

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made this \_\_\_\_ day of \_\_\_\_\_, 2004 by and between Wellington Management, Inc., a Minnesota corporation (“Wellington”), and the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota (the “HRA”).

### RECITALS

- A. Wellington has obtained site control of approximately 8.6 acres of land located at the southwest corner of Lexington Parkway North and University Avenue in Saint Paul (the “Property”), consisting of three separate parcels, one owned by Nighthawk Properties LLC (the “Nighthawk Site”) and the other two owned by George and Marcella Keys and Jeff and Paula Keys, respectively (the “Keys Sites”).
- B. The existing buildings on the Nighthawk Site are currently vacant and require demolition.
- C. Although not yet confirmed by the HRA’s blight inspectors, the buildings located on the Property appear to be blighted and structurally substandard within the meaning of Minn Stat 469.174 Subd. 10.
- D. At least one of the Keys Sites’ parcels currently contains environmental conditions requiring remediation.
- E. Wellington has proposed redeveloping the Property and has asked the HRA to assist with the redevelopment as set forth below.
- F. The parties desire to set forth their understanding of their respective roles in the development of the Property, subject to the completion of a binding development agreement (the “Development Agreement”).

### AGREEMENT

Section 1. Project Description. Wellington proposes developing a complex of commercial buildings on the Property with approximately 100,000 to 125,000 gross square feet in the aggregate. The estimated cost of the project is approximately \$15,000,000. The buildings would be designed principally for retail purposes with some office space, although there is a potential for housing in the southwest corner of the Keys Sites. The project would involve demolishing the buildings on the Nighthawk Site, and if the Keys Sites are included, the substantial renovation of those existing buildings or demolition and new construction, or some combination thereof. The project could include one or more smaller pads that would accommodate smaller retail shops ranging from 2,500 to 16,000 square feet. The HRA will assist Wellington with obtaining the platting or subdivision approvals needed for the project.

The HRA acknowledges that the project may include an ALDI-operated grocery store, which store shall be designed, constructed and equipped similar to and comparable with the ALDI store located in Champlin, Minnesota, and at least one pad for a restaurant that includes fast food and agrees to support such uses.

Section 2. TIF Financing.

*TIF Note.* To assist with the extraordinary costs involved with redeveloping the Property, such as demolition, stormwater management, repair or replacement of the existing parking lot, relocation benefits, asbestos abatement, mold remediation, the possible need for a retaining wall, and the environmental remediation of the Keys Sites, the HRA will use its best efforts to create a TIF district for the Property and issue a pay-as-you-go tax increment financing note to Wellington in an amount determined by the HRA as necessary for the project and that will satisfy the 'but for' test.

Section 3 . Environmental Remediation. The HRA will consider applying for up to \$150,000 of environmental grants to remediate the contamination at the Keys Sites and for asbestos removal and mold remediation for all buildings and a decision will be made in part on the priorities the HRA establishes for all of its pending projects.

Section 4 . Master Landscape Plan. The HRA will work with Wellington to develop and implement a Master Landscape and Public Improvement Plan for the intersection of Lexington and University. Wellington will agree to pay for 100% of the cost of design for this plan, up to a maximum of \$10,000. Wellington will also agree to pay its pro-rata share of any special assessments levied by the City to implement this plan.

Section 5 . Project Schedule. Subject to execution and delivery of a Development Agreement acceptable to both parties incorporating the terms of this Memorandum, Wellington expects to complete site acquisition of the Property by March 31 and September 30, 2004, begin construction in November 2004, and complete the project by October 1, 2005.

Section 6 . Construction. The project design will be subject to HRA prior approval. The HRA will approve a site plan for the project on or before the execution of the Development Agreement and approve final plans and specifications for the project prior to the commencement of construction. Wellington may perform demolition and site work before approval of the final plans and specifications.

Section 7 . Contingency. The HRA's obligation to issue the TIF Note and Wellington's obligation to commence the Minimum Improvements under the Development Agreement will be subject to Wellington providing evidence to the HRA of financing sufficient to complete the project and other customary contingencies.

Section 8. Compliance. Wellington and its contractors and agents shall comply with all

federal, state and local laws, ordinances and regulations applicable to the project including without limitation the City's affirmative action requirements, vendor outreach program, labor standards, relocation, and the Minnesota business subsidy act.

Section 9. Present Intent; Deposit. The foregoing represents the parties present intentions with respect to the development of the Property, but is not a legally binding agreement. The parties understanding as to the development of the Property is subject to the negotiation, execution and delivery of a Development Agreement that will contain such additional terms and conditions that are usual and customary and will elaborate on the general terms and conditions of this Memorandum and approval of such Development Agreement by the HRA's Board of Commissioners. Upon approval of this Memorandum by the HRA Board of Commissioners Wellington agrees to deposit with the HRA the amounts required under the HRA's policy that will be used to pay for the costs and expenses incurred by the HRA in this project.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the date first above written.

WELLINGTON MANAGEMENT, INC.

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

HOUSING AND REDEVELOPMENT  
AUTHORITY  
FOR THE CITY OF SAINT PAUL, MINNESOTA

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

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

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