



**REGULAR HOUSING AND REDEVELOPMENT AUTHORITY MEETING
RICHFIELD MUNICIPAL CENTER, COUNCIL CHAMBERS
JUNE 20, 2023
7:00 PM**

Call to Order

Appoint a Temporary Secretary

Open Forum

Each speaker is to keep their comment period to three minutes to allow sufficient time for others. Comments are to be an opportunity to address the HRA. Please refer to the HRA agenda and minutes web page for additional ways to submit comments. You may also call 612-861-9764 or email ldubois@richfieldmn.gov with questions. Call into the open forum by dialing 1-415-655-0001 Use webinar access code: 2630 557 9041 and password: 1234.

Approval of the 1) Regular Housing and Redevelopment Authority meeting minutes of April 17, 2023, 2) the Special Housing and Redevelopment Authority meeting minutes of June 5, 2023; and 3) the Special Housing and Redevelopment Authority work session minutes of June 7, 2023.

AGENDA APPROVAL

1. Approval of the Agenda
2. **Consent Calendar contains several separate items which are acted upon by the HRA in one motion. Once the Consent Calendar has been approved, the individual items and recommended actions have also been approved. No further HRA action on these items is necessary. However, any HRA Commissioner may request that an item be removed from the Consent Calendar and placed on the regular agenda for HRA discussion and action. All items listed on the Consent Calendar are recommended for approval.**
 - A. Consideration of a Resolution authorizing execution of a Developer Agreement with the West Hennepin Affordable Land Housing Trust, dba Homes Within Reach, for the acquisition, rehabilitation and sale of houses under the New Home Program.

Staff Report No. 11
 - B. Consideration of the adoption of a resolution approving a Subordination of the Contract for Private Redevelopment and a Collateral Assignment of the Tax Increment Financing Note for Woodlake Centre, and authorize the Executive Director to execute an Estoppel Certificate.

Staff Report No. 12
3. Consideration of items, if any, removed from Consent Calendar

RESOLUTIONS

4. Consider a resolution approving a Redevelopment Agreement with Beacon Interfaith Housing Collaborative for

the development of approximately 38 units of supportive housing at 6613-25 Portland Avenue.

Staff Report No. 13

5. Consideration of the adoption of a resolution approving the Amended and Restated Contract for Private Development with 101 E 66th ST LLC and authorizing the issuance of a Tax Increment Limited Revenue Note related to the construction of an 80-unit mixed use project at 101 - 66th Street East.

Staff Report No. 14

6. Consider a request to modify (2024) and then terminate (2025) Best Buy's Minimum Assessment Agreement.

Staff Report No. 15

HRA DISCUSSION ITEMS

7. HRA Discussion Items

EXECUTIVE DIRECTOR REPORT

8. Executive Director's Report

CLAIMS

9. Claims
10. Adjournment

Auxiliary aids for individuals with disabilities are available upon request. Requests must be made at least 96 hours in advance to the City Clerk at 612-861-9739.



HOUSING AND REDEVELOPMENT AUTHORITY MEETING MINUTES

Richfield, Minnesota

Regular Meeting

April 17, 2023

CALL TO ORDER

Chair Vrieze Daniels called the meeting to order at 7:01 p.m. in the Council Chambers.

HRA Members Present: Erin Vrieze Daniels, Chair; Mary Supple; Sean Hayford Oleary; and Gordon Hanson

HRA Members Absent: Lee Ohnesorge

Staff Present: Melissa Poehlman, Executive Director; Julie Urban, Assistant Community Development Director; Jan Youngquist, Economic Development Manager; and Dustin Leslie, City Clerk.

OPEN FORUM

No callers

APPROVAL OF THE MINUTES

M/Hanson, S/Supple to approve the minutes of the 1) Housing and Redevelopment Authority Work Session of March 20, 2023; and 2) the regular Housing and Redevelopment Authority Meeting of March 20, 2023.

Motion carried: 4-0

APPROVAL OF THE AGENDA

M/Hayford Oleary, S/Hanson to approve the agenda.

Motion carried: 4-0

ITEM #1	2022 HRA AND EDA YEAR IN REVIEW PRESENTATION
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Executive Director Poehlman began the presentation by discussing themes of 2022; an overview of redevelopment projects; and business assistance programs.

Assistant Director Urban continued the presentation by discussing affordable housing progress; programs for renters; programs for homebuyers; programs for homeowners; and Richfield Rediscovered.

Executive Director Poehlman wrapped up the presentation giving an overview of staffing updates in the Community Development Department.

Commissioners thanked staff for their work and for the report.

ITEM #2	HRA DISCUSSION ITEMS
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Commissioner Supple spoke about the Eco Fair and complimented staff on the handouts and asked for them to be available on the website.

Chair Vrieze Daniels spoke about the Habitat house at 6600 Logan Ave and stated there was great progress made so far. Commissioner Hanson asked if tours would be available once completed. Assistant Director Urban stated she would reach out for a possible tour for Authority members.

ITEM #3	EXECUTIVE DIRECTOR REPORT
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None.

ITEM #4	CLAIMS
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M/Supple, S/Hanson that the following claims be approved:

<u>U.S. BANK</u>	<u>4/17/2023</u>
HRA Checks: #34343-34354	<u>\$29,670.17</u>
Section 8 Checks: #134737-134815	\$205,017.07
TOTAL	\$234,687.24

Motion carried: 4-0

ITEM #5	ADJOURNMENT
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The meeting was adjourned by unanimous consent at 7:34 p.m.

Date Approved: June 20, 2023

Gordon Hanson
Acting HRA Chair

Dustin Leslie
City Clerk

Melissa Poehlman
Executive Director



HOUSING AND REDEVELOPMENT AUTHORITY MEETING MINUTES

Richfield, Minnesota

Special Meeting

June 5, 2023

CALL TO ORDER

Chair Vrieze Daniels called the meeting to order at 7:00 p.m. in the Council Chambers.

HRA Members Present: Erin Vrieze Daniels, Chair; Mary Supple; Sean Hayford Oleary; and Gordon Hanson

HRA Members Absent

Staff Present: Melissa Poehlman, Executive Director; Julie Urban, Assistant Community Development Director; and Dustin Leslie, City Clerk.

Guests: Julie Eddington, HRA Attorney; John Nolde, Dominion Attorney; Khayree Duckett, Dominion Attorney.

OPEN FORUM

Chair Vrieze Daniels opened the public forum. No one spoke and the forum was closed.

ITEM #1 APPROVAL OF THE AGENDA

M/Supple, S/Hanson to approve the agenda.

Motion carried: 4-0

ITEM #2

PUBLIC HEARING TO CONSIDER A RESOLUTION AUTHORIZING THE ISSUANCE OF \$10 MILLION IN MULTIFAMILY HOUSING REVENUE BONDS FOR THE BENEFIT OF THE UPPER POST FLATS HOUSING DEVELOPMENT AND RELATED POST-ISSUANCE COMPLIANCE POLICY

Executive Director Poehlman gave the report and spoke about the conduit bond process as well as the benefits to the HRA.

Chair Vrieze Daniels opened the public hearing.

Alex Asmus – 6401 Harriet Ave S: Asmus pointed out that the project would be beyond Richfield city limits in Fort Snelling. He also spoke about troubling tenant records in regard to the developer Dominion.

Ann Dougherty – 6844 James Ave S: Dougherty spoke about a Section 8 resident she was helping to find housing. She stated it has been difficult helping her find a rental in Richfield and was in support of helping Dominion create more affordable housing in the area. She also stated she would like to see more affordable housing units for families in the project.

Mary Best – 6727 Elliot Ave S: Best spoke about how the plan would add around 200 students to the Richfield School District. She also recited statistics about student proficiencies within the district and stated the School District was failing students and should not be allowed to add more through this project. She further stated that the project would be closer to Mendota Heights and could benefit them more.

Janet Coleman – 6632 Elliot Ave S: Coleman spoke about comments from the Columbia Heights Mayor which were published in the Star Tribune. Resident noted that the Mayor spoke negatively about Dominion and was not in favor of approving the bond.

Larry Ernster – 6727 Elliot Ave S: Ernster stated this project would not benefit Richfield with Dominion's reputation. Ernster also spoke about unfavorable comments made by the Mayor of Columbia Heights in regard to Dominion which were published in the Star Tribune.

Kathleen Balaban – 6526 Stevens Ave S: Balaban questioned the public hearing process and stated the community should have more input on projects.

Ruane Onesirosan – 2421 W. 65th St.: Onesirosan spoke against the bonding and did not want her tax dollars going toward the project. She also spoke about Dominion's negative reputation.

Linda Kohlman – 6430 Logan Ave S: Kohlman spoke about how the city has more pressing issues than this project and asked to put the money elsewhere.

There were no more speakers. M/Hanson, S/Hayford Oleary to close the public hearing.

Motion carried 4-0

Commissioner Hayford Oleary asked if there would be any financial stake from the city if they were to approve the conduit bonds.

HRA Attorney Eddington stated the conduit bond was passing from the Minnesota Department of Natural Resources (DNR) to Dominion with the Richfield HRA acting as a passthrough conduit. She further stated there would be no financial stake for the city or HRA.

Commissioner Hayford Oleary asked if \$10 million would be available to the city if the HRA denied the request. HRA Attorney Eddington responded that it would not be available to the city.

Commissioner Hayford Oleary asked what would happen if Dominion defaults on the bond. HRA Attorney Eddington stated that defaults were extremely rare but if it were to happen, the developer would pay the costs.

Commissioner Hayford Oleary asked if there was a default would the city's credit be negatively impacted in any way. HRA Attorney Eddington responded that if there was a default, neither the city nor the HRA's credit would be impacted in any way.

Commissioner Hayford Oleary asked the developer representatives what would happen if the request was denied. Dominion representative Duckett stated that there was currently no backup plan if the bonding request was denied.

Commissioner Supple asked if denial would affect the current tenants. Dominion representative Noldy stated denial would not affect current tenants in any way.

Executive Director Poehlman asked if the developer was unable to get the \$10 million in bond funding, would they look elsewhere for funding? Dominion representative Noldy stated that they would look elsewhere.

Commissioner Hanson asked the developers why they chose Richfield for this project. Dominion representative Noldy stated that they chose Richfield for geographical reasons and because it would benefit their school district.

Commissioner Supple asked who had the ability to inspect units to ensure quality for tenants. Executive Director Poehlman stated inspections would mostly be done by the State of Minnesota but the city could also request to perform inspections.

Commissioner Supple asked if there were plans to increase accessibility. Executive Director Poehlman stated that since this was a historic preservation project, there would be difficulties with ensuring accessibility features. However, some accessibility features such as ramps would be included where they could be.

Chair Vrieze Daniels spoke about low income housing and asked if rent would be lower for qualified tenants. Executive Director Poehlman spoke about tenant qualification requirements and how rent would be set for tenants. She further stated that rates were set by the Department of Housing and Urban Development (HUD).

M/Hayford Oleary, S/Hanson to approve a resolution authorizing the issuance of \$10 million in multifamily housing revenue bonds for the benefit of the Upper Post Flats housing development and related Post-Issuance Compliance Policy.

Commissioner Hanson stated there was a dire need for affordable housing and that this project was an opportunity to offer deep affordability. He further stated this would benefit the School District by getting more students.

Commissioner Hayford Oleary stated not approving this project would not offer any advantages to Richfield.

Commissioner Supple spoke about the comments from residents during the public hearing and encouraged Dominion to take their criticisms to hear.

Motion carried 4-0

ITEM #3	HRA DISCUSSION ITEMS: UPDATE ON DISCUSSIONS AND ACTIONS RELATED TO THE REQUEST BY BEST BUY TO TERMINATE THE MINIMUM ASSESSMENT AGREEMENT FOR THE CORPORATE CAMPUS PROPERTY AT 7601 PENN AVENUE SOUTH
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Executive Director Poehlman gave an update to the Commissioners.

Commissioner Supple asked which entities would vote to approve the request. Executive Director Poehlman stated approval would come from the City Council, the School District, and the County. She further stated the HRA would sign the agreement.

Commissioner Supple asked about the timeline. Executive Director Poehlman stated the agreement would have to be executed by all parties by June 30.

ITEM #4	ADJOURNMENT
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Before adjournment, Assistant Community Development Director Urban gave the Commissioners an update on the housing legislation passed during the most recent legislative session.

The meeting was adjourned by unanimous consent at 8:15 p.m.

Date Approved: June 20, 2023

Gordon Hanson
Acting HRA Chair

Dustin Leslie
City Clerk

Melissa Poehlman
Executive Director



CITY COUNCIL MEETING MINUTES

Richfield, Minnesota

Special HRA Work Session

June 7, 2023

CALL TO ORDER

The meeting was called to order by Chair Erin Vrieze Daniels at 5:15 p.m. held in the Heredia Room.

HRA Members Present: Erin Vrieze Daniels, Chair; Mary Supple; and Gordon Hanson

Staff Present: Kelly Wynn, Administrative Assistant

Item #1	MEETINGS WITH APPLICANTS FOR VACANT HRA AND EDA SEAT
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The HRA members interviewed James Jaffe as an applicant for the HRA and EDA.

ADJOURNMENT

The work session was adjourned by unanimous consent at 6:08 p.m.

Date Approved: June 20, 2023

Gordon Hanson
Acting HRA Chair

Kelly Wynn
Administrative Assistant

Melissa Poehlman
Executive Director



STAFF REPORT NO. 11
HOUSING AND REDEVELOPMENT AUTHORITY
MEETING
6/20/2023

REPORT PREPARED BY: Celeste McDermott, Housing Specialist

OTHER DEPARTMENT REVIEW:

EXECUTIVE DIRECTOR REVIEW: Melissa Poehlman, Executive Director
6/13/2023

ITEM FOR COUNCIL CONSIDERATION:

Consideration of a Resolution authorizing execution of a Developer Agreement with the West Hennepin Affordable Land Housing Trust, dba Homes Within Reach, for the acquisition, rehabilitation and sale of houses under the New Home Program.

EXECUTIVE SUMMARY:

The Housing and Redevelopment Authority's (HRA) New Home Program (Program) provides affordable homeownership opportunities in the community through new construction, acquisition and rehabilitation, and down payment assistance. As part of the Program, the HRA works with the West Hennepin Affordable Land Housing Trust (WHAHLT), dba Homes Within Reach, to purchase and rehabilitate homes to be sold to income-qualifying households. WHAHLT is a Community Land Trust that allows moderate-income buyers to achieve affordable homeownership by holding ownership of the land, and reducing the burden of down payment and large mortgage payments on the homeowner. The model ensures ongoing affordability throughout the lifetime of the property and with multiple owners.

WHAHLT is seeking to continue providing affordable housing in Richfield through this model. The proposed Developer Agreement (Agreement) between the HRA and WHAHLT details the terms of this continued partnership through 2023. Under the terms of the Agreement, the HRA would provide up to \$200,000 to WHAHLT for the purchase and rehabilitation of up to two single-family homes. WHAHLT would then resell the homes to households earning no more than 80% of the Area Median Income (AMI). Funding for this work will come from both Community Development Block Grant funds (CDBG) and the Affordable Housing Trust Fund (AHTF).

RECOMMENDED ACTION:

By motion: Approve a resolution authorizing the execution of a Developer Agreement with the West Hennepin Affordable Land Housing Trust, dba Homes Within Reach, for the acquisition, rehabilitation and sale of up to two houses under the New Home Program.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

- Under the Program, the HRA has worked with several developers over the years to either build new homes or purchase and rehabilitate existing homes. These homes are then sold to households earning no more than 80% of the AMI.
- Since 2002, WHAHLT has successfully purchased, rehabilitated and sold 15 homes in Richfield.
- Funding for the work of the Program has varied by year, with most recent projects funded with

local CDBG funds and the AHTF, as well as pooled Tax Increment Financing.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- The objectives of the Program are to:
 - Eliminate the blighting influence of substandard housing, thus improving residential neighborhoods;
 - Maintain and improve the existing housing stock while preserving housing affordability;
 - Develop quality housing with long-term affordability, to the greatest extent possible;
 - Coordinate with developers to provide affordable housing for families.
- Purchasing and rehabilitating homes to provide affordable housing carries out the policies of the City's Comprehensive Plan, including: support the rehabilitation and upgrading of the existing housing stock; promote the development, management and maintenance of affordable housing in the City through assistance programs, alternative funding sources, and the creation of partnerships whose mission is to promote low to moderate income housing.

C. CRITICAL TIMING ISSUES:

- WHAHLT has identified one property in Richfield that they would like to develop under the Program. The Agreement must be approved before they can include the property in the Program and request reimbursement.
- The Agreement provides for HRA staff to approve the acquisition of the specific property and to review income documentation prior to the final sale.

D. FINANCIAL IMPACT:

- The 2023 budget includes \$200,000 for acquisition and rehabilitation through the Program.
- HRA funds can be used for the acquisition of the property or applied to rehabilitation. Maximum reimbursement under this Agreement is \$200,000 (\$100,000 per property).

E. LEGAL CONSIDERATION:

- The Agreement was prepared by HRA legal counsel.

ALTERNATIVE RECOMMENDATION(S):

- Do not approve a resolution authorizing execution of a Developer Agreement with the West Hennepin Affordable Land Housing Trust, dba Homes Within Reach.

PRINCIPAL PARTIES EXPECTED AT MEETING:

N/A

ATTACHMENTS:

Description	Type
□ Resolution	Resolution Letter
□ Developer Agreement	Contract/Agreement

**HOUSING AND REDEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF RICHFIELD, MINNESOTA**

RESOLUTION NO. _____

**RESOLUTION APPROVING DEVELOPER AGREEMENT WITH WEST HENNEPIN
AFFORDABLE HOUSING LAND TRUST DBA HOMES WITHIN REACH**

WHEREAS, the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the "Authority") intends to provide \$200,000 from Community Development Block Grant funds ("CDBG Funds") or Affordable Housing Trust Fund ("AHTF funds") to the West Hennepin Affordable Housing Land Trust dba Homes Within Reach, a Minnesota nonprofit corporation ("WHAHLT"), for the purposes of acquiring and rehabilitating homes in the City of Richfield, Minnesota; and

WHEREAS, the Authority has proposed that WHAHLT use the CDBG Funds or AHTF funds to purchase, rehabilitate, and resell one or more properties to households earning at or below 80% of the area median income; and

WHEREAS, there has been presented before the Board of Commissioners of the Authority a Developer Agreement (the "Developer Agreement") to be executed by the Authority and WHAHLT, which sets for the terms of the CDBG Funds or AHTF funds to be provided to WHAHLT and the agreement by WHAHLT to purchase, rehabilitate, and resell the properties; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota as follows:

1. The Developer Agreement is hereby in all respects authorized, approved, and confirmed, and the Chair and the Executive Director are hereby authorized and directed to execute the Developer Agreement for and on behalf of the Authority in substantially the form now on file with the Executive Director but with such modifications as shall be deemed necessary, desirable, or appropriate, the execution thereof to constitute conclusive evidence of their approval of any and all modifications therein.

2. The Chair and the Executive Director are hereby authorized to execute and deliver any and all documents deemed necessary to carry out the intentions of this resolution and the Developer Agreement.

3. This resolution shall be in full force and effect as of the date hereof.

Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota this 20th day of June, 2023.

Gordon Hanson, Acting Chair

Secretary

DEVELOPER AGREEMENT
(West Hennepin Affordable Housing Land Trust dba Homes Within Reach)

THIS DEVELOPER AGREEMENT (the “Agreement”), made and entered into as of this ___ of _____, 2023 (“Effective Date”), by and between the **Housing and Redevelopment Authority in and for the City of Richfield** (“Authority” or “HRA”), a body corporate and politic under the laws of the State of Minnesota, having its principal office at 6700 Portland Avenue, Richfield, Minnesota (“HRA”) and the **West Hennepin Affordable Housing Land Trust (dba Homes Within Reach)**, a nonprofit corporation under the laws of Minnesota, having its principal office at 5101 Thimsen Ave, Suite 202, Minnetonka, MN 55345. (“Developer” or “WHAHLT”).

RECITALS

- A. The HRA intends to provide WHAHLT with up to \$200,000 in Community Development Block Grant funds (“CDBG Funds”) or Affordable Housing Trust Fund funds (“AHTF Funds”) for the purposes of acquiring and rehabilitating up to two homes in the City of Richfield (the “City”) to be resold to people earning at or below 80% of the area median income.
- B. The HRA desires WHAHLT to purchase, rehabilitate, and resell up to two properties eligible to be purchased, rehabilitated and resold with CDBG Funds or AHTF Funds (the “Eligible Properties”) and WHAHLT has agreed to do so pursuant to the terms and conditions of this Agreement.
- C. The City and the HRA have previously established a New Home Program pursuant to the authority granted in Minnesota Statutes, Sections 469.001 through 469.047.
- D. WHAHLT will utilize the Community Land Trust model to purchase, rehabilitate, and resell the property(ies) to an income-qualified buyer(s), and will retain ownership of the land to ensure long-term affordability.
- E. The grant of the CDBG Funds or AHTF Funds to WHAHLT is for the purpose of providing affordable housing within the City and to assist in carrying out the objectives of the New Home Program, which are in the 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.
- F. In performing its obligations under this Agreement, WHAHLT must adhere to the restrictions for the use of CDBG Funds or AHTF Funds set forth in this Agreement.

AGREEMENT

1. Scope of Work.

A. Developer. The HRA hereby designates WHAHLT as a Developer to purchase, rehabilitate, and resell Eligible Properties in accordance with the terms and conditions of this Agreement.

B. Memorandum of Understanding. WHAHLT shall purchase, rehabilitate and resell Eligible Properties based on the Memorandum of Understanding of the parties set forth in EXHIBIT A.

C. Criteria. WHAHLT will identify Eligible Properties that WHAHLT would like to acquire under this Agreement. Prior to the acquisition of an Eligible Property, WHAHLT shall provide the HRA with a Developer Pro Forma in the form set forth in EXHIBIT B.

D. Compliance with Required Programs. To the extent required by federal, state, and local law and regulation, WHAHLT agrees to comply with the program requirements of:

(i) Equal opportunity and discrimination provisions of all applicable State and Federal laws, rules, and regulations;

(ii) Section 504 of the Rehabilitation Act of 1973, as amended;

(iii) Fair housing requirements of section 104(b) and section 109 of Title I of the Housing and Community Development Act of 1974, as amended, including Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and other applicable fair housing laws;

(iv) All Lead Laws and Rules, including Minn. Stat. Sections 144.9501 through 144.9512, Minnesota Rules 4761.2000 through 4761.2700, and Federal Regulations including Residential Lead-Based Paint Disclosure Program (Section 1018 of Title X) and the Renovation, Repair, and Painting Rule (TSCA 406(B)).

(v) The Hennepin County Affirmative Action Policy.

WHAHLT further agrees to provide HRA with a timely certification that the requirements listed in this Section have been met.

E. Resale of Property. After WHAHLT completes the rehabilitation of an Eligible Property, WHAHLT will market said Eligible Property and execute a purchase agreement with an end buyer earning at or below 80% of the area median income.

F. Reports. WHAHLT shall provide HRA with a report of its activities on an as-needed basis, including but not limited to reports related to the income of the end buyer of each Eligible Property.

2. Term. This Agreement is effective as of the Effective Date and until December 31, 20__.
3. Acquisition, Relocation and Displacement. WHAHLT shall be responsible for carrying out all acquisitions of real property necessary for implementation of this Agreement. WHAHLT shall conduct all such acquisitions in its name and shall hold title to all real property purchased and shall be responsible for preparation of all notices, appraisals, and documentation required in conducting acquisition under the regulations of the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as required under 49 CFR Part 24. WHAHLT shall also be responsible for providing all relocation notices, counseling, and services required by said regulations. In addition, WHAHLT shall comply with the acquisition and relocation requirements of the Minn. Stat. Sections 117.50 through 117.56 (the “Minnesota Relocation Act”).
4. Labor Standards, Employment and Contracting. WHAHLT shall notify the HRA prior to initiating any rehabilitation activities, including advertising for contractual services, which will include costs likely to be subject to the provisions of Federal Labor Standards and Equal Employment Opportunity and related implementing regulations.
5. Documentation. WHAHLT must maintain the following records and reports relating to Eligible Properties acquired pursuant to this Agreement: income documentation for buyer of property financed with CDBG Funds or AHTF Funds, appraisals, environmental reports, purchase agreements, settlement statements, and deed document number/filing information per property. WHAHLT shall submit copies of the foregoing documentation to HRA with respect to any Eligible Property acquired pursuant to this Agreement prior to closing with the buyer. The HRA will issue a clear to close once documentation has been submitted.
6. Suspension and Termination. If WHAHLT materially fails to comply with any term of this Agreement after written notice and an opportunity to cure, this Agreement may be terminated. The time period for said opportunity to cure will be dependent upon the relevant time period requirements of the applicable law, regulation, program, or otherwise.
7. Notice. All communications, notices, and demands of any kind which either party may be required or may desire to give to or serve upon the other shall be made in writing, and such notice shall be deemed sufficiently given if and when it is addressed to then other party as provided below and either (a) delivered personally, (b) deposited in the United States mail, registered or certified, with postage prepaid, (c) deposited with an overnight delivery service for next day delivery, or (d) telecopied:

To HRA: Richfield Housing and Redevelopment Authority
 Attention: Melissa Poehlman, Executive Director
 6700 Portland Avenue
 Richfield, Minnesota 55423-2599
 Fax: (612) 861-8974

To WHAHLT: West Hennepin Affordable Housing Land Trust
Attention: Brenda Lano, Executive Director
5101 Thimsen Avenue
Suite 202
Minnetonka, MN 55345-4117

8. Data Practices. WHAHLT agrees to abide by the provisions of the Minnesota Government Data Practices Act and all other applicable State and Federal laws, rules, and regulations relating to data privacy and confidentiality, and as any of the same may be amended.

9. Access to Records. HRA shall have the authority to review any and all procedures and all materials, notices, and documents prepared by WHAHLT in implementation of this Agreement.

10. Indemnification. WHAHLT agrees to hold harmless, indemnify and defend HRA, its elected officials, officers, agents, and employees against any and all claims, losses, or damages, including attorneys' fees, arising from, allegedly arising from, or related to, the provision of services under this Agreement by WHAHLT, its employees, agents, officers, or volunteer workers.

11. Independent Contractor. Nothing in this Agreement is intended, nor may be construed, to create the relationship of partners or employer/employee between the parties. WHAHLT, its officers, agents, employees, and volunteers are, and will remain for all purposes and services under this Agreement, independent contractors.

12. Entire Agreement. The entire agreement of the parties is contained in this document. This Agreement supersedes all previous written and oral agreements and negotiations between the parties relating to the subject matter of this Agreement except as provided in paragraph 17 of this Agreement.

13. Severability. The invalidity, illegality or enforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, all of which shall remain in full force and effect.

14. Assignment of Agreement. The parties shall not assign this Agreement without the express written consent of the other party.

15. Modification. No provision, term or clause of this Agreement shall be revised, modified, amended or waived except by an instrument in writing signed by both parties.

16. Counterparts. This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original, all of which, when taken together, shall constitute one agreement.

17. Headings. The titles to the sections and headings of various paragraphs of this Agreement are placed for convenience of reference only and in case of conflict, the text of this Agreement, rather than such titles or headings shall control.

18. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto.

19. Invalidity. If for any reason any portion or paragraph of this Agreement shall be declared void and unenforceable by any court of law or equity, it shall only affect such particular portion or paragraph of this Agreement, and the balance of this Agreement shall remain in full force and effect and shall be binding upon the parties hereto.

20. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Minnesota.

21. Electronic Signatures. This Agreement may be executed with electronic signatures.

(Signature page follows)

IN WITNESS WHEREOF, the Authority has caused this Agreement to be duly executed in its name and behalf and WHAHLT has caused this Agreement to be duly executed in its name and behalf as of the date first above written.

HOUSING AND REDEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF RICHFIELD, MINNESOTA

By _____
Its Acting Chairperson

By _____
Its Executive Director

WEST HENNEPIN AFFORDABLE HOUSING LAND
TRUST

By _____
Its Executive Director

**EXHIBIT A
PROCEDURES
Memorandum of Understanding**

Properties, In General:

- WHAHLT will identify, purchase, and rehabilitate up to two Eligible Properties for subsequent resale to households earning at or below 80% of the Area Median Income.
- The HRA agrees to cover \$100,000 of the Development Gap for Eligible Properties. Development Gap means the estimated total development costs less the sales price of the improved property up to a maximum gap amount as shown on “Exhibit B” or other developer pro forma approved by the HRA.

Identification of Eligible Property:

- WHAHLT will identify Eligible Properties.
- WHAHLT will provide the HRA with the identity of the Eligible Property so that the HRA may decide whether the HRA will use CDBG or AHTF funds to acquire said Eligible Property.

Purchase of Eligible Property:

- WHAHLT will identify one or more Eligible Properties and only purchase an Eligible Property after receipt of the HRA’s express written consent.
- HRA may express its written consent via email to WHAHLT at blano@homeswithinreach.org.
- WHAHLT shall be responsible for the timely completion of all CDBG or AHTF required documentation.

Rehabilitation of Eligible Property:

- After WHAHLT has purchased an Eligible Property, WHAHLT will submit a rehabilitation plan to the HRA and the HRA will agree in writing to the plan, prior to WHAHLT beginning its rehabilitation efforts at that Eligible Property.

Subsequent Resale of Certain Eligible Property to End Buyer:

- After WHAHLT completes the rehabilitation of an Eligible Property, WHAHLT will market said Eligible Property and execute a purchase agreement with an end buyer whose household income is at or below 80% of Area Median Income.
- WHAHLT will maintain long-term affordability by retaining ownership of the land through its land trust.

Reimbursement of Acquisition/Rehabilitation Costs (or Payment of the Development Gap):

- WHAHLT will use its own funds to purchase an eligible property.
- Following the acquisition of the property, WHAHLT may request that the HRA provide payment up to \$80,000 of the estimated Development Gap.
- The remaining \$20,000 will be paid upon sale of the Eligible Property and submittal of all required documentation to the HRA.
- The maximum amount of reimbursement available under this Agreement is \$100,000 per Eligible Property up to a total of \$200,000.

**EXHIBIT B
DEVELOPER PRO FORMA**

Sources & Uses - Preliminary				
Name of Property:				
Date:				
Sources:				Comments
Homebuyer Mortgage			\$	
20__ AHIF			\$	Project Costs
20__ Richfield Tax Increment			\$	Land & Project Costs
20__ HOME			\$	Land
20__ MH Impact			\$	Project Costs
20__ Bond Proceeds			\$	Land
20__ Met Council			\$	Rehab
		Total	\$	
Uses:				
Acquisition Costs			\$	
Closing Costs			\$	
Inspection/other			\$	
	Acquisition costs		\$	
Adm Fee			\$	Project Fee & HOME Fee
Holding/Closing Costs/ LC/ Taxes			\$	Special Assessments of \$_____
Rehab Costs			\$	
		Total	\$	



STAFF REPORT NO. 12
HOUSING AND REDEVELOPMENT AUTHORITY
MEETING
6/20/2023

REPORT PREPARED BY: Julie Urban, Asst. Community Development Director
OTHER DEPARTMENT REVIEW:

EXECUTIVE DIRECTOR REVIEW: Melissa Poehlman, Executive Director
6/13/2023

ITEM FOR COUNCIL CONSIDERATION:

Consideration of the adoption of a resolution approving a Subordination of the Contract for Private Redevelopment and a Collateral Assignment of the Tax Increment Financing Note for Woodlake Centre, and authorize the Executive Director to execute an Estoppel Certificate.

EXECUTIVE SUMMARY:

The Urban Village Tax Increment Financing (TIF) District was established in July 1999. It is a Redevelopment District that includes BMO Harris Bank, McDonald's, The Oaks on Pleasant, The Pines, and Woodlake Centre office/retail space, located at 66th Street and Lyndale Avenue. In 2001, the Housing and Redevelopment Authority (HRA) entered into a Contract for Private Redevelopment and agreed to provide tax increment assistance to the property and issue Tax Increment Revenue Notes to reimburse development costs.

Woodlake Centre MOB, LLC (Owner) is the current owner of the Woodlake Centre office/retail space and the holder of Taxable Tax Increment Revenue Note Series 2001B (TIF Note). The Owner is refinancing with Alerus Financial (Lender) and is requesting that the HRA subordinate the Contract for Private Redevelopment (Contract) to the primary financing. The Owner is also assigning the TIF Note to the Lender, which requires approval of a Collateral Assignment. Finally, the Lender requires an Estoppel Certificate in order to complete the refinance.

The HRA's Attorney has reviewed and approved all documents.

RECOMMENDED ACTION:

By motion: Adopt a resolution approving a Subordination of Contract for Private Redevelopment and a Collateral Assignment of Tax Increment Financing Note for Woodlake Centre, and authorize the Executive Director to execute an Estoppel Certificate.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

- The Urban Village TIF District was established in July 1999.
- On May, 21, 2001 the HRA entered into an Amended and Restated Contract for Private Redevelopment with Richfield State Agency, Inc.
- Two Pay-Go Notes were issued in 2001 and will mature in 2026.
- The property has been sold several times since then, most recently to Woodlake Centre MOB, LLC in 2019.

- Woodlake Centre MOB, LLC attempted to sell the property in 2022. The sale did not go through, and now the Owner is refinancing their primary financing.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- The HRA is required to approve all Subordinations and Assignments of Pay-As-You-Go Notes.

C. CRITICAL TIMING ISSUES:

- The Owner has closed on its financing, contingent upon HRA Approval of the Subordination and related documents.

D. FINANCIAL IMPACT:

- Alerus Financial will receive the Pay-Go tax increment on Tax Increment Revenue Note Series 2001B per the Assignment and Assumption Agreement.
- The HRA will continue to receive a portion of the tax increment to pay administrative costs associated with the TIF District and a contribution of pooled TIF to the Housing and Redevelopment Fund.

E. LEGAL CONSIDERATION:

- HRA legal counsel reviewed and approved all documents.
- The Collateral Assignment will be provided once the Lender provides an Investment Letter to the HRA.

ALTERNATIVE RECOMMENDATION(S):

- Do not approve the Assignment and Assumption Agreement.

PRINCIPAL PARTIES EXPECTED AT MEETING:

None

ATTACHMENTS:

Description	Type
<input type="checkbox"/> Resolution	Resolution Letter
<input type="checkbox"/> Subordination	Contract/Agreement
<input type="checkbox"/> Collateral Assignment	Contract/Agreement
<input type="checkbox"/> Estoppel Certificate	Contract/Agreement

**HOUSING AND REDEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF RICHFIELD, MINNESOTA**

RESOLUTION NO. _____

**RESOLUTION APPROVING SUBORDINATION AGREEMENT, COLLATERAL ASSIGNMENT
OF TIF NOTE, AND ESTOPPEL CERTIFICATE FOR WOODLAKE CENTRE**

WHEREAS, the Housing and Redevelopment Authority in and for the City of Richfield (the “Authority” and the Woodlake Centre MOB, LLC a Delaware limited liability company (the “Developer”) entered into that certain Amended and Restated Contract for Private Redevelopment dated May 21, 2001, as amended by that certain First Amendment to Amended and Restated Contract for Private Redevelopment dated January 25, 2005, as assigned by that certain Assignment and Assumption of Amended and Restated Contract for Private Redevelopment dated January 25, 2005, as assigned by that certain Assignment and Assumption of Amended and Restated Contract for Private Redevelopment dated January 31, 2014, as assigned and amended by that certain Assignment and Secondment Amendment to Amended and Restated Contract for Private Redevelopment dated March 19, 2018, as assigned by that certain Assignment and Assumption Agreement (Amended and Restated Contract for Private Redevelopment) dated March 11, 2019, (collectively, the “Development Agreement”); and

WHEREAS, Alerus Financial, N.A. (the “Lender”) and the Borrower have entered into a Loan Agreement (the “Loan Agreement”), pursuant to which the Lender has agreed to make a real estate loan in the amount of \$22,300,000.00 (the “Loan”); and

WHEREAS, as a condition to providing the Loan, the Bank is requiring that the Authority subordinate certain of the Authority’s rights under the Development Agreement, including but not limited to the rights of the Authority with respect to the development property, to the rights of the Bank under the documents to be executed in conjunction with the Loan, pursuant to the terms of a Subordination Agreement (the “Subordination Agreement”) proposed to be entered into between the Authority, the Bank, and the Developer, a copy of which has been presented before this Board of Commissioners of the Authority and execute an estoppel certificate; and

WHEREAS, the Lender has also requested a Collateral Assignment of TIF Note, between the Authority, the Developer, and the Lender and an Estoppel Certificate and Notice Request; and

WHEREAS, the Subordination Agreement, the Collateral Assignment of TIF Note, and the Estoppel Certificate and Notice Request have been provided to the member of the Board of Commissioners; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota as follows:

1. The Subordination Agreement, Collateral Assignment of TIF Note, and the Estoppel Certificate and Notice Request are hereby in all respects authorized, approved, and confirmed, and the Chair and the Executive Director are hereby authorized and directed to execute the Subordination Agreement and the estoppel certificate for and on behalf of the Authority in substantially the form now on file with the Community Development Director but with such modifications as shall be deemed necessary, desirable, or appropriate, the execution thereof to constitute conclusive evidence of their approval of any and all modifications therein.

2. The Chair and the Executive Director are hereby authorized to execute and deliver all documents deemed necessary to carry out the intentions of this resolution, the Subordination Agreement, the Collateral Assignment of TIF, and the Estoppel Certificate and Notice Request.

Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota this 20th day of June, 2023.

Gordon Hanson, Acting Chair

Secretary

SUBORDINATION OF CONTRACT FOR PRIVATE REDEVELOPMENT

THIS SUBORDINATION OF CONTRACT FOR PRIVATE REDEVELOPMENT (this “Agreement”) is made and entered into effective as of this ___ day of _____, 2023, by and among the HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), WOODLAKE CENTRE MOB, LLC, a Delaware limited liability company (the “Borrower”), and ALERUS FINANCIAL, N.A., a national banking association (the “Lender”).

R E C I T A L S:

WHEREAS, the Authority and the Borrower entered into that certain Amended and Restated Contract for Private Redevelopment dated May 21, 2001, recorded on November 30, 2001 in the Office of the County Recorder of Hennepin County, Minnesota as Document No. A7593401, and on January 26, 2005 in the Office of the Registrar of Titles of Hennepin County, Minnesota as Document No. T4070502, as amended by that certain First Amendment to Amended and Restated Contract for Private Redevelopment dated January 25, 2005, recorded on May 4, 2005 in the Office of the County Recorder of Hennepin County, Minnesota as Document No. A8576021, and on January 26, 2005 in the Office of the Registrar of Titles of Hennepin County, Minnesota as Document No. T4070504, as assigned by that certain Assignment and Assumption of Amended and Restated Contract for Private Redevelopment dated January 25, 2005, recorded on May 4, 2005 in the Office of the County Recorder of Hennepin County, Minnesota as Document No. A8576023, and on January 26, 2005 in the Office of the Registrar of Titles of Hennepin County, Minnesota as Document No. T4070506, as assigned by that certain Assignment and Assumption of Amended and Restated Contract for Private Redevelopment dated January 31, 2014, recorded on February 4, 2014 in the Office of the County Recorder of Hennepin County, Minnesota as Document No. A10051789, and on February 4, 2014 in the Office of the Registrar of Titles of Hennepin County, Minnesota as Document No. T05150284, as assigned and amended by that certain Assignment and Secondment Amendment to Amended and Restated Contract for Private Redevelopment dated March 19, 2018, recorded on August 22, 2018 in the Office of the Registrar of Titles of Hennepin County, Minnesota as Document No. T5554637, as assigned by that certain Assignment and Assumption Agreement (Amended and Restated Contract for Private Redevelopment) dated March 11, 2019, recorded on April 10, 2019 in the Office of the County Recorder of Hennepin County, Minnesota as Document No. A10648855, and on March 14, 2019 in the Office of the Registrar of Titles of Hennepin County, Minnesota as Document No. T5600118

(collectively, the “Development Agreement”) concerning the real property legally described on Exhibit A attached hereto and incorporated herein (the “Property”); and

WHEREAS, Lender, and the Borrower have entered into a certain Loan Agreement dated June ___, 2023 (the “Loan Agreement”), pursuant to which Lender and the Lender has agreed to make a real estate loan in the amount of \$22,300,000.00 (the “Loan”) in accordance and subject to the conditions set forth therein; and

WHEREAS, the obligations of the Borrower under and pursuant to the Loan Agreement and all “Loan Documents” (as that term is defined in the Loan Agreement) will be secured by, among other things, a Mortgage, Security Agreement, Fixture Financing Statement and Assignment of Leases and Rents dated as of June ___, 2023, recorded in the Office of the County Recorder of Hennepin County, Minnesota as Document No. _____ on _____ in the Office of the Registrar of Titles of Hennepin County, Minnesota as Document No. _____ on _____ (the “Mortgage”); and

WHEREAS, Lender requires, as a condition of making the Loan, that the Authority subordinate it’s rights with respect to the Property pursuant to the Development Agreement to Lender’s interest in the Property under and pursuant to the Mortgage.

NOW, THEREFORE, in consideration of the Recitals, which are hereby made a part hereof, and for other good and valuable consideration, the receipt and sufficiency are hereby acknowledged, it is hereby agreed as follows:

1. Subordination of Development Agreement. The Authority agrees that its rights under the Development Agreement shall be subject and subordinate to the Mortgage and Lender’s rights, title and interest set forth therein.
2. Notification of Bank and Right to Cure. The Authority agrees to notify Lender in writing of any default by Borrower under the Development Agreement that the Authority is aware of. Lender shall have the right, but not the obligation, to cure any such default under the Development Agreement.
3. Representations of the Authority. The Authority, with the understanding that Lender will rely upon the statements and representations made by the Authority herein in providing the Loan contemplated by the Loan Agreement, hereby certifies, represents, warrants and confirm to Lender, its successors and assigns, that, as of the date hereof:

(a) The Development Agreement sets forth all of the agreements and understandings of the Borrower and the Authority with respect to the Property; there are no other written or oral agreements or understandings between the Authority and the Borrower with respect to the Property; the Development Agreement is in full force and effect in accordance with its terms.

(b) To the best of the Authority’s knowledge, no default by the Borrower or the Authority in the performance of any obligation or promise of such party in the Development Agreement exists on the date hereof, and no event has occurred which, after

the passage of time or expiration of any notice, grace or right to cure period, would constitute a default under the Development Agreement.

4. This Agreement may not be amended or modified in any manner other than by an agreement in writing signed by all of the parties hereto.

5. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns, including any purchaser of the Property at a foreclosure sale.

6. Unless otherwise required by the specific provisions hereof or by law in respect to any matter, any notice or other communication to any party in connection with this Agreement shall be in writing and shall be sent by manual delivery, facsimile transmission, overnight courier or United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows:

If to the Authority: Housing and Redevelopment Authority
in and for the City of Richfield, Minnesota
6700 Portland Avenue South
Richfield, Minnesota 55423
Attention: Community Development Director

If to the Borrower: Woodlake Centre MOB, LLC
533 South Third Street, Suite 100
Minneapolis, MN 55415
Attention: Shawn Moore

If to the Lender: Alerus Financial, N.A.
120 South 6th Street, Suite 200
Minneapolis, Minnesota 55402
Attention: Kristine Johnson

or addressed to any such party at such other address as such party shall hereafter furnish by written notice to the other party hereto, at least ten (10) days prior to the effective date of said change in address, and all periods of notice shall be measured from the date of delivery thereof if manually delivered, from the date of sending thereof if sent by facsimile transmission, from the first business day after the date of sending if sent by overnight courier, or from four days after the date of mailing if mailed.

7. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be duly executed effective as of the day and year first above written.

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[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]

[SIGNATURE PAGE TO SUBORDINATION OF CONTRACT FOR PRIVATE REDEVELOPMENT]

WOODLAKE CENTRE MOB, LLC,
a Delaware limited liability company

By: VREC Ryan Woodlake Centre, LLC,
a Delaware limited liability company,
its sole member

By: Ryan Woodlake, LLC, a Delaware
limited liability company, its manager

By: _____
Brian C. Murray
Its Manager

STATE OF MINNESOTA)
)
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Brian C. Murray, the Manager of Ryan Woodlake, LLC, a Delaware limited liability company, the manager of VREC Ryan Woodlake Centre, LLC, a Delaware limited liability company, the sole member of Woodlake Centre MOB, LLC, a Delaware limited liability company, for and on behalf of the limited liability company.

Notary Public

[SIGNATURE PAGE TO SUBORDINATION OF CONTRACT FOR PRIVATE REDEVELOPMENT]

ALERUS FINANCIAL, N.A., a national
banking association

By: _____
Kristine Johnson
Its Senior CRE Lending Advisor

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Kristine Johnson, the Senior CRE Lending Advisor of Alerus Financial, N.A., a national banking association, for and on behalf of said national banking association.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

Winthrop & Weinstine, P.A. (TJK)
225 South Sixth Street, Suite 3500
Minneapolis, Minnesota 55402-4629

**AGREED TO AND APPROVED BY TAX EXEMPT NOTE HOLDER AS REQUIRED
PURSUANT OT SECTION 8.3 OF THE DEVELOPMENT AGREEMENT:**

BMO HARRIS BANK N.A.

By: _____
Name: _____
Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____, the _____ of BMO Harris Bank N.A., a national banking association, for and on behalf of said national banking association.

Notary Public

EXHIBIT A

Legal Description

Real property in the City of Richfield, County of Hennepin, State of Minnesota, described as follows:

PARCEL 1:

TORRENS PROPERTY, Certificate of Title No. 1480793:

Lots 2 and 3, Block 1, Richfield Urban Village, Hennepin County, Minnesota; and Outlots A and C, Richfield Urban Village, EXCEPT that part of said Outlot C lying easterly of the centerline of vacated Grand Avenue South and its southerly extension, Hennepin County, Minnesota.

AND

ABSTRACT PROPERTY:

That part of Outlot C, Richfield Urban Village, Hennepin County, Minnesota, lying Easterly of the centerline of vacated Grand Avenue South and its southerly extension.

PARCEL 2:

Non-exclusive easements contained within that certain Easements and Declaration of Covenants and Restrictions recorded as Document No. 7359245 in the Office of the County Recorder, and also recorded as Document No. 3317547 in the Office of the Registrar of Titles, all in Hennepin County, Minnesota.

PARCEL 3:

Non-exclusive easements contained within that certain Ingress/Egress Easement Agreement recorded as Document No. 8576022 in the Office of the County Recorder, and also recorded as Document No. 4070505 in the Office of the Registrar of Titles, all in Hennepin County, Minnesota.

COLLATERAL ASSIGNMENT OF TIF NOTE

THIS COLLATERAL ASSIGNMENT OF TIF NOTE (this “Agreement”) is made and entered into as of the ___ day of June, 2023, by and among the HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), WOODLAKE CENTRE MOB, LLC, a Delaware limited liability company (the “Borrower”), and ALERUS FINANCIAL, N.A., a national banking association (the “Lender”).

WITNESSETH:

WHEREAS, the Authority and Borrower are parties to that certain Amended and Restated Contract for Private Redevelopment dated May 21, 2001 (as amended and assigned from time to time, collectively, the “Development Agreement”), concerning property legally described on Exhibit A attached hereto and hereby made a part hereof (the “Project”); and

WHEREAS, pursuant to the Development Agreement, the Authority issued that certain Taxable Tax Increment Revenue Note Series 2001B dated October 17, 2001, in the principal amount of up to \$7,000,000.00 (the “TIF Note”); and

WHEREAS, the Lender intends to make a loan to the Borrower to be evidenced by, among other things, a Real Estate Note (the “Lender Note”) in the original principal amount of \$22,300,000.00 (the “Loan”); and

WHEREAS, the Lender has required, as a condition to the making of the Loan, that (a) the Borrower assign all of its rights under the TIF Note to the Lender to secure the obligations of the Borrower to the Lender under the Lender Note (the Lender Note and all documents executed in connection therewith are collectively referred to as the “Loan Documents”), and (b) the Authority agrees to certain other matters, all as more fully contained herein.

NOW THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Assignment. The Borrower hereby assigns to the Lender all of its right, title and interest under the TIF Note, including, without limitation, the right to receive payments under the TIF Note, to secure the Borrower’s obligations under the Loan Documents. The Borrower shall

execute and deliver to the Lender an endorsement to the TIF Note, all to be held by the Lender pursuant to the terms of this Agreement.

2. TIF Note. To perfect the Lender's security interest in the TIF Note, the Authority accepts the endorsement of the TIF Note from the Borrower to the Lender, and the Borrower shall deliver the TIF Note directly to the Lender. Prior to the Borrower endorsing the TIF Note to the Lender, the Lender shall execute an investment letter. Until payment in full of the Lender Note, the Borrower authorizes and directs the Authority to make all payments under the TIF Note directly to the Lender, and the Lender shall apply any such payments amounts owing under the Lender Note in the amount set forth in the Loan Agreement, with any remaining amounts being paid over to the Borrower provided no Event of Default has occurred and is then continuing.

3. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that there have been no prior assignments of the TIF Note that have not been released as of the date hereof, that the TIF Note is a valid and enforceable agreement and that neither the Authority nor the Borrower is in default thereunder or under any agreement related thereto and that all covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date hereof. The Borrower agrees not to sell, assign, pledge, mortgage or otherwise transfer or encumber its interest in the TIF Note as long as this Agreement is in effect. The Borrower hereby irrevocably constitutes and appoints the Lender as its attorney-in-fact to demand, receive and enforce the Borrower's rights with respect to the TIF Note for and on behalf of and in the name of the Borrower, or, at the option of the Lender, in the name of the Lender, with the same force and effect as the Borrower could do if this Agreement had not been made.

4. Present Assignment. This Agreement shall constitute a perfected, absolute and present assignment, provided that the Lender shall have no right under this Agreement to enforce the provisions of the TIF Note or exercise any of its rights or remedies under this Agreement until an Event of Default (as that term is defined in the Lender Note) shall occur and be continuing.

5. Event of Default. Upon the occurrence and during the continuance of an Event of Default (as that term is defined in the Loan Documents), the Lender may, without affecting any of its rights or remedies against the Borrower under any other instrument, document or agreement, exercise its rights under this Agreement as the Borrower's attorney-in-fact in any manner permitted by law and, in addition, the Lender shall have the right to exercise and enforce any and all rights and remedies available after a default to a secured party under the Uniform Commercial Code as adopted in the State of Minnesota. If notice to the Borrower of any intended disposition of collateral or of any intended action is required by law in any particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) days prior to the intended disposition or other action.

6. Representations and Warranties of the Authority. The Authority hereby consents and agrees to the terms and conditions of this Agreement. The Authority has not declared an event of default under the Development Agreement.

7. No Assumption. The Authority acknowledges that the Lender is not a party to the Development Agreement and by executing this Agreement does not become a party to the Development Agreement, and specifically does not assume and shall not be bound by any obligations of the Borrower to the Authority under the Development Agreement.

8. Default Under Development Agreement. Notwithstanding anything to the contrary in the Development Agreement, if the Lender exercises its rights under this Agreement or under the Loan Documents, the Authority will not declare an event of default under the Development Agreement; provided, however, that the Authority's obligations under the Development Agreement, and in any event, Authority's obligation to make payments under the TIF Note is conditioned upon performance by the Borrower or the Lender or their successors of all of the Borrower's obligations under the Development Agreement to the extent provided in the Development Agreement.

9. Notice from the Authority. So long as the Development Agreement remains in effect, the Authority agrees to give to the Lender copies of notices of any event of default given to the Borrower under the Development Agreement.

10. Amendments. The Authority and the Borrower agree that no change or amendment shall be made to the terms of the Development Agreement or the TIF Note without the prior written consent of the Lender.

11. Waiver. This Agreement can be waived, modified, amended, terminated or discharged only explicitly in writing signed by the parties hereto. A waiver by the Lender shall be effective only in a specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Lender's rights or remedies hereunder. All rights and remedies of the Lender shall be cumulative and may be exercised singularly or concurrently at the Lender's option, and any exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other.

12. Headings. The descriptive headings for the several sections of this Agreement are inserted for convenience only and not to confine or limit any of the terms or provisions hereof.

13. Addresses for Notice. Any notice from, request, demand or communication hereunder shall be deemed fully given if delivered or served by depositing the same with the United States Postal Service, postage prepaid, certified or registered, addressed to the parties as set forth below:

If to the Authority:	Housing and Redevelopment Authority in and for the City of Richfield, Minnesota 6700 Portland Avenue South Richfield, Minnesota 55423 Attention: Community Development Director
----------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

If to the Borrower: Woodlake Centre MOB, LLC
533 South Third Street, Suite 100
Minneapolis, MN 55415
Attention: Shawn Moore

If to the Lender: Alerus Financial, N.A.
120 South 6th Street, Suite 200
Minneapolis, Minnesota 55402
Attention: Kristine Johnson

14. Transfer of Title to Lender. The Authority agrees that in the event the Lender, a transferee of the Lender, or a purchaser at foreclosure sale, acquires title to the Project pursuant to foreclosure, or a deed in lieu thereof, the Lender, transferee or purchaser shall not be bound by the terms and conditions of the Development Agreement.

15. Rights of Authority. Nothing herein limits the Authority's ability to exercise its rights and remedies under the Development Agreement.

16. Successors. This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

17. Severability. The enforceability or invalidity of any provision hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

18. Governing Law. This Agreement is made in and shall be construed in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

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[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE TO COLLATERAL ASSIGNMENT OF TIF NOTE]

**HOUSING AND REDEVELOPMENT
AUTHORITY IN AND FOR THE CITY
OF RICHFIELD, MINNESOTA**

By: _____
Name: Gordon Hanson
Its: Acting Chair

By: _____
Name: Melissa Poehlman
Its: Executive Director

STATE OF MINNESOTA)
) ss.

COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Gordon Hanson, the Acting Chair of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, for and on behalf of said public body.

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Melissa Poehlman, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, for and on behalf of said public body.

Notary Public

[SIGNATURE PAGE TO COLLATERAL ASSIGNMENT OF TIF NOTE]

WOODLAKE CENTRE MOB, LLC,
a Delaware limited liability company

By: VREC Ryan Woodlake Centre, LLC,
a Delaware limited liability company,
its sole member

By: Ryan Woodlake, LLC, a Delaware
limited liability company, its manager

By: _____
Brian C. Murray
Its Manager

STATE OF MINNESOTA)
)
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Brian C. Murray, the Manager of Ryan Woodlake, LLC, a Delaware limited liability company, the manager of VREC Ryan Woodlake Centre, LLC, a Delaware limited liability company, the sole member of Woodlake Centre MOB, LLC, a Delaware limited liability company, for and on behalf of the limited liability company.

Notary Public

EXHIBIT A

(Legal Description)

Real property in the City of Richfield, County of Hennepin, State of Minnesota, described as follows:

PARCEL 1:

TORRENS PROPERTY, Certificate of Title No. 1480793:

Lots 2 and 3, Block 1, Richfield Urban Village, Hennepin County, Minnesota; and Outlots A and C, Richfield Urban Village, EXCEPT that part of said Outlot C lying easterly of the centerline of vacated Grand Avenue South and its southerly extension, Hennepin County, Minnesota.

AND

ABSTRACT PROPERTY:

That part of Outlot C, Richfield Urban Village, Hennepin County, Minnesota, lying Easterly of the centerline of vacated Grand Avenue South and its southerly extension.

PARCEL 2:

Non-exclusive easements contained within that certain Easements and Declaration of Covenants and Restrictions recorded as Document No. 7359245 in the Office of the County Recorder, and also recorded as Document No. 3317547 in the Office of the Registrar of Titles, all in Hennepin County, Minnesota.

PARCEL 3:

Non-exclusive easements contained within that certain Ingress/Egress Easement Agreement recorded as Document No. 8576022 in the Office of the County Recorder, and also recorded as Document No. 4070505 in the Office of the Registrar of Titles, all in Hennepin County, Minnesota.

ESTOPPEL CERTIFICATE

(Contract for Private Redevelopment & Assessment Agreement)

TO: Alerus Financial, N.A.
120 South 6th Street, Suite 200
Minneapolis, Minnesota 5540

The undersigned understands that Alerus Financial, N.A., a national banking association (the “Lender”) has or will extend a real estate loan to Woodlake Centre MOB, LLC, a Delaware limited liability company (the “Borrower”) the owner of certain real property legally described on Exhibit A attached hereto (the “Property”), which is affected by that certain Amended and Restated Contract for Private Redevelopment dated May 21, 2001, recorded on November 30, 2001 in the Office of the County Recorder of Hennepin County, Minnesota as Document No. A7593401, and on January 26, 2005 in the Office of the Registrar of Titles of Hennepin County, Minnesota as Document No. T4070502, as amended by that certain First Amendment to Amended and Restated Contract for Private Redevelopment dated January 25, 2005, recorded on May 4, 2005 in the Office of the County Recorder of Hennepin County, Minnesota as Document No. A8576021, and on January 26, 2005 in the Office of the Registrar of Titles of Hennepin County, Minnesota as Document No. T4070504, as assigned by that certain Assignment and Assumption of Amended and Restated Contract for Private Redevelopment dated January 25, 2005, recorded on May 4, 2005 in the Office of the County Recorder of Hennepin County, Minnesota as Document No. A8576023, and on January 26, 2005 in the Office of the Registrar of Titles of Hennepin County, Minnesota as Document No. T4070506, as assigned by that certain Assignment and Assumption of Amended and Restated Contract for Private Redevelopment dated January 31, 2014, recorded on February 4, 2014 in the Office of the County Recorder of Hennepin County, Minnesota as Document No. A10051789, and on February 4, 2014 in the Office of the Registrar of Titles of Hennepin County, Minnesota as Document No. T05150284, as assigned and amended by that certain Assignment and Secondment Amendment to Amended and Restated Contract for Private Redevelopment dated March 19, 2018, recorded on August 22, 2018 in the Office of the Registrar of Titles of Hennepin County, Minnesota as Document No. T5554637, as assigned by that certain Assignment and Assumption Agreement (Amended and Restated Contract for Private Redevelopment) dated March 11, 2019, recorded on April 10, 2019 in the Office of the County Recorder of Hennepin County, Minnesota as Document No. A10648855, and on March 14, 2019 in the Office of the Registrar of Titles of Hennepin County, Minnesota as Document No. T5600118 (collectively, the “Contract for Private Redevelopment”), and that certain Assessment Agreement and Assessor’s Certification dated February 15, 1994, recorded on February 25, 1994 in the Office of the Registrar of Titles of Hennepin County, Minnesota as Document No. T2484811 (the “Assessment Agreement”).

The undersigned hereby certifies to the Lender as to the following:

1. As of the date hereof, the Contract for Private Redevelopment as described above is in full force and effect and has not been amended.
2. To the best knowledge of the Authority, as of the date hereof, there is no event of default, and no event which with the giving of notice or passage of time or both would result in a

default or a violation by the Borrower under the Contract for Private Redevelopment.

3. As of the date hereof, there are no costs and expenses due and owing to the undersigned pursuant to the Contract for Private Redevelopment which would constitute a lien against the Property.
4. The undersigned agrees that all notices under Section 8.1 of the Contract for Private Redevelopment will be provided to the Lender as follows:

Alerus Financial, N.A.
120 South 6th Street, Suite 200
Minneapolis, Minnesota 55402
Attention: Kristine Johnson

5. As of the date hereof, the Assessment Agreement is null and void pursuant to Section 6 of the terms thereof.
6. To the best knowledge of the Authority, as of the date hereof, there is no event of default, and no event which with the giving of notice or passage of time or both would result in a default or a violation by the Borrower under the Assessment Agreement.
7. As of the date hereof, there are no costs and expenses due and owing to the undersigned pursuant to the Assessment Agreement which would constitute a lien against the Property.

Dated as of June __, 2023.

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EXHIBIT A

(Legal Description)

Real property in the City of Richfield, County of Hennepin, State of Minnesota, described as follows:

PARCEL 1:

TORRENS PROPERTY, Certificate of Title No. 1480793:

Lots 2 and 3, Block 1, Richfield Urban Village, Hennepin County, Minnesota; and Outlots A and C, Richfield Urban Village, EXCEPT that part of said Outlot C lying easterly of the centerline of vacated Grand Avenue South and its southerly extension, Hennepin County, Minnesota.

AND

ABSTRACT PROPERTY:

That part of Outlot C, Richfield Urban Village, Hennepin County, Minnesota, lying Easterly of the centerline of vacated Grand Avenue South and its southerly extension.

PARCEL 2:

Non-exclusive easements contained within that certain Easements and Declaration of Covenants and Restrictions recorded as Document No. 7359245 in the Office of the County Recorder, and also recorded as Document No. 3317547 in the Office of the Registrar of Titles, all in Hennepin County, Minnesota.

PARCEL 3:

Non-exclusive easements contained within that certain Ingress/Egress Easement Agreement recorded as Document No. 8576022 in the Office of the County Recorder, and also recorded as Document No. 4070505 in the Office of the Registrar of Titles, all in Hennepin County, Minnesota.



STAFF REPORT NO. 13
HOUSING AND REDEVELOPMENT AUTHORITY
MEETING
6/20/2023

REPORT PREPARED BY: Julie Urban, Asst. Community Development Director

OTHER DEPARTMENT REVIEW:

EXECUTIVE DIRECTOR REVIEW: Melissa Poehlman, Executive Director
6/15/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider a resolution approving a Redevelopment Agreement with Beacon Interfaith Housing Collaborative for the development of approximately 38 units of supportive housing at 6613-25 Portland Avenue.

EXECUTIVE SUMMARY:

In April of 2022, the Housing and Redevelopment Authority (HRA) approved a Preliminary Redevelopment Agreement with Beacon Interfaith Housing Collaborative (Beacon) to develop approximately 40 units of affordable, supportive rental housing, with the target population of neuro-diverse youth on the HRA-owned property located at 6613-25 Portland Avenue.

Since that time, Beacon has reduced the number of units to 38 and the bedroom mix to all studios, identified a service provider, obtained an initial capital grant from Hennepin County, submitted preliminary plans for sketch plan review by City staff, held a neighborhood meeting, obtained a commitment from Hennepin County for 20 units of supportive housing, and conducted environmental testing.

Beacon (dba Aster Commons Limited Partnership and Aster Commons GP LLC) is now seeking financial assistance for the project through the City's Affordable Housing Trust Fund (AHTF) and a commitment from the HRA to sell the property at a reduced price. Beacon is seeking a variety of funding sources for the project, including Low Income Housing Tax Credits (LIHTC) through the Minnesota Housing Finance Agency (MN Housing). The application for LIHTC is due July 14, and funding decisions are expected by the end of the year. Evidence of financial commitments and site control must be submitted with the application and are necessary for the project to be competitive for LIHTC funding.

The attached Redevelopment Agreement (Agreement) proposes the following terms and deadlines:

- \$500,000 grant from the AHTF.
- Sale of the property for one dollar.
- Funds to be provided at the closing on the property and on the construction financing.
- Requirement to close on the property by January 31, 2025. Because of the competitive nature of LIHTC funding, Beacon is asking that the HRA to agree to supporting their application for up to two rounds of funding.
- Construction to begin by July 1, 2025.
- A commitment of at least 50% of the units to be affordable at 30% of the Area Median Income (AMI).
- Compliance with the City's Inclusionary Housing Policy, including accessibility requirements.

The terms of the Redevelopment Agreement are contingent upon the project receiving tax credits

and City land use approvals. Sale of the land will require a public hearing at a future date.

RECOMMENDED ACTION:

By motion: Approve the attached resolution approving a Redevelopment Agreement with Aster Commons Limited Partnership and Aster Commons GP LLC for the development of up to 38 units of affordable, supportive housing at 6613-25 Portland Avenue.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

- Beacon Interfaith Housing Collaborative is a non-profit housing developer that has developed deeply affordable, supportive housing throughout the Twin Cities.
- The property is made up of remnant parcels from the Portland Avenue roundabout project. The HRA has been seeking a viable development proposal for the site since 2009.
- On Tuesday, March 8, 2022, at a joint work session of the City Council, HRA, and Planning Commission, Beacon presented conceptual plans for the development of up to 40 units of supportive rental housing at 6613-25 Portland Avenue. Beacon specializes in developing supportive housing at deeply affordable levels throughout the Twin Cities.
- On March 21, 2022, the HRA approved a resolution of support for the Beacon concept.
- On April 18, 2022, the HRA approved a Preliminary Redevelopment Agreement with Beacon. On January 17, 2023, the HRA extended the Preliminary Agreement until January 31, 2024.
- The population to be served would include neuro-diverse youth and young adults, and supportive housing services would be provided on-site. The 20 units of County-assisted units would be affordable at 30% of the AMI and the remaining units would be affordable at 50% of the AMI. Beacon continues to seek sources of funding to be able to provide all units affordable at 30% of the AMI.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- The 2040 Comprehensive Plan calls for a full range of housing choices that meets residents' needs at every stage of their lives and ensures a healthy balance of housing types that meet the needs of a diverse population with diverse needs.
- The City of Richfield and its HRA have a long history of partnering with organizations that best serve its residents. Supporting housing stability for people with the lowest incomes is a way to further the community's commitment to equitable opportunities for all.
- The Metropolitan Council has identified the City's share of housing affordable at 30% of the AMI to be 66 units by 2030.
- The proposed project meets several priorities of the AHTF, including:
 - Housing with units affordable at 30% of the AMI
 - Housing with accessible units
 - Housing with supportive services
 - Housing with resident rental subsidies
- In order to be financially competitive for LIHTC, the project needs to demonstrate evidence of site control and financial commitments of at least 10% of all financing needed.

C. CRITICAL TIMING ISSUES:

- The application for LIHTC funding is due July 14, 2023. A letter and accompanying resolution from the HRA, committing to the sale of the land and funding from the AHTF are needed for the application.

D. FINANCIAL IMPACT:

- Under the Agreement, the HRA would sell the property to Beacon for one dollar. There was no cost to the HRA for the property.
- The Agreement commits \$500,000 from the AHTF to the project. While there are sufficient funds available in the AHTF, the payment to Beacon would use up most of the fund's balance, so staff will likely recommend that funds be transferred from the Spending Plan to the AHTF to cover this commitment.
- The HRA's financial consultant reviewed the request and determined that the project needs the

requested funds and land write-down in order to be economically viable.

- Beacon has and will continue to cover the HRA's financial consultant and legal fees related to the project.

E. LEGAL CONSIDERATION:

- The HRA Attorney prepared the Agreement.
- A public hearing on the sale of the land will be required.
- A Declaration of Restrictive Covenants will be filed against the property, establishing the affordability requirements.

ALTERNATIVE RECOMMENDATION(S):

- Do not approve the Agreement.

PRINCIPAL PARTIES EXPECTED AT MEETING:

N/A

ATTACHMENTS:

Description	Type
☐ Resolution	Resolution Letter
☐ Contract for Private Redevelopment	Contract/Agreement
☐ Ehlers Analysis	Backup Material
☐ Aerial Photograph of Site	Exhibit

**HOUSING AND REDEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF RICHFIELD, MINNESOTA**

RESOLUTION NO. _____

**RESOLUTION APPROVING A CONTRACT FOR PRIVATE REDEVELOPMENT WITH ASTER
COMMONS LIMITED PARTNERSHIP AND ASTER COMMONS GP LLC**

WHEREAS, the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the "Authority") was created pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended, and was authorized to transact business and exercise its powers by a resolution of the City Council of the City of Richfield, Minnesota (the "City"); and

WHEREAS, Aster Commons GP LLC, a Minnesota limited liability company (the "Redeveloper"), has proposed to acquire certain property located in the City (the "Redevelopment Property") from the Authority and to transfer the Redevelopment Property to Aster Commons Limited Partnership, a Minnesota limited partnership (the "Partnership");

WHEREAS, the Partnership has proposed to construct on the Redevelopment Property a multifamily housing project consisting of approximately 38 supportive housing units (the "Minimum Improvements"); and

WHEREAS, to make the Minimum Improvements economically feasible for the Partnership to construct, the Authority has proposed to provide a grant to the Redeveloper in the principal amount of \$500,000 (the "Grant") with pooled tax increment from the Affordable Housing Trust Fund; and

WHEREAS, to make the Minimum Improvements economically feasible for the Partnership to construct, the Authority has proposed to sell the Redevelopment Property for the reduced price of \$1.00, following a public hearing; and

WHEREAS, there has been presented before this Board of Commissioners of the Authority (the "Board") a Contract for Private Redevelopment (the "Contract") between the Authority, the Partnership, and the Redeveloper, which sets forth the terms of the development of the Minimum improvements and the Grant; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota as follows:

1. The Contract is hereby in all respects authorized, approved, and confirmed, and the Chair and the Executive Director are hereby authorized and directed to execute the Contract for and on behalf of the Authority in substantially the form now on file with the Executive Director but with such modifications as shall be deemed necessary, desirable, or appropriate, the execution thereof to constitute conclusive evidence of their approval of any and all modifications therein.

2. The Chair and the Executive Director are hereby authorized to execute and deliver any and all documents deemed necessary to carry out the intentions of this resolution and the Contract.

Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota this 20th day of June, 2023.

Gordon Hanson, Acting Chair

ATTEST:

Secretary

RC125-390 (JAE)
882588v1

Draft
June 16, 2023

CONTRACT
FOR
PRIVATE REDEVELOPMENT

between

**HOUSING AND REDEVELOPMENT AUTHORITY IN AND
FOR THE CITY OF RICHFIELD, MINNESOTA**

ASTER COMMONS LIMITED PARTNERSHIP

and

ASTER COMMONS GP LLC

Dated _____, 2023

This document was drafted by:
Kennedy & Graven, Chartered (JAE)
150 South Fifth Street, Suite 700
Minneapolis, Minnesota 55402-1299
Telephone: 612-337-9300

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CONTRACT FOR PRIVATE REDEVELOPMENT

THIS CONTRACT FOR PRIVATE REDEVELOPMENT, made as of the ___ day of _____, 2023 (the “Agreement”), is between the HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), ASTER COMMONS LIMITED PARTNERSHIP, a Minnesota limited partnership (the “Partnership”), and ASTER COMMONS GP LLC, a Minnesota limited liability company (the “Redeveloper”).

WITNESSETH:

WHEREAS, the Authority was created pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended (the “HRA Act”), and was authorized to transact business and exercise its powers by a resolution of the City Council of the City of Richfield, Minnesota (the “City”); and

WHEREAS, the Authority has undertaken a program to promote redevelopment and development of land that is underused or underutilized within the City, and in this connection the Authority administers a redevelopment project known as the Richfield Redevelopment Project (the “Redevelopment Project”) pursuant to the HRA Act; and

WHEREAS, pursuant to the HRA Act, the Authority is authorized to acquire real property, or interests therein, and to undertake certain activities to facilitate the redevelopment of real property by private enterprise and promote the redevelopment within the City; and

WHEREAS, the Redeveloper proposes to acquire from the Authority certain property (the “Redevelopment Property”) within the Redevelopment Project and to transfer the Redevelopment Property to the Partnership; and

WHEREAS, the Partnership will construct thereon a multifamily housing project consisting of approximately 38 supportive housing units (the “Minimum Improvements”); and

WHEREAS, in order to achieve the objectives of the redevelopment plan for the Redevelopment Project and make the Minimum Improvements economically feasible for the Partnership to construct, the Authority is prepared to provide a grant to the Redeveloper in the principal amount of \$500,000 (the “Grant”) with pooled tax increment from the Affordable Housing Trust Fund; and

WHEREAS, the Redeveloper will convey the Minimum Improvements to the Partnership, who will be responsible for constructing, operating and maintaining the Minimum Improvements; and

WHEREAS, the Authority believes that the redevelopment to be performed pursuant to this Agreement, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State of Minnesota and local laws and requirements under which the Redevelopment Project has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I

Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context, the following terms have the following meanings:

“Agreement” means this Contract for Private Redevelopment, as the same may be from time to time modified, amended, or supplemented.

“Authority” means the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota.

“Authority Representative” means the Executive Director of the Authority.

“Board” means the Board of Commissioners of the Authority.

“Business Subsidy Act” means Minnesota Statutes, Sections 116J.993 to 116J.995, as amended.

“Certificate of Completion” means the certification provided to the Redeveloper pursuant to Section 4.4 hereof and set forth in EXHIBIT B.

“City” means the City of Richfield, Minnesota.

“City Council” means the City Council of the City.

“Closing” has the meaning provided in Section 3.2(d) hereof.

“Code” means the Internal Revenue Code of 1986, as amended.

“Construction Plans” means the plans, specifications, drawings and related documents for the construction work to be performed by the Partnership on the Redevelopment Property, including the Minimum Improvements, which (a) shall be as detailed as the plans, specifications, drawings and related documents which are submitted to the appropriate building officials of the City; and (b) shall include at least the following: (1) site plan, (2) foundation plan, (3) floor plan for each floor, (4) cross-sections of each (length and width), (5) elevations (all sides, including a building materials schedule), (6) landscape and grading plan, and (7) such other plans or supplements to the foregoing plans as the City may reasonably request to allow it to ascertain the nature and quality of the proposed construction work.

“County” means Hennepin County, Minnesota.

“Declaration” means the Declaration of Restrictive Covenants in substantially the form set forth in EXHIBIT C attached hereto.

“Event of Default” means an action by the Redeveloper listed in Article XIII hereof.

“Grant” means the grant provided by the Authority to the Redeveloper in the amount of \$500,000.

“HRA Act” means Minnesota Statutes, Sections 469.001 through 469.047, as amended.

“Minimum Improvements” means a multifamily housing project consisting of approximately 38 supportive housing units.

“Partnership” means the Aster Commons Limited Partnership, a Minnesota limited partnership, or its permitted successors and assigns.

“Preliminary Redevelopment Agreement” means the Amended and Restated Preliminary Redevelopment Agreement, dated January 17, 2023, between the Authority and the Redeveloper.

“Redeveloper” means Aster Commons GP LLC, a limited liability company, or its permitted successors and assigns.

“Redevelopment Plan” means the Redevelopment Plan for the Redevelopment Project approved and adopted by the Board and the City Council.

“Redevelopment Project” means the Richfield Redevelopment Project.

“Redevelopment Property” means the real property described in EXHIBIT A.

“State” means the State of Minnesota.

“Termination Date” means the date of termination of the “Qualified Project Period” as defined in the Declaration.

“Unavoidable Delays” means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of strikes, other labor troubles, prolonged adverse weather or acts of God, 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 governmental unit (other than the Authority in exercising its rights under this Agreement) which directly result in delays.

(The remainder of this page is intentionally left blank.)

ARTICLE II

Representations and Warranties

Section 2.1. Representations by the Authority. The Authority makes the following representations as the basis for the undertaking on its part herein contained:

(a) The Authority is a housing and redevelopment authority organized and existing under the laws of the State. Under the provisions of the HRA Act, the Authority has the power to enter into this Agreement and carry out its obligations hereunder, and execution of this Agreement has been duly, properly and validly authorized by the Authority.

(b) The Authority proposes to assist in financing certain costs necessary to facilitate the construction of the Minimum Improvements in accordance with the terms of this Agreement to further the objectives of the Redevelopment Plan and provide supportive housing units that are needed within the City.

(c) The Authority finds that the Minimum Improvements are necessary to alleviate a shortage of, and maintain existing supplies of, decent, safe, and sanitary housing in the City.

(d) The execution, delivery and performance of this Agreement and of any other documents or instruments required pursuant to this Agreement by the Authority, and consummation of the transactions contemplated therein and the fulfillment of the terms thereof, do not and will not conflict with or constitute a breach of or default under any existing (i) indenture, mortgage, deed of trust or other agreement or instrument to which the Authority is a party or by which the Authority or any of its property is or may be bound; or (ii) legislative act, constitution or other proceedings establishing or relating to the establishment of the Authority or its officers or its resolutions.

(e) There is not pending, nor to the best of the Authority's knowledge is there threatened, any suit, action or proceeding against the Authority before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the Authority to perform its obligations hereunder, or the validity or enforcement of this Agreement.

(f) No commissioner of the Board or officer of the Authority has either a direct or indirect financial interest in this Agreement, nor will any commissioner or officer benefit financially from this Agreement within the meaning of Section 469.009 of the HRA Act.

Section 2.2. Representations by the Redeveloper. The Redeveloper represents and warrants that:

(a) The Redeveloper is a limited liability company duly organized and in good standing under the laws of the State, is duly authorized to transact business within the State, and has the power to enter into this Agreement.

(b) The Redeveloper has received no notice or communication from any local, State or federal official that the activities of the Redeveloper or the Authority in or on the Redevelopment Property may be or will be in violation of any environmental law or regulation (other than those notices or communications of which the Authority is aware). The Redeveloper is aware of no facts the existence of which would cause it to be in violation of or give any person a valid claim under any local, State, or federal environmental law, regulation, or review procedure.

(c) The Redeveloper 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.

(d) 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, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any corporate restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which the Redeveloper is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(e) The proposed development hereunder would not occur but for the financial assistance being provided by the Authority hereunder.

(f) The Redeveloper shall promptly advise the Authority in writing of all litigation or claims affecting any part of the Minimum Improvements and all written complaints and charges made by any governmental authority materially affecting the Minimum Improvements or materially affecting Redeveloper or its business which may delay or require changes in construction of the Minimum Improvements.

(g) The Redeveloper shall convey the Redevelopment Property to the Partnership.

Section 2.3. Representations by Partnership. The Partnership represents and warrants that:

(a) The Partnership is a limited partnership duly organized and in good standing under the laws of the State of Minnesota, is duly authorized to transact business within the State, and has the power to enter into this Agreement.

(b) The Partnership will cause the construction of the Minimum Improvements in accordance with the terms of this Agreement, the Redevelopment Plan, and all local, State, and federal laws and regulations (including, but not limited to, environmental, zoning, building code, labor, and public health laws and regulations).

(c) Following the Redeveloper's conveyance of the Redevelopment Property to the Partnership, the Partnership shall be responsible for all of the duties of the Redeveloper in this Agreement except for the requirements of Sections 3.1 through 3.3 of this Agreement.

(d) 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, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any corporate restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which the Partnership is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(e) The Partnership 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.

(f) The Partnership shall promptly advise the Authority in writing of all litigation or claims affecting any part of the Minimum Improvements and all written complaints and charges made by any governmental authority materially affecting the Minimum Improvements or materially affecting Partnership or its business which may delay or require changes in construction of the Minimum Improvements.

ARTICLE III

Property Acquisition; Financing

Section 3.1. Status of Redevelopment Property. The Authority currently owns the Redevelopment Property and shall convey the Redevelopment Property to the Redeveloper pursuant to the provisions of Section 3.2 hereof.

Section 3.2. Conveyance of Redevelopment Property.

(a) The Authority will convey the Redevelopment Property to the Redeveloper via a quit claim deed. The Redevelopment Property will be conveyed “as-is” and “where-is.” The conveyance of the Redevelopment Property to the Redeveloper is contingent on the Board conducting a public hearing and approving the sale of the Redevelopment Property to the Redeveloper in accordance with Section 469.029 of the HRA Act. Within sixty (60) days following execution of this Agreement, the Authority will provide the Redeveloper with a commitment for title insurance from a title insurance company acceptable to the Redeveloper (the “Title Company”). The Redeveloper will be responsible for reimbursing the Authority for the cost of preparation of the commitment for title insurance. The Redeveloper shall pay for the cost of obtaining a policy of title insurance.

(b) Within sixty (60) days after the Redeveloper’s receipt of the title commitment, the Redeveloper may give the Authority written notice of any alleged defect(s) in the marketability of the Authority’s actual and/or record title to the Redevelopment Property, or any portion thereof (the “Objections”) and request that the Authority make the Authority’s title marketable or conforming. The Redeveloper’s failure to object to defects in the marketability of Authority’s title to the Redevelopment Property, in writing, within the time period set forth above or at any time prior to Closing, shall be deemed a waiver of the Redeveloper’s right to require the Authority to cure such defects. If the Redeveloper notifies the Authority of Objections within the time period set forth above, the Authority shall use good faith efforts to make the Authority’s actual and record title to the Redevelopment Property marketable. The Authority shall have up to forty-five (45) days from the Authority’s receipt of the Redeveloper’s Objections to use good faith efforts to make the Authority’s actual and record title to the Redevelopment Property marketable. In no event will the Authority be required to expend more than \$1,000 in its good faith efforts to make the Authority’s actual and record title to the Redevelopment Property marketable. If the Authority makes the Authority’s title marketable within the forty-five (45) day period, the Authority shall notify the Redeveloper, in writing, and the parties shall close pursuant to the terms of this Agreement. If the Authority is unable to make title marketable within the forty-five (45) day period, the Redeveloper may either (i) terminate this Agreement by delivering written notice of termination to the Authority; or (ii) notify the Authority that the Redeveloper waives the Redeveloper’s Objections. If the Redeveloper waives the Redeveloper’s Objections, the matters giving rise to such Objections shall be deemed a permitted encumbrance and the parties shall otherwise perform their obligations under this Agreement. The Authority shall have no obligation to take any action to clear defects in the title to the Redevelopment Property other than the good faith efforts described above.

(c) Without limitation, the Redeveloper is responsible for satisfying itself as to matters such as contamination, soils and soil stability, title and survey. The Authority shall have no obligation to cure any defect or other matter, but agrees to cooperate, at no cost or expense to it, in any efforts by the Redeveloper to achieve such a cure.

(d) On the date the Redevelopment Property is conveyed to the Redeveloper (the “Closing”), the Authority will execute and deliver to the Redeveloper the following, in form and content reasonably acceptable to the Redeveloper:

- (i) a quit claim deed conveying the Redevelopment Property to the Redeveloper;
- (ii) a non-foreign affidavit, properly executed, containing such information as is required by Section 1445(b)(2) of the Internal Revenue Code and its regulations;
- (iii) a standard form Seller’s Affidavit;
- (iv) if required, a well certificate in the form required by law;
- (v) any affidavits and disclosures required by law pertaining to private sewage treatment systems; and
- (vi) any affidavits, certificates, or other documents that may be required under applicable law and/or that are reasonably determined by the Redeveloper or the Title Company to be necessary to transfer the Redevelopment Property to the Redeveloper and to evidence that the Authority has duly authorized the transactions contemplated hereby.

(e) The Redeveloper acknowledges that the Authority will be conveying the Redevelopment Property to the Redeveloper for a purchase price of \$1.00 (the “Redevelopment Property Purchase Price”). The fair market value of the Redevelopment Property is \$570,000; therefore, the Redevelopment Property Purchase Price represents a land write-down in the amount of \$100.

(f) Prior to the conveyance of the Redevelopment Property to the Partnership or Redeveloper having delivered to the Authority a list of all sources of funding to be used to develop the Minimum Improvements and evidence of the total costs of developing the Minimum Improvements, in a form reasonably satisfactory to the Authority.

(g) The Closing will not take place until the Redeveloper or Partnership has (i) obtained all necessary land use approvals from the City; (ii) has applied for tax credits through the Minnesota Housing Finance Agency; (iii) has received bond housing allocation from Minnesota Management and Budget or through the Minnesota Housing Finance Agency or received proceeds of Housing Infrastructure Bonds (“HIBs”) or other financing from the Minnesota Housing Finance Agency; and (iv) has executed the Declaration in substantially the form set forth in EXHIBIT C attached hereto. The Partnership intends to apply for tax credits in July 2023. If the Partnership receives housing allocation from Minnesota Management and Budget or through the Minnesota Housing Finance Agency or proceeds of HIBs prior to January 31, 2024, the Redeveloper or Partnership shall obtain all of the land use approvals on or prior to one hundred eighty (180) days after receiving the allocation.

(h) In the event that the Partnership does not receive tax credits and/or other financing sufficient to build the Minimum Improvements housing allocation by January 31, 2025, unless extended by mutual agreement of the parties, this Agreement will terminate and be of no further force and effect, and the parties will be relieved of any further obligations hereunder.

Section 3.3. Grant.

(a) *Grant.* The Authority shall provide the Redeveloper with a Grant in the amount of \$500,000 to support construction of the Minimum Improvements.

(b) *Disbursement of Grant.* Subject to the immediately following conditions, the Grant shall be funded in a single disbursement of funds to the Redeveloper at the closing of construction financing for the Minimum Improvements:

- (i) the Redeveloper has closed on the Redevelopment Property;
- (ii) the Redeveloper having delivered to the Authority a list of all sources of funding to be used to develop the Minimum Improvements and evidence of the total costs of developing the Minimum Improvements, in a form reasonably satisfactory to the Authority; and
- (iii) a fully executed construction contract;
- (iv) the Redeveloper having provided evidence satisfactory to the Authority that the Redeveloper has established a separate accounting system for the Minimum Improvements for the purpose of recording the receipt and expenditure of the Grant proceeds;
- (v) there being no uncured Event of Default under this Agreement.

Section 3.4. Payment of Administrative Costs. Pursuant to the Preliminary Redevelopment Agreement, the Redeveloper has deposited with the Authority \$5,000 to pay Administrative Costs related to the Preliminary Redevelopment Agreement. The Redeveloper will deposit with the Authority an additional \$7,000 to pay Administrative Costs related to this Agreement. “Administrative Costs” are defined as \$2,000 in Authority staff costs, along with all out-of-pocket costs incurred by the Authority (including without limitation reasonable attorney and consultant costs of the Authority), all attributable to or incurred in connection with the negotiation and preparation of this Agreement and other documents and agreements in connection with the redevelopment of the Redevelopment Property, and not previously paid by Redeveloper. At the Redeveloper’s request, but no more often than monthly, the Authority will provide the Redeveloper with a written report including invoices, time sheets or other comparable evidence of expenditures for Administrative Costs and the outstanding balance of funds deposited. At any time the deposit drops below \$1,000, the Redeveloper shall replenish the deposit to the full \$7,000 within thirty (30) days after receipt of written notice thereof from the Authority. If at any time the Authority determines that the deposit is insufficient to pay Administrative Costs, the Redeveloper is obligated to pay such shortfall within fifteen (15) days after receipt of a written notice from the Authority containing evidence of the unpaid costs. If Administrative Costs incurred, and reasonably anticipated to be incurred, are less than the deposit by the Redeveloper, the Authority shall return to the Redeveloper any funds not anticipated to be needed.

Section 3.5. Exception to Business Subsidy Act. The parties agree and understand that the purpose of the Authority’s financial assistance to the Redeveloper is to facilitate development of housing and is not a “business subsidy” within the meaning of Minnesota Statutes, Sections 116J.993 to 116J.995, as amended.

Section 3.6. Records. The Authority and its representatives shall have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and records of the Redeveloper and the Partnership relating to the Minimum Improvements and the costs for which the Partnership has been reimbursed.

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ARTICLE IV

Construction of Minimum Improvements

Section 4.1. Construction of Minimum Improvements. Following the conveyance of the Redevelopment Property to the Partnership, the Partnership agrees that it will construct the Minimum Improvements on the Redevelopment Property substantially in accordance with the Construction Plans as approved pursuant to Section 4.2 hereof, and at all times prior to the Termination Date, the Partnership 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 Authority shall have no obligation to operate or maintain the Minimum Improvements.

Section 4.2. Construction Plans. Before commencement of construction of the Minimum Improvements, the Partnership shall obtain all the necessary planning approvals from the City's Planning Division.

Section 4.3. Commencement and Completion of Construction. Subject to Unavoidable Delays, the Partnership will commence the construction of the Minimum Improvements by July 1, 2025, and substantially complete construction of the Minimum Improvements by September 30, 2026. Construction is considered to be commenced upon the beginning of physical improvements beyond grading. All work with respect to the Minimum Improvements to be constructed or provided by the Partnership on the Redevelopment Property shall be in substantial conformity with the Construction Plans as submitted by the Partnership and approved by the Authority. The Executive Director of the Authority is authorized to extend the dates of commencement of construction and completion of construction set forth in this Section.

The Partnership agrees for itself, its successors and assigns, and every successor in interest to the Redevelopment Property, or any part thereof, that the Partnership, and such successors and assigns, shall promptly begin and diligently prosecute to completion the development of the Minimum Improvements.

Section 4.4. Certificate of Completion.

(a) Promptly after completion of the Minimum Improvements in accordance with those provisions of this Agreement relating solely to the obligations of the Partnership to construct the Minimum Improvements (including the dates for beginning and completion thereof), the Authority Representative will furnish the Partnership with a Certificate of Completion shown in EXHIBIT B hereof; provided, however, that prior to the issuance of the Certificate of Completion, the Partnership must provide the Authority with evidence satisfactory to the Authority Representative that all contractors, subcontractors, and project laborers have been paid.

(b) If the Authority Representative shall refuse or fail to provide any certification in accordance with the provisions of this Section, the Authority Representative shall, within thirty (30) days after written request by the Partnership, provide the Partnership with a written statement, indicating in adequate detail in what respects the Partnership has failed to complete the Minimum Improvements in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the opinion of the Authority, for the Partnership to take or perform in order to obtain such certification.

(c) Regardless of whether a Certificate of Completion is issued by the Authority, the construction of the Minimum Improvements shall be deemed to be complete upon issuance of a certificate of occupancy by the City.

Section 4.5. Reserved.

Section 4.6. Affordability Covenants. The Partnership agrees that at all times from initial occupancy of the Minimum Improvements through the Termination Date, (a) at least fifty percent (50%) of the units within the Minimum Improvements shall be reserved for occupancy by individuals and families whose income is thirty percent (30%) or less of the area median gross income constructed and satisfy the income requirements for a qualified residential rental project as defined in Section 142(d) of the Code; and the remainder of the units within the Minimum Improvements shall be reserved for occupancy by individuals whose income is fifty percent (50%) or less of the area's median gross income constructed and satisfy the income requirements for a qualified residential rental project as defined in Section 142(d) of the Code. The Partnership and the Authority shall execute the Declaration and record such agreement against the Redevelopment Property.

During the term of the Declaration, the Partnership shall not adopt any policies that the Partnership knows or should know prohibit or in any way exclude rental to tenants holding certificates/vouchers under Section 8 of the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq., or its successor because of such prospective tenant's status as such a certificate/voucher holder. Additionally, the Partnership shall not adopt policies that the Partnership knows or should know will have the effect of making it difficult for tenants holding certificates/vouchers under Section 8 of the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq., or its successor, to rent units within the Minimum Improvements (for example, policies that require income of more than two times the rent to be paid for a unit).

Section 4.7. Affordable Housing Reporting. At least annually, no later than April 1 of each year commencing on the April 1 first following the issuance of the Certificate of Completion, the Partnership shall provide a report to the Authority evidencing that the Partnership complied with the income affordability covenants set forth in Section 4.5 hereof during the previous calendar year. The income affordability reporting shall be on the form entitled "Tenant Income Certification" from the Minnesota Housing Finance Agency (MHFA HTC Form 14), or if unavailable, any similar form. The Authority may require the Partnership to provide additional information reasonably necessary to assess the accuracy of such certification. Unless earlier excused by the Authority, the Partnership shall send affordable housing reports to the Authority until the Termination Date.

It is the intention of the parties hereto that if tax-exempt revenue obligations are issued by the City or the Authority for the benefit of the Partnership, the annual report required under this Section may be used to satisfy the reporting requirements under a regulatory agreement between the City or the Authority, the Partnership, and the trustee for such tax-exempt revenue obligations.

Section 4.8. Notice of Sale of Minimum Improvements. In consideration of the financial assistance provided pursuant to Article III hereof, the Partnership agrees to provide the Authority with at least ninety (90) days' notice of any sale of the Minimum Improvements.

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ARTICLE V

Insurance

Section 5.1. Insurance.

(a) The Partnership will provide and maintain at all times during the process of constructing the Minimum Improvements an All Risk Broad Form Basis Insurance Policy and, from time to time during that period, at the request of the Authority, furnish the Authority with proof of payment of premiums on policies covering the following:

(i) builder's risk insurance, written on the so-called "Builder's Risk – Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called "all risk" form of policy; the interest of the Authority shall be protected in accordance with a clause in form and content satisfactory to the Authority;

(ii) comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with a Protective Liability Policy with limits against bodily injury and property damage of not less than \$2,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used); the Authority shall be listed as an additional insured on the policy; and

(iii) workers' compensation insurance, with statutory coverage.

(b) Upon completion of construction of the Minimum Improvements and prior to the Termination Date, the Partnership shall maintain, or cause to be maintained, at its cost and expense, and from time to time at the request of the Authority shall furnish proof of the payment of premiums on, insurance as follows:

(i) insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses;

(ii) comprehensive general public liability insurance, including personal injury liability (with employee exclusion deleted), against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of \$2,000,000, and shall be endorsed to show the Authority as an additional insured; and

(iii) such other insurance, including workers' compensation insurance respecting all employees, if any, of the Partnership, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Partnership may be self-insured with respect to all or any part of its liability for workers' compensation.

(c) All insurance required in this Article V shall be taken out and maintained in responsible insurance companies selected by the Partnership which are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Partnership will deposit annually with the Authority policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V each policy shall contain a provision that the insurer shall not cancel nor modify it in such a way as to reduce the coverage provided below the amounts required herein without giving written notice to the Partnership and the Authority at least

thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, the Partnership may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Partnership shall deposit with the Authority a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

(d) The Partnership agrees to notify the Authority immediately in the case of damage exceeding \$200,000, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. In such event the Partnership will forthwith repair, reconstruct and restore the Minimum Improvements to substantially the same or an improved condition or value as it existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction and restoration, the Partnership will apply the net proceeds of any insurance relating to such damage received by the Partnership to the payment or reimbursement of the costs thereof.

The Partnership shall complete the repair, reconstruction, and restoration of the Minimum Improvements, whether or not the net proceeds of insurance received by the Partnership for such purposes are sufficient to pay for the same. Any net proceeds remaining after completion of such repairs, construction, and restoration shall be the property of the Partnership.

(e) The Partnership and the Authority agree that all of the insurance provisions set forth in this Article V shall terminate upon the Termination Date.

Section 5.2. Subordination. Notwithstanding anything to the contrary contained in this Article V, the rights of the Authority with respect to the receipt and application of any proceeds of insurance shall, in all respects, be subject and subordinate to the rights of any lender under a Mortgage approved pursuant to Article VI hereof.

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ARTICLE VI

Financing

Section 6.1. Mortgage Financing.

(a) Before commencement of construction of the Minimum Improvements, the Partnership shall submit to the Authority evidence of one or more commitments for financing which, together with committed equity for such construction, is sufficient for payment of the Minimum Improvements. Such commitments may be submitted as short-term financing, long-term mortgage financing, a bridge loan with a long-term take-out financing commitment, or any combination of the foregoing.

(b) If the Authority finds that the financing is sufficiently committed and adequate in amount to pay the costs specified in subsection (a) above, then the Authority shall notify the Partnership in writing of its approval. Such approval shall not be unreasonably withheld and either approval or rejection shall be given within thirty (30) days from the date when the Authority is provided the evidence of financing. A failure by the Authority to respond to such evidence of financing shall be deemed to constitute an approval hereunder. If the Authority rejects the evidence of financing as inadequate, it shall do so in writing specifying the basis for the rejection. In any event the Partnership shall submit adequate evidence of financing within thirty (30) days after such rejection.

Section 6.2. Modification; Subordination. In order to facilitate the Partnership obtaining financing for the development of the Minimum Improvements, the Authority agrees to subordinate its rights under this Agreement to the holder of any Mortgage securing construction or permanent financing, under terms and conditions reasonably acceptable to the Authority. If a separate agreement to subordinate this Agreement is required by any lender, the agreement must be approved by the Board.

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ARTICLE VII

Prohibitions Against Assignment and Transfer; Indemnification

Section 7.1. Representation as to Development. The Partnership represents and agrees that its purchase of the Redevelopment Property, and its other undertakings pursuant to this Agreement, are, and will be used, for the purpose of development of the Redevelopment Property and not for speculation in land holding.

Section 7.2. Prohibition Against Partnership's Transfer of Property and Assignment of Agreement. The Partnership represents and agrees that until the Termination Date:

(a) Except only by way of security for, and only for, the purpose of obtaining financing necessary to enable the Partnership or any successor in interest to the Redevelopment Property, or any part thereof, to perform its obligations with respect to making the Minimum Improvements under this Agreement, and any other purpose authorized by this Agreement, the Partnership 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 lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Redevelopment Property or any part thereof or any interest therein, or any contract or agreement to do any of the same, except for a purchase option and right of first refusal in favor of, without the prior written approval of the Authority, the Partnership remains liable and bound by this Agreement in which event the Authority's approval is not required. Any such transfer shall be subject to the provisions of this Agreement.

(b) Prior to the issuance of the Certificate of Completion, in the event the Partnership, upon transfer or assignment of the Redevelopment Property seeks to be released from its obligations under this Agreement, the Authority shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such release that:

(i) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the Authority, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Partnership.

(ii) Any proposed transferee, by instrument in writing reasonably satisfactory to the Authority and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the Authority, have expressly assumed all of the obligations of the Partnership under this Agreement and agreed to be subject to all the conditions and restrictions to which the Partnership is subject; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Redevelopment Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, and shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Authority) deprive the Authority of any rights or remedies or controls with respect to the Redevelopment Property or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Redevelopment Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the Authority of or with respect to any rights or remedies on controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the Authority would have had, had there been no such transfer or change. In the absence of specific written agreement by the Authority to the contrary, no such

transfer or approval by the Authority thereof shall be deemed to relieve the Partnership 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.

(iii) Any and all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Redevelopment Property governed by this Article VIII, shall be in a form reasonably satisfactory to the Authority.

In the event the foregoing conditions are satisfied then the Partnership shall be released from its obligation under this Agreement.

After issuance of the Certificate of Completion for the Minimum Improvements, the Partnership may transfer or assign the Redevelopment Property or the Partnership's interest in this Agreement if it obtains the prior written consent of the Authority (which consent will not be unreasonably withheld) and the transferee or assignee is bound by all the Partnership's obligations hereunder. The Partnership shall submit to the Authority written evidence of any such transfer or assignment, including the transferee or assignee's express assumption of the Partnership's obligations under this Agreement. If the Partnership fails to provide such evidence of transfer and assumption, the Partnership shall remain bound by all its obligations under this Agreement.

Notwithstanding the foregoing, if the Partnership does not receive an allocation of low-income housing tax credits prior to the commencement of construction of the Minimum Improvements, the Partnership may, with notice to, but without the consent of the Authority, assign this Agreement to the Redeveloper. Upon such assignment, the Redeveloper shall assume all obligations of the Partnership and all references to the Partnership in this Agreement and the Declaration shall be deemed to be references to the Redeveloper.

Section 7.3. Release and Indemnification Covenants.

(a) The Partnership and the Redeveloper release from and covenant and agree that the Authority and its governing body members, officers, agents, servants and employees thereof shall not be liable for and agree to indemnify and hold harmless the Authority and its respective governing body members, officers, agents, servants and employees thereof against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements.

(b) Except for any willful misrepresentation, gross negligence or any willful or wanton misconduct of the Authority, or its governing body members, officers, agents or employees, the Partnership agrees to protect and defend the Authority and its governing body members, officers, agents, servants and employees thereof, now or 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, maintenance and operation of the Minimum Improvements. As to any willful misrepresentation, gross negligence or any willful or wanton misconduct of the Authority, or its governing body members, officers, agents or employees, the Authority agrees to protect and defend the Partnership, its officers, agents, servants and employees and hold the same harmless from any such proceedings.

(c) The Authority and its governing body members, officers, agents, servants and employees thereof shall not be liable for any damage or injury to the persons or property of the Partnership or their officers, agents, servants or employees or any other person who may be about the Redevelopment Property or Minimum Improvements due to any act of negligence of any person.

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

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ARTICLE VIII

Events of Default

Section 8.1. Events of Default. The following will be “Events of Default” under this Agreement and the term “Event of Default” means, whenever it is used in this Agreement, any one or more of the following events, after the non-defaulting party provides thirty (30) days’ written notice to the defaulting party of the event, but only if the event has not been cured within said thirty (30) days or, if the event is by its nature incurable within thirty (30) days, the defaulting party does not, within the thirty (30) day period, provide assurances reasonably satisfactory to the party providing notice of default that the event will be cured and will be cured as soon as reasonably possible:

- (a) failure by the Partnership or the Authority to observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement; or
- (b) if the Partnership:
 - (i) files 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;
 - (ii) makes an assignment for benefit of its creditors;
 - (iii) fails to pay real estate taxes on the Redevelopment Property or the Minimum Improvements as they become due;
 - (iv) admits in writing its inability to pay its debts generally as they become due;
 - (v) is adjudicated a bankrupt or insolvent;
 - (vi) fails to comply with labor laws; or
 - (vii) fails to comply with the Declaration.

Section 8.2. Remedies on Default. Whenever any Event of Default referred to in Section 8.1 hereof occurs, the non-defaulting party may exercise its rights under this Section 8.2 after providing thirty (30) days’ written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days or, if the Event of Default is by its nature incurable within thirty (30) days, the defaulting party does not provide assurances reasonably satisfactory to the non-defaulting party that the Event of Default will be cured and will be cured as soon as reasonably possible:

- (a) suspend its performance under this Agreement until it receives assurances that the defaulting party will cure its default and continue its performance under this Agreement;
- (b) cancel and rescind or terminate this Agreement; or
- (c) take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

Section 8.3. Revesting Title in Authority Upon Happening of Event Subsequent to Conveyance to Partnership. In the event that subsequent to conveyance of the Redevelopment Property to the Partnership, subject to Unavoidable Delays, the Partnership fails to commence construction of the Minimum Improvements by the dates specified in Section 4.3 hereof, and such failure to commence is not cured within ninety (90) days after written notice from the Authority to the Partnership to do so, then the Authority shall have the right to re-enter and take possession of the Redevelopment Property and to terminate and re-vest in the Authority the Redevelopment Property, it being the intent of this provision, together with other provisions of this Agreement, that the conveyance of the Redevelopment Property to the Partnership shall be made upon, and that the deeds shall contain a condition subsequent to the effect that in the event of any default on the part of the Partnership in performance of the obligations specified in this Section 8.3 and failure on the part of the Partnership to remedy, end, or abrogate such default within the period and in the manner stated in this Section, the Authority at its option may declare a termination in favor of the Authority of the title, and of all the rights and interests in and to the Redevelopment Property and that such title and all rights and interests of the Partnership, and any assigns or successors in interest to and in the Redevelopment Property, shall revert to the Authority, as applicable, but only if the events stated in this Section have not been cured within the time periods provided above. The rights of the Authority under this Section shall be subordinate to any mortgage financing pursuant to Section 6.2

Section 8.4. Resale of Reacquired Property; Disposition of Proceeds. Upon the revesting in the Authority of title to and/or possession of the Redevelopment Property, the Authority shall, pursuant to its responsibilities under law, use its best efforts to sell the Redevelopment Property and in such manner as the Authority to a qualified and responsible party or parties (as determined by the Authority) who will assume the obligation of making or completing the Minimum Improvements or such other improvements in its stead as shall be satisfactory to the Authority in accordance with the uses specified for the Redevelopment Property in this Agreement. During any time while the Authority has title to and/or possession of a parcel of property obtained by reverter, the Authority will not disturb the rights of any tenants under any leases encumbering such parcel. Upon resale of the Redevelopment Property, the proceeds thereof shall be applied:

(a) first, to reimburse the Authority for all costs and expenses incurred by it, including but not limited to salaries of personnel, in connection with the recapture, management, and resale of the Redevelopment Property (but less any income derived by the Authority from the property or part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the Redevelopment Property or part thereof (or, in the event the Redevelopment Property is exempt from taxation or assessment or such charge during the period of ownership thereof by the Authority, an amount, if paid, equal to such taxes, assessments, or charges (as determined by the Authority assessing official) as would have been payable if the Redevelopment Property were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Redevelopment Property, or part thereof at the time of revesting of title thereto in the Authority, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Partnership, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the subject improvements or any part thereof on the Redevelopment Property; and any amounts otherwise owing the Authority by the Partnership and its successor or transferee; and

(b) second, to reimburse the Partnership, its successor or transferee, up to the amount equal to the portion of the Redevelopment Property Purchase Price paid by the Partnership under Section 3.2 hereof and the amount actually invested by it in making any of the subject improvements on the Redevelopment Property or part thereof, including any related costs related to acquisition and development of the Redevelopment Property, less any gains or income withdrawn or made by it from this Agreement or the Redevelopment Property.

Any balance remaining after such reimbursements shall be retained by the Authority as its property.

Section 8.5. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority or the Partnership is intended to be exclusive of any other available remedy or remedies, but each and every such 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. In order to entitle the Authority to exercise any remedy reserved to it, it shall not be necessary to give notice, other than the notices already required in Section 8.2 hereof.

Section 8.6. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other 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 hereunder.

Section 8.7. Attorneys' Fees and Costs. Whenever any Event of Default occurs and if the Authority employs 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 Partnership under this Agreement, and the Authority prevails in the action, the Partnership agrees that it will, within ten (10) days of written demand by the Authority, pay to the Authority the reasonable fees of the attorneys and the other expenses so incurred by the Authority.

(The remainder of this page is intentionally left blank.)

ARTICLE IX

Additional Provisions

Section 9.1. Conflict of Interests; Authority Representatives Not Individually Liable. The Authority and the Redeveloper, to the best of their respective knowledge, represent and agree that no member, official, or employee of the Authority shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of the Authority shall be personally liable to the Partnership, or any successor in interest, in the event of any default or breach by the Authority or County or for any amount which may become due to the Partnership or successor or on any obligations under the terms of this Agreement.

Section 9.2. Equal Employment Opportunity. The Partnership, for itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in this Agreement it will comply with all applicable federal, State, and local equal employment and non-discrimination laws and regulations.

Section 9.3. Restrictions on Use. The Partnership agrees that, prior to the Termination Date, the Partnership, and such successors and assigns, shall use the Redevelopment Property solely for the development of affordable housing in accordance with the terms of this Agreement, including the affordability requirements set forth in Section 4.5 hereof, and shall not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Redevelopment Property or any improvements erected or to be erected thereon, or any part thereof.

Section 9.4. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring any interest in the Redevelopment Property and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 9.5. 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 its provisions.

Section 9.6. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(a) in the case of the Partnership or the Redeveloper, is addressed to or delivered personally to the Partnership or the Redeveloper, as applicable, at 2610 University Avenue West, Suite 100, Saint Paul, MN 55114, Attn: Kevin Walker, Vice President, Housing Development;

(b) in the case of the Authority, is addressed to or delivered personally to the Authority at 6700 Portland Avenue South, Richfield, MN 55423, Attn: Community Development Director;

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

Section 9.7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 9.8. Recording. The Authority may record a memorandum of this Agreement and any amendments thereto with the County Recorder and/or Registrar of Titles of the County, as the case may be. The Redeveloper shall pay all costs for recording.

Section 9.9. Amendment. This Agreement may be amended only by written agreement executed by the Authority and the Redeveloper.

Section 9.10. Interpretation; Concurrence. The language in this Agreement shall be construed simply according to its generally understood meaning, and not strictly for or against any party and no interpretation shall be affected by which party drafted any part of this Agreement. By executing this Agreement, the parties acknowledge that they (a) enter into and execute this Agreement knowingly, voluntarily and willingly of their own volition with such consultation with legal counsel as they deem appropriate; (b) have had a sufficient amount of time to consider this Agreement's terms and conditions, and to consult an attorney before signing this Agreement; (c) have read this Agreement, understand all of its terms, appreciate the significance of those terms and have made the decision to accept them as stated herein; and (d) have not relied upon any representation or statement not set forth herein.

Section 9.11. Preliminary Redevelopment Agreement. On the date of this Agreement, the Preliminary Redevelopment Agreement shall terminate.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Authority, the Redeveloper, and the Partnership have caused this Contract for Private Redevelopment to be duly executed in their respective name and behalf, as of the date and year first written above.

**HOUSING AND REDEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF RICHFIELD,
MINNESOTA**

By _____
Its Acting Chair

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this day of _____, 2023, by _____, the Chair of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this day of _____, 2023, by Melissa Poehlman, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

Execution page of the Partnership to the Contract for Private Redevelopment, dated the date and year first written above.

ASTER COMMONS LIMITED PARTNERSHIP

By: Aster Commons GP LLC,
a Minnesota limited liability company,
Its: General Partner

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this day of _____, 2023, by _____, the _____ of Aster Commons GP LLC, a limited partnership, on behalf of the Partnership.

Notary Public

Execution page of the Redeveloper to the Contract for Private Redevelopment, dated the date and year first written above.

ASTER COMMONS GP LLC

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this day of _____, 2023, by _____, the _____ of Aster Commons GP LLC, a Minnesota limited liability company, on behalf of the Owner.

Notary Public

EXHIBIT A

REDEVELOPMENT PROPERTY

Lot 31, Auditor's Subdivision No. 340, Hennepin County, Minnesota
Torrens Property
Certificate of Title 1418472

Lot 32, Auditor's Subdivision No. 340, Hennepin County, Minnesota
Torrens Property
Certificate of Title 1418471

Lot 33, Auditor's Subdivision No. 340, Hennepin County, Minnesota
Torrens Property
Certificate of Title 1418470

Lot 34, Auditor's Subdivision No. 340, Hennepin County, Minnesota
Torrens Property
Certificate of Title 1418469

EXHIBIT C

FORM OF DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS, made as of the ____ day of _____, 2023 (the “Declaration”), is by ASTER COMMONS LIMITED PARTNERSHIP, a Minnesota limited partnership (the “Partnership”), in favor of the HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”).

RECITALS:

WHEREAS, the Authority intends to convey the real property legally described in EXHIBIT A attached hereto (the “Redevelopment Property”) to Aster Commons GP LLC, a limited liability company (the “Redeveloper”) under a Contract for Private Development of even date herewith (the “Contract”) between the Authority, the Redeveloper, and the Partnership; and

WHEREAS, pursuant to the Contract, the Partnership will construct a multifamily housing project consisting of approximately 38 supportive housing units and (the “Project”) on the Redevelopment Property, and to cause compliance with certain affordability covenants described in Section 4.5 of the Contract; and

WHEREAS, the Redeveloper shall convey the Minimum Improvements to the Partnership; and

WHEREAS, Section 4.5 of the Contract requires that the Partnership cause to be executed an instrument in recordable form substantially reflecting the covenants set forth in Section 4.5 of the Contract; and

WHEREAS, the Partnership intends, declares, and covenants that the restrictive covenants set forth herein will be and are covenants running with the Redevelopment Property for the term described herein and binding upon all subsequent owners of the Redevelopment Property for the term described herein, and are not merely personal covenants of the Partnership; and

WHEREAS, capitalized terms in this Declaration have the meaning provided in the Contract unless otherwise defined herein.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Partnership agrees as follows:

1. Term of Restrictions.

(a) Occupancy and Rental Restrictions. The term of the Occupancy Restrictions set forth in Section 3 hereof will commence on the date a certificate of occupancy is received from the City of Richfield, Minnesota (the “City”) for all affordable rental units on the Redevelopment Property (the “Rental Housing Units”). The period from commencement to termination is the “Qualified Project Period.”

(b) Termination of Declaration. This Declaration will terminate upon the date that is forty (40) years after the commencement of the Qualified Project Period.

(c) Removal from Real Estate Records. Upon termination of this Declaration, the Authority will, upon request by the Partnership or its assigns, file any document appropriate to remove this Declaration from the real estate records of Hennepin County, Minnesota.

2. Project Restrictions.

(a) the Partnership represents, warrants, and covenants that:

(i) All leases of Rental Housing Units to Qualifying Tenants (as defined in Section 3(a)(i) hereof) will contain clauses, among others, wherein each individual lessee:

(1) certifies the accuracy of the statements made in its application and Eligibility Certification (as defined in Section 3(a)(ii) hereof); and

(2) agrees that the family income at the time the lease is executed will be deemed substantial and material obligation of the lessee's tenancy, that the lessee will comply promptly with all requests for income and other information relevant to determining low or moderate income status from the Partnership or the Authority, and that the lessee's failure or refusal to comply with a request for information with respect thereto will be deemed a violation of a substantial obligation of the lessee's tenancy.

(ii) Upon reasonable prior written notice, the Partnership will permit any duly authorized representative of the Authority to inspect the books and records of the Partnership pertaining to the income of Qualifying Tenants residing in the Project.

3. Occupancy Restrictions.

(a) Tenant Income Provisions. The Partnership represents, warrants, and covenants that:

(i) Qualifying Tenants. From the commencement of the Qualified Project Period, all of the housing units (the "Rental Housing Units") shall be occupied (or treated as occupied as provided herein) or held vacant and available for occupancy by Qualifying Tenants. Qualifying Tenants shall mean one or more occupants of a unit who are determined from time to time by the Partnership to have combined adjusted income that does not exceed thirty percent (30%) or fifty percent (50%) of the Minneapolis-St. Paul metropolitan statistical area (the "Metro Area") median income for the applicable calendar year, subject to the following: (1) at least fifty percent (50%) of the Rental Housing Units shall be occupied or held vacant and available for occupancy by Qualifying Tenants with a combined adjusted income that does not exceed thirty percent (30%) of the Metro Area median income for the applicable calendar year; and (2) the remainder of the Rental Housing Units shall be occupied or held vacant and available for occupancy by Qualifying Tenants with a combined adjusted income that does not exceed fifty percent (50%) of the Metro Area median income for the applicable calendar year. For purposes of this definition, the occupants of a residential unit will not be deemed to be Qualifying Tenants if all the occupants of such residential unit at any time are "students," as defined in Section 151(c)(4) of the Internal Revenue Code of 1986, as amended (the "Code"), not entitled to an exemption under the Code. The determination of whether an individual or family is of low or moderate income will be made at the time the tenancy commences and on an ongoing basis thereafter, determined at least annually. If during their tenancy a Qualifying Tenant's income exceeds one hundred forty percent (140%) of the maximum income qualifying as low or moderate income for a family of its size, the next available unit (determined in accordance with the Code and applicable regulations) (the "Next Available Unit Rule") must be leased to a Qualifying Tenant or held vacant and available for occupancy by a Qualifying Tenant. If the Next Available

Unit Rule is violated, the Rental Housing Unit will not continue to be treated as a Qualifying Unit. If any rental unit is determined not to be a Qualifying Tenant, Owner shall have one hundred eighty (180) days to have the unit become a Qualifying Unit.

(ii) Certification of Tenant Eligibility. As a condition to initial and continuing occupancy, each person who is intended to be a Qualifying Tenant will be required annually to sign and deliver to the Partnership a Certification of Tenant Eligibility substantially in the form attached hereto as EXHIBIT B, or in any other form as may be approved by the Authority (the "Eligibility Certification"), in which the prospective Qualifying Tenant certifies as to qualifying as low or moderate income. In addition, the person will be required to provide whatever other information, documents, or certifications are deemed necessary by the Authority to substantiate the Eligibility Certification, on an ongoing annual basis, and to verify that the tenant continues to be a Qualifying Tenant within the meaning of Section 3(a) hereof. Eligibility Certifications will be maintained on file by the Partnership with respect to each Qualifying Tenant who resides in a Rental Housing Unit or resided therein during the immediately preceding calendar year.

(iii) Lease. The form of lease to be utilized by the Partnership in renting any Rental Housing Units to any person who is intended to be a Qualifying Tenant will provide for termination of the lease and consent by the person to immediate eviction for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by the person with respect to the Eligibility Certification.

(iv) Annual Report. The Partnership covenants and agrees that during the term of this Declaration, it will prepare and submit to the Authority on or before April 1 of each year, a certificate substantially in the form of EXHIBIT C hereto, executed by the Partnership, (a) identifying the tenancies and the dates of occupancy (or vacancy) for all Qualifying Tenants in the Project, including the percentage of the Rental Housing Units which were occupied by Qualifying Tenants (or held vacant and available for occupancy by Qualifying Tenants) at all times during the year preceding the date of the certificate; (b) describing all transfers or other changes in ownership of the Project or any interest therein; and (c) stating, that to the best knowledge of the person executing the certificate after due inquiry, all the Rental Housing Units were rented or available for rental on a continuous basis during the year to members of the general public and that the Partnership was not otherwise in default under this Declaration during the year. In the event of a casualty, any damaged units shall be deemed to be Qualifying Units provided that the Partnership promptly commences and completes restoration of the Minimum Improvements.

(v) Notice of Non-Compliance. The Partnership will immediately notify the Authority if at any time during the term of this Declaration the Rental Housing Units are not occupied or available for occupancy as required by the terms of this Declaration.

(c) Section 8 Housing. During the term of this Declaration, the Partnership shall not adopt any policies that the Partnership knows or should know will prohibit or in any way exclude rental to tenants holding certificates/vouchers under Section 8 of the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq., or its successor because of such prospective tenant's status as such a certificate/voucher holder. Additionally, the Partnership shall not adopt policies that the Partnership knows or should know will have the effect of making it difficult for tenants holding certificates/vouchers under Section 8 of the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq., or its successor, to rent units within the Minimum Improvements (for example, policies that require income of more than two times the rent to be paid for a unit).

(d) Compliance with City's Inclusionary Housing Policy. The Partnership covenants and agrees to comply with the City's Inclusionary Housing Policy.

4. Transfer Restrictions. The Partnership covenants and agrees that the Partnership will cause or require as a condition precedent to any conveyance, transfer, assignment, or any other disposition of the Project prior to the termination of the Rental Restrictions and Occupancy Restrictions provided herein (the "Transfer") that the transferee of the Project pursuant to the Transfer assume in writing, in a form acceptable to the Authority, all duties and obligations of the Partnership under this Declaration, including this Section 4, in the event of a subsequent Transfer by the transferee prior to expiration of the Rental Restrictions and Occupancy Restrictions provided herein (the "Assumption Agreement"). The Partnership will deliver the Assumption Agreement to the Authority prior to the Transfer.

5. Notice of Sale. In consideration of the financial assistance provided to the Partnership pursuant to Article IV of the Contract, the Partnership agrees to provide the Authority with at least ninety (90) days' notice of any sale of the Project.

6. Enforcement.

(a) The Partnership will permit, during normal business hours and upon reasonable prior written notice, any duly authorized representative of the Authority to inspect any books and records of the Partnership regarding the Project with respect to the incomes of Qualifying Tenants.

(b) The Partnership will submit any other information, documents or certifications requested by the Authority which the Authority deems reasonably necessary to substantial the Partnership's continuing compliance with the provisions specified in this Declaration.

(c) The Partnership acknowledges that the primary purpose for requiring compliance by the Partnership with the restrictions provided in this Declaration is to ensure compliance of the property with the housing affordability covenants set forth in Section 4.5 of the Contract, and by reason thereof, the Partnership, in consideration for assistance provided by the Authority under the Contract that makes possible the construction of the Project on the Redevelopment Property, hereby agrees and consents that the Authority will be entitled, for any breach of the provisions of this Declaration, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Partnership of its obligations under this Declaration in a state court of competent jurisdiction. The Partnership hereby further specifically acknowledges that the Authority cannot be adequately compensated by monetary damages in the event of any default hereunder.

(d) The Partnership understands and acknowledges that, in addition to any remedy set forth herein for failure to comply with the restrictions set forth in this Declaration, the Authority may exercise any remedy available to it under Article IX of the Contract.

7. Indemnification. The Partnership hereby indemnifies, and agrees to defend and hold harmless the Authority and its members, officers, and agents from and against all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses), causes of action, suits, allegations, claims, demands, and judgments of any nature arising from the consequences of a legal or administrative proceeding or action brought against them, or any of them, on account of any failure by the Partnership to comply with the terms of this Declaration, or on account of any representation or warranty of the Partnership contained herein being untrue.

8. Agent of the Authority. The Authority will have the right to appoint an agent to carry out any of its duties and obligations hereunder, and will inform the Partnership of any agency appointment by written notice.

9. Severability. The invalidity of any clause, part or provision of this Declaration will not affect the validity of the remaining portions thereof.

10. Notices. All notices to be given pursuant to this Declaration must be in writing and will be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to any other place as a party may from time to time designate in writing. The Partnership and the Authority may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, or other communications are sent. The initial addresses for notices and other communications are as follows:

To the Authority: Housing and Redevelopment Authority
 in and for the City of Richfield, Minnesota
 6700 Portland Avenue South
 Richfield, MN 55423
 Attn: Community Development Director

To the Partnership: Aster Commons Limited Partnership
 c/o Beacon Interfaith Housing Collaborative
 2610 University Avenue West, Suite 100
 Saint Paul, MN 55114
 Attn: President or CEO

11. Governing Law. This Declaration is governed by the laws of the State of Minnesota and, where applicable, the laws of the United States of America.

12. Attorneys' Fees. In case any action at law or in equity, including an action for declaratory relief, is brought against the Partnership to enforce the provisions of this Declaration, the Partnership agrees to pay the reasonable attorneys' fees and other reasonable expenses paid or incurred by the Authority in connection with the action.

13. Declaration Binding. This Declaration and the covenants contained herein will run with the real property comprising the Project and will bind the Partnership and its successors and assigns and all subsequent owners of the Project or any interest therein, and the benefits will inure to the Authority and its successors and assigns for the term of this Declaration as provided in Section 1(b) hereof.

14. Tax Credits. If the Partnership obtains housing tax credits, it may submit the report it provides to the U.S. Department of Housing and Urban Development instead of completing the forms attached as EXHIBITS B and C to this Declaration of Restrictive Covenants.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Partnership has caused this Declaration of Restrictive Covenants to be signed by its duly authorized representative as of the date and year first written above.

ASTER COMMONS LIMITED PARTNERSHIP

By Aster Commons GP LLC,
A Minnesota limited liability company,
General Partner

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this day of _____, 2023, by _____, the _____ of Aster Commons GP LLC, a Minnesota limited liability company, on behalf of the Partnership.

Notary Public

This document was drafted by:
Kennedy & Graven, Chartered (JAE)
150 South Fifth Street, Suite 700
Minneapolis, Minnesota 55402-1299
Telephone: 612-337-9300

This Declaration of Restrictive Covenants is acknowledged and consented to by:

**HOUSING AND REDEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF RICHFIELD,
MINNESOTA**

By _____
Its Chair

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this day of _____, 2023, by _____, the Chair of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this day of _____, 2023, by Melissa Poehlman, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

EXHIBIT A TO DECLARATION OF RESTRICTIVE COVENANTS

LEGAL DESCRIPTION OF REDEVELOPMENT PROPERTY

Lot 31, Auditor's Subdivision No. 340, Hennepin County, Minnesota
Torrens Property
Certificate of Title 1418472

Lot 32, Auditor's Subdivision No. 340, Hennepin County, Minnesota
Torrens Property
Certificate of Title 1418471

Lot 33, Auditor's Subdivision No. 340, Hennepin County, Minnesota
Torrens Property
Certificate of Title 1418470

Lot 34, Auditor's Subdivision No. 340, Hennepin County, Minnesota
Torrens Property
Certificate of Title 1418469

EXHIBIT B TO DECLARATION OF RESTRICTIVE COVENANTS

CERTIFICATION OF TENANT ELIGIBILITY

Certification of Tenant Eligibility

(INCOME COMPUTATION AND CERTIFICATION)

(TO BE COMPLETED THE FIRST YEAR OF RESIDENCY ONLY)

Project: _____ Portland Avenue South, Richfield, Minnesota

Partnership: Aster Commons Limited Partnership

Unit Type: _____ [___ BR]

1. I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully, frankly and personally each of the following questions for all persons (including minors) who are to occupy the unit in the above apartment development for which application is made, all of whom are listed below:

Name of Members of the Household	Relationship To Head of Household	Age	Place of Employment
_____	_____	___	_____
_____	_____	___	_____
_____	_____	___	_____
_____	_____	___	_____
_____	_____	___	_____

Income Computation

2. The anticipated income of all the above persons during the 12-month period beginning this date,

(a) including all wages and salaries, overtime pay, commissions, fees, tips and bonuses before payroll deductions; net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness); interest and dividends; the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts; payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay; the maximum amount of public assistance available to the above persons; periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling; and all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household or spouse; but

(b) excluding casual, sporadic or irregular gifts; amounts which are specifically for or in reimbursement of medical expenses; lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen's

compensation), capital gains and settlement for personal or property losses; amounts of educational scholarships paid directly to the student or the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for these types of purposes; special pay to a serviceman head of a family who is away from home and exposed to hostile fire; relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; foster child care payments; the value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charged for the allotments; and payments received pursuant to participation in ACTION volunteer programs, is as follows: \$_____.

3. If any of the persons described above (or whose income or contributions was included in item 2) has any savings, bonds, equity in real property or other form of capital investment, provide:

(a) the total value of all such assets owned by all such persons: \$_____;

(b) the amount of income expected to be derived from such assets in the 12 month period commencing this date: \$_____; and

(c) the amount of such income which is included in income listed in item 2: \$_____.

4. (a) Will all of the persons listed in item 1 above be or have they been full-time students during five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students?

Yes _____

No _____

(b) Is any such person (other than nonresident aliens) married and eligible to file a joint federal income tax return?

Yes _____

No _____

THE UNDERSIGNED HEREBY CERTIFY THAT THE INFORMATION SET FORTH ABOVE IS TRUE AND CORRECT. THE UNDERSIGNED ACKNOWLEDGE THAT THE LEASE FOR THE UNIT TO BE OCCUPIED BY THE UNDERSIGNED WILL BE CANCELLED UPON 10 DAYS WRITTEN NOTICE IF ANY OF THE INFORMATION ABOVE IS NOT TRUE AND CORRECT.

Head of Household

Spouse

FOR COMPLETION BY PARTNERSHIP
(OR ITS MANAGER) ONLY

1. Calculation of Eligible Tenant Income:

(a) Enter amount entered for entire household in 2 above: \$_____

(b) If the amount entered in 3(a) above is greater than \$5,000, enter the greater of (i) the amount entered in 3(b) less the amount entered in 3(c) or (ii) 10% of the amount entered in 3(a):
\$_____

(c) TOTAL ELIGIBLE INCOME (Line 1(a) plus Line 1(b)): \$_____

2. The amount entered in 1(c) is less than or equal to [30%] [50%] of median income for the area in which the Project is located, as defined in the Declaration. [30%] [50%] is necessary for status as a "Qualifying Tenant" under Section 3(a) of the Declaration.

3. Rent:

(a) The rent for the unit is \$_____.

(b) The amount entered in 3(a) is less than or equal to the maximum rent permitted under the Declaration.

4. Number of apartment unit assigned: _____.

5. This apartment unit was ____ was not ____ last occupied for a period of at least 31 consecutive days by persons whose aggregate anticipated annual income as certified in the above manner upon their initial occupancy of the apartment unit was less than or equal to [30%] [50%] of Median Income in the area.

6. Check as applicable: _____ Applicant qualifies as a Qualifying Tenant (tenants of at least _____ units must meet), or _____ Applicant otherwise qualifies to rent a unit.

THE UNDERSIGNED HEREBY CERTIFIES THAT THEY HAVE NO KNOWLEDGE OF ANY FACTS WHICH WOULD CAUSE THEM TO BELIEVE THAT ANY OF THE INFORMATION PROVIDED BY THE TENANT MAY BE UNTRUE OR INCORRECT.

ASTER COMMONS LIMITED PARTNERSHIP

By Aster Commons GP LLC,
A Minnesota limited liability company,
General Partner

By _____
Its _____

EXHIBIT C TO DECLARATION OF RESTRICTIVE COVENANTS

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

(PROVIDED EACH YEAR OF RESIDENCY)

Certificate of
Continuing Program Compliance

Date: _____

The following information with respect to the multifamily housing development located at _____ Portland Avenue South, Richfield, Minnesota (the "Project"), is being provided by Aster Commons Limited Partnership, a Minnesota limited partnership (the "Partnership"), to the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the "Authority"), pursuant to that certain Declaration of Restrictive Covenants, dated _____, 2023 (the "Declaration"), with respect to the Project:

(A) The total number of residential units which are available for occupancy is _____. The total number of these units occupied is _____.

(B) The following residential units (identified by unit number) are currently occupied by "Qualifying Tenants," as the term is defined in the Declaration (for a total of ____ units):

Studio Units: _____

[____ BR Units]: _____

(C) The following residential units which are included in (B) above, have been re-designated as units for Qualifying Tenants since _____, 20____, the date on which the last "Certificate of Continuing Program Compliance" was filed with the Authority by the Partnership:

Unit Number	Previous Designation of Unit (if any)	Replacing Unit Number
_____	_____	_____
_____	_____	_____

(D) The following residential units are considered to be occupied by Qualifying Tenants based on the information set forth below:

	Unit Number	Name of Tenant	Number of Persons Residing in the Unit	Number of Bedrooms	Total Adjusted Gross Income	Date of Initial Occupancy	Rent
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
[etc.]							

(E) The Partnership has obtained a “Certification of Tenant Eligibility,” in the form provided as EXHIBIT B to the Declaration, from each Tenant named in (D) above, and each such Certificate is being maintained by the Partnership in its records with respect to the Project. Attached hereto is the most recent “Certification of Tenant Eligibility” for each Tenant named in (D) above who signed such a Certification since _____, 20____, the date on which the last “Certificate of Continuing Program Compliance” was filed with the Authority by the Partnership.

(F) In renting the residential units in the Project, the Partnership has not given preference to any particular group or class of persons (except for persons who qualify as Qualifying Tenants); and none of the units listed in (D) above have been rented for occupancy entirely by students, no one of which is entitled to file a joint return for federal income tax purposes. All of the residential units in the Project have been rented pursuant to a written lease, and the term of each lease is at least twelve (12) months.

(G) The information provided in this “Certificate of Continuing Program Compliance” is accurate and complete, and no matters have come to the attention of the Partnership which would indicate that any of the information provided herein, or in any “Certification of Tenant Eligibility” obtained from the Tenants named herein, is inaccurate or incomplete in any respect.

(H) The Project is in continuing compliance with the Declaration.

(I) The Partnership certifies that as of the date hereof at least _____ of the residential dwelling units in the Project are occupied or held open for occupancy by Qualifying Tenants, as defined and provided in the Declaration.

(J) The rental levels for each Qualifying Tenant comply with the maximum permitted under the Declaration.

IN WITNESS WHEREOF, I have hereunto affixed my signature, on behalf of the Partnership, on _____, 20____.

ASTER COMMONS LIMITED PARTNERSHIP

By Aster Commons GP LLC,
A Minnesota limited liability company,
General Partner

By _____
Its _____

MEMORANDUM

TO: Richfield HRA Commissioners
FROM: Rebecca Kurtz and Jessica Cook, Ehlers
DATE: June 13, 2023
SUBJECT: Aster Commons Request for Financial Assistance

The Richfield HRA received a request from Beacon Interfaith Housing Collaborative (the “Developer”) for a grant from the HRA’s Housing Trust Fund in the amount of \$500,000 to facilitate the development of 38 studio units of deeply affordable housing with supportive services especially designed to serve neurodivergent individuals (the “Project”). The Project site is the property currently owned by the HRA at 6613-6625 Portland Avenue South. In addition to the Housing Trust Fund request, the Developer has requested that the HRA transfer ownership of most of the HRA property to the Developer for the cost of HRA legal fees incurred in the transaction. The HRA will retain a portion of the site for a bus shelter and pull-off lane for bus loading/unloading.

The Project is applying for a myriad of federal, state, and local funding through the highly competitive Super RFP process at Minnesota Housing. To be competitive for the funding, the Developer needs at least \$500,000 of local funding (such as the HRA’s Housing Trust Fund) committed to the project. Ehlers reviewed the Project to determine if the requested funding was reasonable and necessary. Due to the deeply affordable rents, future rent increases restricted by Hennepin County funding formulas, and the level of service provided to the tenants, we have determined that the project needs the \$500,000 of funding requested to be financially viable.

This memo details the basis for that finding as well as provides additional information about the Housing Trust Fund.

Housing Trust Fund

In 2021, the City of Richfield obtained special legislation (see Exhibit A) which allows the HRA to transfer up to 10% of increment from tax increment financing districts to the HRA Housing Trust Fund through December 31, 2026. As part of the 2022 Tax Increment Financing Management Report, three redevelopment TIF districts were identified as having sufficient increment available for transfers:

- Lyndale Gateway/Interchange West
- Urban Village
- City Bella

The transfers to the Housing Trust Fund (the “Fund”) can be undertaken at any time through December 31, 2026. While there is no deadline for spending the Fund dollars, the HRA is required to report to the legislature on the uses of the Fund on February 1st of 2024 and 2026.

Once funds are transferred to the Fund, the TIF must only be used to:

1. Make grants, loans, and loan guarantees for the development, rehabilitation or financing of housing; or
2. Match other funds from federal, state, or private resources for housing projects.

The Fund cannot be used for rent or down payment assistance.

To date, the HRA has transferred \$750,000 into the Fund. Providing \$500,000 to the Aster Commons would leave a balance of \$250,000 in the Fund for other projects. However, additional increment may be transferred into the Fund if needed for other affordable housing developments.

Ehlers’ Review of Aster Commons

Ehlers is in receipt of the Project’s application to the HRA for financial assistance and the Project’s financial proforma. Our analysis is based on these submissions, which detail sources and uses, as well as the operating proforma for the Project. Ehlers conducted a review based on industry standards for project costs, developer fees, available funding sources, underwriting and financing criteria, reasonable return on investment and project cash flow.

The findings of this analysis include:

1. **Level of Affordability:** Of the 38 proposed units, over half (20 units) will be affordable to persons with incomes at or below 30% of the area median income. These 20 deeply affordable units will receive rental assistance from Hennepin County’s Housing Support program. The remaining 18 units will be affordable to persons at or below 50% of the median income and will have initial rents of \$1,027 per month.
2. **Total Development Cost:** The proposed total development cost is \$15,634,097 or \$411,424 per unit. This is on the high end of the range of per unit costs we see in the marketplace, especially because there is negligible land cost included. However, due to the small size of the project, the infill nature of the site, and the amount of common area devoted to supportive services, we find the total development costs to be reasonable. The total sources and uses for the project are as follows:

SOURCES			
	Amount	Pct.	Per Unit
Deferred Loan	6,300,792	40%	165,810
Tax Credits	4,607,267	29%	121,244
Sales Tax Rebate	281,038	2%	7,396
Energy Rebates	5,000	0%	132
Hennepin County Supportive Hsg	950,000	6%	25,000
Met Council LCDA	990,000	6%	26,053
City of Richfield AHTF	500,000	3%	13,158
FHLB AHP	1,000,000	6%	26,316
Met Council LHIA	1,000,000	6%	26,316
TOTAL SOURCES	15,634,097	100%	411,424

USES			
	Amount	Pct.	Per Unit
Construction Costs	11,578,119	74%	304,687
Environmental Abatement/Soil Correction	100,000	1%	2,632
Professional Services	926,250	6%	24,375
Financing Costs	844,709	5%	22,229
Developer Fee	1,900,000	12%	50,000
Cash Accounts/Escrows/Reserves	285,019	2%	7,501
TOTAL USES	15,634,097	100%	411,424

3. **Financing:** As can be seen in the above chart, the Developer is seeking to obtain multiple funding sources including Low Income Housing Tax Credits and a deferred loan from Minnesota Housing. The rent received from the deeply affordable units (serving persons at or below 30% of AMI) does not even cover the operating costs of the facility, let alone supportive services or debt. Therefore, projects like this one have to be financed without any amortizing debt. The Developer is experienced at assembling the necessary funding. Typically, the local City or HRA funding needs to come in first to leverage the other sources.
4. **Developer Fee:** The proposed developer fee of \$1,900,000 is 12.2% of the total development costs. Typically, we see developer fees of this magnitude only when the developer is deferring a significant portion of the fee over a ten-year period. In this case, the Developer is not proposing to defer any of the fee but, instead, use it to ensure the project is adequately funded into the future if there are shortfalls to pay for extraordinary expenses or supportive services. Beacon's past performance indicates that they do stand behind their projects. Nevertheless, by allowing a developer fee of this magnitude the HRA is entrusting the Developer to use it for the benefit of the project and the City of Richfield.
5. **Developer Return:** There is no developer equity in this project because there is not enough cashflow from the project to support a reasonable return on equity.

Recommendation:

Based upon our analysis of the information provided, the Project demonstrates a need for approximately \$500,000 in up-front grant assistance from the Housing Trust Fund to deliver the deeply affordable units with services.

Exhibit A

Laws of Minnesota, 2021, First Special Session, Chapter 14, Article 9, Section 5

CITIES OF MINNETONKA, RICHFIELD, AND ST. LOUIS PARK; TEMPORARY TRANSFER OF INCREMENT AUTHORIZED.

Subdivision 1. Transfer of increment.

- (a) The city of Minnetonka, or its economic development authority, may transfer tax increment accumulated for housing development purposes under Minnesota Statutes, section 469.1763, subdivision 2, paragraph (b) or (d), to the housing trust fund established by the city of Minnetonka under Minnesota Statutes, section 462C.16. Increment transferred under this paragraph must be used as provided in subdivision 2.
- (b) The city of Richfield, or its housing and redevelopment authority, may transfer tax increment accumulated for housing development purposes under Minnesota Statutes, section 469.1763, subdivision 2, paragraph (b) or (d), to the housing trust fund established by the city of Richfield under Minnesota Statutes, section 462C.16. Increment transferred under this paragraph must be used as provided in subdivision 2.
- (c) The city of St. Louis Park, or its economic development authority, may transfer tax increment accumulated for housing development purposes under Minnesota Statutes, section 469.1763, subdivision 2, paragraph (b) or (d), to the housing trust fund established by the city of St. Louis Park under Minnesota Statutes, section 462C.16. Increment transferred under this paragraph must be used as provided in subdivision 2.

Subd. 2. Allowable use.

Tax increment transferred under subdivision 1 must be used only to:

- (1) make grants, loans, and loan guarantees for the development, rehabilitation, or financing of housing; or
- (2) match other funds from federal, state, or private resources for housing projects.

Subd. 3. Annual financial reporting.

Tax increment transferred under this section is subject to the annual reporting requirements under Minnesota Statutes, section 469.175, subdivision 6.

Subd. 4. Legislative report.

By February 1, 2024, and February 1, 2026, each city must issue a report to the chairs and ranking minority members of the legislative committees with jurisdiction over taxes and property taxes. The report must include detailed information relating to each housing project financed with increment transferred under this section, including, when applicable, the percentage of area median income relative to each housing project, the total cost per housing project, the number of units per housing project, and income and rent limitations required under federal, state, or local law for each housing project.

Subd. 5. Expiration.

The authority to make transfers under subdivision 1 expires December 31, 2026.

EFFECTIVE DATE.

- (a) Subdivision 1, paragraph (a), is effective the day after the governing body of the city of Minnetonka and its chief clerical officer comply with the requirements of Minnesota Statutes, section 645.021, subdivisions 2 and 3.
- (b) Subdivision 1, paragraph (b), is effective the day after the governing body of the city of Richfield and its chief clerical officer comply with the requirements of Minnesota Statutes, section 645.021, subdivisions 2 and 3.
- (c) Subdivision 1, paragraph (c), is effective the day after the governing body of the city of St. Louis Park and its chief clerical officer comply with the requirements of Minnesota Statutes, section 645.021, subdivisions 2 and 3.

The Richfield Site

66th Street East and Portland Avenue South





STAFF REPORT NO. 14
HOUSING AND REDEVELOPMENT AUTHORITY
MEETING
6/20/2023

REPORT PREPARED BY: Jan Youngquist, Economic Development Manager
OTHER DEPARTMENT REVIEW:

EXECUTIVE DIRECTOR REVIEW: Melissa Poehlman, Executive Director
6/14/2023

ITEM FOR COUNCIL CONSIDERATION:

Consideration of the adoption of a resolution approving the Amended and Restated Contract for Private Development with 101 E 66th ST LLC and authorizing the issuance of a Tax Increment Limited Revenue Note related to the construction of an 80-unit mixed use project at 101 - 66th Street East.

EXECUTIVE SUMMARY:

The property at 101 - 66th Street East was first vacated in 2013. After three years of neglect, it was purchased for redevelopment by PLH & Associates in 2016. After many years of work, the City approved plans for a 42-unit mixed use building in October 2020, and the Housing and Redevelopment Authority (HRA) approved a Contract for Private Development to provide financial assistance in the form of Tax Increment in January 2021. Shortly thereafter, PLH sold the property to 101 E 66th ST LLC (Developer).

In June 2021, the Developer presented new plans for redevelopment of the site and on January 11, 2022, the City Council approved plans for the development of an 80-unit, 5-story mixed use building. On June 21, 2022, the HRA approved a Contract for Private Development and issuance of a Tax Increment Financing (TIF) Note for up to \$2,300,000.

In the interim, the Developer's budget has been impacted by increases in both construction costs and interest rates. Ehlers, the HRA's financial consultant, has reviewed updated project finances and has concluded that, as was the case with the previous financial request, there is a substantial financial "gap" that must be filled in order to redevelop the blighted site and that an increased subsidy of \$385,000 is justified, resulting in a recommendation for a new TIF Note of up to \$2,685,000.

HRA staff has worked with HRA Legal Counsel and the Developer to negotiate an Amended and Restated Contract for Private Development (Contract). Among the provisions of the Contract are:

- The Developer will make improvements totaling at least \$18,000,800 to include construction of a new 5-story mixed use building with approximately 80 apartment units and 2,800 square feet of ground floor commercial space.
- The Developer will pay and/or reimburse the HRA's up-front costs to create this Contract and for other administrative costs.
- A minimum of 20% of the units in the building (16 units) will be reserved for households earning up to 60% of the Area Median Income (AMI) for fifteen years. Affordable units are to be distributed proportionally among the various unit types.
- In accordance with the City and HRA's Inclusionary Housing Policy, the development must

include at least three "Type A" units that include roll-in showers and grab bars; or at least two units that are ADA accessible.

- The HRA will withhold the first 10% of the Tax Increment for reimbursement of its ongoing administrative costs throughout the life of the TIF District.
- The maximum TIF that would be available to the Developer is \$2,685,000. Staff, and Ehlers, have concluded that the development could not occur "But For" this level of assistance.
- The Contract includes a one-time "lookback" where the project's financial performance will be reviewed and the principal amount of the TIF Note may be adjusted accordingly. Based on this analysis, the TIF Note will either be reduced or will not change.
- As a reminder, in a TIF District, the property owner continues to pay taxes on the pre-redevelopment property values to all of the taxing jurisdictions (City, County, and School District) as had been the case prior to the establishment of the TIF District. The property owner also pays property taxes on the value of the new construction; these "new" taxes can be returned to the Developer as reimbursement for costs necessary to make the project financially feasible.

RECOMMENDED ACTION:

By motion: Approve a resolution approving the Amended and Restated Contract for Private Development with 101 E 66th ST LLC and authorizing the issuance of a Tax Increment Limited Revenue Note.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

- Southview Baptist Church vacated the property and began marketing it for sale in 2013.
- Developer PLH & Associates purchased the property in 2016.
- June 26, 2018 - The City Council approved land use applications for a 31-unit mixed use development.
- May 28, 2019 and May 12, 2020 - the City Council approved extensions of the land use approvals.
- June 15, 2020 - Revised plans with reduced commercial space and affordable units were presented to the City Council and HRA.
- July 14, 2020 - The City Council approved an application for Livable Communities Development Account grant funds through the Metropolitan Council (not awarded).
- July 20, 2020 - The HRA approved a Preliminary Development Agreement.
- October 13, 2020 - The City Council approved a revised land use application for a 42-unit mixed use development.
- January 19, 2021 - The HRA approved a Contract for Private Development and issuance of a TIF Note (not executed).
- May 2021 - PLH & Associates sold the project to North Bay Companies, dba 101 E 66th ST LLC (Developer).
- June 21, 2021 - The Developer presented plans for a 75-unit, 6-story mixed use building at a joint work session of the City Council, HRA, and Planning Commission.
- January 11, 2022 - The City Council approved land use plans for an 80-unit, 5-story mixed use building.
- June 6, 2022 - The HRA approved a Contract for Private Development and issuance of a TIF Note for up to \$2,300,000.
- February 14, 2022 - The City Council approved an extension of the land use approvals.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- In a Redevelopment TIF District, there are no statutory requirements related to housing affordability. The HRA and City's Inclusionary Housing Policy states that rental housing developments that receive financial assistance must either:
 - Reserve 20% of the units for households earning up to 60% of the Area Median Income;

OR

- Contribute 15% of the available Tax Increment generated to the Richfield Housing and Redevelopment Fund.

C. CRITICAL TIMING ISSUES:

- The Contract requires that construction commence by December 31, 2023 and be substantially complete by December 31, 2025.
- The City Council approved an extension of the land use approvals, which requires that substantial construction needs to be underway by January 11, 2024.
- The TIF District was certified on March 16, 2021. In accordance with state statute, site improvements must take place before March 16, 2025 or no increment from the site may be collected for the duration of the TIF District.

D. FINANCIAL IMPACT:

- The Contract calls for the Developer to receive up to \$2,685,000 in TIF.
 - The TIF would be provided in the form of a "Pay-As-You-Go" Note and would not pose a financial risk to the HRA (the risk would be to the Developer if adequate property taxes were not paid).
 - The development property will continue to generate and pay property taxes to all of the current taxing jurisdictions (City, County and School District) based on the "base value" of the property.
 - The Developer would be obligated to reimburse the HRA for legal and financial costs associated with drafting this Contract and with evaluating project finances.
 - The HRA would retain 10% of the TIF generated to reimburse the HRA for ongoing expenses related to administration of the TIF District.
 - The Contract calls for a one-time "lookback" where the project's financial performance will be reviewed and the principal amount of the TIF Note may be adjusted accordingly. Based on this analysis, the TIF Note will either be reduced or will not change.

E. LEGAL CONSIDERATION:

- The Contract was drafted by the HRA Attorney, Julie Eddington.

ALTERNATIVE RECOMMENDATION(S):

1. Do not approve the Contract.
2. Approve the Contract with modifications.

PRINCIPAL PARTIES EXPECTED AT MEETING:

Representative(s) of 101 E 66th ST LLC.

ATTACHMENTS:

Description	Type
☐ Resolution	Resolution Letter
☐ Amended and Restated Contract for Private Development	Contract/Agreement

**HOUSING AND REDEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF RICHFIELD, MINNESOTA**

RESOLUTION NO. _____

**RESOLUTION APPROVING THE AMENDED AND RESTATED CONTRACT FOR PRIVATE
DEVELOPMENT WITH 101 E 66TH ST LLC AND AUTHORIZING THE ISSUANCE OF A TAX
INCREMENT LIMITED REVENUE NOTE**

WHEREAS, the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the “Authority”) was created pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended, and was authorized to transact business and exercise its powers by a resolution of the City Council of the City of Richfield, Minnesota (the “City”); and

WHEREAS, the City and the Authority has established a redevelopment tax increment financing district (the “TIF District”) within the Richfield Redevelopment Project, pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended (the “TIF Act”); and

WHEREAS, 101 E 66th St LLC, a Minnesota limited liability company (the “Developer”), owns certain property in the City (the “Development Property”) and has proposed to construct thereon approximately 80 rental housing units, including sixteen affordable housing units, and approximately 2,800 square feet of commercial space (the “Minimum Improvements”); and

WHEREAS, there has been presented before this Board of Commissioners of the Authority (the “Board”) an Amended and Restated Contract for Private Development (the “Development Agreement”) between the Authority and the Developer, pursuant to which the Developer will agree to construct the Minimum Improvements, and the Authority will agree to reimburse the Developer for certain public redevelopment costs associated with the Minimum Improvements (the “Public Redevelopment Costs”); and

WHEREAS, pursuant to Minnesota Statutes, Section 469.178, the Authority is authorized to issue and sell its bonds for the purpose of financing a portion of the Public Redevelopment Costs, and such bonds shall be payable from all or any portion of revenues derived from the TIF District and pledged to the payment of the bonds; and

WHEREAS, pursuant to the Development Agreement, the Authority has proposed to issue a Tax Increment Limited Revenue Note to the Developer (the “TIF Note”) in the maximum principal amount of \$2,685,000 to reimburse the Developer for the Public Redevelopment Costs; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota as follows:

Section 1. The Development Agreement. The Development Agreement is hereby in all respects authorized, approved, and confirmed, and the Chair and the Executive Director are hereby authorized and directed to execute the Development Agreement for and on behalf of the Authority in substantially the form now on file with the Executive Director but with such modifications as shall be deemed necessary, desirable, or appropriate, the execution thereof to constitute conclusive evidence of their approval of any and all modifications therein.

Section 2. The TIF Note.

2.01. The Authority hereby approves and authorizes the Chair and Executive Director to execute the TIF Note upon the Executive Director's determination that the conditions for issuance of the TIF Note set forth in Section 3.3 of the Development Agreement have been met. The TIF Note shall be sold to the Developer with such terms provided in the Development Agreement. The Authority hereby delegates to the Executive Director the determination of the date on which the TIF Note is to be delivered. The Authority shall receive in exchange for the sale of the TIF Note the agreement of the Developer to pay or cause to be paid the Public Redevelopment Costs.

2.02. The TIF Note shall be in substantially the form set forth in Exhibit B attached to the Development Agreement, with the blanks to be properly filled in and the principal amount and payment schedule adjusted as of the date of issue.

2.03. The TIF Note shall be issued as a single typewritten note numbered R-1. The TIF Note shall be issuable only in fully registered form. Principal of the TIF Note shall be payable by check or draft issued by the registrar described herein. Principal of the TIF Note shall be payable by mail to the owner of record thereof as of the close of business on the fifteenth day of the month preceding the Payment Date (as defined in the Development Agreement), whether or not such day is a business day.

2.04. The Authority hereby appoints the Executive Director of the Authority to perform the functions of registrar, transfer agent and paying agent (the "Registrar") for the TIF Note. The effect of registration and the rights and duties of the Authority and the Registrar with respect thereto shall be as follows:

(a) The Registrar shall keep at its office a bond register in which the Registrar shall provide for the registration of ownership of the TIF Note and the registration of transfers and exchanges of the TIF Note.

(b) Upon surrender for transfer of the TIF Note duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form reasonably satisfactory to the Registrar, duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, a new TIF Note or Notes of a like aggregate principal amount and maturity, as requested by the transferor. Notwithstanding the foregoing, the TIF Note shall not be transferred to any person other than an affiliate, or other related entity, of the Developer unless the Authority has been provided with an investment letter in a form substantially similar to the investment letter submitted by the Developer or a certificate of the transferor, in a form satisfactory to the Authority, that such transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws. The Registrar may close the books for registration of any transfer after the fifteenth day of the month preceding each Payment Date and until such Payment Date.

(c) Any TIF Note surrendered upon any transfer shall be promptly cancelled by the Registrar and thereafter disposed of as directed by the Authority.

(d) If the TIF Note is presented to the Registrar for transfer, the Registrar may refuse to transfer the same until it is satisfied that the endorsement on such TIF Note or separate instrument of transfer is legally authorized. The Registrar shall incur no liability for its refusal, in good faith, to make transfers which it, in its judgment, deems improper or unauthorized.

(e) The Authority and the Registrar may treat the person in whose name the TIF Note is at any time registered in the bond register as the absolute owner of such TIF Note, whether the TIF Note shall be

overdue or not, for the purpose of receiving payment of, or on account of, the principal of such TIF Note and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability of the Authority upon such TIF Note to the extent of the sum or sums so paid.

(f) For every transfer or exchange of the TIF Note, the Registrar may impose a charge upon the owner thereof sufficient to reimburse the Registrar for any tax, fee, or other governmental charge required to be paid with respect to such transfer or exchange.

(g) In case the TIF Note shall become mutilated or be lost, stolen, or destroyed, the Registrar shall deliver a new TIF Note of like amount, maturity dates and tenor in exchange and substitution for and upon cancellation of such mutilated TIF Note or in lieu of and in substitution for such TIF Note lost, stolen, or destroyed, upon the payment of the reasonable expenses and charges of the Registrar in connection therewith; and, in the case of the TIF Note lost, stolen, or destroyed, upon filing with the Registrar of evidence satisfactory to it that such TIF Note was lost, stolen, or destroyed, and of the ownership thereof, and upon furnishing to the Registrar of an appropriate bond or indemnity in form, substance, and amount satisfactory to it, in which both the Authority and the Registrar shall be named as obligees. The TIF Note so surrendered to the Registrar shall be cancelled by it and evidence of such cancellation shall be given to the Authority. If the mutilated, lost, stolen, or destroyed TIF Note has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue a new TIF Note prior to payment.

2.05. The TIF Note shall be prepared under the direction of the Executive Director and shall be executed on behalf of the Authority by the signatures of its Chair and Executive Director. In case any officer whose signature shall appear on the TIF Note shall cease to be such officer before the delivery of the TIF Notes, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery. When the TIF Note has been so executed, it shall be delivered by the Executive Director to the Developer in accordance with the Development Agreement.

Section 3. Security Provisions of the TIF Note.

3.01. The Authority hereby pledges to the payment of the principal of the TIF Note all Available Tax Increment (as defined in the Development Agreement and as further described in the TIF Note). Available Tax Increment shall be applied to payment of the principal of the TIF Note in accordance with the terms of Development Agreement and the form of TIF Note.

3.02. Until the date the TIF Note is no longer outstanding and no principal thereof (to the extent required to be paid pursuant to this resolution) remains unpaid, the Authority shall maintain a separate and special "Bond Fund" for the TIF Note to be used for no purpose other than the payment of the principal of the TIF Note. The Authority irrevocably agrees to appropriate to the Bond Fund in each year Available Tax Increment, subject to the terms of the Development Agreement. Any Available Tax Increment remaining in either Bond Fund shall be transferred to the Authority's account for the TIF District upon the payment of all principal to be paid with respect to the TIF Note.

Section 4. Miscellaneous.

4.01. The Chair and the Executive Director are hereby authorized to execute and deliver to the Developer any and all documents deemed necessary to carry out the intentions of this resolution and the Development Agreement.

4.02. The officers of the Authority are hereby authorized and directed to prepare and furnish to the Developer certified copies of all proceedings and records of the Authority, and such other affidavits,

certificates, and information as may be required to show the facts relating to the legality and marketability of the TIF Note as the same appear from the books and records under their custody and control or as otherwise known to them, and all such certified copies, certificates, and affidavits, including any heretofore furnished, shall be deemed representations of the Authority as to the facts recited therein.

4.03. This resolution shall be effective upon the establishment of the TIF District.

4.04. The approval of the execution and delivery of the Development Agreement shall supersede any prior approvals by the Board with respect to the development of the Development Property by a private developer.

Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota this 20th day of June, 2023.

Gordon Hanson, Acting Chair

ATTEST:

Secretary

Draft
June 13, 2023

AMENDED AND RESTATED CONTRACT FOR PRIVATE DEVELOPMENT

between

**HOUSING AND REDEVELOPMENT AUTHORITY IN AND
FOR THE CITY OF RICHFIELD, MINNESOTA**

and

101 E 66TH ST LLC

Dated _____, 2023

This document was drafted by:
Kennedy & Graven, Chartered (JAE)
150 South Fifth Street, Suite 700
Minneapolis, Minnesota 55402-1299
Telephone: 612-337-9300

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CONTRACT FOR PRIVATE DEVELOPMENT

THIS AMENDED AND RESTATED CONTRACT FOR PRIVATE DEVELOPMENT, made as of the _____ day of June, 2023 (the “Agreement”), is between the HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), and 101 E 66TH ST LLC, a Minnesota limited liability company (the “Developer”).

WITNESSETH:

WHEREAS, the Authority was created pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended (the “HRA Act”), and was authorized to transact business and exercise its powers by a resolution of the City Council of the City of Richfield, Minnesota (the “City”); and

WHEREAS, the Authority has undertaken a program to promote redevelopment and development of land that is underused or underutilized within the City, and in this connection the Authority administers a redevelopment project known as the Richfield Redevelopment Project (the “Redevelopment Project”) pursuant to the HRA Act; and

WHEREAS, pursuant to the HRA Act, the Authority is authorized to undertake certain activities to facilitate the redevelopment of blighted properties and promote the development of affordable housing within the City; and

WHEREAS, within the Redevelopment Project, the Authority has created the 2020-2 Tax Increment Financing District – EMI (the “TIF District”), a redevelopment district, in order to facilitate redevelopment of certain property in the Redevelopment Project and promote the development of affordable housing within the City; and

WHEREAS, the Developer owns certain property in the City (the “Development Property”) within the TIF District and intends to construct thereon a mixed-use development, including approximately 80 apartment units (including sixteen affordable units) and approximately 2,800 square feet of commercial space (the “Minimum Improvements”); and

WHEREAS, in order to achieve the objectives of the redevelopment plan for the Redevelopment Project and make the Minimum Improvements economically feasible for the Developer to construct, the Authority is prepared to reimburse the Developer for a portion of land acquisition costs, site improvement costs, infrastructure costs, demolition and remediation costs, and other costs related to the Minimum Improvements that may be reimbursed with tax increment; and

WHEREAS, the Authority believes that the development of the TIF District pursuant to this Agreement, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State of Minnesota and local laws and requirements under which the Redevelopment Project has been undertaken and is being assisted.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I

Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context, the following terms have the following meanings:

“Agreement” means this Amended and Restated Contract for Private Development, as the same may be from time to time modified, amended, or supplemented.

“Authority” means the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota.

“Authority Representative” means the Executive Director of the Authority.

“Available Tax Increment” means, on each Payment Date, the Tax Increment attributable to the Development Property and paid to the Authority by the County in the six months preceding the Payment Date after first deducting therefrom ten percent (10%) of the Tax Increment to be used to reimburse the Authority for administrative expenses. Available Tax Increment shall not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default under this Agreement that has not been waived by the Authority. Once the Event of Default is cured or waived by the Authority, withheld Tax Increment shall be Available Tax Increment.

“Board” means the Board of Commissioners of the Authority.

“Calculation Date” means the earliest of (A) 90 days after the earlier of (i) the date of Stabilization of the Project; (ii) two years after the date of completion of the Project, as evidenced by the City’s issuance of a Certificate of Completion, or; (B) at least 30 days prior to sale of the Project

“Certificate of Completion” means the certification provided to the Developer pursuant to Section 4.4 hereof and set forth in EXHIBIT D.

“City” means the City of Richfield, Minnesota.

“City Council” means the City Council of the City.

“Construction Plans” means the plans, specifications, drawings and related documents on the construction work to be performed by the Developer on the Development Property, including the Minimum Improvements, which (a) shall be as detailed as the plans, specifications, drawings and related documents which are submitted to the appropriate building officials of the City; and (b) shall include at least the following: (1) site plan, (2) foundation plan, (3) floor plan for each floor, (4) cross-sections of each (length and width), (5) elevations (all sides, including a building materials schedule), (6) landscape and grading plan, and (7) such other plans or supplements to the foregoing plans as the City may reasonably request to allow it to ascertain the nature and quality of the proposed construction work.

“Consultant” means Ehlers & Associates, Inc.

“County” means Hennepin County, Minnesota.

“Declaration of Restrictive Covenants” means the Declaration of Restrictive Covenants between the Authority and the Developer in substantially the form set forth in EXHIBIT E.

“Developer” means 101 E 66th St LLC, a Minnesota limited liability company, or its permitted successors and assigns.

“Development Property” means the real property described in EXHIBIT A.

“Event of Default” means an action by the Developer listed in Article IX hereof.

“Holder” means the owner of a Mortgage.

“HRA Act” means Minnesota Statutes, Sections 469.001 through 469.047, as amended.

“Material Change” means a change in construction plans that materially and adversely affects generation of tax increment or changes the number of units of rental housing.

“Maturity Date” means the date that the TIF Note has been paid in full or terminated, whichever is earlier.

“Minimum Improvements” means the development on the Development Property of a mixed use development, including approximately 80 apartment units (including 16 affordable units) and approximately 2,800 square feet of commercial space.

“Minimum Market Value” has the meaning set forth in Section 4.2(a)(vi) hereof.

“Mortgage” means any mortgage made by the Developer which is secured, in whole or in part, with the Development Property and which is a permitted encumbrance pursuant to the provisions of Article VII hereof.

“Net Operating Income (NOI)” means total annual income and other project-derived annual revenue, including payments under the TIF Note, less Operating Expenses, which exclude debt service payments.

“Operating Expenses” means reasonable and customary expenses actually incurred in operating the Project and any other expenses actually incurred by the Developer pursuant to its obligations under this Agreement, determined in the same manner as shown in the Pro Forma Financial Statement, which excludes expenses after debt service, and includes administrative, payroll, marketing, insurance, property management fees, utilities, maintenance, deposits to commercially reasonable capital replacement reserves and payment of real estate taxes, but subject to final review and acceptance by the Consultant.

“Payment Date” means each February 1 and August 1 on which principal of and interest on the TIF Note is paid.

“Pro Forma Financial Statement” Project cash flow pro forma model financial statement projecting future returns, a summary of which is attached to this Agreement as EXHIBIT F.

“Public Redevelopment Costs” means costs related to the development of the Minimum Improvements and eligible to be reimbursed with Tax Increment, including but not limited to land acquisition costs, site improvement costs, infrastructure costs, and demolition and remediation costs.

“Qualified Project Period” means the period commencing on the date a certificate of occupancy is received from the City and continuing through the date that is fifteen years after the date a certificate of occupancy is received from the City.

“Redevelopment Plan” means the Redevelopment Plan for the Redevelopment Project approved and adopted by the Board and the City Council.

“Redevelopment Project” means the Richfield Redevelopment Project.

“Stabilization” means the calendar month-end date on which the Project has first achieved an average occupancy of 90% during the preceding 12 calendar months, or such earlier date as may be requested by the Developer but, for purposes of the Yield on Cost Return calculation, assuming 95% occupancy notwithstanding actual occupancy rate as of such date.

“State” means the State of Minnesota.

“Tax Increment” means that portion of the real property taxes which is paid with respect to the TIF District and which is remitted to the Authority as tax increment pursuant to the TIF Act.

“Tax Official” means any County assessor, County auditor, County or State board of equalization, 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.

“TIF Act” means the Tax Increment Financing Act, Minnesota Statutes, Sections 469.174 through 469.1794, as amended.

“TIF District” means the 2020-2 Tax Increment District – Emi, a redevelopment district within the Redevelopment Project.

“TIF Note” means the Tax Increment Limited Revenue Note, substantially in the form attached hereto as EXHIBIT B, to be delivered by the Authority to the Developer pursuant to Section 3.3(a) hereof.

“TIF Plan” means the Tax Increment Financing Plan for the TIF District, as approved by the City Council of the City on January 26, 2021, as it may be amended and supplemented.

“Total Project Cost” means the total expenditures incurred to complete development of the Project inclusive of land acquisition, hard construction costs, soft costs and financing costs as approved by Developer’s senior construction debt lender.

“Unavoidable Delays” means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of strikes, other labor troubles, prolonged adverse weather or acts of God, 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 governmental unit (other than the Authority in exercising its rights under this Agreement) which directly result in delays, acts of public enemies, wars, blockades, insurrections, riots, earthquakes, fires, floods, disasters, sabotage, regulatory changes, or other events or circumstances not within the reasonable control of a party preventing a party from performing its obligations, including, without limitation, diseases, public health emergencies, pandemics (e.g., COVID-19), endemics, travel bans, domestic or international restrictions on travel, or acts of governmental bodies (but not including governmental actions, orders, penalties, judgments, or requirements which such party could have prevented by compliance with applicable laws, regulations and standards).

“Yield on Cost Return” means NOI divided by the Minimum Improvements’ actual Total Development Costs, calculated as set forth in the sample lookback calculation attached as EXHIBIT G.

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ARTICLE II

Representations and Warranties

Section 2.1. Representations by the Authority. The Authority makes the following representations as the basis for the undertaking on its part herein contained:

(a) The Authority is a housing and redevelopment authority organized and existing under the laws of the State. Under the provisions of the HRA Act, the Authority has the power to enter into this Agreement and carry out its obligations hereunder, and execution of this Agreement has been duly, properly and validly authorized by the Authority.

(b) The Authority proposes to assist in financing certain land acquisition costs, demolition and remediation costs, and site improvement costs necessary to facilitate the construction of the Minimum Improvements in accordance with the terms of this Agreement to further the objectives of the Redevelopment Plan.

(c) The Authority finds that the Minimum Improvements are necessary to alleviate a shortage of, and maintain existing supplies of, decent, safe, and sanitary housing and to promote redevelopment of blighted properties in the City.

(d) The execution, delivery and performance of this Agreement and of any other documents or instruments required pursuant to this Agreement by the Authority, and consummation of the transactions contemplated therein and the fulfillment of the terms thereof, do not and will not conflict with or constitute a breach of or default under any existing (i) indenture, mortgage, deed of trust or other agreement or instrument to which the Authority is a party or by which the Authority or any of its property is or may be bound; or (ii) legislative act, constitution or other proceedings establishing or relating to the establishment of the Authority or its officers or its resolutions.

(e) There is not pending, nor to the best of the Authority's knowledge is there threatened, any suit, action or proceeding against the Authority before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the Authority to perform its obligations hereunder, or the validity or enforcement of this Agreement.

(f) No commissioner of the Board or officer of the Authority has either a direct or indirect financial interest in this Agreement, nor will any commissioner or officer benefit financially from this Agreement within the meaning of Section 469.009 of the HRA Act.

Section 2.2. Representations by the Developer. The Developer represents and warrants that:

(a) The Developer is a Minnesota limited liability company duly organized and in good standing under the laws of the State, is duly authorized to transact business within the State, and has the power to enter into this Agreement.

(b) The Developer will construct, operate and maintain the Minimum Improvements in accordance with the terms of this Agreement, the Redevelopment Plan, and all local, State, and federal laws and regulations (including, but not limited to, environmental, zoning, building code, labor, and public health laws and regulations).

(c) The Developer has received no notice or communication from any local, State or federal official that the activities of the Developer or the Authority in or on the Development Property may be or will be in violation of any environmental law or regulation (other than those notices or communications of which the Authority is aware). The Developer is aware of no facts the existence of which would cause it to be in violation of or give any person a valid claim under any local, State, or federal environmental law, regulation, or review procedure.

(d) 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.

(e) 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, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any corporate restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(f) The proposed development by the Developer hereunder would not occur but for the tax increment financing assistance being provided by the Authority hereunder.

(g) The Developer shall promptly advise the Authority in writing of all litigation or claims affecting any part of the Minimum Improvements and all written complaints and charges made by any governmental authority materially affecting the Minimum Improvements or materially affecting Developer or its business which may delay or require changes in construction of the Minimum Improvements.

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ARTICLE III

Property Acquisition; Financing

Section 3.1. Status of Development Property. The Developer owns the Development Property. The Authority has no obligation to purchase the Development Property.

Section 3.2. Environmental Conditions.

(a) The Developer acknowledges that the Authority makes no representations or warranties as to the condition of the soils on the Development Property or the fitness of the Development Property for construction of the Minimum Improvements or any other purpose for which the Developer may make use of such property, and that the assistance provided to the Developer under this Agreement neither implies any responsibility by the Authority for any contamination of the Development Property nor imposes any obligation on such parties to participate in any cleanup of the Development Property.

(b) Without limiting its obligations under Section 8.3 hereof, the Developer further agrees that it will indemnify, defend, and hold harmless the Authority and its governing body members, officers, and employees, from any claims or actions arising out of the presence, if any, of hazardous wastes or pollutants existing on or in the Development Property, unless and to the extent that such hazardous wastes or pollutants are present as a result of the actions or omissions of the indemnitees. Nothing in this Section will be construed to limit or affect any limitations on liability of the Authority under State or federal law, including without limitation Minnesota Statutes, Sections 466.04 and 604.02, as amended.

Section 3.3. Issuance of Pay-As-You-Go TIF Note.

(a) To reimburse the Developer for certain Public Redevelopment Costs, the Authority shall issue and deliver and the Developer shall purchase the TIF Note in the principal amount of \$2,685,000 in substantially the form set forth in EXHIBIT B. The Authority and the Developer agree that the consideration from the Developer for the purchase of the TIF Note shall consist of the Developer's payment of the Public Redevelopment Costs in at least the principal amount of the TIF Note.

The Authority shall deliver the TIF Note upon delivery by the Developer of an investment letter in substantially the form attached hereto as EXHIBIT C, together with evidence reasonably satisfactory to the Authority that the Developer has paid the Public Redevelopment Costs in at least the principal amount of the TIF Note. The principal of and interest on the TIF Note shall be payable each Payment Date solely with Available Tax Increment.

The Developer agrees that it will not seek Class 4d property status pursuant to Minn. Stat. Section 273.13, Section 25(e), as amended.

(b) The Developer understands and acknowledges that the Authority makes no representations or warranties regarding the amount of Available Tax Increment, or that revenues pledged to the TIF Note will be sufficient to pay the principal of and interest on the TIF Note. Any estimates of Tax Increment prepared by the Authority or its financial or municipal advisors in connection with the TIF District or this Agreement are for the benefit of the Authority and are not intended as representations on which the Developer may rely.

(c) The Authority acknowledges that the Developer may assign the TIF Note to a lender that provides part of the financing for the acquisition of the Development Property or the construction of the

Minimum Improvements. Pursuant to the terms of the TIF Note, the TIF Note may be assigned if the assignee executes an investment letter in substantially the form set forth in EXHIBIT C.

Section 3.4. Term of TIF District. The Developer understands and acknowledges that the TIF Note is payable solely from the Available Tax Increment generated in the first sixteen years of the TIF District.

Section 3.5. Termination of TIF District. At any time following payment in full of the principal of and interest on the TIF Note, the Authority may use the remaining Tax Increment for any other authorized uses set forth in the TIF Plan or may terminate the TIF District.

Section 3.6. Payment of Administrative Costs. The Developer has deposited with the Authority \$15,000 to pay Administrative Costs. "Administrative Costs" are defined as out-of-pocket costs incurred by the Authority, together with staff and consultant costs of the Authority, all attributable to or incurred in connection with the negotiation and preparation of this Agreement, the TIF Plan, and other documents and agreements in connection with the establishment of the TIF District and development of the Development Property, and not previously paid by Developer. At the Developer's request, but no more often than monthly, the Authority will provide the Developer with a written report including invoices, time sheets or other comparable evidence of expenditures for Administrative Costs and the outstanding balance of funds deposited. At any time the deposit drops below \$1,000, the Developer shall replenish the deposit to the full \$15,000 within 30 days after receipt of written notice thereof from the Authority. If at any time the Authority determines that the deposit is insufficient to pay Administrative Costs, the Developer is obligated to pay such shortfall within 15 days after receipt of a written notice from the Authority containing evidence of the unpaid costs. If Administrative Costs incurred, and reasonably anticipated to be incurred, are less than the deposit by the Developer, the Authority shall return to the Developer any funds not anticipated to be needed.

Section 3.7. Records. The Authority and its representatives shall have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and records of Developer relating to the Minimum Improvements and the costs for which the Developer has been reimbursed with Tax Increment.

Section 3.8. Purpose of Assistance. The parties agree and understand that the purpose of the Authority's financial assistance to the Developer is to facilitate redevelopment of blighted properties and the development of housing and is not a "business subsidy" within the meaning of Minnesota Statutes, Sections 116J.993 to 116J.995, as amended. No portion of the tax increment assistance provided pursuant to the Agreement shall be utilized for the commercial portion of the Minimum Improvements.

Section 3.9. Lookback.

(a) *Generally.* The financial assistance to the Developer under this Agreement is based on certain assumptions regarding likely performance of the Minimum Improvements including operating revenues, expenses and development costs of constructing the Minimum Improvements. The Authority and the Developer agree that the actual financial performance of the Project will be reviewed at the times described in this Section, and that the principal amount of the TIF Note will be adjusted accordingly. The Developer shall provide the Authority and its municipal advisor (the "Consultant") with the Pro Forma Financial Statements showing a target Yield on Cost Return of 7%.

(b) On the Calculation Date, the Developer of the Minimum Improvements shall deliver to the Authority and Consultant, at a minimum, (i) the Developer's actual financial statement, in the same form as the Pro Forma Financial Statement submitted to the Authority pursuant to clause (a) above and showing Net Operating Income (NOI), and such other financial information as the Consultant shall reasonably require, for trailing 12-month period preceding the Calculation Date calculated as of the

Calculation Date as provided herein and as set forth in the Pro Forma Financial Statement and (ii) evidence, satisfactory to the Authority, of its Total Project Cost.

(c) The average annual Yield on Cost Return shall be calculated by the Consultant based on the Minimum Improvements' financial statement submitted to the Authority pursuant to clause (b) above, (in the manner the Consultant determines is consistent with the sample lookback calculation attached as EXHIBIT G, as approved by the City).

(d) If the average annual Yield on Cost Return does not exceed 7% over the term of the TIF Note, then the principal amount of the TIF Note will not change. For purposes of the Yield on Cost Return calculation on the Calculation Date, (i) revenue shall be based upon 95% occupancy regardless of whether the average occupancy for the measured period is higher or lower than 95%, (ii) revenue for periods after the Calculation Date shall be inflated by 2% annually, and (iii) Operating Expenses for periods after the Calculation Date, shall be inflated by 2% annually.

(e) If the Consultant determines, based on such review, that the average annual Yield on Cost Return over the term of the TIF Note exceeds 7% (to be calculated in a manner comparable to the sample attached as EXHIBIT F), then the principal balance of the TIF Note will be reduced by an amount calculated in the manner the Consultant determines is consistent with clause (f) below.

(f) The Consultant will determine the amount of the reduction of the principal amount of the TIF Note, calculated in the manner the Consultant determines is consistent with the sample lookback calculation attached as EXHIBIT G, by:

(i) First, determining the period over which the TIF Note needs to be outstanding to achieve a 7% average annual Yield on Cost Return over the term of the TIF Note based on the Consultant's calculation of the average annual Yield on Cost Return.

(ii) Second, by determining the present value of actual or projected (with respect to future payments) annual TIF Note payments over the life of the TIF Note through the year determined in clause f(i) using the interest rate on the TIF Note as the present value discount rate.

(iii) Third, by determining the amount equal to 50% of the difference between the original principal amount of the TIF Note and the present value number calculated in clause f(ii).

(iv) Finally, the new principal amount of the TIF Note will then be determined by adding the amounts in clauses f(ii) and f(iii) and rounding to the nearest \$1,000 (the "Revised TIF Note Principal Amount").

(v) Such Revised TIF Note Principal Amount will be effective upon delivery to the Developer of a written notice stating the revised TIF Note Principal Amount as determined by the Consultant in accordance with this Section 3.8(f), accompanied by the Consultant's report. The Developer shall, thereupon, deliver the TIF Note in exchange for a new TIF Note in the Revised TIF Note Principal Amount.

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ARTICLE IV

Construction of Minimum Improvements

Section 4.1. Construction of Minimum Improvements. The Developer agrees that it will construct the Minimum Improvements on the Development Property substantially in accordance with the Construction Plans as approved pursuant to Section 4.2 hereof, and at all times prior to the Maturity Date, the Developer 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 Authority shall have no obligation to operate or maintain the Minimum Improvements.

Section 4.2. Construction Plans.

(a) Before commencement of construction of the Minimum Improvements, the Developer shall submit the Construction Plans to the Authority. The Authority Representative will approve the Construction Plans in writing if (i) the Construction Plans conform to the terms and conditions of this Agreement; (ii) the Construction Plans conform to the goals and objectives of the Redevelopment Plan; (iii) the Construction Plans conform to all applicable federal, State, and local laws, ordinances, rules and regulations; (iv) the Construction Plans are adequate to provide for construction of the Minimum Improvements; (v) the Construction Plans do not provide for expenditures in excess of the funds available to the Developer from all sources (including Developer's equity) for construction of the Minimum Improvements; (vi) the Construction Plans provide for the construction of Minimum Improvements having an estimated market value of at least \$18,000,800 (the "Minimum Market Value"); and (vii) no uncured Event of Default has occurred. Approval may be based upon a review by the City's Building Official of the Construction Plans. No approval by the Authority Representative shall relieve the Developer of the obligation to comply with the terms of this Agreement or of the Redevelopment Plan, applicable federal, State, and local laws, ordinances, rules, and regulations, or to construct the Minimum Improvements in accordance therewith. No approval by the Authority Representative shall constitute a waiver of an Event of Default. 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 Authority Representative, in whole or in part. Such rejections shall set forth in detail the reasons therefor, and shall be made within 30 days after the date of their receipt by the Authority. If the Authority Representative 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 relating to approval, rejection and resubmission of corrected Construction Plans shall continue to apply until the Construction Plans have been approved by the Authority. The Authority Representative's approval shall not be unreasonably withheld, delayed or conditioned. Said approval shall constitute a conclusive determination that the Construction Plans (and the Minimum Improvements constructed in accordance with said plans) comply to the Authority's satisfaction with the provisions of this Agreement relating thereto.

(b) If the Developer desires to make any Material Change in the Construction Plans after their approval by the Authority, the Developer shall submit the proposed change to the Authority for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2 with respect to such previously approved Construction Plans, the Authority Representative shall approve the proposed change and notify the Developer in writing of its approval. Such change in the Construction Plans shall, in any event, be deemed approved by the Authority unless rejected, in whole or in part, by written notice by the Authority to the Developer, setting forth in detail the reasons therefor. Such rejection shall be made within 30 days after receipt of the notice of such change. The Authority's approval of any such change in the Construction Plans may be conditioned on amendment to provisions of this Agreement if such amendments will mitigate the materiality of such proposed changes.

Section 4.3. Commencement and Completion of Construction. Subject to Unavoidable Delays, the Developer will commence the construction of the Minimum Improvements by December 31, 2023, and substantially complete construction of the Minimum Improvements by December 31, 2025. Construction is considered to be commenced upon the beginning of physical improvements beyond grading. All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Development Property shall be in substantial conformity with the Construction Plans as submitted by the Developer and approved by the Authority.

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 promptly begin and diligently prosecute to completion the development of the Minimum Improvements.

Section 4.4. Certificate of Completion.

(a) Promptly after completion of the Minimum Improvements in accordance with those provisions of this Agreement relating solely to the obligations of the Developer to construct the Minimum Improvements (including the dates for beginning and completion thereof), the Authority Representative will furnish the Developer with a Certificate of Completion shown in EXHIBIT D; provided, however, that prior to the issuance of the Certificate of Completion, the Developer must provide the Authority with evidence satisfactory to the Authority Representative that all contractors, subcontractors, and project laborers have been paid.

(b) If the Authority Representative shall refuse or fail to provide any certification in accordance with the provisions of this Section 4.4, the Authority Representative shall, within 30 days after written request by the Developer, provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Minimum Improvements in accordance with the provisions of this Agreement, or is otherwise in default, and what measures or acts will be necessary, in the opinion of the Authority, for the Developer to take or perform in order to obtain such certification.

(c) Regardless of whether a Certificate of Completion is issued by the Authority, the construction of the Minimum Improvements shall be deemed to be complete upon issuance of a certificate of occupancy by the City.

Section 4.5. Affordability Covenants.

(a) The Developer agrees that at all times from initial occupancy of the Minimum Improvements through the date that is fifteen (15) years after the date the Developer received a Certificate of Occupancy for the Minimum Improvements, at least sixteen (16) of the units within the Minimum Improvements shall be reserved for occupancy by individuals whose income is sixty percent (60%) or less of the area's median gross income and satisfy the income requirements for a qualified residential rental project as defined in Section 142(d) of the Internal Revenue Code.

(b) Pursuant to the City's Inclusionary Housing Policy, the Minimum Improvements must include (i) at least three (3) "Type A" units per ANSI A117.1, Section 1003 of the 2020 Minnesota Accessibility Code that include roll-in showers and grab bars; or (ii) at least two (2) Rental Housing Units that are ADA accessible units per ANSI A117.1 Section 1002 of the 2020 Minnesota Accessibility Code.

(c) The Developer agrees to distribute the affordable units across unit types as follows:

Type of Unit	Total Number of Units	Number of Affordable Units
Studio	37	7 at 60% Area Median Income
One Bedroom	31	5 at 60% Area Median Income
Two Bedroom	11	3 at 60% Area Median Income
Three Bedroom	1	1 at 60% Area Median Income

(d) The Developer and the Authority shall execute the Declaration of Restrictive Covenants in substantially the form set forth in EXHIBIT E and record such agreement against the Development Property.

(e) During the term of the Declaration, the Developer shall not adopt any policies specifically prohibiting or excluding any rental to tenants holding certificates/vouchers under Section 8 of the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq., or its successor because of such prospective tenant's status as such a certificate/voucher holder.

(f) The Authority and its representatives will have the right at all reasonable times while the covenants in this Section are in effect, after reasonable notice to inspect, examine, and copy all books and records of the Developer and its successors and assigns relating to the covenants described in this Section and in the Declaration.

(g) The Developer will immediately notify the Authority if at any time during the term of the Declaration the dwelling units in the Minimum Improvements are not occupied or available for occupancy as required by the terms of the Declaration.

Section 4.6. Affordable Housing Reporting. At least annually, no later than April 1 of each year commencing on the April 1 first following the issuance of the Certificate of Completion, the Developer shall provide a report to the Authority evidencing that the Developer complied with the income affordability covenants set forth in Section 4.5 hereof during the previous calendar year. The income affordability reporting shall be on the form entitled "Tenant Income Certification" from the Minnesota Housing Finance Agency (MHFA HTC Form 14), or if unavailable, any similar form. The Authority may require the Developer to provide additional information reasonably necessary to assess the accuracy of such certification. Unless earlier excused by the Authority, the Developer shall send affordable housing reports to the Authority until TIF District is decertified. If the Developer fails to provide the annual reporting required under this Section, the Authority may withhold payments of Available Tax Increment under the TIF Note.

It is the intention of the parties hereto that if tax-exempt revenue obligations are issued by the City or the Authority for the benefit of the Developer, the annual report required under this Section may be used to satisfy the reporting requirements under a regulatory agreement between the City or the Authority, the Developer, and the trustee for such tax-exempt revenue obligations.

Section 4.7. Notice of Sale of Minimum Improvements. In consideration of the financial assistance provided to the Developer pursuant to Article III hereof, the Developer agrees to provide the Authority with at least 90 days' notice of any sale of the Minimum Improvements.

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ARTICLE V

Insurance

Section 5.1. Insurance.

(a) The Developer will provide and maintain at all times during the process of constructing the Minimum Improvements an All Risk Broad Form Basis Insurance Policy and, from time to time during that period, at the request of the Authority, furnish the Authority with proof of payment of premiums on policies covering the following:

(i) builder's risk insurance, written on the so-called "Builder's Risk – Completed Value Basis," in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called "all risk" form of policy; the interest of the Authority shall be protected in accordance with a clause in form and content satisfactory to the Authority;

(ii) comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with a Protective Liability Policy with limits against bodily injury and property damage of not less than \$2,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used); the Authority shall be listed as an additional insured on the policy; and

(iii) workers' compensation insurance, with statutory coverage.

(b) Upon completion of construction of the Minimum Improvements and prior to the Maturity Date, the Developer shall maintain, or cause to be maintained, at its cost and expense, and from time to time at the request of the Authority shall furnish proof of the payment of premiums on, insurance as follows:

(i) insurance against loss and damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses;

(ii) comprehensive general public liability insurance, including personal injury liability (with employee exclusion deleted), against liability for injuries to persons and property, in the minimum amount for each occurrence and for each year of \$2,000,000, and shall be endorsed to show the Authority as an additional insured; and

(iii) such other insurance, including workers' compensation insurance respecting all employees, if any, of the Developer, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Developer may be self-insured with respect to all or any part of its liability for workers' compensation.

(c) All insurance required in this Article V shall be taken out and maintained in responsible insurance companies selected by the Developer which are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Developer will deposit annually with the Authority policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V each policy shall contain a provision that the insurer shall not cancel nor modify it in such a way as to reduce the coverage provided below the amounts required herein without giving written notice to the Developer and the Authority at least 30 days before the cancellation or modification becomes effective. In lieu of separate policies, the Developer

may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Developer shall deposit with the Authority a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

(d) The Developer agrees to notify the Authority immediately in the case of damage exceeding \$250,000 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 it existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction and restoration, the Developer will apply the net proceeds of any insurance relating to such damage received by the Developer to the payment or reimbursement of the costs thereof.

The Developer shall complete the repair, reconstruction, and restoration of the Minimum Improvements, whether or not the net proceeds of insurance received by the Developer for such purposes are sufficient to pay for the same. Any net proceeds remaining after completion of such repairs, construction, and restoration shall be the property of the Developer.

(e) Notwithstanding anything to the contrary contained in this Agreement, in the event of damage to the Minimum Improvements in excess of \$250,000 and the Developer fails to complete any repair, reconstruction or restoration of the Minimum Improvements within 18 months from the date of damage, the Authority may, at its option, terminate the TIF Note as provided in Section 9.3(b) hereof. If the Authority terminates the TIF Note, such termination shall constitute the Authority's sole remedy under this Agreement as a result of the Developer's failure to repair, reconstruct, or restore the Minimum Improvements. Thereafter, the Authority shall have no further obligations to make any payments under the TIF Note.

(f) The Developer and the Authority agree that all of the insurance provisions set forth in this Article V shall terminate upon the termination of this Agreement.

Section 5.2. Subordination. Notwithstanding anything to the contrary contained in this Article V, the rights of the Authority with respect to the receipt and application of any proceeds of insurance shall, in all respects, be subject and subordinate to the rights of any lender under a Mortgage approved pursuant to Article VII hereof.

(The remainder of this page is intentionally left blank.)

ARTICLE VI

Tax Increment; Taxes

Section 6.1. Right to Collect Delinquent Taxes. The Developer acknowledges that the Authority is providing substantial aid and assistance in furtherance of the redevelopment through issuance of the TIF Note. The Developer understands that the Tax Increments pledged to payment of the TIF Note are derived from real estate taxes on the Development Property, which taxes must be promptly and timely paid. To that end, the Developer agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Development Property and the Minimum Improvements. The Developer acknowledges that this obligation creates a contractual right on behalf of the Authority to sue the Developer or its successors and assigns to collect delinquent real estate taxes and any penalty or interest thereon and to pay over the same as a tax payment to the county auditor. In any such suit, the Authority shall also be entitled to recover its costs, expenses and reasonable attorneys' fees.

Section 6.2. Reduction of Taxes. The Developer agrees that after the date of certification of the TIF District and prior to completion of the Minimum Improvements, it will not cause a reduction in the real property taxes paid in respect of the Development Property through (a) willful destruction of the Development Property or any part thereof (except for the demolition of structures required for construction of the Minimum Improvements); or (b) willful refusal to reconstruct damaged or destroyed property pursuant to Section 5.1 hereof.

The Developer also agrees that it will not, prior to the Maturity Date, (i) seek exemption from property tax for the Development Property; (ii) convey or transfer or allow conveyance or transfer of the Development Property to any entity that is exempt from payment of real property taxes under State law; or (iii) seek or agree to any reduction of the assessor's estimated market value to below the Minimum Market Value.

The Developer may, at any time following the issuance of the Certificate of Completion, seek through petition or other means to have the assessor's estimated market value for the Development Property reduced to not less than the Minimum Market Value. Such activity must be preceded by written notice from the Developer to the Authority indicating its intention to do so.

Upon receiving such notice, or otherwise learning of the Developer's intentions, the Authority may suspend or reduce payments due under the TIF Note except for the portion of such payments from Available Tax Increment based on the Minimum Market Value or the assessor's estimated market value for the year in which the Minimum Improvements have been completed, if less than Minimum Market Value, until the actual amount of the reduction in market value is determined, whereupon the Authority will make the suspended payments less any amount that the Authority is required to repay the County as a result of any retroactive reduction in market value of the Development Property.

During the period that the payments are subject to suspension, the Authority may make partial payments on the TIF Note, from the amounts subject to suspension, if it determines, in its sole and absolute discretion, that the amount retained will be sufficient to cover any repayment which the County may require. Upon resolution of the Developer's tax petition, any Available Tax Increment deferred and withheld under this Section shall be paid, without interest thereon, to the extent payable under the assessor's final determination of market value.

The Authority's suspension of payments on the TIF Note pursuant to this Section shall not be considered a default under Section 9.1 hereof.

Section 6.3. Qualifications. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that upon a transfer of the Development Property to another person or entity, the Developer will remain obligated under Sections 6.1 and 6.2 hereof, unless the Developer is released from such obligations in accordance with the terms and conditions of Section 8.2(b) or 8.3 hereof.

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ARTICLE VII

Financing

Section 7.1. Mortgage Financing.

(a) Before commencement of construction of the Minimum Improvements, the Developer shall submit to the Authority evidence of one or more commitments for financing which, together with committed equity for such construction, is sufficient for payment of the Minimum Improvements. Such commitments may be submitted as short-term financing, long-term mortgage financing, a bridge loan with a long-term take-out financing commitment, or any combination of the foregoing.

(b) If the Authority finds that the financing is sufficiently committed and adequate in amount to pay the costs specified in subsection (a) above, then the Authority shall notify the Developer in writing of its approval. Such approval shall not be unreasonably withheld and either approval or rejection shall be given within 30 days from the date when the Authority is provided the evidence of financing. A failure by the Authority to respond to such evidence of financing shall be deemed to constitute an approval hereunder. If the Authority rejects the evidence of financing as inadequate, it shall do so in writing specifying the basis for the rejection. In any event the Developer shall submit adequate evidence of financing within 30 days after such rejection.

Section 7.2. Authority's Option to Cure Default in Mortgage. In the event that any portion of the Developer's funds is provided through mortgage financing, and there occurs a default under any Mortgage authorized pursuant to this Article VII, the Developer shall cause the Authority to receive copies of any notice of default received by the Developer from the Holder of such Mortgage. Thereafter, the Authority shall have the right, but not the obligation, to cure any such default on behalf of the Developer within such cure periods as are available to the Developer under the Mortgage documents.

Section 7.3. Modification; Subordination. In order to facilitate the Developer obtaining financing for the development of the Minimum Improvements, the Authority agrees to subordinate its rights under this Agreement to the Holder of any Mortgage securing construction or permanent financing, under terms and conditions reasonably acceptable to the Authority. An agreement to subordinate this Agreement must be approved by the Board.

Section 7.4. Termination. All the provisions of this Article VII shall terminate with respect to the Minimum Improvements, upon delivery of the Certificate of Completion for the Minimum Improvements. The Developer or any successor in interest to the Minimum Improvements or portion thereof, may sell or engage in financing or any other transaction creating a mortgage or encumbrance or lien on the Minimum Improvements or any portion thereof for which a Certificate of Completion has been obtained, without obtaining prior written approval of the Authority; provided that such sale, financing or other transaction creating a mortgage or encumbrance shall not be deemed as resulting in any subordination of the Authority's rights under this Agreement unless the Authority expressly consents to such a subordination.

(The remainder of this page is intentionally left blank.)

ARTICLE VIII

Prohibitions Against Assignment and Transfer; Indemnification

Section 8.1. Representation as to Development. The Developer represents and agrees that its purchase of the Development Property, and its other undertakings pursuant to this Agreement, are, and will be used, for the purpose of development of the Development Property and not for speculation in land holding.

Section 8.2. Prohibition Against Developer's Transfer of Property and Assignment of Agreement. The Developer represents and agrees that prior to issuance of the Certificate of Completion for the Minimum Improvements:

(a) Except only by way of security for, and only for, the purpose 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 making the Minimum Improvements under this Agreement, and any other purpose authorized by 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 lease, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same (except a lease to a residential occupant or a lease to a retail/commercial tenant), without the prior written approval of the Authority unless the Developer remains liable and bound by this Agreement in which event the Authority's approval is not required. Any such transfer shall be subject to the provisions of this Agreement.

(b) Prior to the issuance of the Certificate of Completion, in the event the Developer, upon transfer or assignment of the Development Property seeks to be released from its obligations under this Agreement, the Authority shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such release that:

(i) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the Authority, 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 Authority and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the Authority, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, and shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the Authority) deprive the Authority of any rights or remedies or controls with respect to the Development Property or any part thereof or the construction of the Minimum Improvements; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Development Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the Authority of or with respect to any rights or remedies on controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the Authority would have had, had there been no such transfer or change. In the

absence of specific written agreement by the Authority to the contrary, no such transfer or approval by the Authority thereof 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.

(iii) Any and all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Development Property governed by this Article VIII, shall be in a form reasonably satisfactory to the Authority.

In the event the foregoing conditions are satisfied then the Developer shall be released from its obligation under this Agreement.

After issuance of the Certificate of Completion for the Minimum Improvements, the Developer may transfer or assign the Development Property or the Developer's interest in this Agreement if it obtains the prior written consent of the Authority (which consent will not be unreasonably withheld) and the transferee or assignee is bound by all the Developer's obligations hereunder. The Developer shall submit to the Authority 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 8.3. Release and Indemnification Covenants.

(a) The Developer releases from and covenants and agrees that the Authority and its governing body members, officers, agents, servants and employees thereof shall not be liable for and agrees to indemnify and hold harmless the Authority and its respective governing body members, officers, agents, servants and employees thereof against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Minimum Improvements.

(b) Except for any willful misrepresentation, gross negligence or any willful or wanton misconduct of the Authority, or its governing body members, officers, agents or employees, the Developer agrees to protect and defend the Authority and its governing body members, officers, agents, servants and employees thereof, now or 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, maintenance and operation of the Minimum Improvements. As to any willful misrepresentation, gross negligence or any willful or wanton misconduct of the Authority, or its governing body members, officers, agents or employees, the Authority agrees to protect and defend the Developer, its officers, agents, servants and employees and hold the same harmless from any such proceedings.

(c) The Authority and its governing body members, officers, agents, servants and employees thereof shall not be liable for any damage or injury to the persons or property of the Developer or its officers, agents, servants or employees or any other person who may be about the Development Property or Minimum Improvements due to any act of negligence of any person.

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

ARTICLE IX

Events of Default

Section 9.1. Events of Default. The following will be “Events of Default” under this Agreement and the term “Event of Default” means, whenever it is used in this Agreement, any one or more of the following events, after the non-defaulting party provides 30 days’ written notice to the defaulting party of the event, but only if the event has not been cured within said 30 days or, if the event is by its nature incurable within 30 days, the defaulting party does not, within the 30 day period, provide assurances reasonably satisfactory to the party providing notice of default that the event will be cured and will be cured as soon as reasonably possible:

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

(b) if the Developer:

(i) files 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;

(ii) makes an assignment for benefit of its creditors;

(iii) fails to pay real estate taxes on the Development Property or the Minimum Improvements as they become due;

(iv) admits in writing its inability to pay its debts generally as they become due;

(v) is adjudicated a bankrupt or insolvent;

(vi) fails to comply with the Declaration; or

(vii) fails to comply with labor laws.

Section 9.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 hereof occurs, the non-defaulting party may exercise its rights under this Section 9.2 after providing 30 days’ written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said 30 days or, if the Event of Default is by its nature incurable within 30 days, the defaulting party does not provide assurances reasonably satisfactory to the non-defaulting party that the Event of Default will be cured and will be cured as soon as reasonably possible:

(a) suspend its performance under this Agreement until it receives assurances that the defaulting party will cure its default and continue its performance under this Agreement;

(b) cancel and rescind or terminate this Agreement, subject to the provisions of Section 9.3;

(c) upon a default by the Developer resulting from the Developer’s noncompliance with labor laws, the Authority may determine not to issue the TIF Note, delay the issuance of the TIF Note until the Developer is in compliance with labor laws, reduce the principal amount of the TIF Note issued or to be issued, and terminate this Agreement;

(d) upon a default by the Developer, other than as provided in subsection (c) above, the Authority may suspend payments under the TIF Note or terminate the TIF Note and the TIF District, subject to the provisions of Section 9.3 hereof; or

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

Section 9.3. Termination or Suspension of TIF Note. After the Authority has issued its Certificate of Completion for the Minimum Improvements, the Authority and the City may exercise its rights under Section 9.2 hereof only for the following Events of Default:

(a) the Developer fails to pay real estate taxes or assessments on the Development Property or any part thereof when due, and such taxes or assessments shall not have been paid, or provision satisfactory to the Authority made for such payment, within 30 days after written demand by the Authority to do so;

(b) the Developer fails to comply with Developer's obligation to 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, pursuant to Sections 4.1 and 5.1 hereof; provided that, upon Developer's failure to comply with Developer's obligations under Section 4.1 or 5.1 hereof, if uncured after 30 days' written notice to the Developer of such failure, the Authority may only suspend payments under the TIF Note until such time as Developer complies with said obligations; if the Developer fails to comply with said obligations for a period of 18 months, the Authority may terminate the TIF Note and the TIF District; or

(c) if the Developer fails to provide the annual reports required by Section 4.6 hereof regarding compliance with the income restrictions described in Section 4.5 hereof, the Authority may suspend payments of Available Tax Increment under the TIF Note.

Section 9.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority or the Developer is intended to be exclusive of any other available remedy or remedies, but each and every such 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. In order to entitle the Authority to exercise any remedy reserved to it, it shall not be necessary to give notice, other than the notices already required in Sections 9.2 and 9.3 hereof.

Section 9.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other 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 hereunder.

Section 9.6. Attorneys' Fees and Costs. Whenever any Event of Default occurs and if the Authority employs 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 under this Agreement, and the Authority prevails in the action, the Developer agrees that it will, within 10 days of written demand by the Authority, pay to the Authority the reasonable fees of the attorneys and the other expenses so incurred by the Authority.

ARTICLE X

Additional Provisions

Section 10.1. Conflict of Interests; Authority Representatives Not Individually Liable. The Authority and the Developer, to the best of their respective knowledge, represent and agree that no member, official, or employee of the Authority shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his or her personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of the Authority shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Authority or County or for any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement.

Section 10.2. Equal Employment Opportunity. The Developer, for itself and its successors and assigns, agrees that during the construction of the Minimum Improvements provided for in this Agreement it will comply with all applicable federal, State, and local equal employment and non-discrimination laws and regulations.

Section 10.3. Restrictions on Use. The Developer agrees that, prior to the Maturity Date, the Developer, and such successors and assigns, shall use the Development Property solely for the development of housing in accordance with the terms of this Agreement, including the affordability requirements set forth in Section 4.5 and shall not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Development Property or any improvements erected or to be erected thereon, or any part thereof.

Section 10.4. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring any interest in the Development Property and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 10.5. 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 its provisions.

Section 10.6. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(a) in the case of the Developer, is addressed to or delivered personally to the Developer at 2118 Fourth Avenue South, Minneapolis, MN 55404, Attn: President; and

(b) in the case of the Authority, is addressed to or delivered personally to the Authority at 6700 Portland Avenue South, Richfield, MN 55423, Attn: Community Development Director;

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

Section 10.7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 10.8. Recording. The Authority may record a memorandum of this Agreement and any amendments thereto with the Registrar of Titles of the County. The Developer shall pay all costs for recording.

Section 10.9. Amendment. This Agreement may be amended only by written agreement executed by the Authority and the Developer.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Authority has caused this Amended and Restated Contract for Private Development to be duly executed in its name and behalf and the Developer has caused this Amended and Restated Contract for Private Development to be duly executed in its name and behalf as of the date and year first written above.

**HOUSING AND REDEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF RICHFIELD,
MINNESOTA**

By _____
Its Acting Chair

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Gordon Hanson, the Acting Chair of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Melissa Poehlman, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

Execution page of the Developer to the Amended and Restated Contract for Private Development, dated the date and year first written above.

101 E 66TH ST LLC

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____, the _____ of 101 E 66th St LLC, a Minnesota limited liability company, on behalf of the Developer.

Notary Public

EXHIBIT A

DEVELOPMENT PROPERTY

Parcel 1:

That part of Lot 7, Goodspeed's First Plat, Hennepin County, Minnesota, described as follows, to wit:

Beginning at the northwest corner of said Lot 7, and running thence south along the west line of said Lot 7, a distance of 46.56 feet; thence running east a distance of 135.62 feet; thence running north a distance of 46.62 feet to the north line of said Lot 7; thence running west along the said north line of Lot 7 a distance of 135.63 feet to the place of beginning;

The North 22.56 feet of that part of Lot 7, Goodspeed's First Plat, Hennepin County, Minnesota, described as follows:

Beginning at a point on the west line of said Lot 7, 46.56 feet south of the northwest corner of said Lot 7, thence running east a distance of 135.62 feet; thence south to a point on the south line of said Lot 7, 135.61 feet east of the southwest corner of said Lot 7; thence west to said southwest corner, thence north along the west line of said Lot 7 to the point of beginning.

Parcel 2:

That part of Lot 7, Goodspeed's First Plat, Hennepin County, Minnesota, described as follows:

Beginning at a point on the west line of said Lot 7, 46.56 feet south of the northwest corner of said Lot 7, thence running east a distance of 135.62 feet; thence south to a point on the south line of said Lot 7, 135.61 feet east of the southwest corner of said Lot 7, thence west to said southwest corner, thence north along the west line of said Lot 7 to the point of beginning, except the North 22.56 feet thereof,

The west half of Lot 8, except the south 50 feet thereof, Goodspeed's First Plat, Hennepin County, Minnesota..

Parcel 3:

That part of Lot 7, Goodspeed's First Plat, Hennepin County, Minnesota, described as follows:

Commencing at the northwest corner of said Lot 7, thence south along the west line of said Lot 7, 46.56 feet, thence east on a line parallel to the north line of said Lot 7, 135.62 feet to the actual point of beginning; thence north to a point on the north line of said Lot 7, 135.63 feet east from the northwest corner thereof, thence east along the north line of said Lot 7 to the northeast corner, thence south along the east line to the southeast corner of said Lot 7, thence west along the south line to a point 135.61 feet east from the southwest corner measured along the south line of said Lot 7, thence north to the actual point of beginning.

Parcel 4:

The east half of Lot 8, Goodspeed's First Plat, Hennepin County, Minnesota.

EXHIBIT B

FORM OF TIF NOTE

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF HENNEPIN
HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE
CITY OF RICHFIELD

No. R-1

\$ _____

TAX INCREMENT LIMITED REVENUE NOTE
SERIES _____

Rate _____% Date of Original Issue _____, 20____

The Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the “Authority”), for value received, certifies that it is indebted and hereby promises to pay to 101 E 66th St LLC, a Minnesota limited liability company, or registered assigns (the “Owner”), the principal sum of \$2,685,000 and to pay interest thereon at the rate per annum set forth above, as and to the extent set forth herein. Capitalized terms used herein that are otherwise not defined shall have the meanings provided in the Amended and Restated Contract for Private Development, dated _____, 2023 (the “Agreement”), between the Authority and the Owner.

1. Payments. Principal and interest (the “Payments”) shall be paid on August 1, 2024, and each February 1 and August 1 thereafter (each a “Payment Date”) to and including February 1, 2039, in the amounts and from the sources set forth in Section 3 herein. Payments shall be applied first to accrued interest, and then to unpaid principal.

Payments are payable by mail to the address of the Owner or such other address as the Owner may designate upon 30 days’ written notice to the Authority. Payments on this Note are payable in any coin or currency of the United States of America which, on the Payment Date, is legal tender for the payment of public and private debts.

2. Interest. Interest at the rate stated above shall accrue on the unpaid principal, commencing on the Date of Original Issue. Interest shall accrue on a simple basis and will not be added to principal. Interest shall be computed on the basis of a year of three hundred sixty (360) days and charged for actual days principal is unpaid.

3. Available Tax Increment. Payments on this Note are payable on each Payment Date in the amount of and solely payable from Available Tax Increment attributable to the Development Property and paid to the Authority by the County in the six (6) months preceding the Payment Date. The principal of and interest on this Note shall be payable each Payment Date solely from Available Tax Increment. No payments will be made on the Note on any Payment Date if there is an uncured Event of Default under the Agreement.

“Available Tax Increment” means, on each Payment Date, the Tax Increment attributable to the Development Property and paid to the Authority by the County in the six (6) months preceding the Payment Date after first deducting therefrom ten percent (10%) of the Tax Increment to be used to reimburse the Authority for administrative expenses and subject to Section 4.5 hereof. Available Tax Increment shall not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default under this Agreement that has not been waived by the Authority. Once the Event of Default is cured or waived by the Authority, withheld Tax Increment shall be Available Tax Increment.

The Authority shall have no obligation to pay principal of and interest on this Note on each Payment Date from any source other than Available Tax Increment, and the failure of the Authority to pay the entire amount of principal or interest on this Note on any Payment Date shall not constitute a default hereunder as long as the Authority pays principal and interest hereon to the extent of Available Tax Increment. The Authority shall have no obligation to pay unpaid balance of principal or accrued interest that may remain after the payment of Available Tax Increment from the last payment of Tax Increment the Authority is entitled to receive from the County with respect to the Development Property.

4. Optional Prepayment. The principal sum and all accrued interest payable under this Note is prepayable in whole or in part at any time by the Authority without premium or penalty. No partial prepayment shall affect the amount or timing of any other regular payment otherwise required to be made under this Note.

5. Termination. At the Authority’s option, this Note shall terminate and the Authority’s obligation to make any payments under this Note shall be discharged upon the occurrence of an Event of Default on the part of the Developer, but only if the Event of Default has not been cured in accordance with Section 9.2 of the Agreement.

6. Nature of Obligation. This Note is issued to aid in financing certain public development costs and administrative costs of a Redevelopment Project undertaken by the Authority pursuant to Minnesota Statutes, Sections 469.001 through 469.047, as amended, and is issued pursuant to an authorizing resolution (the “Resolution”) duly adopted by the Board of Commissioners of the Authority on _____, 2023, and pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including Minnesota Statutes, Sections 469.174 through 469.1794, as amended. This Note is a limited obligation of the Authority which is payable solely from Available Tax Increment pledged to the payment hereof under the Resolution. This Note and the interest hereon shall not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the Authority. Neither the State of Minnesota, nor any political subdivision thereof shall be obligated to pay the principal of or interest on this Note or other costs incident hereto except out of Available Tax Increment, and neither the full faith and credit nor the taxing power of the State of Minnesota or any political subdivision thereof is pledged to the payment of the principal of or interest on this Note or other costs incident hereto.

7. Estimated Tax Increment Payments. Any estimates of Tax Increment prepared by the Authority or its financial or municipal advisors in connection with the TIF District or the Agreement are for the benefit of the Authority, and are not intended as representations on which the Developer may rely.

THE AUTHORITY MAKES NO REPRESENTATION OR WARRANTY THAT THE AVAILABLE TAX INCREMENT WILL BE SUFFICIENT TO PAY THE PRINCIPAL OF AND INTEREST ON THIS NOTE.

8. Registration. This Note is issuable only as a fully registered note without coupons.

9. Transfer. As provided in the Resolution, and subject to certain limitations set forth therein, this Note is transferable upon the books of the Authority kept for that purpose at the principal office of the City Clerk of the City of Richfield. Upon surrender for transfer of this TIF Note, including any assignment or exchange thereof, duly endorsed by the registered owner thereof or accompanied by a written instrument of transfer, in form reasonably satisfactory to the Executive Director, as registrar (the “Registrar”), duly executed by the registered owner thereof or by an attorney duly authorized by the registered owner in writing, and the payment by the Owner of any tax, fee, or governmental charge required to be paid by or to the Authority with respect to such transfer or exchange, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, a new Note of the same aggregate principal amount, bearing interest at the same rate and maturing on the same dates.

Notwithstanding the foregoing, this TIF Note shall not be transferred to any person other than an affiliate, or other related entity, of the Owner unless the Authority has been provided with an investment letter in a form substantially similar to the investment letter in Exhibit C attached to the Agreement or a certificate of the transferor, in a form satisfactory to the Executive Director of the Authority, that such transfer is exempt from registration and prospectus delivery requirements of federal and applicable state securities laws. The Registrar may close the books for registration of any transfer after the fifteenth day of the month preceding each Payment Date and until such Payment Date.

The Owner may assign this TIF Note to a lender that provides all or part of the financing for the acquisition of the Development Property or the construction of the Minimum Improvements. The Authority hereby consents to such assignment, conditioned upon receipt of an investment letter from such lender in substantially the form attached to the Agreement as Exhibit C, or other form reasonably acceptable to the Executive Director of the Authority. The Authority also agrees that future assignments of this TIF Note may be approved by the Executive Director of the Authority without action of the Board of Commissioners of the Authority, upon the receipt of an investment letter in substantially the form of Exhibit C of the Agreement or other investment letter reasonably acceptable to the Authority from such assignees.

This Note is issued pursuant to the Resolution and is entitled to the benefits thereof, which Resolution is incorporated herein by reference.

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 exist, to happen, and to be performed in order to make this Note a valid and binding limited obligation of the Authority according to its terms, have been done, do exist, have happened, and have been performed in due form, time and manner as so required.

IN WITNESS WHEREOF, the Board of Commissioners of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota has caused this Note to be executed with the manual signatures of its Chair and Executive Director, all as of the Date of Original Issue specified above.

**HOUSING AND REDEVELOPMENT
AUTHORITY IN AND FOR THE CITY OF
RICHFIELD, MINNESOTA**

Executive Director

Chair

REGISTRATION PROVISIONS

The ownership of the unpaid balance of the within Note is registered in the bond register of the Authority's Executive Director, in the name of the person last listed below.

Date of Registration

Registered Owner

Signature of Executive Director

101 E 66th St, LLC

Federal ID # _____

EXHIBIT C

FORM OF INVESTMENT LETTER

To the Housing and Redevelopment Authority in and for the City of Richfield (the “Authority”)
Attention: Executive Director

Re: \$_____ Tax Increment Limited Revenue Note, Series 20____

The undersigned, as Owner of \$_____ in principal amount of the above-captioned Note (the “Note”) pursuant to a resolution adopted by the Board of Commissioners of the Authority on _____, 2023 (the “Resolution”), hereby represents to you and to Kennedy & Graven, Chartered, Minneapolis, Minnesota, development counsel, as follows:

1. We understand and acknowledge that the TIF Note is delivered to the Owner as of this date pursuant to the Resolution and the Amended and Restated Contract for Private Development, dated _____, 2023 (the “Agreement”), between the Authority and the Owner.

2. We understand that the TIF Note is payable as to principal and interest solely from Available Tax Increment (as defined in the TIF Note).

3. We further understand that any estimates of Tax Increment prepared by the Authority or its financial or municipal advisors in connection with the TIF District, the Agreement or the TIF Note are for the benefit of the Authority, and are not intended as representations on which the Owner may rely.

4. We have sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal obligations, to be able to evaluate the risks and merits of the investment represented by the purchase of the above-stated principal amount of the TIF Note.

5. We acknowledge that no offering statement, prospectus, offering circular or other comprehensive offering statement containing material information with respect to the Authority and the TIF Note has been issued or prepared by the Authority, and that, in due diligence, we have made our own inquiry and analysis with respect to the Authority, the TIF Note and the security therefor, and other material factors affecting the security and payment of the TIF Note.

6. We acknowledge that we have either been supplied with or have access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and we have had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Authority, the TIF Note and the security therefor, and that as a reasonable investor we have been able to make our decision to purchase the above-stated principal amount of the TIF Note.

7. We have been informed that the TIF Note (i) is not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, or under federal securities laws or regulations; (ii) will not be listed on any stock or other securities exchange; and (iii) will carry no rating from any rating service.

8. We acknowledge that neither the Authority nor Kennedy & Graven, Chartered has made any representations as to the status of interest on the TIF Note for state or federal income tax purposes.

9. We represent to you that we are purchasing the TIF Note for our own accounts and not for resale or other distribution thereof, except to the extent otherwise provided in the TIF Note, the Resolution, or any other resolution adopted by the Authority.

10. All capitalized terms used herein have the meaning provided in the Agreement unless the context clearly requires otherwise.

11. The Owner's federal tax identification number is _____.

12. We acknowledge receipt of the TIF Note as of the date hereof.

101 E 66TH ST LLC

By _____
Its _____

Dated: _____, 20__

EXHIBIT E

FORM OF DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS, made as of the 20th day of June, 2023 (the “Declaration”), is by 101 E 66TH ST LLC, a Minnesota limited liability company (the “Developer”), in favor of the HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”).

RECITALS:

WHEREAS, the Developer owns real property legally described in EXHIBIT A attached hereto (the “Development Property”); and

WHEREAS, pursuant to the Amended and Restated Contract for Private Development, dated _____ (the “Agreement”), the Developer will construct a multifamily housing development consisting of a mixed use development, including approximately 80 apartment units and approximately 2,800 square feet of commercial space (the “Minimum Improvements”) on the Development Property, and to cause compliance with certain affordability covenants described in Section 4.5 of the Agreement; and

WHEREAS, Section 4.5 of the Agreement requires that the Developer cause to be executed an instrument in recordable form substantially reflecting the covenants set forth in Section 4.5 of the Agreement; and

WHEREAS, the Developer intends, declares, and covenants that the restrictive covenants set forth herein will be and are covenants running with the Development Property for the term described herein and binding upon all subsequent owners of the Development Property for the term described herein, and are not merely personal covenants of the Developer; and

WHEREAS, capitalized terms in this Declaration have the meaning provided in the Agreement unless otherwise defined herein.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer agrees as follows:

1. Term of Restrictions.

(a) Occupancy and Rental Restrictions. The term of the Occupancy Restrictions set forth in Section 3 hereof will commence on the date a certificate of occupancy is received from the City of Richfield, Minnesota (the “City”) for all affordable rental units on the Development Property (the “Rental Housing Units”). The Qualified Project Period shall continue through the date that is fifteen (15) years following the receipt of a certificate of occupancy from the City. The period from commencement to termination is the “Qualified Project Period.”

(b) Removal from Real Estate Records. Upon termination of this Declaration, the Authority will, upon request by the Developer or its assigns, execute any document appropriate to remove this Declaration from the real estate records of Hennepin County, Minnesota.

2. Project Restrictions.

(a) the Developer represents, warrants, and covenants that:

(i) All leases of Rental Housing Units to Qualifying Tenants (as defined in Section 3(a)(i) hereof) will contain clauses, among others, wherein each individual lessee:

(1) certifies the accuracy of the statements made in its application and Eligibility Certification (as defined in Section 3(a)(ii) hereof); and

(2) agrees that the family income at the time the lease is executed will be deemed substantial and material obligation of the lessee's tenancy, that the lessee will comply promptly with all requests for income and other information relevant to determining low or moderate income status from the Developer or the Authority, and that the lessee's failure or refusal to comply with a request for information with respect thereto will be deemed a violation of a substantial obligation of the lessee's tenancy.

(ii) Upon at least forty-eight (48) hours' notice, the Developer will permit any duly authorized representative of the Authority to inspect the books and records of the Developer pertaining to the income of Qualifying Tenants residing in the Project.

3. Occupancy Restrictions.

(a) Tenant Income Provisions. The Developer represents, warrants, and covenants that:

(i) Qualifying Tenants. From the commencement of the Qualified Project Period, at least 16 of the Rental Housing Units will be occupied (or treated as occupied as provided herein) or held vacant and available for occupancy by Qualifying Tenants. Qualifying Tenants means those persons and families who are determined from time to time by the Developer to have combined adjusted income that does not exceed sixty percent (60%) of the Minneapolis-St. Paul metropolitan statistical area (the "Metro Area") median income for the applicable calendar year, except as provided in the last two sentences of this paragraph. For purposes of this definition, the occupants of a residential unit will not be deemed to be Qualifying Tenants if all the occupants of such residential unit at any time are "students," as defined in Section 151(c)(4) of the Internal Revenue Code of 1986, as amended (the "Code"), not entitled to an exemption under the Code. The determination of whether an individual or family is of low or moderate income will be made at the time the tenancy commences and on an ongoing basis thereafter, determined at least annually. If during their tenancy a Qualifying Tenant's income exceeds one hundred forty percent (140%) of the maximum income qualifying as low or moderate income for a family of its size, the next available unit (determined in accordance with the Code and applicable regulations) (the "Next Available Unit Rule") must be leased to a Qualifying Tenant or held vacant and available for occupancy by a Qualifying Tenant. If the Next Available Unit Rule is violated, the Rental Housing Unit will not continue to be treated as a Qualifying Unit. A tenant that initially qualified as a Qualifying Tenant, will continue to qualify even if such Qualifying Tenant's income exceeds sixty percent (60%) of the Metro Area median income so long as that Tenant's income does not exceed 140% of the maximum qualifying income. A tenant that initially qualified as a Qualifying Tenant, even if that Tenant's income exceeds 140% of the maximum qualifying income, will continue to qualify as a Qualifying Tenant so long as the Next Available Unit Rule is complied with.

(ii) Certification of Tenant Eligibility. As a condition to initial and continuing occupancy, each person who is intended to be a Qualifying Tenant will be required annually to sign

and deliver to the Developer a Certification of Tenant Eligibility substantially in the form attached hereto as EXHIBIT B, or in any other form as may be approved by the Authority (the “Eligibility Certification”), in which the prospective Qualifying Tenant certifies as to qualifying as low or moderate income. In addition, the person will be required to provide whatever other information, documents, or certifications are deemed necessary by the Authority to substantiate the Eligibility Certification, on an ongoing annual basis, and to verify that the tenant continues to be a Qualifying Tenant within the meaning of Section 3(a) hereof. Eligibility Certifications will be maintained on file by the Developer with respect to each Qualifying Tenant who resides in a Rental Housing Unit or resided therein during the immediately preceding calendar year.

(iii) Lease. The form of lease to be utilized by the Developer in renting any Rental Housing Units to any person who is intended to be a Qualifying Tenant will provide for termination of the lease and consent by the person to immediate eviction for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by the person with respect to the Eligibility Certification.

(iv) Annual Report. The Developer covenants and agrees that during the term of this Declaration, it will prepare and submit to the Authority on or before April 1 of each year, a certificate substantially in the form of EXHIBIT C hereto, executed by the Developer, (a) identifying the tenancies and the dates of occupancy (or vacancy) for all Qualifying Tenants in the Project, including the percentage of the Rental Housing Units which were occupied by Qualifying Tenants (or held vacant and available for occupancy by Qualifying Tenants) at all times during the year preceding the date of the certificate; (b) describing all transfers or other changes in ownership of the Project or any interest therein; and (c) stating, that to the best knowledge of the person executing the certificate after due inquiry, all the Rental Housing Units were rented or available for rental on a continuous basis during the year to members of the general public and that the Developer was not otherwise in default under this Declaration during the year.

(v) Notice of Non-Compliance. The Developer will immediately notify the Authority if at any time during the term of this Declaration the Rental Housing Units are not occupied or available for occupancy as required by the terms of this Declaration.

(b) Section 8 Housing. During the term of this Declaration, the Developer shall not adopt any policies specifically excluding rental to tenants holding Section 8 certificate/voucher holders.

4. Transfer Restrictions. The Developer covenants and agrees that the Developer will cause or require as a condition precedent to any conveyance, transfer, assignment, or any other disposition of the Project prior to the termination of the Rental Restrictions and Occupancy Restrictions provided herein (the “Transfer”) that the transferee of the Project pursuant to the Transfer assume in writing, in a form acceptable to the Authority, all duties and obligations of the Developer under this Declaration, including this Section 4, in the event of a subsequent Transfer by the transferee prior to expiration of the Rental Restrictions and Occupancy Restrictions provided herein (the “Assumption Agreement”). The Developer will deliver the Assumption Agreement to the Authority prior to the Transfer.

5. Notice of Sale. In consideration of the financial assistance provided to the Developer pursuant to Article IV of the Agreement, the Developer agrees to provide the Authority with at least ninety (90) days’ notice of any sale of the Project.

6. Enforcement.

(a) The Developer will permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Authority to inspect any books and records of the Developer regarding the Project with respect to the incomes of Qualifying Tenants.

(b) The Developer will submit any other information, documents or certifications requested by the Authority which the Authority deems reasonably necessary to substantial the Developer's continuing compliance with the provisions specified in this Declaration.

(c) The Developer acknowledges that the primary purpose for requiring compliance by the Developer with the restrictions provided in this Declaration is to ensure compliance of the property with the housing affordability covenants set forth in Section 4.5 of the Agreement, and by reason thereof, the Developer, in consideration for assistance provided by the Authority under the Agreement that makes possible the construction of the Project on the Development Property, hereby agrees and consents that the Authority will be entitled, for any breach of the provisions of this Declaration, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Developer of its obligations under this Declaration in a state court of competent jurisdiction. The Developer hereby further specifically acknowledges that the Authority cannot be adequately compensated by monetary damages in the event of any default hereunder.

(d) The Developer understands and acknowledges that, in addition to any remedy set forth herein for failure to comply with the restrictions set forth in this Declaration, the Authority may exercise any remedy available to it under Article IX of the Agreement.

7. Indemnification. The Developer hereby indemnifies, and agrees to defend and hold harmless the Authority and its members, officers, and agents from and against all liabilities, losses, damages, costs, expenses (including attorneys' fees and expenses), causes of action, suits, allegations, claims, demands, and judgments of any nature arising from the consequences of a legal or administrative proceeding or action brought against them, or any of them, on account of any failure by the Developer to comply with the terms of this Declaration, or on account of any representation or warranty of the Developer contained herein being untrue.

8. Agent of the Authority. The Authority will have the right to appoint an agent to carry out any of its duties and obligations hereunder, and will inform the Developer of any agency appointment by written notice.

9. Severability. The invalidity of any clause, part or provision of this Declaration will not affect the validity of the remaining portions thereof.

10. Notices. All notices to be given pursuant to this Declaration must be in writing and will be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to any other place as a party may from time to time designate in writing. The Developer and the Authority may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, or other communications are sent. The initial addresses for notices and other communications are as follows:

To the Authority: Housing and Redevelopment Authority
 in and for the City of Richfield, Minnesota
 6700 Portland Avenue South
 Richfield, MN 55423

Attn: Community Development Director

To the Developer: 101 E 66th St LLC
2118 Fourth Avenue South
Minneapolis, MN 55404
Attn: President

11. Governing Law. This Declaration is governed by the laws of the State of Minnesota and, where applicable, the laws of the United States of America.

12. Attorneys' Fees. In case any action at law or in equity, including an action for declaratory relief, is brought against the Developer to enforce the provisions of this Declaration, the Developer agrees to pay the reasonable attorneys' fees and other reasonable expenses paid or incurred by the Authority in connection with the action.

13. Declaration Binding. This Declaration and the covenants contained herein will run with the real property comprising the Project and will bind the Developer and its successors and assigns and all subsequent owners of the Project or any interest therein, and the benefits will inure to the Authority and its successors and assigns for the term of this Declaration as provided in Section 1(b) hereof.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Developer has caused this Declaration of Restrictive Covenants to be signed by its duly authorized representative as of the date and year first written above.

101 E 66TH ST LLC

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____, the _____ of 101 E 66th St LLC, a Minnesota limited liability company, on behalf of the Developer.

Notary Public

This document was drafted by:
Kennedy & Graven, Chartered (JAE)
150 South Fifth Street, Suite 700
Minneapolis, Minnesota 55402-1299
Telephone: 612-337-9300

This Declaration of Restrictive Covenants is acknowledged and consented to by:

**HOUSING AND REDEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF RICHFIELD,
MINNESOTA**

By _____
Its Chair

By _____
Its Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____, the Chair of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Melissa Poehlman, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

Notary Public

EXHIBIT A TO DECLARATION OF RESTRICTIVE COVENANTS

LEGAL DESCRIPTION OF DEVELOPMENT PROPERTY

Parcel 1:

That part of Lot 7, Goodspeed's First Plat, Hennepin County, Minnesota, described as follows, to wit:

Beginning at the northwest corner of said Lot 7, and running thence south along the west line of said Lot 7, a distance of 46.56 feet; thence running east a distance of 135.62 feet; thence running north a distance of 46.62 feet to the north line of said Lot 7; thence running west along the said north line of Lot 7 a distance of 135.63 feet to the place of beginning;

The North 22.56 feet of that part of Lot 7, Goodspeed's First Plat, Hennepin County, Minnesota, described as follows:

Beginning at a point on the west line of said Lot 7, 46.56 feet south of the northwest corner of said Lot 7, thence running east a distance of 135.62 feet; thence south to a point on the south line of said Lot 7, 135.61 feet east of the southwest corner of said Lot 7; thence west to said southwest corner, thence north along the west line of said Lot 7 to the point of beginning.

Parcel 2:

That part of Lot 7, Goodspeed's First Plat, Hennepin County, Minnesota, described as follows:

Beginning at a point on the west line of said Lot 7, 46.56 feet south of the northwest corner of said Lot 7, thence running east a distance of 135.62 feet; thence south to a point on the south line of said Lot 7, 135.61 feet east of the southwest corner of said Lot 7, thence west to said southwest corner, thence north along the west line of said Lot 7 to the point of beginning, except the North 22.56 feet thereof,

The west half of Lot 8, except the south 50 feet thereof, Goodspeed's First Plat, Hennepin County, Minnesota..

Parcel 3:

That part of Lot 7, Goodspeed's First Plat, Hennepin County, Minnesota, described as follows:

Commencing at the northwest corner of said Lot 7, thence south along the west line of said Lot 7, 46.56 feet, thence east on a line parallel to the north line of said Lot 7, 135.62 feet to the actual point of beginning; thence north to a point on the north line of said Lot 7, 135.63 feet east from the northwest corner thereof, thence east along the north line of said Lot 7 to the northeast corner, thence south along the east line to the southeast corner of said Lot 7, thence west along the south line to a point 135.61 feet east from the southwest corner measured along the south line of said Lot 7, thence north to the actual point of beginning.

Parcel 4:

The east half of Lot 8, Goodspeed's First Plat, Hennepin County, Minnesota.

EXHIBIT B TO DECLARATION OF RESTRICTIVE COVENANTS

CERTIFICATION OF TENANT ELIGIBILITY

Certification of Tenant Eligibility

(INCOME COMPUTATION AND CERTIFICATION)

Project: [Address], Richfield, Minnesota

Owner: _____

Unit Type: _____ Studio _____ 1 BR _____ 2 BR _____ 3 BR

1. I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully, frankly and personally each of the following questions for all persons (including minors) who are to occupy the unit in the above apartment development for which application is made, all of whom are listed below:

Name of Members of the Household	Relationship To Head of Household	Age	Place of Employment
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Income Computation

2. The anticipated income of all the above persons during the 12-month period beginning this date,

(a) including all wages and salaries, overtime pay, commissions, fees, tips and bonuses before payroll deductions; net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness); interest and dividends; the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts; payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay; the maximum amount of public assistance available to the above persons; periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling; and all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household or spouse; but

(b) excluding casual, sporadic or irregular gifts; amounts which are specifically for or in reimbursement of medical expenses; lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen's compensation), capital gains and settlement for personal or property losses; amounts of educational

scholarships paid directly to the student or the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for these types of purposes; special pay to a serviceman head of a family who is away from home and exposed to hostile fire; relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; foster child care payments; the value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charged for the allotments; and payments received pursuant to participation in ACTION volunteer programs, is as follows: \$_____.

3. If any of the persons described above (or whose income or contributions was included in item 2) has any savings, bonds, equity in real property or other form of capital investment, provide:

(a) the total value of all such assets owned by all such persons: \$_____;

(b) the amount of income expected to be derived from such assets in the 12 month period commencing this date: \$_____; and

(c) the amount of such income which is included in income listed in item 2: \$_____.

4. (a) Will all of the persons listed in item 1 above be or have they been full-time students during five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students?

Yes _____

No _____

(b) Is any such person (other than nonresident aliens) married and eligible to file a joint federal income tax return?

Yes _____

No _____

THE UNDERSIGNED HEREBY CERTIFY THAT THE INFORMATION SET FORTH ABOVE IS TRUE AND CORRECT. THE UNDERSIGNED ACKNOWLEDGE THAT THE LEASE FOR THE UNIT TO BE OCCUPIED BY THE UNDERSIGNED WILL BE CANCELLED UPON 10 DAYS WRITTEN NOTICE IF ANY OF THE INFORMATION ABOVE IS NOT TRUE AND CORRECT.

Head of Household

Spouse

FOR COMPLETION BY OWNER
(OR ITS MANAGER) ONLY

1. Calculation of Eligible Tenant Income:

(a) Enter amount entered for entire household in 2 above: \$_____

(b) If the amount entered in 3(a) above is greater than \$5,000, enter the greater of (i) the amount entered in 3(b) less the amount entered in 3(c) or (ii) 10% of the amount entered in 3(a):
\$_____

(c) TOTAL ELIGIBLE INCOME (Line 1(a) plus Line 1(b)): \$_____

2. The amount entered in 1(c) is less than or equal to [50%] [60%] of median income for the area in which the Project is located, as defined in the Declaration. [50%] [60%] is necessary for status as a "Qualifying Tenant" under Section 3(a) of the Declaration.

3. Rent:

(a) The rent for the unit is \$_____.

(b) The amount entered in 3(a) is less than or equal to the maximum rent permitted under the Declaration.

4. Number of apartment unit assigned: _____.

5. This apartment unit was ____ was not ____ last occupied for a period of at least 31 consecutive days by persons whose aggregate anticipated annual income as certified in the above manner upon their initial occupancy of the apartment unit was less than or equal to [50%] [60%] of Median Income in the area.

6. Check as applicable: _____ Applicant qualifies as a Qualifying Tenant (tenants of at least _____ units must meet), or ____ Applicant otherwise qualifies to rent a unit.

THE UNDERSIGNED HEREBY CERTIFIES THAT HE/SHE HAS NO KNOWLEDGE OF ANY FACTS WHICH WOULD CAUSE HIM/HER TO BELIEVE THAT ANY OF THE INFORMATION PROVIDED BY THE TENANT MAY BE UNTRUE OR INCORRECT.

101 E 66TH ST LLC

By _____
Its _____

EXHIBIT C TO DECLARATION OF RESTRICTIVE COVENANTS

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

Certificate of
Continuing Program Compliance

Date: _____

The following information with respect to the multifamily housing development located at _____, Richfield, Minnesota (the "Project"), is being provided by 101 E 66th St LLC, a Minnesota limited liability company (the "Owner"), to the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the "Authority"), pursuant to that certain Declaration of Restrictive Covenants, dated _____, 2023 (the "Declaration"), with respect to the Project:

(A) The total number of residential units which are available for occupancy is _____. The total number of these units occupied is _____.

(B) The following residential units (identified by unit number) are currently occupied by "Qualifying Tenants," as the term is defined in the Declaration (for a total of ____ units):

Studio Units: _____

1 BR Units: _____

2 BR Units: _____

3 BR Units: _____

(C) The following residential units which are included in (B) above, have been re-designated as units for Qualifying Tenants since _____, 20____, the date on which the last "Certificate of Continuing Program Compliance" was filed with the Authority by the Owner:

Unit Number	Previous Designation of Unit (if any)	Replacing Unit Number
_____	_____	_____
_____	_____	_____

(D) The following residential units are considered to be occupied by Qualifying Tenants based on the information set forth below:

	Unit Number	Name of Tenant	Number of Persons Residing in the Unit	Number of Bedrooms	Total Adjusted Gross Income	Date of Initial Occupancy	Rent
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
[etc.]							

(E) The Owner has obtained a “Certification of Tenant Eligibility,” in the form provided as EXHIBIT B to the Declaration, from each Tenant named in (D) above, and each such Certificate is being maintained by the Owner in its records with respect to the Project. Attached hereto is the most recent “Certification of Tenant Eligibility” for each Tenant named in (D) above who signed such a Certification since _____, 20__, the date on which the last “Certificate of Continuing Program Compliance” was filed with the Authority by the Owner.

(F) In renting the residential units in the Project, the Owner has not given preference to any particular group or class of persons (except for persons who qualify as Qualifying Tenants); and none of the units listed in (D) above have been rented for occupancy entirely by students, no one of which is entitled to file a joint return for federal income tax purposes. All of the residential units in the Project have been rented pursuant to a written lease, and the term of each lease is at least twelve (12) months.

(G) The information provided in this “Certificate of Continuing Program Compliance” is accurate and complete, and no matters have come to the attention of the Owner which would indicate that any of the information provided herein, or in any “Certification of Tenant Eligibility” obtained from the Tenants named herein, is inaccurate or incomplete in any respect.

(H) The Project is in continuing compliance with the Declaration.

(I) The Owner certifies that as of the date hereof at least _____ of the residential dwelling units in the Project are occupied or held open for occupancy by Qualifying Tenants, as defined and provided in the Declaration.

(J) The rental levels for each Qualifying Tenant comply with the maximum permitted under the Declaration.

IN WITNESS WHEREOF, I have hereunto affixed my signature, on behalf of the Owner, on _____, 20____.

101 E 66TH ST LLC

By _____

Its _____

EXHIBIT F
PRO FORMA FINANCIAL STATEMENT

EXHIBIT G
SAMPLE LOOKBACK CALCULATION

RC125-387 (JAE)
874528.2



STAFF REPORT NO. 15
HOUSING AND REDEVELOPMENT AUTHORITY
MEETING
6/20/2023

REPORT PREPARED BY: Melissa Poehlman, Executive Director
OTHER DEPARTMENT REVIEW:

EXECUTIVE DIRECTOR REVIEW: Melissa Poehlman, Executive Director
6/15/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider a request to modify (2024) and then terminate (2025) Best Buy's Minimum Assessment Agreement.

EXECUTIVE SUMMARY:

The Interchange West / Lyndale Gateway Tax Increment Financing (TIF) District was established in 1999. This District is a "scattered site" redevelopment District with multiple projects and outstanding obligations, including the Best Buy corporate headquarters, Mainstreet Village, and the Casteel Place Townhomes. Best Buy has approached the City and Housing and Redevelopment Authority (HRA) to request a modification to their individual contract which would remove the Minimum Assessment Agreement (MMA) that prevents the tax value of their property from falling below \$118.5 million during the life of the TIF District (ending December 31, 2025).

After an initial denial of the request by the City Council on May 23, staff and Best Buy representatives continued discussions in hopes of finding a path forward that would address the needs and concerns of all parties. These concerns, left unaddressed, could lead to significant costs, staff time, and uncertainty in the coming years.

The attached Contracts and Assessment (Agreements) address the largest concerns for both the City/HRA and Best Buy. Specifically, it guarantees that the HRA will be able to recoup \$851,000 without the threat of future litigation; and it allows Best Buy to discuss a fair market value for its property with the County and pay the commensurate taxes.

The Agreements require compromise on both sides. Best Buy believes that the HRA has underpaid them and that they are owed approximately \$600,000, which they will not recoup, and they have agreed not to contest the HRA recouping \$851,000. The HRA will almost certainly see a reduction in tax increment generated in the remaining years of the TIF District; an estimated loss of \$105,000 - \$385,000 in pooling revenue. The parties agree that the costs associated with continued disagreement outweigh the losses posed by the compromise. Staff and its legal and financial experts recommend approval of the attached resolution and Agreements.

In order to modify and/or terminate the MAA, Best Buy needs the approval of both the City Council and the HRA, in addition to approvals by Hennepin County and the Richfield School District. On June 13, 2023 the Council approved attached documents.

RECOMMENDED ACTION:

By Motion: Approve a resolution approving the attached Contract and Assessment with Best Buy Co., Inc.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

- The Interchange West / Lyndale Gateway TIF District was established in 1999. This District is a “scattered site” redevelopment District with multiple projects and outstanding obligations, including the Best Buy Corporate Campus, Mainstreet Village, and the Casteel Place Townhomes.
- Best Buy has approached the City and HRA to request a modification to their individual contract which would remove the MMA that prevents the tax value of their property from falling below \$118.5 million during the life of the TIF District (ending December 31, 2025).
- The Interchange West / Lyndale Gateway TIF District is by-far the most complex TIF District in the City. There have been five amendments to the Contract for Private Redevelopment with Best Buy since its initial adoption.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- Additional approvals by the HRA, County, and School Board are required.
- As discussed at the March 6, 2023 work session, there would be no financial impact to the County or School District due to this action. The taxes paid to the City, County, and School District will remain unchanged until the TIF District expires on December 31, 2025.

C. CRITICAL TIMING ISSUES:

- Best Buy would like the MAA modified/terminated as soon as possible. In order to reduce pay 2024 taxes, they must obtain the approval of the City, County, and School Board prior to June 30, 2023. While staff does not believe it will be possible to receive County Board approvals in time, the agreement stipulates that the City will support and work toward this goal with Best Buy. The proposed Agreements are contingent upon these future approvals by the County and School Board, but not by the June 30, 2023 deadline. Given that there will be no financial impact to the County or School Board, staff does not anticipate a denial by either body and will work with Best Buy to communicate and educate the bodies, as needed.

D. FINANCIAL IMPACT:

- Sufficient increment will be available to make the remaining two payments on the General Obligation Bonds issued for infrastructure improvements related to the Best Buy Corporate Campus Project.
- The MAA is also in place to provide a mechanism for pooling. Pooling allows the HRA to spend a portion of tax increment outside the geographical boundaries of the TIF District for TIF-eligible activities such as affordable housing. A modification and termination of the MAA will likely impact the amount of money contributed to the Housing and Redevelopment Fund by an estimated \$210,000 to \$385,000. If Best Buy is unable to get the required approvals for 2023, the estimated reduction is \$105,000-\$192,500.
- The HRA has concluded that Best Buy has been overpaid by approximately \$851,000. Under the proposed Agreements, the HRA is able to recoup this money without threat of future legal challenge.
- The proposed Agreements would not impact taxes paid to either Hennepin County or the School District because those jurisdictions receive payments based on the baseline property value established prior to the Best Buy Campus construction.

E. LEGAL CONSIDERATION:

- The HRA has the legal authority and duty to recoup overpayments and will begin to do so with the August 1, 2023 TIF Payment. The proposed Agreements allow the HRA to do this without the threat of a legal challenge.

ALTERNATIVE RECOMMENDATION(S):

Deny the request for modification/termination of the Minimum Assessment Agreement with Best Buy for property at 7601 Penn Avenue South.

PRINCIPAL PARTIES EXPECTED AT MEETING:

Jeanne Vogt, Senior Fiscal Consultant, Ehlers Tracy Smith, Senior Director and Tax Counsel, Best Buy Dan Lopez, Director of Government Affairs, Best Buy William Griffith & Timothy Rye, Attorneys for Best Buy, Larkin Hoffman

ATTACHMENTS:

Description	Type
□ Resolution	Resolution Letter
□ Contract Amendment	Contract/Agreement
□ Amended Assessment Agreement	Contract/Agreement
□ Amended Assessment Agreement (Redline)	Contract/Agreement

**HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE
CITY OF RICHFIELD, MINNESOTA**

RESOLUTION NO. _____

RESOLUTION APPROVING AGREEMENTS WITH BEST BUY CO., INC.

BE IT RESOLVED by the Board of Commissioners (the "Board") of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the "Authority"), as follows:

Section 1. Recitals.

1.01. The Authority and Best Buy Co., Inc., a Minnesota corporation (the "Redeveloper"), have entered into a Contract for Private Redevelopment, dated March 28, 2000, as amended by the First Amendment to Contract for Private Redevelopment, dated November 27, 2000, as amended by the Second Amendment to Contract for Private Redevelopment, dated February 20, 2001, as amended by the Third Amendment to Contract for Private Redevelopment, dated March 5, 2003, as amended by the Fourth Amendment to Contract for Private Redevelopment, dated December 21, 2010, and as amended by the Fifth Amendment to Contract for Private Redevelopment, dated July 14, 2014 (collectively, the "Contract"), with respect to the redevelopment of land (the "Property") located in the City of Richfield, Minnesota (the "City").

1.02. The Authority and the Redeveloper also entered into an Assessment Agreement, dated March 5, 2003 (the "Assessment Agreement"), which set forth the minimum market value for the Property as improved by the redevelopment.

1.03. The Authority and the Redevelopment have proposed to revise the provisions related to the Assessment Agreement, the overpayment of tax increment by the Authority, and the release of certain claims.

1.04. There have been presented to the Board forms of the following documents (collectively, the "Authority Documents"): (i) a Sixth Amendment to Contract for Private Redevelopment between the Authority and the Redeveloper, which amends the Contract to govern the overpayment of tax increment; and (ii) an Amended and Restated Assessment Agreement between the Authority and the Redeveloper, and including consents to termination of the Assessment Agreement by Independent School District No. 280 (Richfield Public Schools) and Hennepin County, Minnesota, which amends and restates the Assessment Agreement to modify the valuation floor of the Property, as improved by the redevelopment.

Section 2. Approvals.

2.01. The Authority Documents are hereby in all respects authorized, approved, and confirmed, and the Chair and the Executive Director are hereby authorized and directed to execute the Authority Documents for and on behalf of the Authority in substantially the forms now on file with the Executive Director but with such modifications as shall be deemed necessary, desirable, or appropriate, the execution thereof to constitute conclusive evidence of their approval of any and all modifications therein.

2.02. The Chair and the Executive Director are authorized and directed to execute any and all other documents or certificates deemed necessary to carry out the intentions of this resolution and the Authority Documents.

Section 3. Effective Date. This resolution shall be in full force and effect from and after its approval.

Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota this 20th day of June, 2023.

Gordon Hanson, Acting Chair

ATTEST:

Secretary

**SIXTH AMENDMENT
TO
CONTRACT FOR PRIVATE REDEVELOPMENT**

THIS SIXTH AMENDMENT TO CONTRACT FOR PRIVATE REDEVELOPMENT (the “Agreement”), made and entered into as of the ____ day of June, 2023, between the CITY OF RICHFIELD, MINNESOTA, a Minnesota municipal corporation (the “City”), the HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD, MINNESOTA, a Minnesota public body corporate and politic (the “HRA”), and BEST BUY CO., INC., a Minnesota corporation (the “Redeveloper”). The City, the HRA and the Redeveloper are referred to herein as the “Parties.”

WITNESSETH:

WHEREAS, the HRA and the Redeveloper entered into a Contract for Private Development Agreement, dated March 28, 2000 (the “Contract”), for the purposes of redeveloping land within the City of Richfield (the “Property”); and

WHEREAS, the HRA and the Redeveloper entered into an Assessment Agreement, dated March 5, 2003 (the “Assessment Agreement”); and

WHEREAS, the HRA and the Redeveloper amended the Contract five times by entering into a First Amendment on November 27, 2000, a Second Amendment on February 20, 2001, a Third Amendment on March 5, 2003, a Fourth Amendment on December 21, 2010, and a Fifth Amendment on July 14, 2014; and

WHEREAS, the City, the HRA and the Redeveloper propose to amend the Contract further to revise the provisions related to the Assessment Agreement, payment to the HRA, and the release of certain claims; and

NOW, THEREFORE, based upon the mutual covenants and undertakings hereinafter, and in the Contract provided, the Parties hereto stipulate and agree as follows:

Section 1. **Whereas Clauses.** The WHEREAS clauses set forth above are incorporated into this Agreement and are confirmed in all respects.

Section 2. **Definitions.**

“Available Tax Increment” for the purpose of the TIF Note means seventy-five percent (75%) of the Tax Increment attributable to the Minimum Improvements and Development Property that is paid to the HRA by the County in the six months preceding each Payment Date, after deducting any amount necessary to pay principal and interest on the TIF Bonds or, subject to the provisions of Section 3.5, subd. 3, any TIF Refunding Bonds.

Section 3. **Amendments to Contract.** The Contract is hereby amended in the following respects:

A. The Redeveloper agrees that the HRA will receive \$851,000 in tax increment, in addition to the funds the HRA receives based on the provisions of the Contract. The Redeveloper agrees that the HRA will be provided the \$851,000 from the County payments of tax increment on August 1, 2023, February 1, 2024, and August 1, 2024 until the amount is paid in full.

B. All Parties agree and understand that the Tax Increment District for the Redeveloper ends as of December 31, 2025 and the final payment for the TIF Note will occur on February 1, 2026.

Section 4. **Assessment Agreement.**

A. The City and the HRA approve the modification and termination of the Assessment Agreement. Modification means the valuation floor in the Assessment Agreement will not be less than \$60 million until the Assessment Agreement is terminated. The modification of the Assessment Agreement is effective for the 2023 tax assessment payable in 2024. The termination of the Assessment Agreement is effective on December 31, 2023, for the 2024 tax assessment payable in 2025.

B. Section 6.3(b) of the Contract is hereby deleted and is no longer of any force or effect.

C. The City and the HRA will support the Redeveloper in seeking consent of the School District and Hennepin County for modifying and terminating the Assessment Agreement.

D. If the Redeveloper appeals its property value after the Assessment Agreement is modified or after the Assessment Agreement is terminated, the Redeveloper will be solely responsible for repaying the Available Tax Increment from the Development Property paid under the TIF Note if Hennepin County determines that the Available Tax Increment should be returned to Hennepin County due to one or more tax appeals initiated by the Redeveloper. The HRA will alert the Redeveloper of any reduction in tax increment due to tax appeals. The Redeveloper shall have three weeks to pay the HRA the funds owed to Hennepin County. Upon receipt of the funds from the Redeveloper, the HRA will send the funds to Hennepin County within five business days and provide timely notice to the Redeveloper of such transmittal to Hennepin County.

E. If the Redeveloper appeals its property value after the Assessment Agreement is modified or after the Assessment Agreement is terminated, the HRA will be solely responsible for repaying the 25% of the Tax Increment from the Development Property paid to the HRA if Hennepin County determines that the Available Tax Increment should be returned to Hennepin County due to one or more tax appeals initiated by the Redeveloper.

F. If the Redeveloper appeals its property value, it must notify the HRA within two weeks of filing the tax petition.

G. The Parties understand and agree that this agreement is contingent upon obtaining approval of this Sixth Amendment and the Amended and Restated Assessment Agreement by the City Council and HRA Board on or prior to June 20, 2023, and the consent of the School District and Hennepin County to modification and termination of the Assessment Agreement as provided in the Amended and Restated Assessment Agreement prior to June 30, 2023 or thereafter. Each party will use best efforts to obtain the approvals and consents contemplated by this paragraph.

Section 5. Release of Claims.

A. All Parties will release all claims to date regarding any defaults under the Contract. The HRA will continue to follow the requirements of the Tax Increment Act and will make any corrective payments determined by the Office of State Auditor.

B. The agreement will constitute a full and final satisfaction between the Parties regarding any and all matters relating to the Assessment Agreement. The Redeveloper will agree not to request, or encourage any other person to request, an audit from the Office of the State Auditor with respect to matters relating to the Contract or the Assessment Agreement.

C. With the exception of Sections 4(D) and 4(E), the City, the HRA, and the Redeveloper will: (a) mutually release and discharge each other from any and all claims or matters arising out of or relating to the Contract or the Assessment Agreement to date; and (b) agree not to sue any Party to this Agreement with respect to any matters arising out of or relating to the Contract or the Assessment Agreement to date.

D. The Parties agree not to disparage another Party to this Agreement.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed on their behalf by their authorized representatives on or as of the date first above written.

**HOUSING AND REDEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF RICHFIELD,
MINNESOTA**

By _____
Its Acting Chair

By _____
Its Executive Director

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Gordon Hanson, the Acting Chair of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the HRA.

Notary Public

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Melissa Poehlman, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the HRA.

Notary Public

BEST BUY CO., INC.

By _____
Its _____

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by _____, the _____ of Best Buy Co., Inc., a Minnesota corporation, on behalf of the Redeveloper.

Notary Public

CITY OF RICHFIELD, MINNESOTA

By _____
Its Mayor

By _____
Its City Manager

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Mary B. Supple, the Mayor of the City of Richfield, a Minnesota municipal corporation, on behalf of the City.

Notary Public

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Katie Rodriguez, the City Manager of the City of Richfield, a Minnesota municipal corporation, on behalf of the City.

Notary Public

AMENDED AND RESTATED
ASSESSMENT AGREEMENT

THIS AMENDED AND RESTATED ASSESSMENT AGREEMENT, made on the ____ day of June, 2023, by and between the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota (the "Authority") and Best Buy Co., Inc., a Minnesota corporation, (the "Redeveloper"), modifies and replaces the Assessment Agreement dated March 5, 2003, between the same parties.

WITNESSETH:

WHEREAS, the Authority and Redeveloper entered into a Contract for Private Development, dated March 28, 2000 (the "Development Agreement") regarding certain real property located in the city of Richfield, Hennepin County, Minnesota, and legally described in Exhibit A attached hereto (the "Property"); and

WHEREAS, the Authority and Redeveloper entered into that certain Assessment Agreement dated March 5, 2003 (the "Assessment Agreement"); and

WHEREAS, the Authority and Redeveloper amended the Development Agreement six times by entering into a First Amendment on November 27, a Second Amendment on February 20, 2001, a Third Amendment on March 5, 2003, a Fourth Amendment on December 21, 2010, a Fifth Amendment on July 14, 2014, and a Sixth Amendment on June ____, 2023; and

WHEREAS, pursuant to the Sixth Amendment the parties have agreed to modify and then terminate the Assessment Agreement by entering into this Amended and Restated Assessment Agreement; and

WHEREAS, pursuant to the Development Agreement, the Redeveloper has constructed a 1.5 million square foot office facility and related parking structures and other improvements upon the Property (the "Minimum Improvements"); and

WHEREAS, the Authority and Redeveloper desire to establish a minimum market value for the Property and the Minimum Improvements constructed thereon (the "Minimum Market Value"), pursuant to Minnesota Statutes, Section 469.177, Subdivision 8; and

WHEREAS, the Authority and the Assessor for Hennepin County (the "Assessor") have reviewed or examined the Property and the Minimum Improvements.

NOW, THEREFORE, the parties to this Agreement, in consideration of the promises, covenants and agreements made by each to the other, do hereby agree as follows:

1. The Minimum Market Value which shall be assessed for the Property described in Exhibit A, together with the Minimum Improvements thereon, shall be \$60,000,000 as of January 2, 2023 payable in 2024.

2. The Minimum Market Value herein established shall be of no further force and effect and this Agreement shall terminate on December 31, 2023.

3. This Agreement shall be promptly recorded by the Authority. The Redeveloper shall pay all costs of recording.

4. Neither the preambles nor provisions of this Agreement are intended to, nor shall they be construed as, modifying the terms of the Development Agreement between the Authority and the Redeveloper.

5. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

6. Each of the parties has authority to enter into this Agreement and to take all actions required of it, and has taken all actions necessary to authorize the execution and delivery of this Agreement.

7. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

8. The parties hereto agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements, amendments and modifications hereto, and such further instruments as may reasonably be required for correcting any inadequate, or incorrect, or amended description of the Property, or for carrying out the expressed intention of this Agreement.

9. Except as provided in Section 8 of this Agreement, this Agreement may not be amended nor any of its terms modified except by a writing authorized and executed by all parties hereto.

10. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, the HRA has caused this Amended and Restated Assessment Agreement to be duly executed on its behalf by its authorized representatives on or as of the date first above written.

**HOUSING AND REDEVELOPMENT
AUTHORITY IN AND FOR THE CITY OF
RICHFIELD, MINNESOTA**

By _____
Its Acting Chair

By _____
Its Executive Director

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Gordon Hanson, the Acting Chair of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the HRA.

Notary Public

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Melissa Poehlman, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the HRA.

Notary Public

IN WITNESS WHEREOF, the City of Richfield, Minnesota has caused this Amended and Restated Assessment Agreement to be duly executed on its behalf by its authorized representatives on or as of the date first above written.

CITY OF RICHFIELD, MINNESOTA

By _____
Its Mayor

By _____
Its City Manager

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Mary B. Supple, the Mayor of the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the City.

Notary Public

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Katie Rodriguez, the City Manager of the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the City.

Notary Public

IN WITNESS WHEREOF, the Redeveloper has caused this Amended and Restated Assessment Agreement to be duly executed on their behalf by their authorized representatives on or as of the date first above written.

BEST BUY CO., INC.

By _____
Its _____

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of June, 2023, by _____, the _____ of Best Buy Co., Inc., a Minnesota corporation, on behalf of the Redeveloper.

Notary Public

Drafted By:
William Griffith
Larkin Hoffman
8300 Norman Center Drive
Suite 1000
Minneapolis, MN 55437

IN WITNESS WHEREOF, the School District has caused this Amended and Restated Assessment Agreement to be duly executed on their behalf by their authorized representatives on or as of the date first above written.

**INDEPENDENT SCHOOL DISTRICT NO. 280
(RICHFIELD PUBLIC SCHOOLS),
HENNEPIN COUNTY, MINNESOTA**

By _____
Its Chair

By _____
Its Clerk

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Paula Cole, the Chair of Independent School District No. 280 (Richfield Public Schools), Hennepin County, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the School District.

Notary Public

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Allegra Smisek, the Clerk of Independent School District No. 280 (Richfield Public Schools), Hennepin County, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the School District.

Notary Public

IN WITNESS WHEREOF, Hennepin County, Minnesota has caused this Amended and Restated Agreement to be duly executed on their behalf by their authorized representatives on or as of the date first above written.

Reviewed by the County
Attorney's Office

By: _____

Date: _____

**COUNTY OF HENNEPIN
STATE OF MINNESOTA**

By: _____
Chair

Date: _____

ATTEST: _____
Deputy/Clerk of County Board

Date: _____

By: _____
County Administrator

Date: _____

Recommended for Approval:

By: _____
Chief Housing and Economic Development
Officer

Date: _____

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Irene Fernando, the Chair of Hennepin County, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the County.

Notary Public

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by David J. Hough, the County Administrator of Hennepin County, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the County.

Notary Public

EXHIBIT A

DESCRIPTION OF PROPERTY

Lot 1, Block 1, Best Buy Campus

AMENDED AND RESTATED
ASSESSMENT AGREEMENT

THIS AMENDED AND RESTATED ASSESSMENT AGREEMENT, made on the ____ day of June, 2023, by and between the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota (the "Authority") and Best Buy Co., Inc., a Minnesota corporation, (the "Redeveloper"), modifies and replaces the Assessment Agreement dated March 5, 2003, between the same parties.

WITNESSETH:

WHEREAS, the Authority and Redeveloper entered into a Contract for Private Development, dated March 28, 2000 (the "Development Agreement") regarding certain real property located in the city of Richfield, Hennepin County, Minnesota, and legally described in Exhibit A attached hereto (the "Property"); and

WHEREAS, the Authority and Redeveloper entered into that certain Assessment Agreement dated March 5, 2003 (the "Assessment Agreement"); and

WHEREAS, the Authority and Redeveloper amended the Development Agreement six times by entering into a First Amendment on November 27, a Second Amendment on February 20, 2001, a Third Amendment on March 5, 2003, a Fourth Amendment on December 21, 2010, a Fifth Amendment on July 14, 2014, and a Sixth Amendment on June ____, 2023; and

WHEREAS, pursuant to the Sixth Amendment the parties have agreed to modify and then terminate the Assessment Agreement by entering into this Amended and Restated Assessment Agreement; and

WHEREAS, pursuant to the Development Agreement, the Redeveloper has constructed a 1.5 million square foot office facility and related parking structures and other improvements upon the Property (the "Minimum Improvements"); and

WHEREAS, the Authority and Redeveloper desire to establish a minimum market value for the Property and the Minimum Improvements constructed thereon (the "Minimum Market Value"), pursuant to Minnesota Statutes, Section 469.177, Subdivision 8; and

WHEREAS, the Authority and the Assessor for Hennepin County (the "Assessor") have reviewed or examined the Property and the Minimum Improvements.

NOW, THEREFORE, the parties to this Agreement, in consideration of the promises, covenants and agreements made by each to the other, do hereby agree as follows:

1. The Minimum Market Value which shall be assessed for the Property described in Exhibit A, together with the Minimum Improvements thereon, shall be \$60,000,000 as of January 2, 2023 payable in 2024.

2. The Minimum Market Value herein established shall be of no further force and effect and this Agreement shall terminate on December 31, 2023.

3. This Agreement shall be promptly recorded by the Authority. The Redeveloper shall pay all costs of recording.

4. Neither the preambles nor provisions of this Agreement are intended to, nor shall they be construed as, modifying the terms of the Development Agreement between the Authority and the Redeveloper.

5. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

6. Each of the parties has authority to enter into this Agreement and to take all actions required of it, and has taken all actions necessary to authorize the execution and delivery of this Agreement.

7. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

8. The parties hereto agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements, amendments and modifications hereto, and such further instruments as may reasonably be required for correcting any inadequate, or incorrect, or amended description of the Property, or for carrying out the expressed intention ~~of this Agreement, including, without limitation, any further instruments required to delete from the description of the Property such part or parts as may be included within a separate assessment agreement, and any instrument necessary to confirm the occurrence of the Termination Date (as defined in the Contract) and thereby the termination~~ of this Agreement.

9. Except as provided in Section 8 of this Agreement, this Agreement may not be amended nor any of its terms modified except by a writing authorized and executed by all parties hereto.

10. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the HRA has caused this Amended and Restated Assessment Agreement to be duly executed on its behalf by its authorized representatives on or as of the date first above written.

**HOUSING AND REDEVELOPMENT
AUTHORITY IN AND FOR THE CITY OF
RICHFIELD, MINNESOTA**

By _____
Its Acting Chair

By _____
Its Executive Director

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Gordon Hanson, the Acting Chair of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the HRA.

Notary Public

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Melissa Poehlman, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the HRA.

Notary Public

IN WITNESS WHEREOF, the City of Richfield, Minnesota has caused this Amended and Restated Assessment Agreement to be duly executed on its behalf by its authorized representatives on or as of the date first above written.

CITY OF RICHFIELD, MINNESOTA

By _____
Its Mayor

By _____
Its City Manager

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Mary B. Supple, the Mayor of the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the City.

Notary Public

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Katie Rodriguez, the City Manager of the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the City.

Notary Public

IN WITNESS WHEREOF, the Redeveloper has caused this Amended and Restated Assessment Agreement to be duly executed on their behalf by their authorized representatives on or as of the date first above written.

BEST BUY CO., INC.

By _____
Its _____

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of June, 2023, by _____, the _____ of Best Buy Co., Inc., a Minnesota corporation, on behalf of the Redeveloper.

Notary Public

Drafted By:
William Griffith
Larkin Hoffman
8300 Norman Center Drive
Suite 1000
Minneapolis, MN 55437

IN WITNESS WHEREOF, the School District has caused this Amended and Restated Assessment Agreement to be duly executed on their behalf by their authorized representatives on or as of the date first above written.

**INDEPENDENT SCHOOL DISTRICT NO. 280
(RICHFIELD PUBLIC SCHOOLS),
HENNEPIN COUNTY, MINNESOTA**

By _____
Its Chair

By _____
Its Clerk

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Paula Cole, the Chair of Independent School District No. 280 (Richfield Public Schools), Hennepin County, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the School District.

Notary Public

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Allegra Smisek, the Clerk of Independent School District No. 280 (Richfield Public Schools), Hennepin County, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the School District.

Notary Public

IN WITNESS WHEREOF, Hennepin County, Minnesota has caused this Amended and Restated Agreement to be duly executed on their behalf by their authorized representatives on or as of the date first above written.

Reviewed by the County
Attorney's Office

By: _____

Date: _____

**COUNTY OF HENNEPIN
STATE OF MINNESOTA**

By: _____
Chair

Date: _____

ATTEST: _____
Deputy/Clerk of County Board

Date: _____

By: _____
County Administrator

Date: _____

Recommended for Approval:

By: _____
Chief Housing and Economic Development
Officer

Date: _____

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by Irene Fernando, the Chair of Hennepin County, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the County.

Notary Public

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by David J. Hough, the County Administrator of Hennepin County, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the County.

Notary Public

CERTIFICATION BY COUNTY ASSESSOR

The undersigned, having reviewed the plans and specifications for the improvements to be constructed and the market value assigned to the land upon which the improvements are to be constructed, hereby certifies as follows: the undersigned Assessor, being legally responsible for the assessment of the above-described property, hereby certifies that the market values assigned to the land and improvements are reasonable.

ASSESSOR FOR HENNEPIN COUNTY

By _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of June, 2023, by _____, the County Assessor of Hennepin County, Minnesota.

Notary Public

EXHIBIT A

DESCRIPTION OF PROPERTY

Lot 1, Block 1, Best Buy Campus

Document comparison by Workshare 10.0 on Friday, June 9, 2023 12:17:16 PM

Input:	
Document 1 ID	PowerDocs://DOCSOPEN/881427/1
Description	DOCSOPEN-#881427-v1-Amended_and_Restated_Assessment_Agreement
Document 2 ID	PowerDocs://DOCSOPEN/881427/2
Description	DOCSOPEN-#881427-v2-Amended_and_Restated_Assessment_Agreement
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	9
Deletions	10
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	19