEDERAL AND STATE SECURITIES LAWS AND THE RULES, REGULATIONS, AND INTERPRETATIONS OF THE GOVERNMENTAL AGENCIES ADMINISTERING SUCH LAWS, AND THE PROCEDURE ESTABLISHED BY THE ISSUER TO EFFECT COMPLIANCE THEREWITH, GOVERNING UNREGISTERED SECURITIES, AND (b) AGREED TO BY THE OWNER OF SUCH SECURITIES.

THIS NOTE HAS NOT BEEN REGISTERED UNDER CHAPTER 80A OF THE MINNESOTA SECURITIES LAWS OR APPLICABLE STATE BLUE SKY LAWS AND MAY NOT BE SOLD, TRANSFERRED, OR OTHERWISE DISPOSED OF FOR VALUE EXCEPT PURSUANT TO REGISTRATION OR OPERATION OF LAW.

The CITY OF WINDOM, MINNESOTA, a municipal corporation and political subdivision of the State of Minnesota (the "City"), hereby acknowledges itself to be indebted and, for value received, hereby promises to pay the Principal Amount specified above (the "Payment Amount"), to Apollo Development LLC, a Minnesota limited liability company (the "Registered Owner"), or its registered assigns, but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided.

The Payment Amounts due on this Note shall be payable solely from, and to the extent that the City shall receive, the Available Tax Increment as hereinafter defined.

For purposes of this Note, Available Tax Increment shall mean ninety percent (90%) of the Tax Increment received by the City from Cottonwood County with respect to the

Development Property, described on Exhibit A hereto, and improvements thereon located in the City's Tax Increment Financing District No. 1-22 (a Redevelopment District) (the "TIF District") within its Development District No. 1 during the six months preceding any Payment Date specified below and which the City is entitled to retain pursuant to the provisions of Minnesota Statutes, Sections 469.174 through 469.1794, as the same may be amended or supplemented from time to time (the "TIF Act") (after deduction of the State Auditor fee and the County Auditor fee) and subject to Section 4.3 of the Agreement. The payments on this Note shall be made by the City on a semi-annual basis on or before July 15th and December 31st each year commencing on July 15, 202__, and continuing through December 31, 2038, (each referred to herein as a "Payment Date") or until payment in full of the amount due on this Note, or as provided herein, whichever occurs earliest. This Note shall terminate and be of no further force and effect on December 31, 2038 or upon payment in full of the principal on this Note, or on any date upon which the City shall have terminated the Agreement (hereinafter defined), whichever occurs earliest ("Maturity").

The City's obligation hereunder to pay each Payment Amount on the respective Payment Dates shall be further conditioned on the fact that there shall not at the time have occurred and be continuing an Event of Default under that certain Contract for Private Redevelopment, dated as of March __, 2022, as the same may be amended from time to time (the "Agreement"), by and among the City and the Registered Owner; and, further, if pursuant to the occurrence of an Event of Default under the Agreement the City elects to cancel and rescind the Agreement, the City shall have no further debt or obligation under this Note whatsoever. Reference is hereby made to the provisions of the Agreement for the definitions of Tax Increment and Available Tax Increment and the rights and obligations of the City to pay the Payment Amounts of this Note, and said provisions are hereby incorporated into this Note as though set out in full herein.

This Note is a revenue obligation and not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications stated or referenced herein. Neither the full faith and credit nor the taxing powers of the City are pledged to the payment of the principal on this Note and no property or other asset of the City, save and except the above-referenced Available Tax Increment, is or shall be a source of payment of the City's obligations hereunder.

This Note is issued by the City in aid of financing a project pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including the TIF Act. The obligations on this Note are payable solely from Eligible Tax Increment as defined in the Agreement derived from the City's Tax Increment Financing District No. 1-22 (a Redevelopment District) which the City duly established within its Development District No. 1.

Except as hereinafter qualified and subject to Section 6.2 of the Agreement, this Note may not be assigned except as provided in said Agreement; and upon such assignment, the assignor shall promptly notify the City at the Office of the City Administrator by registered mail, and the assignee shall surrender the same to the City Administrator either in exchange for a new fully registered note or for transfer of this Note on the registration records for the Note maintained by the City. Each permitted assignee shall take this Note subject to the foregoing conditions and subject to all provisions stated or referenced herein including the provisions in the Agreement.

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 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; and that this Note, together with all other indebtedness of the City outstanding on the date hereof and on the date of this Note's 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 Windom, Minnesota, by its City Council, has caused this Note to be executed by the manual signatures of the Mayor of the City of Windom, Minnesota, and attested by its City Administrator, and has caused this Note to be issued on and dated _________________, _____.

CITY OF WINDOM, MINNESOTA

By _______________________________________
Its Mayor

ATTEST:

By _______________________________________
Its City Administrator

CERTIFICATE OF REGISTRATION

It is hereby certified that the undersigned has this day registered the Note in the name of such Registered Owner, as indicated in the registration blank below, on the books kept by the undersigned for such purposes.

Registered Owner	Date of Registration	Signature of City Administrator
Apollo Development LLC ___________________________ ___________________________ Federal Tax ID No.: _________		

ASSIGNMENT

For value received, the undersigned hereby sells, assigns and transfers unto ____ the within Note and all rights thereunder, and does hereby irrevocably constitute and appoint ____________________________ attorney to transfer the said Note on the books kept for registration of the within Note, with full power of substitution in the premises.

Dated: ______________________ ____

Notice: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within Note in every particular, without alteration or any change whatsoever.

The City Administrator will not effect transfer of this Note unless the information concerning the assignee requested below is provided.

Name and Address: _______________________________

____

____

Taxpayer Identification Number: ______________________

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE FEDERAL SECURITIES ACT OF 1933 AND MAY NOT BE SOLD OR OTHERWISE DISPOSED OF FOR VALUE, OR TRANSFERRED, WITHOUT (i) AN OPINION OF COUNSEL APPROVED BY THE ISSUER THAT SUCH SALE, DISPOSITION OR TRANSFER MAY LAWFULLY BE MADE WITHOUT REGISTRATION UNDER THE FEDERAL SECURITIES ACT OF 1933 AND UNDER APPLICABLE STATE SECURITIES LAWS, OR (ii) SUCH REGISTRATION. THE TRANSFERABILITY OF THIS NOTE IS SUBJECT TO RESTRICTIONS (a) REQUIRED BY FEDERAL AND STATE SECURITIES LAWS AND THE RULES, REGULATIONS, AND INTERPRETATIONS OF THE GOVERNMENTAL AGENCIES ADMINISTERING SUCH LAWS, AND THE PROCEDURE ESTABLISHED BY THE ISSUER TO EFFECT COMPLIANCE THEREWITH, GOVERNING UNREGISTERED SECURITIES, AND (b) AGREED TO BY THE OWNER OF SUCH SECURITIES.

THIS NOTE HAS NOT BEEN REGISTERED UNDER CHAPTER 80A OF THE MINNESOTA SECURITIES LAWS OR APPLICABLE STATE BLUE SKY LAWS AND MAY NOT BE SOLD, TRANSFERRED, OR OTHERWISE DISPOSED OF FOR VALUE EXCEPT PURSUANT TO REGISTRATION OR OPERATION OF LAW.

EXHIBIT A

TO TAX INCREMENT REVENUE NOTE

Development Property