



**REGULAR HOUSING AND REDEVELOPMENT AUTHORITY MEETING  
RICHFIELD MUNICIPAL CENTER, COUNCIL CHAMBERS  
SEPTEMBER 20, 2021  
7:00 PM**

Call to Order

Open Forum: To participate live in the open forum to address the HRA on items not on the current agenda dial 612-861-0651

Approval of the minutes of the regular Housing and Redevelopment Authority meeting of August 16, 2021; and the minutes of the joint City Council and Housing and Redevelopment Authority meeting/tour on September 7, 2021.

**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. Consider an adjustment to the payment standard for the Section 8 Housing Choice Voucher Program.  
Staff Report No. 28
  - B. Consider the adoption of a resolution approving amended and restated documents related to the Chamberlain Apartments Project.  
Staff Report No. 29
3. Consideration of items, if any, removed from Consent Calendar

**RESOLUTIONS**

4. Consider a resolution supporting an infrastructure grant application to Minnesota Housing for Woodlawn Terrace.  
Staff Report No. 30
5. Consider a Preliminary Donation Agreement with Metro Campus 1, LLC to explore the donation of the office building and property at 1600 78th Street East to the Housing and Redevelopment Authority.  
Staff Report No. 31

**OTHER BUSINESS**

6. Consideration of proposed changes to the Contract for Private Development with Cedar Point Investments, LLC, extending the contract deadline and allowing for the sale of market-rate townhomes.  
Staff Report No. 32

7. Consideration of a request for a subordination of a Housing and Redevelopment Authority Transformation Program loan at 6331 Blaisdell Avenue South.

Staff Report No. 33

**HRA DISCUSSION ITEMS**

8. HRA Discussion Items

**EXECUTIVE DIRECTOR REPORT**

9. Executive Director's Report

**CLAIMS**

10. Claims
11. 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 612-861-9738.**



# HOUSING AND REDEVELOPMENT AUTHORITY MEETING MINUTES

Richfield, Minnesota

Regular Meeting

August 16, 2021

## CALL TO ORDER

The meeting was called to order by Chair Supple at 7:00 p.m. in the Council Chambers.

*HRA Members*

*Present:* Mary Supple, Chair; Sue Sandahl and Lee Ohnesorge

*HRA Members*

*Absent:* Maria Regan Gonzalez and Erin Vrieze Daniels

*Staff Present:*

John Stark, Community Development Director/Executive Director; Melissa Poehlman, Assistant Community Development Director; and LaTonia DuBois, Administrative Assistant.

*Others Present:*

Sam Nelson, Benefactor Brewing and Brian Bochman, Enclave Development/Lynk65, LLC

## OPEN FORUM

No callers.

## APPROVAL OF THE MINUTES

M/Sandahl, S/Ohnesorge to approve the minutes of the regular Housing and Redevelopment meeting of July 19, 2021.

Motion carried 3-0

<b>Item #1</b>	<b>2022 HRA BUDGET PRESENTATIONS</b>
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Executive Director Stark presented the HRA budget

Chair Supple thanked staff and expressed appreciation for the flexibility of Section 8 staff members.

<b>Item #2</b>	<b>APPROVAL OF THE AGENDA</b>
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M/Sandahl, S/Ohnesorge to approve the agenda.

Motion carried 3-0

<b>Item #3</b>	<b>CONSENT CALENDAR</b>
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Executive Director Stark presented the Consent Calendar:

- A. Consider a resolution of support for the expansion of the Minnesota Independence College and Community in the City of Richfield. (Staff Report No. 22)

HRA RESOLUTION NO. 1399

RESOLUTION SUPPORTING THE DEVELOPMENT OF AFFORDABLE,  
ACCESSIBLE MULTIFAMILY HOUSING IN THE VICINITY OF  
2000, 2006, AND 2018 - 76TH STREET WEST

- B. Consideration of the adoption of a resolution approving the issuance of, and providing the form, terms, covenants and directions for the issuance of its Tax Increment Financing Limited Revenue Note, Series 2021 (Phase I) in an aggregate principal amount not to exceed \$900,000. (Staff Report No. 23)

HRA RESOLUTION NO. 1400

RESOLUTION APPROVING THE ISSUANCE OF, AND PROVIDING THE  
FORM, TERMS, COVENANTS AND DIRECTIONS FOR THE ISSUANCE OF  
ITS TAX INCREMENT LIMITED REVENUE NOTE, SERIES 2021 (PHASE I), IN  
AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$900,000

M/Sandahl, S/Ohnesorge to approve the Consent Calendar.

Motion Carried 3-0

<b>Item #4</b>	<b>CONSIDERATION OF ITEMS, IF ANY, REMOVED FROM THE CONSENT CALENDAR</b>
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None

<b>Item #5</b>	<b>CONSIDERATION OF A RESOLUTION APPROVING A CONTRACT FOR PRIVATE DEVELOPMENT WITH BENEFACOR BREWING. (S.R. NO. 24)</b>
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Executive Director Stark presented Staff Report No. 24.

Commissioner Sandahl commented on the interest of the community to have such a business in a good area for it.

Chair Supple also mentioned it being a good area for a brewery, and requested the owner to be a good neighbor when it comes to noise from the amphitheater.

M/Ohnesorge, S/Sandahl to cancel a Public Hearing specific to the Business Subsidy Agreement contained within the Contract for Private Development, and; Approve a resolution to enter into a Contract for Private Development with Benefactor Brewing LLC (contingent on City Council approval of the Business Subsidy Agreement and/or Plan).

Motion carried 3-0

HRA RESOLUTION NO. 1401

RESOLUTION APPROVING A LOAN IN THE AMOUNT OF APPROXIMATELY \$500,000 TO BENEFACTOR BREWING LLC AND THE CORRESPONDING CONTRACT FOR PRIVATE DEVELOPMENT

<b>Item #6</b>	<b>CONSIDER THE ADOPTION OF A RESOLUTION APPROVING AN AMENDMENT TO THE AMENDED AND RESTATED CONTRACT FOR PRIVATE DEVELOPMENT WITH LYNDALE GARDENS, LLC TO ADJUST THE INTEREST RATE ON THE MASTER DEVELOPER TAX INCREMENT FINANCING NOTE. (S.R. NO. 25)</b>
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Assistant Community Development Director Poehlman presented Staff Report No. 25

Chair Supple asked if the HRA has ever changed the interest rate on a Tax Increment Financing Note in the past.

Executive Director Stark explained the HRA has made interest rate adjustments in the past.

M/Sandahl, S/Ohnesorge to adopt a resolution approving an amendment to the Amended and Restated Contract for Private Development with Lyndale Gardens, LLC to adjust the interest rate on the Master developer Tax Increment Financing Note.

Motion carried 3-0

HRA RESOLUTION NO. 1402

RESOLUTION APPROVING AMENDED TAX INCREMENT LIMITED REVENUE NOTE

<b>Item #7</b>	<b>CONSIDER A RESOLUTION APPROVING A LOAN TO LYNK65, LLC FOR \$500,000 TO HELP FINANCE A MIXED USE PROJECT AT 65<sup>TH</sup> STREET AND LYNDALE AVENUE SOUTH. (S.R. NO 26)</b>
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Assistant Community Development Director Poehlman presented Staff Report No. 26

Chair Supple asked Brian Bochman, Lynk65 LLC (Developer) to speak about the concerns he has with the feasibility of the commercial portion without the cash infusion and going straight to residential.

The Developer spoke of the impact Covid has had on retail spaces that go into store fronts and a massive increase in development costs such as lumbar, steel and appliances. He also spoke to supply chain issues they've been experiencing. In regards to eliminating or reducing the commercial space, he spoke of difficulties with predicting if tenants would occupy the space and with receiving financing due to the way commercial space is appraised.

Chair Supple inquired about new Planning Commission permissions that may be required.

Assistant Community Development Director Poehlman explained the removal of retail space and replacement with housing would require the project to go to the Planning Commission and City Council for amendments.

Commissioner Sandahl stated that this would be an opportunity to use funds that might otherwise have to be returned to the County and she would recommend the proposal.

Chair Supple stated that she has not decided if she feels the development should be full residential or include the originally proposed commercial space.

Assistant Community Development Director Poehlman explained the area is guided for a mix of uses and explained the need for commercial spaces in the area.

Commissioner Sandahl spoke of the benefits of the commercial space.

M/Sandahl, S/Ohnesorge to approve a resolution approving a \$500,000 loan to Lynk 65, LLC and the execution and delivery of documents in connection therewith.

Motion carried 3-0

HRA RESOLUTION NO. 1403

RESOLUTION APPROVING A LOAN TO LYNK 65 LLC AND THE EXECUTION AND DELIVERY OF DOCUMENTS IN CONNECTION THEREWITH

Item #8	<b>CONSIDER RESOLUTIONS APPROVING PROPOSED 2022 PROPOSED HOUSING AND REDEVELOPMENT AND AUTHORITY BUDGET AND TAX LEVY AND 2021 REVISED HOUSING AND REDEVELOPMENT AUTHORITY BUDGET. (S.R. NO. 27)</b>
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Executive Director Stark Presented Staff Report No. 27

Chair Supple inquired about the percentage the levy is increasing.

Executive Director Stark explained.

M/Sandahl, S/Ohnesorge to adopt the attached resolutions approving the 2022 Proposed Housing and Redevelopment Authority Budget and Tax Levy and 2021 Revised Housing and Redevelopment Authority Budget.

Motion carried 3-0

HRA RESOLUTION NO. 1404

RESOLUTION APPROVING PROPOSED 2022 HOUSING AND REDEVELOPMENT AUTHORITY BUDGET AND CERTIFYING THE 2022 TAX LEVY

HRA RESOLUTION NO. 1405

RESOLUTION AUTHORIZING REVISION OF THE 2021 BUDGET OF THE HOUSING AND REDEVELOPMENT AUTHORITY OF RICHFIELD

<b>Item #9</b>	<b>HRA DISCUSSION ITEMS</b>
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None

<b>Item #10</b>	<b>EXECUTIVE DIRECTOR'S REPORT</b>
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Executive Director Stark notified commissioners about an upcoming tour at Woodlawn Terrace.

Executive Director Stark thanked HRA staff member Myrt Link for managing the HRA and EDA budgets along with the Bi-Annual TIF litigations. He also thanked Chris Regis and Pam Dmytrenko for their years of service and mentioned that they are leaving the City of Richfield.

<b>Item #11</b>	<b>CLAIMS</b>
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M/Sandahl, S/Ohnesorge that the following claims be approved:

<b>U.S. BANK</b>	<b>8/16/2021</b>
Section 8 Checks: 133019 - 133102	\$178,317.94
HRA Checks: 34058 - 34071	\$55,450.87
<b>TOTAL</b>	<b>\$233,768.81</b>

Motion carried 3-0

<b>Item #12</b>	<b>ADJOURNMENT</b>
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The meeting was adjourned by unanimous consent at 8:07 p.m.

Date Approved: September 20, 2021

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Mary B. Supple  
HRA Chair

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LaTonia DuBois  
Administrative Assistant

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John Stark  
Executive Director





**HOUSING AND REDEVELOPMENT  
AUTHORITY MEETING MINUTES**  
Richfield, Minnesota

**Concurrent Housing and Redevelopment  
Authority and City Council Work Session**

**September 7, 2021**

**CALL TO ORDER**

The work session was called to order by HRA Chair Supple at 5:00.

- HRA Members Present: Mary Supple, Chair; Maria Regan Gonzalez; Sue Sandahl; and Lee Ohnesorge
- HRA Members Absent: Erin Vrieze Daniels
- Council Members Present: Maria Regan Gonzalez, Mayor; Mary Supple; Simon Trautmann; Ben Whalen; and Sean Hayford Oleary
- Council Members Absent: None
- Staff Present: Katie Rodriguez, City Manager; John Stark, HRA Executive Director/Community Development Director; Julie Urban, Housing Manager; and Celeste McDermott, Housing Specialist
- Others Present: Board members of the Woodlawn Terrace Cooperative and staff from Northcountry Cooperative Foundation

<b>Item #1</b>	<b>ON-SITE TOUR OF THE WOODLAWN TERRACE COMMUNITY</b>
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Board members of the Woodlawn Terrace Cooperative and staff from Northcountry Cooperative Foundation led policymakers on a tour of the Woodlawn Terrace manufactured home community, located at 7421 Lyndale Avenue. Staff described the current conditions, plans for the future, and how they'd like to partner with the city to upgrade the infrastructure and provide down payment assistance to new residents.

**ADJOURNMENT**

The work session was adjourned by unanimous consent at 5:55 p.m.

Date Approved:

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Mary B. Supple  
Chair

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LaTonia DuBois  
Administrative Assistant

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John Stark  
Executive Director



**STAFF REPORT NO. 28**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**9/20/2021**

REPORT PREPARED BY: Lynnette Chambers, Multifamily Housing Coordinator

OTHER DEPARTMENT REVIEW:

EXECUTIVE DIRECTOR REVIEW: John Stark, Executive Director  
 9/14/2021

**ITEM FOR COUNCIL CONSIDERATION:**

**Consider an adjustment to the payment standard for the Section 8 Housing Choice Voucher Program.**

**EXECUTIVE SUMMARY:**

On an annual basis, the U.S. Department of Housing and Urban Development (HUD) establishes a Fair Market Rent (FMR) for the Twin Cities Metropolitan Area, by bedroom size. Individual Housing and Redevelopment Authorities are allowed to select a payment standard within 90% to 110% of HUD's FMR. The selection of the payment standard should ensure that a sufficient supply of rental housing is available to Section 8 Housing Choice Voucher Program (Program) participants. HUD's newly published FMRs have increased and the Housing and Redevelopment Authority's (HRA) current payment standards do not fit within the established parameters. To remain in compliance with HUD regulations, the HRA must increase its payment standards. The proposed payment standards will fall between 90% to 93% of the current FMRs.

The new payment standards are effective for October 1, 2021. The attached table lists the specific changes proposed. The last adjustment made by the HRA was on July 20, 2021 for one and two bedroom units; therefore, these payment standards will remain the same. The new payment standards will increase for zero, three, four and five bedroom units.

**RECOMMENDED ACTION:**

**By motion: Approve the proposed adjustment of the payment standard for the Section 8 Housing Choice Voucher Program.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

- The HRA last adjusted its payment standards in July 2021 for one and two bedroom units. This adjustment in payment standards will affect only zero, three, four and five bedroom units.

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

- The HRA must approve increases in the payment standard for the Program in order to remain compliant with HUD regulations that require payment standards to fall within 90-110% of HUD's FMRs.
- Section 8 participants will be able to choose from a larger selection of affordable housing units and may receive some immediate rent relief on a case-by-case basis.
- HUD provides sufficient federal assistance to cover these adjustments in the payment standards and has approved the increase.
- Without an increase in the payment standard, many Section 8 participants will be unable to find

housing and keep up with changing rents.

- Potential changes in Federal law impact the financial resources available to the Program if the HRA does not remain current with the FMR.

**C. CRITICAL TIMING ISSUES:**

- The new payment standards will be effective October 1, 2021.

**D. FINANCIAL IMPACT:**

- An increase in the payment standard will decrease the rent burden for Section 8 participants.
- HUD provides sufficient funding to cover the increase.

**E. LEGAL CONSIDERATION:**

- The contract between the HRA and HUD provides for FMR adjustments in accordance with federal regulations.

**ALTERNATIVE RECOMMENDATION(S):**

- Do not change the payment standard at this time; however, the HRA will not be in compliance with HUD regulations.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

N/A

**ATTACHMENTS:**

Description	Type
▢ Payment Standards	Backup Material

Proposed Payment Standards effective 10/1/2021

<u>0 BDR</u>	<u>1 BDR</u>	<u>2 BDR</u>	<u>3 BDR</u>	<u>4 BDR</u>	<u>5 BDR</u>
840	1000	1225	1675	1975	2310

Current Payment Standards effective 8/1/2021 (changed only 1 and 2 Bedrooms)

<u>0 BDR</u>	<u>1 BDR</u>	<u>2 BDR</u>	<u>3 BDR</u>	<u>4 BDR</u>	<u>5 BDR</u>
810	1000	1225	1655	1945	2281

HUD FMR effective 10/1/2021

<u>0 BDR</u>	<u>1 BDR</u>	<u>2 BDR</u>	<u>3 BDR</u>	<u>4 BDR</u>
932	1078	1329	1841	2145



**STAFF REPORT NO. 29**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**9/20/2021**

REPORT PREPARED BY: Melissa Poehlman, Asst. Community Development Director  
OTHER DEPARTMENT REVIEW:

EXECUTIVE DIRECTOR REVIEW: John Stark, Executive Director  
9/14/2021

**ITEM FOR COUNCIL CONSIDERATION:**

**Consider the adoption of a resolution approving amended and restated documents related to the Chamberlain Apartments Project.**

**EXECUTIVE SUMMARY:**

On June 18, 2018, the Housing and Redevelopment Authority (HRA) approved an Amended and Restated Contract for Private Development (Contract) with Chamberlain Apartments, LLC (Developer) to acquire certain HRA properties and other privately-owned properties, construct 283 new apartments and substantially rehabilitate three 11-unit apartment buildings. Per the Contract, the HRA agreed to reimburse the Developer for a portion of the acquisition costs and certain site improvement costs with tax increment. The Developer agreed to provide a Developer Surplus Cash Note to the HRA (principal amount of \$682,850) to pay for the HRA property, and to record a Declaration of Restrictive Covenants (Declaration) on the property which relates to the affordable units.

Financing for the project was provided by a loan (HUD Loan) from the U.S. Department of Housing and Urban Development (HUD) and per the Contract, the HRA subordinated its rights under the Contract to the rights of HUD. The Developer has notified the HRA that their HUD Loan will be amended and restated and in connection, the HUD Rider to the Declaration and the Developer Surplus Cash Note require amendment and restatement, and the HRA is required to confirm and ratify its subordination of the Contract to the HUD Loan.

This action will not have a financial impact on the HRA and staff recommends approval of the documents that will allow the Developer to amend the HUD Loan.

**RECOMMENDED ACTION:**

**By motion: Approve the attached resolution approving amended and restated documents connected to the Chamberlain Apartments Project.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

- On October 19, 2015, the Richfield HRA entered into a Preliminary Development Agreement with the Anderson Companies (predecessor to the Developer) for the development of the Cedar Point South Redevelopment Area.
- On August 29, 2017, the HRA approved a Contract for Private Development with the

Developer for the Cedar Point South Redevelopment Area. This Contract was further amended by the HRA at its October 16, 2017 and April 16, 2018 meetings.

- On June 18, 2018, the HRA approved an Amended and Restated Contract for Private Development with Chamberlain Apartments, LLC. This agreement remains in place and dictates the requested action tonight.

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

- The Contract specifically states that the affordability covenants are subordinate to the HUD Loan.
- The Contract also stipulates that the Applicant return to the HRA for approval for any further subordinations.
- The subordination request does not change the HRA's financial position.

**C. CRITICAL TIMING ISSUES:**

- The Developer is seeking to amend and restate their HUD Loan and would appreciate action by the HRA as soon as possible.

**D. FINANCIAL IMPACT:**

- There is not financial impact to the HRA.

**E. LEGAL CONSIDERATION:**

- The HRA Attorney drafted the attached resolution and has reviewed all other documents.

**ALTERNATIVE RECOMMENDATION(S):**

- Do not approve the requests.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

Bob Cunningham for Chamberlain Apartments, LCC

**ATTACHMENTS:**

Description	Type
☐ Resolution - HUD Documents	Resolution Letter
☐ Amended & Restated Developer Surplus Cash Note	Contract/Agreement
☐ Amended & Restated HUD Rider to Restrictive Covenants	Contract/Agreement
☐ Subordination Agreement	Contract/Agreement

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

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION APPROVING AMENDED AND RESTATED DOCUMENTS IN CONNECTION  
WITH THE CHAMBERLAIN APARTMENTS PROJECT**

WHEREAS, the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the “Authority”) and the City of Richfield, Minnesota (the “City”) have established Tax Increment Financing District No. 2017-1 (The Chamberlain) (a housing district) within the Richfield Redevelopment Project (the “Project”) in the City; and

WHEREAS, the Authority entered into an Amended and Restated Contract for Private Development, dated June 18, 2018 (the “Contract”), with Chamberlain Apartments, LLC, a Delaware limited liability company (the “Developer”), pursuant to which the Developer agreed to acquire certain property from the Authority and certain other parcels of property within the Project (collectively, the “Development Property”) and construct a multifamily housing development with approximately 283 apartment units, substantially rehabilitate three 11-unit apartment buildings, and construct underground parking (the “Minimum Improvements”), and the Authority agreed to reimburse the Developer for a portion of land acquisition costs and certain site improvements costs related thereto with tax increment generated from the Development Property; and

WHEREAS, in connection with the Minimum Improvements, the Authority and the Developer also entered into a Declaration of Restrictive Covenants, dated June 18, 2018 (the “Declaration”), and the Developer also delivered to the Authority a Developer Surplus Cash Note (the “Developer Surplus Cash Note”) in the principal amount of \$682,850; and

WHEREAS, the Developer obtained financing (the “HUD Loan”) from Colliers Mortgage LLC, a Delaware limited liability company (the “Lender”), for the Minimum Improvements; and

WHEREAS, under the terms of the Contract, the Authority subordinated its rights under the Contract to the rights of U.S. Department of Housing and Urban Development (“HUD”) and the Lender under the documents executed in connection with the HUD Loan (the “HUD Loan Documents”); and

WHEREAS, the Developer has notified the Authority that the HUD Loan will be amended and restated, and in connection therewith the HUD Rider to the Declaration and the Developer Surplus Cash Note require amendment and restatement and the Authority is required to confirm and ratify its subordination of the Contract to the HUD Loan Documents; and

WHEREAS, there have been presented before the Board of Commissioners of the Authority forms of the following documents: (i) an Amended and Restated HUD Rider to Restrictive Covenants (the “Amended and Restated Rider to Declaration”) between the Authority and the Developer; (ii) an Amended and Restated Developer Surplus Cash Note by the Developer in favor of the Authority; and (iii) a Subordination Agreement (the “Subordination Agreement”) between the Authority and the Developer, pursuant to which the Authority confirms and ratifies the subordination of its rights under the Contract to the rights of HUD and the Lender under the HUD Loan Documents; 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 Amended and Restated Rider to Declaration and the Subordination Agreement are hereby in all respects authorized, approved, and confirmed, and the Chair and the Executive Director are hereby authorized and directed to execute the Amended and Restated Rider to Declaration and 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. The Chair and the Executive Director are hereby authorized to execute and deliver to the Developer, HUD, and the Lender any and all documents deemed necessary to carry out the intentions of this resolution.

Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota this 20<sup>th</sup> day of September, 2021.

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Mary B. Supple, Chair

ATTEST:

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Maria Regan Gonzalez, Secretary

AMENDED AND RESTATED DEVELOPER SURPLUS CASH NOTE  
(Project – Chamberlain Multifamily Housing in Richfield, Minnesota)

FOR VALUE RECEIVED, Chamberlain Apartments, LLC, a Delaware limited liability company (“**Maker**” or “**Developer**”) promises to pay to the Housing and Redevelopment Authority in and for the City of Richfield (“**Payee**”) the sum of Six Hundred Eighty-Two Thousand Eight Hundred Fifty Dollars Dollars (\$682,850), that was advanced pursuant to that certain Amended and Restated Contract for Private Development, dated June 18, 2018 (the “**Development Contract**”), between the Maker and the Payee, with interest on any remaining balance of principal at two percent (2.0%) per annum accruing from November 1, 2018, and payable semi-annually, commencing August 1, 2025, and thereafter on the first day of February and August until the entire indebtedness has been paid. Any interest not so paid shall not create any default in the terms of this note but shall accrue and be payable in full on the maturity date hereof. In any event, the balance of principal, if any remaining unpaid, plus accrued interest, shall be due and payable on [August 1, 2060] (“**Maturity Date**”). The definition of any capitalized term or word used herein can be found in this Amended and Restated Developer Surplus Cash Note (Project – Chamberlain Multifamily Housing in Richfield, Minnesota) (this “**Developer Surplus Cash Note**”), the Regulatory Agreement dated [ \_\_\_\_\_ ] 1, 2021, between Maker and the Secretary of Housing and Urban Development (“**HUD**”), or the Security Instrument dated [ \_\_\_\_\_ ] 1, 2021, securing that certain Note (“**Note**”) in the principal amount of \$[ \_\_\_\_\_ ] made by Maker to Colliers Mortgage LLC, Delaware limited liability company (*fka* Dougherty Mortgage LLC). This Amended and Restated Developer Surplus Cash Note (Project – Chamberlain Multifamily Housing in Richfield, Minnesota) amends, restates, and supersedes in all respects that certain Developer Surplus Cash Note (Project – Chamberlain Multifamily Housing in Richfield, Minnesota) dated as of June 18, 2018.

This Developer Surplus Cash Note is subject to the following terms and conditions:

1. By May 31st of each year, beginning May 31, 2025, and continuing until the Maturity Date, the Maker shall deliver to the Payee a certificate signed by an officer of the Maker’s managing member providing the calculation of Surplus Cash available for distribution by the Maker. The Payee requires scheduled payments to be made in an amount equal to \$22,641.00 on each February 1 and August 1, commencing August 1, 2025 (each a “**Payment Date**”). Payments shall be payable by the Maker on each Payment Date from 75% of Surplus Cash, as provided in Section 3.6 of the Development Contract, and shall continue until principal of and interest on this Note is paid in full. If the payments are not paid in full for each required payment date, such payments will be made by Kraus-Anderson, Incorporated, a Minnesota corporation, as the guarantor under the Developer Surplus Cash Note Guaranty Agreement, dated June 18, 2018.
2. Prior to the Maturity Date, the entire amount due and owing under this Developer Surplus Note shall be due and payable in full on the occurrence of any of the following events: (a) the voluntary or involuntary sale, transfer, or conveyance of any part of the Development Property or the Minimum Improvements (which shall not include liens securing the

financing required for the acquisition and construction of the Development Property and the Minimum Improvements); (b) the voluntary or involuntary sale, transfer or conveyance of any part of the Developer (excluding the sale, transfer or conveyance of any part of the Developer to an affiliate of the Developer or a tax credit partner); or (c) the refinancing of the debt incurred to acquire the Development Property and construct the Minimum Improvements. Notwithstanding anything to the contrary in this Surplus Cash Note, capitalized terms not otherwise defined in this Surplus Cash Note have the meanings given to such term in the Development Contract.

3. In the event that the maturity date of that certain Note referenced above is extended and such extension is approved in writing by HUD, then in such event the Maturity Date shall automatically be extended to the extended maturity date of the Note without the consent of Payee.
4. Except as provided in Section 5 below, as long as HUD is the insurer or holder of the Note secured by the Security Instrument, payments due under this Developer Surplus Cash Note shall be payable only from no more than 75% of available Surplus Cash. The restriction on payment imposed by this paragraph shall not excuse any default caused by the failure of Maker to pay the indebtedness evidenced by this Developer Surplus Cash Note. In no event may payments due under all subordinate debt of Maker cumulatively exceed 75% of available Surplus Cash.
5. In the event the Indebtedness secured by the Security Instrument is paid in full and the Security Instrument released of record, then the holder of this Developer Surplus Cash Note may, at its option, declare the whole principal sum or any balance thereof, together with interest thereon, immediately due and payable.

Notwithstanding the foregoing, in the event said indebtedness is paid in full by way of any substitute indebtedness of Maker secured by any substitute security instrument insured or held by HUD under Section 223(a)(7) of the National Housing Act, as amended, the maturity date of this Developer Surplus Cash Note shall automatically be extended to the maturity date of the note evidencing the substitute indebtedness without the consent of Payee.

6. Maker may pay any part or all of the principal of this Developer Surplus Cash Note on any interest payment date, provided no such prepayment of principal in any amount or any payment of interest shall be made except from Surplus Cash in accordance with the conditions prescribed in the Regulatory Agreement.
7. Notwithstanding the provisions of paragraphs numbered 4, 6, and 9, Maker may also make payments due hereunder from sources other than Project income or Project Assets.
8. Any unauthorized payments, as determined by HUD, shall be returned to the Project immediately upon discovery.
9. Except as permitted pursuant to Paragraph 7 hereof, no prepayment of this Developer Surplus Cash Note shall be made until after final endorsement for mortgage insurance by HUD of the Note, unless such prepayment is made from non-Project sources.

10. This Developer Surplus Cash Note is non-negotiable and may not be sold, transferred, assigned, or pledged by Payee.
11. Interest on this Developer Surplus Cash Note shall not be compounded as long as HUD is the insurer or holder of the Note secured by the Security Instrument.
12. Maker hereby waives presentment, demand, protest and notice of demand, protest and nonpayment of this Developer Surplus Cash Note.

The terms and provisions of this Developer Surplus Cash Note are also for the benefit of and are enforceable by HUD against any party hereto, their successors and assigns. This Developer Surplus Cash Note may not be modified or amended without the written consent of HUD.

IN WITNESS WHEREOF, Maker has signed this Amended and Restated Developer Surplus Cash Note on this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

MAKER: Chamberlain Apartments, LLC

By: Kraus Anderson, Incorporated  
Its: Managing Member

By: \_\_\_\_\_  
Name: Bruce W. Engelsma  
Title: Chief Executive Officer

## **Amended and Restated HUD Rider To Restrictive Covenants**

This AMENDED AND RESTATED HUD RIDER TO RESTRICTIVE COVENANTS is made as of [\_\_\_\_\_], 2021, by Chamberlain Apartments, LLC, a Delaware limited liability company (“Borrower”) and 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 (“Agency”).

WHEREAS, Borrower has obtained financing from Colliers Mortgage LLC, a Delaware limited liability company (“Lender”) for the benefit of the project known as Chamberlain Apartments (“Project”), which loan is secured by a Multifamily Mortgage, Assignment of Leases and Rents, and Security Agreement (Minnesota) (“Security Instrument”) dated as of \_\_\_\_\_ 1, 2021, and recorded in the office of the Abstract and Torrens records of Hennepin County, Minnesota (“Records”) simultaneously herewith, and is insured by the United States Department of Housing and Urban Development (“HUD”);

WHEREAS, Borrower entered into that certain Declaration of Restrictive Covenants (“Restrictive Covenants”) with respect to the Project, as more particularly described in Exhibit A attached hereto, dated as of June 18, 2018, and recorded on July 9, 2018 in the Records as Document No. A10569935 (Abstract) and T05543327 (Torrens);

WHEREAS, HUD requires as a condition of its insuring Lender’s financing to the Project, that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument;

WHEREAS, the Agency previously agreed to subordinate the Restrictive Covenants to the lien of a prior mortgage loan insured by HUD in accordance with the terms of that certain HUD Rider to Restrictive Covenants, dated as of June 18, 2018, and recorded in the Records (the “Prior Rider”); and

WHEREAS, the Agency has agreed to resubordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this Rider, which is intended to amend, restate, and replace in its entirety the Prior Rider.

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

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Rider, the provision contained in this Rider shall govern and be controlling in all respects as set forth more fully herein.

(b) The following terms shall have the following definitions:

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

“HUD” means the United States Department of Housing and Urban Development.

“HUD Regulatory Agreement” means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

“Lender” means Colliers Mortgage LLC, a Delaware limited liability company, its successors and assigns.

“Mortgage Loan” means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

“Mortgage Loan Documents” means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

“National Housing Act” means the National Housing Act, 12 USC § 1701 *et seq.*, as amended.

“Program Obligations” has the meaning set forth in the Security Instrument.

“Residual Receipts” has the meaning specified in the HUD Regulatory Agreement.

“Security Instrument” means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

“Surplus Cash” has the meaning specified in the HUD Regulatory Agreement.

- (c) Notwithstanding anything in the Restrictive Covenants to the contrary, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the “HUD Requirements”). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency’s ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower’s knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.
- (d) In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate.
- (e) Borrower and the Agency acknowledge that Borrower’s failure to comply with the covenants provided in the Restrictive Covenants will does not and will not serve as a basis for default under the HUD Requirements, unless a separate default also arises under the HUD Requirements.

- (f) Except for the Agency's reporting requirement, in enforcing the Restrictive Covenants the Agency will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:
- i. Available surplus cash, if the Borrower is a for-profit entity;
  - ii. Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
  - iii. Available residual receipts authorized for release by HUD, if the Borrower is a non-profit entity.
- (g) For so long as the Mortgage Loan is outstanding, Borrower and Agency shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.
- (h) Subject to the HUD Regulatory Agreement, the Agency may require the Borrower to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Agency relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Agency harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

The statements and representations contained in this rider and all supporting documentation thereto are true, accurate, and complete. This certification has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring a multifamily loan, and may be relied upon by HUD as a true statement of the facts contained therein.

**Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.**



**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 \_\_\_\_\_, 2021, by Mary B. Supple, the Chairperson of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2021, by John Stark, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

**CHAMBERLAIN APARTMENTS, LLC,**  
a Delaware limited liability company

By: Kraus-Anderson, Incorporated  
Its: Managing Member

By: \_\_\_\_\_  
Its [ \_\_\_\_\_ ]

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2021, by  
\_\_\_\_\_, the \_\_\_\_\_ of Kraus-Anderson, Incorporated, a Minnesota  
corporation, the managing member of Chamberlain Apartments, LLC, on behalf of the Borrower.

\_\_\_\_\_  
Notary Public

Exhibit A  
Legal Description

*[to be added]*

## **SUBORDINATION AGREEMENT**

This SUBORDINATION AGREEMENT is dated as of [ \_\_\_\_\_ ], 2021, by and between the Housing and Redevelopment Authority for the City of Richfield, Minnesota, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”) and Chamberlain Apartments, LLC, a Delaware limited liability company (the “Developer”).

The Authority and the Developer are parties to that certain Amended and Restated Contract for Private Development dated as of June 18, 2018 and recorded on July 9, 2018 in the County Recorder’s Office of Hennepin County, Minnesota as Document No. A10569936 (the “Agreement”).

Pursuant to Section 7.5 of the Agreement, the Authority agreed to subordinate its rights under the Agreement to the rights of the U.S. Department of Housing and Urban Development (“HUD”) and Colliers Mortgage LLC, a Delaware limited liability company (*formerly known as* Dougherty Mortgage LLC) (the “Lender”) under a mortgage loan made by Lender to the Developer (the “HUD Loan”), which HUD Loan was insured by HUD pursuant to applicable law, as such HUD loan is and/or shall be amended and restated on or about contemporaneously herewith under Section 223(f) of the National Housing Act, as amended pursuant to an FHA Commitment dated August 5, 2021, as amended (“Amended and Restated HUD Loan”).

In connection with the amendment and restatement of certain documents relating to the Amended and Restated HUD Loan (including the note, mortgage, and regulatory agreement relating thereto), the Lender and HUD require the Authority to confirm and ratify the prior subordination of, and to resubordinate, its rights under the Agreement to the Rights of HUD and the Lender.

Accordingly, the Authority hereby confirms and ratifies its subordination of the Agreement, and hereby resubordinates its rights under the Agreement, to the rights of HUD and the Lender under the Amended and Restated HUD Loan. For the avoidance of doubt, the subordination of the Authority’s rights hereunder does not prohibit the Authority from exercising its remedies under Sections 9.2 and 9.3 of the Agreement.

\*\*\* *Signature page follows* \*\*\*

**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 \_\_\_\_\_, 2021, by Mary B. Supple, the Chairperson of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2021, by John Stark, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public



**EXHIBIT A**



**STAFF REPORT NO. 30**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**9/20/2021**

REPORT PREPARED BY: Julie Urban, Housing and Redevelopment Manager  
OTHER DEPARTMENT REVIEW:

EXECUTIVE DIRECTOR REVIEW: John Stark, Executive Director  
9/14/2021

**ITEM FOR COUNCIL CONSIDERATION:**

**Consider a resolution supporting an infrastructure grant application to Minnesota Housing for Woodlawn Terrace.**

**EXECUTIVE SUMMARY:**

The residents of Woodlawn Terrace, a manufactured home community located at 7421 Lyndale Avenue, have been working with the Northcountry Cooperative Foundation (NCF) to form a cooperative model of ownership and purchase the property. Under the current ownership model, the housing units are owned by individuals but the underlying property is owned by a separate owner, leaving the park vulnerable to purchase and conversion to another use and/or loss of affordability. The park provides affordable homeownership opportunities for low and moderate-income households, and self-ownership ensures that the park and its long-term affordability is preserved.

The Woodlawn Terrace Cooperative (Cooperative) has been formed, and they are in the process of finalizing the financing for the acquisition, which they hope to complete in October of this year. City staff have been in conversation with representatives from NCF about a variety of ways the City may be able support the preservation of these affordable homes, including providing funds for utility work and providing down payment assistance to new owners.

NCF undertook an assessment of the current utilities and determined that the park, which is currently on a private well, should be connected to City water and the sanitary sewer pipes lined. The cost for that work is estimated at \$1.1 million, and NCF is seeking funds from Minnesota Housing and the Richfield Housing and Redevelopment Authority (HRA) to complete that work.

Minnesota Housing's Manufactured Home Community Redevelopment Program is a grant program to fund infrastructure improvements or acquisition of manufactured home parks in order to assist the needs for aging manufactured home communities around the state. The program prioritizes projects based on health, safety and critical need improvements, as well as projects that leverage support from local municipalities. A match from the HRA will make the Cooperative's application for this grant more competitive and likely to be funded.

At this time, the HRA is being asked to approve a resolution committing the funds to be submitted along with the grant application to Minnesota Housing, which is due September 30, 2021. The HRA has redevelopment pooled increment available to provide assistance and has budgeted \$350,000 in the 2022 budget to assist with the utility improvements. Currently this "pooled redevelopment TIF"



has a very limited number of uses permitted under Minnesota TIF statutes; the requested use is among those limited uses. This funding was specifically included in the 2022 HRA Budget that was approved in August.

### **RECOMMENDED ACTION:**

**By motion: Adopt the attached resolution approving support for an infrastructure grant application to Minnesota Housing by the Woodlawn Terrace Cooperative in support of utility improvements at Woodlawn Terrace.**

### **BASIS OF RECOMMENDATION:**

#### **A. HISTORICAL CONTEXT**

- The current residents of Woodlawn Terrace formed a cooperative earlier this year and are working to purchase the underlying property.
- There are currently 32 housing units in the park, and the cooperative plans to increase that number to 53, offering an opportunity for an additional 21 households to purchase homes. Staff and NCF are in the process of identifying possible funding sources to create a down payment assistance program that would offer assistance to households earning up to 50% of the Area Median Income.

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

- The City's Inclusionary Housing Policy (IHP) requires that projects containing the construction of at least five new units and receiving financial assistance from the HRA provide a percentage of the units as affordable. In the case of ownership developments, 20% of the units must be affordable at 115% of the Area Median Income (AMI), 15% affordable at 100% of the AMI, or 10% affordable at 80% of the AMI. Of the current units at Woodlawn Terrace, 34% are owned by households earning less than 50% of the AMI, which greatly exceeds the requirements of the IHP. In addition, there will be 21 new units for sale, and any down payment assistance provided would be targeted to households earning less than 80% of the AMI, with the priority given to households earning less than 50% AMI. The actual number will be dependent upon the funds available.
- The Minnesota Housing grant requires the park to remain a manufactured home community for 25 years, to maintain lot rent affordable to low and moderate income households, and to cap rent increases at five percent annually.

#### **C. CRITICAL TIMING ISSUES:**

- The grant application is due to Minnesota Housing on September 30, 2021.
- The Cooperative anticipates closing on the property in October 2021.
- The utility work is planned for 2022.
- A grant agreement between the Cooperative and the HRA would need to be executed before any HRA funds are expended.

#### **D. FINANCIAL IMPACT:**

- The proposed match from the HRA is \$350,000. Funds would be taken from the Housing and Redevelopment Fund (HRF), specifically pooled redevelopment funds from the Interchange West tax increment financing district. The 2022 HRA budget includes funding for this request.

#### **E. LEGAL CONSIDERATION:**

- Approval of the resolution is contingent upon the Cooperative completing its purchase of the property, that the Minnesota Housing grant be awarded, and that the HRA and the Cooperative enter into a grant agreement.
- A condition of the use of HRF monies is that the property qualify as substandard. Staff have inspected the property and determined that there are blighted conditions at the property.

### **ALTERNATIVE RECOMMENDATION(S):**

- Decide not to approve the resolution.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

A representative from NCF.

**ATTACHMENTS:**

Description	Type
□ Resolution	Resolution Letter

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

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION APPROVING SUPPORTING INFRASTRUCTURE GRANT APPLICATION FOR  
WOODLAWN TERRACE MOBILE HOME PARK**

WHEREAS, Woodlawn Terrace Cooperative, a Minnesota nonprofit corporation (the “Cooperative”) intends to purchase and operate a manufactured home park on property at 7421 Lyndale Avenue South in the City of Richfield (the “Project”); and

WHEREAS, the Cooperative has determined it is in the best interests of the residents of the Project to make improvements to the water system and sanitary sewer system that services the Project; and

WHEREAS, the Cooperative has applied to Minnesota Housing’s Manufactured Home Community Redevelopment Program for a grant (the “Minnesota Housing Grant”) to fund infrastructure improvements for the purposes of connecting the Project to the City of Richfield’s water system and to line the existing sanitary sewer system; and

WHEREAS, the Housing and Redevelopment Authority in and for the City of Richfield (the “Authority”) has inspected the Project and has determined that there is blighted conditions at the Project; and

WHEREAS, if the Cooperative purchases the Project and the Minnesota Housing Grant is provided to the Project, the Authority is willing to provide a grant of \$350,000 (the “Authority Grant”) to the Cooperative for the purposes of assisting with the water system and sanitary sewer system improvements at the Project;

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 Authority Grant of \$350,000 to the Cooperative is hereby preliminarily approved, subject to (i) the Cooperative’s purchase of the Project; (ii) the Cooperative obtaining the Minnesota Housing Grant; and (iii) the Authority and the Cooperative entering into a grant agreement.
2. The Authority Grant shall be funded with pooled tax increment from the Interchange West Tax Increment District (a redevelopment tax increment district).
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 \_\_\_\_\_ day of September, 2021.

\_\_\_\_\_  
Mary B. Supple, Chair

ATTEST:

\_\_\_\_\_  
Maria Regan Gonzalez, Secretary



**STAFF REPORT NO. 31**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**9/20/2021**

REPORT PREPARED BY: Melissa Poehلمان, Asst. Community Development Director  
OTHER DEPARTMENT REVIEW:

EXECUTIVE DIRECTOR REVIEW: John Stark, Executive Director  
9/16/2021

**ITEM FOR COUNCIL CONSIDERATION:**

**Consider a Preliminary Donation Agreement with Metro Campus 1, LLC to explore the donation of the office building and property at 1600 78th Street East to the Housing and Redevelopment Authority.**

**EXECUTIVE SUMMARY:**

Over the past ten to fifteen years, Housing and Redevelopment Authority (HRA) staff and the ownership and management of Metro Sales, Inc. have developed and maintained an excellent working relationship. Recently a representative of owner Jerry Mathwig (acting as a Power of Attorney) approached staff about the possibility of donating a part of their property (owned under Metro Campus 1, LLC) located at 1600 78th Street East to the HRA. The office building on this site was the former home of EcoSmart, a water filtration company, and has been in a state of perpetual construction for more than 10 years. The current owner purchased the property from EcoSmart in 2019 with the intent of completing construction and using the office space to consolidate employees that were scattered in several locations throughout the metro. These plans have changed and the owner is interested in donating the property to the HRA for future redevelopment. The property is located near the future 77th Street underpass and could provide the HRA with additional influence over redevelopment in this important area.

Before accepting the donation, the HRA Attorney has recommended that due diligence work be done. This would include a review of title work, inspection of the property, appraisal, and environmental testing to determine the site's suitability and feasibility for redevelopment. The attached agreement establishes the terms under which this work could occur and the timeline for the donation/acceptance of the property. If, after this due diligence, the HRA concludes that it would like to accept the property, the HRA would agree to reimburse the owner for the second half 2021 taxes (\$40,486.60). The current estimated market value of the property is \$2,326,000.

**RECOMMENDED ACTION:**

**By motion: Approve the attached Preliminary Donation Agreement with Metro Campus 1, LLC to explore the acceptance of property at 1600 78th Street East.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

- The City currently owns property at 1710 78th Street East.
- Ownership of 1600 78th Street East would strengthen the City/HRA's position in influencing redevelopment in the area immediately adjacent to the 77th Street underpass.
- The properties in this area are guided for Regional Commercial Use by the 2040 Comprehensive

Plan.

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

- The HRA Attorney has concluded that the HRA is eligible to receive a land donation such as the one contemplated.
- Approval of the attached Preliminary Donation Agreement does not obligate the HRA to accept the donation.

**C. CRITICAL TIMING ISSUES:**

- The owner would prefer for the HRA to accept the donated property in 2021 for tax purposes.

**D. FINANCIAL IMPACT:**

- Current estimated market value of the property is approximately \$2.3 million.
- If the HRA accepts the property donation, the seller is asking to be reimbursed for the second half 2021 property taxes (approximately \$40,000).

**E. LEGAL CONSIDERATION:**

- HRA Attorney Julie Eddington has been consulted and drafted the attached Preliminary Donation Agreement.

**ALTERNATIVE RECOMMENDATION(S):**

- Do not approve the attached Preliminary Donation Agreement; declining the offer of the property donation.
- Approve the attached Agreement with revised terms to be considered by the owner.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

Tim Pabst, for Metro Campus 1, LLC

**ATTACHMENTS:**

Description	Type
☐ Resolution	Resolution Letter
☐ Preliminary Donation Agreement	Contract/Agreement
☐ Map	Exhibit

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

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION APPROVING THE EXECUTION AND DELIVERY OF A PRELIMINARY  
DONATION AGREEMENT WITH METRO CAMPUS 1 LLC**

WHEREAS, Metro Campus 1 LLC, a Minnesota limited liability company (the “Owner”), is the fee simple owner of property located at 1600 78<sup>th</sup> Street East, Richfield, Minnesota (the “Property”); and

WHEREAS, the Owner has proposed to donate the Property, including the office building on the Property, to the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the “Authority”); and

WHEREAS, the Authority desires to accept the donation of the Property for future redevelopment; and

WHEREAS, prior to accepting the donation of the Property, the Authority has requested the opportunity to do due diligence on the Property, including reviewing title work, entering and inspecting the Property, and performing environmental testing to determine its suitability and feasibility for redevelopment; and

WHEREAS, the Board of Commissioners of the Authority (the “Board”) has been presented with a form of a Preliminary Donation Agreement (the “Agreement”) between the Authority and the Owner, which sets forth the terms under which the Authority may conduct due diligence on the Property; 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 Agreement presented to the Authority and on file with the Executive Director is hereby in all respects approved, subject to modifications that do not alter the substance of the transaction and that are approved by the Chair and Executive Director; provided that execution of such document by such officials shall be conclusive evidence of approval.

2. The Chair and Executive Director are hereby authorized to execute the Agreement on behalf of the Authority and to carry out on the Authority’s obligations thereunder.

Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota this 20<sup>th</sup> day of September, 2021.

\_\_\_\_\_  
Mary B. Supple, Chair

ATTEST:

\_\_\_\_\_  
Maria Regan Gonzalez, Secretary

## PRELIMINARY DONATION AGREEMENT

THIS PRELIMINARY DONATION AGREEMENT (the “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021 (the “Effective Date”), between the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a Minnesota public body corporate and politic (the “HRA”), and Metro Campus 1 LLC, a Minnesota limited liability company (the “Owner”).

### RECITALS:

WHEREAS, the Owner is the fee simple owner of property located at 1600 78<sup>th</sup> Street East, Richfield, Minnesota, which is legally described in EXHIBIT A attached hereto (the “Property”); and

WHEREAS, the Owner has proposed to donate the Property, including the office building on the Property, to the HRA; and

WHEREAS, the HRA desires to accept the donation of the Property for future redevelopment; and

WHEREAS, prior to accepting the donation of the Property, the HRA has requested the opportunity to do due diligence on the Property, including reviewing title work, entering and inspecting the Property, and performing environmental testing to determine its suitability and feasibility for redevelopment; and

WHEREAS, the parties are entering into this Agreement to set forth the terms of the HRA’s entry to, inspection of, and testing of the Property;

### AGREEMENT

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

1. Right of Entry.

(a) The Owner grants to the HRA, its employees, agents, and other representatives, upon the terms set forth below, the permission and right to enter and access the Property as necessary for surveying the Property, appraising the property, conducting non-invasive environmental tests, and preparing other studies to determine the suitability and feasibility for redevelopment; provided, however, that no invasive testing shall be performed without the prior written consent of the Owner, which may be withheld in the Owner’s sole discretion. Testing costs shall be the responsibility of the HRA.

(b) Prior to entering the Property, the HRA shall give the Owner at least five days’ notice.

(c) In connection with any invasive testing the HRA performs (pursuant to the Owner’s written consent under subsection (a) above), if the HRA removes a sample or portion of the Property for investigation, monitoring, or testing or obtains any data or issues any report, the HRA shall give the Owner a copy of any such data or report.

(d) The HRA agrees to indemnify, defend, and hold harmless the Owner, and its agents, officials and employees from any and all claims, losses, damages, liabilities, causes of action, judgments, costs, or expenses because of personal injury, death, or property damage caused by HRA’s use of the

Property. The HRA agrees to indemnify, defend, and hold harmless the Owner from and against any and all claims, losses, damages, liabilities, causes of action, judgments, costs, or expenses because of personal injury, death, or property damage caused by the HRA or its officials, employees, agents, contractors, or assigns' entry into the Property during the term of this Agreement. The HRA shall maintain commercial general liability insurance covering its obligations under this Section in the amount of at least \$2,000,000. The HRA's contractors and consultants entering the Property shall be required to carry such insurance. The liability insurance required under this Section shall be primary and non-contributory and shall name the Owner as an additional insured. The HRA shall provide the Owner with certificates of insurance evidencing coverage upon the Owner's request. This subsection (d) shall survive the expiration or termination of this Agreement.

(e) By December 15, 2021 (the "Due Diligence Deadline"), the HRA shall notify the Owner of its completion and review of the tests and studies and whether it desires to proceed with accepting the Property from the Owner. The Due Diligence Deadline may be extended by the Owner in its sole discretion.

2. Donation of Property. If the HRA determines to proceed with accepting the Property, the Owner shall convey the Property to the HRA by limited warranty deed in a form reasonably acceptable to the Executive Director of the HRA and counsel to the HRA. The conveyance of the Property to the HRA, which shall include the recording of the deed with the office of the Hennepin County recorder, shall occur prior to January 1, 2022.

3. Acknowledgments. If the HRA accepts the Property, the HRA accepts the Property in its as-is, where-as, with all faults condition, and expressly acknowledges that (a) it has inspected the Property to its full and complete satisfaction with the full cooperation of the Owner; and (b) it has not relied, and does not rely, upon any warranties, representations, or statements concerning the Property made by the Owner or anyone representing the Owner. This Section shall survive the expiration or termination of this Agreement and the conveyance of the Property to the HRA. Consistent with the foregoing, the HRA, for itself and its agents, affiliates, successors, and assigns, hereby releases and forever discharges the Owner, its agents, affiliates, subsidiaries, successors, and assigns (collectively, the "Releasees") from any and all rights, claims, and demands at law or in equity, whether known or unknown at the time of this Agreement, which the HRA has or may have in the future, arising out of the physical, environmental, or legal condition of the Property, including, without limitation all claims for indemnification or contribution arising under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601, et seq.) or any similar federal, state, or local statute, rule, or regulation. The provisions of this Section shall survive the conveyance of the Property or termination of this Agreement indefinitely and shall not be merged into the closing documents.

4. Redevelopment of Property. If the Owner donates the Property to the HRA, the HRA shall proceed with demolition of the office building on the Property and hold the property for future redevelopment.

5. Payment of Transaction Costs. If the Owner donates the Property to the HRA prior to October 15, 2021, the HRA shall pay the property taxes (including special assessments) due and payable on October 15, 2021. If the Owner donates the Property to the HRA after such date, the HRA will reimburse owner for such property taxes due and payable on October 15, 2021. The HRA shall be responsible for the costs of its due diligence in connection with the Property, deed tax (if any), the cost of recording the deed, the cost (if any) of any escrow agent who facilitates closing, and the cost any title policy that the HRA chooses to obtain. The parties shall pay their respective attorneys' fees in connection with negotiating this Agreement and generating the closing documents.



6. Term of Agreement. This Agreement is effective from the Effective Date through December 31, 2021, unless extended by the Owner with the approval of the Executive Director of the HRA.

7. Agreement. This Agreement constitutes the entire agreement between the parties relative to the proposed Project. Unless specifically described herein, no obligation shall be inferred or construed.

8. Notices. Notice or demand or other communication between the Owner and the HRA shall be sufficiently given if sent by certified or registered mail, postage prepaid, return receipt requested or delivered personally:

To the HRA: Richfield Housing and Redevelopment Authority  
6700 Portland Avenue South  
Richfield, MN 55422  
Attn: John Stark, Executive Director

To the Owner: Metro Campus 1, LLC  
c/o Timothy J. Pabst  
Stinson LLP  
50 South Sixth Street, Suite 2600  
Minneapolis, MN 55402

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

**IN WITNESS WHEREOF**, the parties have executed this Preliminary Donation Agreement effective on the date and year first written above.

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

By \_\_\_\_\_  
Mary B. Supple  
Its Chair

By \_\_\_\_\_  
John Stark  
Its Executive Director

Execution page of the Owner to the Preliminary Agreement, dated the date and year first written above.

**METRO CAMPUS 1, LLC**, a Minnesota  
limited liability company

By \_\_\_\_\_  
Timothy J. Pabst, as attorney-in-fact for  
Jerry E. Mathwig, the sole member of  
Owner

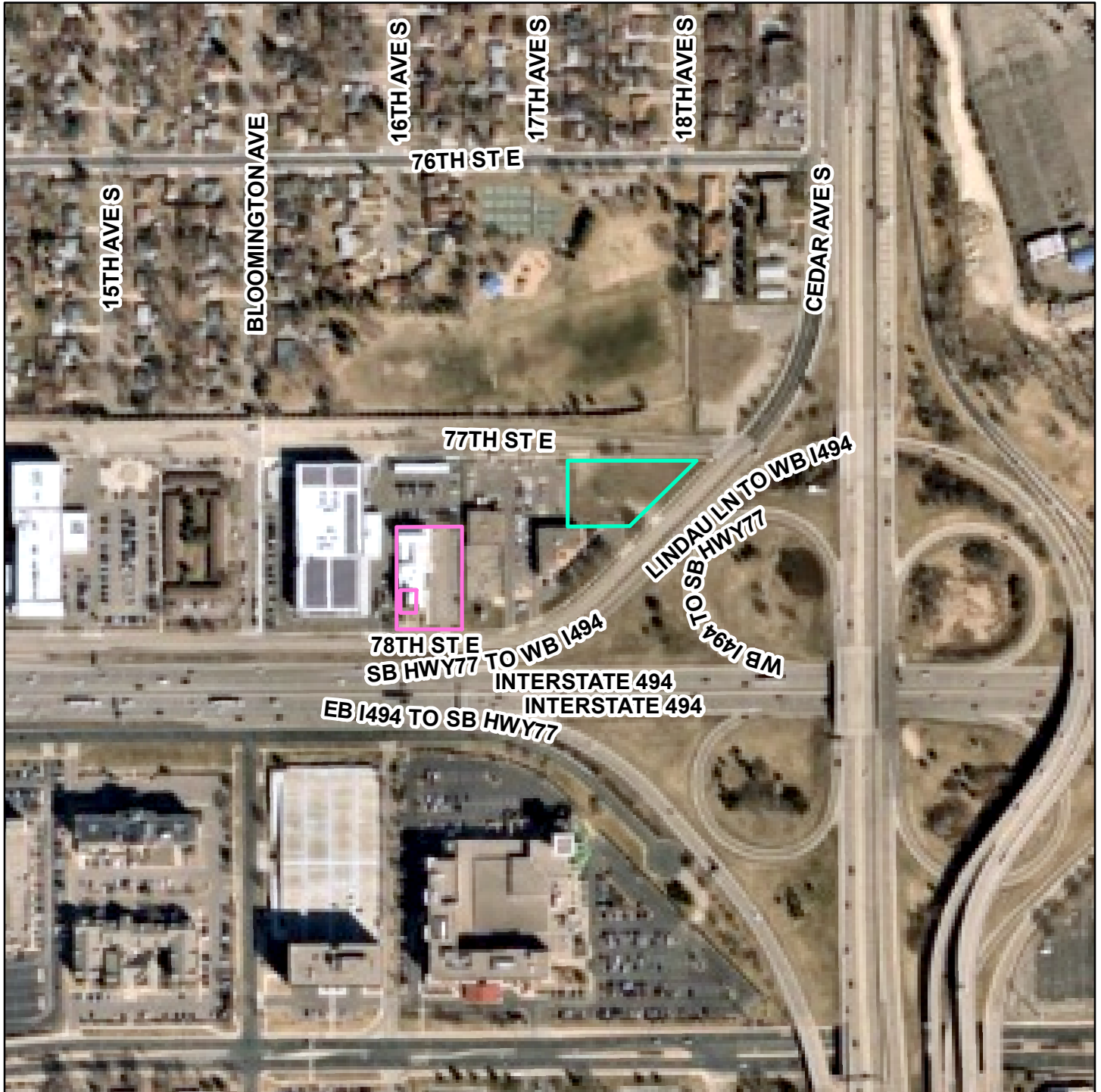
**EXHIBIT A**



**PROPERTY**

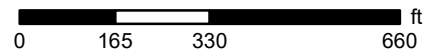
That part of the East 150 feet of the West 480 feet of the South 1/2 of the Southeast Quarter of the Southeast Quarter of Section 35, Township 28, Range 24, lying South of the North 180.26 feet thereof.



# HRA Property Donation



-  Donation Property
-  City Parcel





**STAFF REPORT NO. 32**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**9/20/2021**

REPORT PREPARED BY: Julie Urban, Housing & Redevelopment Manager  
OTHER DEPARTMENT REVIEW:

EXECUTIVE DIRECTOR REVIEW: John Stark, Executive Director  
9/15/2021

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of proposed changes to the Contract for Private Development with Cedar Point Investments, LLC, extending the contract deadline and allowing for the sale of market-rate townhomes.**

**EXECUTIVE SUMMARY:**

Cedar Point Investments, LLC (Developer), is constructing 64 townhome units in the Cedar Point II Housing area (63rd to 65th Streets, 16th Avenue to Richfield Parkway). In 2018, the Housing and Redevelopment Authority (HRA) approved the creation of a housing Tax Increment Financing (TIF) District and the issuance of two TIF Notes in the amount of \$900,000 each. Each Note is issued when construction has begun on 32 units, and payment is contingent upon 95% of the units being sold to households earning up to 100% (family of 1-2) or 115% (family of 3 or more) of the Area Median Income (AMI).

In addition to approving TIF funding, the HRA assisted in the acquisition and land assembly costs for the project, loaning the project \$630,000 for the acquisition of two properties. Twenty percent of the annual tax increment generated by the project is set aside to repay this loan.

Construction and sales of the first 32 units are nearing completion; however, cost increases are impacting the affordability of the project. The cost of construction for each unit has increased 32 percent since the start of the project. Significant cost increases in materials and labor, along with delays caused by the pandemic and shortages and delays in the supply chains, have raised the sale price of the units to over \$400,000, which is out of the range of affordability for the targeted buyers. The project currently faces a shortfall of approximately two million dollars to complete the final 32 units.

Given the current unaffordability of the units, the Developer is proposing to construct the remaining 32 units as market-rate units and sell to buyers regardless of income. Prices will likely rise to the upper \$400,000's as a result. Under this scenario, the second TIF Note would not be issued, and the HRA would receive an estimated \$272,197 less in TIF to repay the inter-fund loan. While these market-rate units would not contribute to the interfund loan, they would immediately go onto the tax roles and would generate tax revenues for the City, HRA, County and School District through their levies. The total estimated tax revenues from the addition of 32 townhomes valued at \$400,000 is approximately \$185,000.

Both staff and the Developer would prefer to continue selling the units as affordable; however, the current path is not sustainable under current market conditions. In order to allow the project to proceed, staff proposes to create an amendment to the Contract for Private Redevelopment (Contract) with the following provisions:

- The Developer would be able to sell the remaining 32 units as market-rate or affordable.
- The decision regarding affordability would be made by groups or "pods" of eight units.

- At the conclusion of construction, any pods of eight sold as market-rate would be removed from the TIF District.
- At the conclusion of construction, if any units are sold as affordable, the second TIF Note would be sized accordingly (i.e., \$225,000 per pod of eight constructed).
- At the sale of each unit, the Developer would place \$8,506 into an escrow account to make up for the estimated loan repayment shortfall. At the conclusion of construction, an estimate of projected tax increment would be prepared by the City's financial consultant and the final amount paid to the HRA from the escrowed funds would be determined.
- The final construction date would be extended from December 31, 2022 to December 31, 2024.

If the HRA approves of the proposed changes, the HRA Attorney would prepare a contract amendment for consideration by the HRA at its October meeting.

### **RECOMMENDED ACTION:**

**By motion: Provide feedback for the proposed changes to the RF64 townhome development and direct staff to prepare an amendment to the Contract for Private Development with Cedar Point Investments, LLC.**

### **BASIS OF RECOMMENDATION:**

#### **A. HISTORICAL CONTEXT**

- On August 20, 2018, the HRA approved a Contract for Private Development with NHH Companies, LLC for the townhome portion of the development. The Contract was later assigned to Cedar Point Investments, LLC.
- The first eight townhomes had been reserved by buyers and construction was nearing completion when the pandemic began in 2020.
- Construction costs have risen significantly in the past year-and-a-half causing a rise in sale prices and restricting the pool of available qualified buyers.

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

- The RF64 development consists of both the townhomes as well as 237 units of market-rate apartments on the east side of the block. The development was negotiated and approved prior to the adoption of the City's Inclusionary Housing Policy. Affordability standards were; however, applied to the development, specifically 95% of the townhomes were expected to be affordable, 100% of the apartments would be market-rate but provide a 10% contribution in TIF to the City's Housing and Redevelopment Fund (HRF).

#### **C. CRITICAL TIMING ISSUES:**

- The Developer needs a decision by October in order in order to continue construction. A delay could result in losing the current builder from the project, which would further increase costs.

#### **D. FINANCIAL IMPACT:**

- Removing 32 units from the TIF District will reduce the amount of TIF collected by the HRA to repay the inter-fund loan by \$272,197. The proposed amendment would require the Developer to place money in escrow upon the sale of each market-rate unit. At the conclusion of construction, the City's financial consultant will prepare an estimate of projected tax increment that will be generated to repay the loan. The final amount to be paid by the Developer to the HRA will be based on that estimate.

#### **E. LEGAL CONSIDERATION:**

- HRA legal counsel will draft the proposed Contract amendment in cooperation with staff and the Developer.

### **ALTERNATIVE RECOMMENDATION(S):**

- Do not approve the concept for proposed changes to the Contract for Private Development.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

Representative(s) of Cedar Point Investments, LLC

**ATTACHMENTS:**

Description	Type
☐ Contract for Private Development	Contract/Agreement



**Eighth Draft  
September 13, 2018**

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**CONTRACT  
FOR  
PRIVATE DEVELOPMENT  
between**

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

**and**

**CEDAR POINT INVESTMENTS LLC**

Dated: September 17, 2018

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THIS INSTRUMENT WAS DRAFTED BY:  
Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402  
(612) 337-9300

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## CONTRACT FOR PRIVATE DEVELOPMENT

THIS CONTRACT FOR PRIVATE DEVELOPMENT (the “Agreement”), made as of the 17<sup>th</sup> day of September, 2018, 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 CEDAR POINT INVESTMENTS, 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 (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 development of affordable housing within the City; and

WHEREAS, the Authority plans to establish the Tax Increment Financing District No. 2018-1 (a housing district) (the “TIF District”) within the Richfield Redevelopment Project pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended (the “TIF Act”) 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 proposes to acquire at least 15 parcels of property within the TIF District (the “Development Property”) and construct a development which will include (i) the Owner-Occupied Housing (as defined herein); (ii) two parking stalls per unit of Owner-Occupied Housing; and (ii) necessary public infrastructure, including streets and utilities. (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 convey four of the parcels that make up the Development Property to the Developer and reimburse the Developer for a portion of the land acquisition costs and certain site improvement costs related to the Minimum Improvements; 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 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:

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

“Apartments Project” means the development on property adjacent to the Development Property of (i) multifamily housing with approximately 218 units; (ii) a parking ramp with approximately 184 spaces; and (iii) necessary public infrastructure, including streets and utilities.

“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 located in the TIF District and paid to the Authority by the County in the six months preceding the Payment Date after first deducting therefrom thirty percent (30%) of the Tax Increment to be used to reimburse the Authority for administrative expenses, to reimburse the Authority for interfund loans, and for the promotion of redevelopment and affordable housing. 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.

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

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

“City” means the City of Richfield, Minnesota.

“Closing” has the meaning given such term in Section 3.2 hereof.

“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.

“County” means Hennepin County, Minnesota.

“Developer” means Cedar Point Investments LLC, a Minnesota limited liability company, or its permitted successors and assigns.

“Developer Property” means the portion of the Development Property to be acquired by the Developer from third parties other than the Authority, as described in EXHIBIT A attached hereto

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

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

“Holder” means the owner of a Mortgage.

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

“HRA Property” means the portion of the Development Property owned by the HRA, as described in EXHIBIT A attached hereto.

“HRA Property Purchase Price” has the meaning given in Section 3.2(e) hereof.

“HRA Tax Increment” means, on each Payment Date, the Tax Increment attributable to the Development Property located in the TIF District and paid to the Authority by the County in the six months preceding the Payment Date after first deducting therefrom thirty percent (30%) of the Tax Increment to be used to reimburse the Authority for administrative expenses, to reimburse the Authority for interfund loans, and for the promotion of redevelopment and affordable housing. 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.

“Ineligible Unit” has the meaning given in Section 4.8 hereof.

“Interfund Loans” has the meaning given in Section 3.9. hereof.

“Material Change” means a change in construction plans that adversely affects generation of tax increment or changes the number of units of Owner-Occupied Housing. A change in construction plans caused by the Developer’s inability to obtain at least nine of the Developer Parcels will not be considered a material change.

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

“Minimum Improvements” means the development on the Development Property of (i) the Owner-Occupied Housing; (ii) two parking stalls per unit of Owner-Occupied Housing; and (ii) necessary public infrastructure, including streets and utilities.

“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 of this Agreement.

“Owner-Occupied Housing” means the approximately 80 affordable owner-occupied townhomes to be constructed as part of the Minimum Improvements, subject to unit reduction as described in Section 4.9.

“Payment Date” means each February 1 and August 1.

“Phase” means Phase I, Phase II, or Phase III.

“Phase I” means the construction of 32 townhomes on the Development Property.

“Phase II” means the construction of 32 townhomes on the Development Property (in addition to the 32 townhomes completed for Phase I).

“Phase III” means the construction of 16 townhomes (subject to reduction in accordance with Section 4.9 herein) on the Development Property (in addition to the 64 townhomes completed for Phase I and Phase II); provided, however, if construction of 64 or less townhomes has been commenced on the Development Property prior to the completion date set forth in Section 4.3 herein, then the Minimum Improvements will not include a Phase III and any references herein to a “Phase” will only include Phase I and Phase II.

“Phase I TIF Note” has the meaning given in Section 3.6(a) hereof.

“Phase II TIF Note” has the meaning given in Section 3.6(a) hereof.

“Phase III TIF Note” has the meaning given in Section 3.6(a) hereof.

“Project Area” means the real property located within the boundaries of the Redevelopment Project.

“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, public infrastructure, and the costs of the housing structures.

“PUD” means the planned unit development for the property that includes the Development Property, as approved by the City Council.

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

“Redevelopment Project” means the Richfield Redevelopment Project.

“Right of Purchase and Right of First Refusal Agreement” means the Right of Purchase and Right of First Refusal Agreement between the Authority and the Developer as described in Sections 3.2(h) and 9.9 hereof and substantially in the form set forth in EXHIBIT E.

“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 Tax Increment Act.

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

“Tax Increment Plan” means the Tax Increment Financing Plan for the Tax Increment District No. 2018-1, as approved by the City Council of the City on August 20, 2018, as it may be amended and supplemented.

“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 District” means the Tax Increment District No. 2018-1, a housing district established pursuant to the TIF Act.

“TIF Notes” means the Tax Increment Limited Revenue Notes, substantially in the form contained in EXHIBIT B, to be delivered by the Authority to the Developer pursuant to Section 3.6(b) hereof and payable from Available Tax Increment received from the TIF District.

“Unavoidable Delays” means delays beyond the reasonable control of the party seeking to be excused as a result thereof, including delays which are the direct result of strikes, lockouts or 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, acts of any federal, state or local governmental unit (other than the Authority in properly exercising its rights under this Agreement) which directly result in delays, war, invasion, rebellion, revolution, insurrection, riots or civil war, or unavailability or shortage of supply of construction materials or construction labor, other than by reason of non-payment of costs of the same.

(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 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, site improvement costs, and housing construction 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 activities of the Authority are undertaken to foster the redevelopment of certain real property which for a variety of reasons is presently underutilized, to eliminate current blighting factors and prevent the emergence of further blight at a critical location in the City, to create increased tax base in the City, to increase affordable owner-occupied housing opportunities in the City, and to stimulate further development of the TIF District and Redevelopment Project as a whole.

(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 of the Authority 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 the Agreement within the meaning of Minnesota Statutes, Section 469.009.

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

(a) The Developer 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) With the understanding the definition of the Minimum Improvements may change pursuant to the provisions of this Agreement, the Developer will construct, operate and maintain the Minimum Improvements in accordance with the terms of this Agreement, Redevelopment Plan and all local, state and

federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations).

(c) 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) Subject to the provisions of Section 3.3 and contingent upon obtaining approvals from local governments in a timely fashion, if the Developer is able to purchase a sufficient number of the parcels included in the Development Property which would allow the Developer to commence construction of the Minimum Improvements, the Developer will use commercially reasonable efforts to 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 Authority currently owns four of the 15 parcels that make up the Development Property as more fully described in EXHIBIT A and shall convey the HRA Property to the Developer pursuant to the provisions of Section 3.2 hereof. The Developer currently has executed purchase contracts for six of the 15 parcels that make up the Development Property. In addition, the HRA has provided a loan to the Developer to assist in purchasing three of the 15 parcels that make up the Development Property.

#### Section 3.2. Conveyance of HRA Property.

(a) The Authority will convey the HRA Property to the Developer via a quit claim deed. The conveyance of the HRA Property to the Developer is contingent on (i) the Board of the Authority holding a public hearing and approving the sale of the HRA Property; (ii) the City Council of the City holding a public hearing and approving the establishment of the TIF District and the TIF Plan; and (iii) the Board of the Authority approving the establishment of the TIF District and the TIF Plan. The Authority will cause the Board of the Authority and the City Council to hold such public hearings and consider such approvals no later than December 31, 2018. The HRA Property will be conveyed “as-is” and “where-is.” Within 60 days following execution of this Agreement, the Authority will provide the Developer with a commitment for title insurance from a title insurance company (the “Title Company”) acceptable to Developer. The Developer will be responsible for reimbursing the Authority for the cost of preparation of the commitment for title insurance. The Developer shall pay for the cost of obtaining a policy of title insurance.

(b) Within 60 days after the Developer’s receipt of the title commitment, the Developer 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 HRA Property, or any portion thereof (“Objections”) and request that the Authority make the Authority’s title marketable or conforming. The Developer’s failure to object to defects in the marketability of Authority’s title to the HRA Property, in writing, within the time period set forth above or at any time prior to Closing, shall be deemed a waiver of the Developer’s right to require the Authority to cure such defects. If the Developer 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 HRA Property marketable. The Authority shall have up to 45 days from the Authority’s receipt of the Developer’s Objections to use good faith efforts to make the Authority’s actual and record title to the HRA 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 HRA Property marketable. If the Authority makes the Authority’s title marketable within the 45-day period, the Authority shall notify the Developer, 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 45-day period, the Developer may either: (i) terminate this Agreement by delivering written notice of termination to the Authority; or (ii) notify the Authority that the Developer waives Developer’s Objections. If the Developer waives the Developer’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 HRA Property other than the good faith efforts described above.

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

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

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

(e) The Developer acknowledges that the Authority will be conveying the HRA Property to the Developer for a purchase price of \$184,000 (the “HRA Property Purchase Price”) and the Developer shall pay \$84,000 of the HRA Property Purchase Price to the Authority on the date of the Developer’s closing on the construction financing. The remainder of the HRA Property Purchase Price (\$100,000) will be paid by the Developer to the Authority no later than the date that the Developer sells at least eight (8) townhome units, plus interest in the amount of 4.0% per annum. If the Developer does not pay the full amount of the HRA Property Purchase Price on or before December 1, 2019, the Authority shall have the option to receive all Available Tax Increment on each Payment Date until the remainder of the HRA Property Purchase Price is paid, plus interest in the amount of 4.0% per annum.

(f) The Developer’s obligation to consummate the Closing is expressly conditioned on satisfaction of each of the following conditions: (i) on or before December 31, 2018, Developer shall have determined that the matters and conditions disclosed by the reports, investigations and tests received or performed by Developer relating to the Development Property are satisfactory to Developer and Developer has otherwise found the Development Property to be in a condition satisfactory to proceed to Closing, (ii) on the date of Closing, Title Company shall be irrevocably committed to issue to Developer an owner’s policy of title insurance with respect to the Development Property in form and substance and containing such endorsements as shall be acceptable to Developer (the “Title Policy”), and (iii) on the date of Closing, the Developer shall have obtained all necessary land use approvals from the City (including final approval of the PUD). If any of the foregoing conditions are not timely satisfied, Developer may terminate this Agreement. Notwithstanding the foregoing, the Closing will not take place until the Developer has applied for all necessary land use approvals from the City (including final approval of the PUD) and has acquired the rights to purchase or purchased at least six contiguous parcels and either the northernmost parcel or the southernmost parcel within the Developer Property, in order to construct the Minimum Improvements, as described in Section 3.3 hereof.

(g) Subject to Section 3.3 hereof, in the event that the Closing has not taken place by December 31, 2018, and unless extended by mutual agreement of the parties, this Agreement shall terminate and be of no further force and effect, and the parties will be relieved of any further obligations hereunder.

(h) The Developer shall grant the Authority the right to repurchase the HRA Property and purchase the Developer Property pursuant to the Right of Purchase and Right of First Refusal Agreement as described in Section 9.9 hereof and EXHIBIT E.

Section 3.3. Acquisition of Remaining Developer Property.

(a) The Developer will make its best efforts to acquire the rights to purchase or purchase the eleven (11) parcels that make up the Developer Property. If the Developer is unable to acquire the rights to purchase or purchase all of the remaining parcels of the Developer Property but has acquired the rights to purchase or purchased at least eight (8) of the remaining parcels, the deadline for Closing set forth in Section 3.2(g) of this Agreement may be postponed for up to 90 days by mutual agreement of the Developer and the Authorized Representative of the Authority. If the Developer wants to move forward with purchasing the HRA Property but is unable to acquire the rights to purchase or purchase the remaining parcels of the Developer Property, the Developer shall submit to the Authority a redesign of the layout of the Minimum Improvements with the number of units the Developer is able to construct. The Authority has no obligation to acquire any portion of the Developer Property, and has played no role in the Developer’s acquisition activities.

(b) If the Developer proceeds with a redesigned version of the Minimum Improvements, and the Developer does not develop all the properties in the TIF District, the Authority may withhold Available Tax Increment from the parcels that the Developer did not use for the Minimum Improvements.

Section 3.4. Grants. The Authority and the Developer will work cooperatively to apply for grants from the Department of Employment and Economic Development and the Metropolitan Council in the amount of up to \$1,700,000 for the costs of the public infrastructure needed for the Minimum Improvements.

Section 3.5. Relocation. For each parcel of the Development Property acquired by the Developer, the Borrower is obligated to deliver to the Authority a certification describing in detail the relocation services, payments, and benefits to be provided to the owner of such parcel.

Section 3.6. Issuance of Pay-As-You-Go TIF Notes.

(a) To reimburse the Developer for certain Public Redevelopment Costs incurred within the TIF District, the Authority shall issue and deliver and the Developer shall purchase up to three TIF Notes in the total principal amount of \$2,400,000 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 Notes shall consist of the Developer’s payment of the Public Redevelopment Costs in at least the principal amount of the TIF Notes.

The Authority shall deliver the TIF Notes in phases as follows:

<b>Phase</b>	<b>Maximum Amount</b>	<b>When TIF Notes Issued</b>
Phase I TIF Note	\$900,000	Construction of at least 32 townhomes commenced
Phase II TIF Note	\$900,000	Construction of an additional 32 townhomes commenced
Phase III TIF Note	\$600,000, subject to modification pursuant to Section 3.6(e)	Construction of final 16 townhomes commenced (unless the required number of townhomes is reduced pursuant to Section 4.9, in which event commencement of construction of only the required number of townhomes is necessary)

The delivery of each TIF Note is contingent upon delivery by the Developer of an investment letter in substantially the form attached to this Agreement 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 Notes shall be payable each Payment Date solely from Available Tax Increment derived from the TIF District. The Phase II TIF Note and the Phase III TIF Note will be issued on a Payment Date. When more than one TIF Note is outstanding, the principal of and interest on the TIF Note shall be paid with Available Tax Increment on a parity basis based on the amount of principal outstanding for each TIF Note.

(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 Notes will be sufficient to pay the principal of and interest on the TIF Notes. Any estimates of Tax Increment prepared by the Authority or its financial 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 Notes to one or more lenders that provide 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 Notes, the TIF Notes may be assigned if the assignee executes an investment letter in the form set forth in EXHIBIT C.

(d) The Developer understands and acknowledges that the principal amount of the TIF Notes are subject to reduction pursuant to the provisions of Section 4.8 hereof.

(e) The Developer understands and acknowledges that, although the Phase III TIF Note may be issued in an original principal amount of up to \$600,000 (assuming construction of 16 townhomes is commenced within Phase III), the Phase III TIF Note will be issued in an original principal amount equal to \$37,500 multiplied by the number of townhomes for which construction is commenced in Phase III (up to a maximum of 16).

Section 3.7. Termination of TIF District. At any time following the reimbursement of the Authority for the HRA Property Purchase Price and the payment in full of the principal of and interest on the TIF Notes, the Authority may use the remaining Tax Increment derived from the TIF District for any other authorized uses set forth in the Tax Increment Plan or may terminate the TIF District.

Section 3.8. Payment of Administrative Costs. Pursuant to a Preliminary Development Agreement, dated March 19, 2018, between the Authority, the City, and the Developer, the Developer has deposited with the Authority \$15,000 to pay Administrative Costs. The Authority will use such deposit to pay "Administrative Costs," which term means 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, preparation or modification 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 \$5,000, the Developer shall replenish the deposit to the full \$15,000 within 30 days after receipt of written notice thereof from the HRA. 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 3.9. Reimbursement for Interfund Loans. The Authority provided the Developer with a forgivable loan in the amount of \$630,000 in order to assist with the purchase of three (3) of the parcels that make up the Developer Property. Pursuant to a Loan Agreement, dated August 1, 2018 (the “Loan Agreement”), between the Authority and the Developer, the Authority has agreed to forgive the loan and release the mortgage securing the loan for each parcel once certain conditions set forth in the Loan Agreement are met. On July 16, 2018, the Board of the Authority approved Resolution No. 1300, an interfund loan resolution (which was amended by Resolution No. 08-20 adopted by the Board of the Authority on August 20, 2018) allowing the Authority to use available funds to make the loan of \$630,000 to the Developer to acquire property, to provide a land write-down to the Developer in the amount of \$100,000 as described in Section 3.2(e), and to use available funds to pay for costs related to the TIF District with the intent of reimbursement itself for such costs with Tax Increment generated by the TIF District, with interest in the amount of 4.0% per annum (the “2018 Land Interfund Loan”). In addition, on March 16, 2015, the Board of the Authority approved Resolution 1199, an interfund loan resolution allowing the Authority to use available funds to pay for costs related to the TIF District with the intent of reimbursing itself for such costs with Tax Increment generated by the TIF District, with interest in the amount of 4.0% per annum (the “Administrative and Land Interfund Loan, and with the 2018 Land Interfund Loan, the “Interfund Loans”). The Administrative and Land Interfund Loan is outstanding in the amount of \$359,000 for land acquisition. The Authority intends to reimburse itself for the cost of the Interfund Loans with HRA Tax Increment generated by the TIF District.

Section 3.10. 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 Available Tax Increment.

Section 3.11. Purpose of Assistance. The parties agree and understand that the purpose of the Authority’s financial assistance to the Developer is to facilitate development of housing, and is not a “business subsidy” within the meaning of Minnesota Statutes, Sections 116J.993 to 116J.995.

Section 3.12. Public Art. The Developer shall incorporate one or two pieces of public art within the Minimum Improvements that are visible to the general public and are mutually agreeable to both the Developer and the Authority. Examples of public art include a sculpture, a water fountain, or a mural. Notwithstanding the foregoing, if a total of three pieces of public art are installed as part of the Minimum Improvements or the Apartments Project, the requirements of this provision will be satisfied.

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## ARTICLE IV

### Construction of Minimum Improvements

Section 4.1. Construction of Improvements. Following the conveyance of the HRA Property to the Developer, 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, and at all times prior to the Maturity Date, 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. Notwithstanding the foregoing, the Developer and the Authority agree that, for any Owner-Occupied Housing unit that is sold to a member of the general public, the Developer's obligation to maintain, preserve, and keep such unit shall terminate upon the date on which such unit is so sold to a member of the general public.

#### Section 4.2. Construction Plans.

(a) Before commencement of construction of the Minimum Improvements, the Developer shall submit the Construction Plans for the Minimum Improvements to the Authority. The Authority Representative will approve the Construction Plans in writing if: (i) the Construction Plans are in material compliance with the PUD and all other land use approvals received for the Minimum Improvements; (ii) the Construction Plans conform to the terms and conditions of this Agreement; (iii) the Construction Plans conform to the goals and objectives of the Redevelopment Plan, as modified; (iv) the Construction Plans conform to all applicable federal, state and local laws, ordinances, rules and regulations; (v) the Construction Plans are adequate to provide for construction of the Minimum Improvements; (vi) 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; 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, the PUD, 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 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 construction of the Minimum Improvements on or before June 1, 2019, and be substantially complete with the construction of the Minimum Improvements on or before December 31, 2022.

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 each the Minimum Improvements in accordance with those provisions of the Agreement relating solely to the obligations of the Developer to construct the Minimum Improvements, the Authority Representative will furnish the Developer with a Certificate of Completion shown as EXHIBIT D.

(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 the 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. Owner-Occupied Housing Affordability Covenants; Qualification of the TIF District. The Developer agrees that the Owner-Occupied Housing constructed within the TIF District is subject to the following affordability covenants: In accordance with Section 469.1761, subdivision 2 of the TIF Act, ninety-five percent (95%) of the units of Owner-Occupied Housing must be initially purchased and occupied by persons whose income is no greater than one hundred fifteen percent (115%) of median gross income. If any units of Owner-Occupied Housing will be occupied by fewer than three (3) people, those units must be initially purchased and occupied by persons whose income is no greater than one hundred percent (100%) of median gross income. For the purposes of this Agreement, median gross income is the greater of (i) the median gross income of the County; or (ii) the statewide median gross income, as determined by the secretary of the United States Department of Housing and Urban Development for the calendar year of each home sale. Prior to the initial sale of each home, the Developer must submit to the City the application in substantially the form in EXHIBIT F attached hereto, showing that the purchaser meets the income limits under this Section 4.6 (a "Qualified Purchaser"). The parties agree and understand that the Developer will review

applications and will certify to the City that each buyer of a unit of Owner-Occupied Housing is a Qualified Purchaser using the form set forth in EXHIBIT F attached hereto.

Section 4.6. Disqualification of TIF District. If the Authority or the City receives notice from the State Department of Revenue, the State Auditor, any Tax Official or any court of competent jurisdiction that the TIF District does not qualify as a “housing district,” such event shall be deemed an Event of Default under this Agreement; provided, however, that the Authority may not exercise any remedy under this Agreement so long as such determination is being contested and has not been finally adjudicated. In addition to any remedies available to the Authority and the City under Article IX hereof, the Developer shall indemnify, defend and hold harmless the Authority and the City for any damages or costs resulting therefrom. Such indemnification and hold harmless will include the immediate payment to the Authority for any portion of the value of the HRA Property not already reimbursed by the Developer of from tax increment as described in Section 3.2(e).

Section 4.7. Affordable Housing Reporting. At least annually and until all units within the Minimum Improvements have been sold to owner-occupants, 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.

Section 4.8. Disqualified Owner-Occupied Housing Units; Reduction of TIF Notes. If the Developer sells more than four (4) units of Owner-Occupied Housing to persons who do not meet the income restrictions set forth in Section 4.5, each such unit will be an “Ineligible Unit.” For each Ineligible Unit, the Authority will remove the Ineligible unit from the TIF District. In addition, for each Ineligible Unit, the Developer shall pay the Authority \$7,875 to repay the Authority for the portion of the loan described in Section 3.9 allocable to the Ineligible Unit and the principal amount of the TIF Notes will be reduced by \$30,000 for each Ineligible Unit. The reduction of the Notes shall be done on a pro rata basis based on the amount of principal amount outstanding for each. The maximum number of Ineligible Units, including the four (4) units of Owner-Occupied Housing described in this Section 4.8, shall be twenty percent (20%) of all Owner-Occupied Housing units constructed.

Section 4.9. Reduction of Number of Owner-Occupied Housing Units. The Developer has agreed to construct eighty (80) Owner-Occupied Housing units as part of the Minimum Improvements. However, due to circumstances beyond its control, including the Developer’s inability to assemble all of the necessary real property or to generate sufficient sales activity, the Developer may not be able to substantially complete all eighty (80) Owner-Occupied Housing units on or before the completion date set forth in Section 4.3 hereof. Notwithstanding anything herein to the contrary, the Developer agrees the Minimum Improvements will include a minimum of sixty-four (64) Owner-Occupied Housing units. If, for any reason, the Developer fails to substantially complete any of the 16 remaining Owner-Occupied Housing units on or before the completion date set forth in Section 4.3 hereof, the principal amount of the Phase III TIF Note described in Section 3.6(a) hereof will be reduced pursuant to the provisions of Section 3.6(e). Notwithstanding anything herein to the contrary, failure by the Developer to construct more than sixty-four (64) Owner-Occupied Housing units as part of the Minimum Improvements will not be considered an Event of Default hereunder.

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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 reasonably satisfactory to the Authority;

(ii) General commercial 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, the Developer shall maintain, or cause to be maintained for each unit of the Minimum Improvements owned by the Developer, 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 additional insured.

(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 at least 30 days before the

cancellation or modification becomes effective. If such a notice is received by the Developer, it will provide notice to the Authority. 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) For the portion of the Minimum Improvements that the Developer owns, the Developer agrees to notify the Authority immediately in the case of damage exceeding \$100,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. In such event the Developer will forthwith repair, reconstruct and restore the Minimum Improvements to substantially the same or an improved condition or value as 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 has no duty to repair, reconstruct, or restore any portion of the Minimum Improvements that is not owned by it.

The Developer shall complete the repair, reconstruction and restoration of the portion of the Minimum Improvements owned by the Developer, 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 \$100,000 and the Developer fails to complete any repair, reconstruction or restoration of the Minimum Improvements it owns within 18 months from the date of damage, the Authority may, at its option, terminate the TIF Notes as provided in Section 9.3(b) hereof. If the Authority terminates the TIF Notes, 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 Notes.

(f) The Developer and the Authority agree that all of the insurance provisions set forth in this Article V shall terminate upon (i) the date on which any unit within the Owner-Occupied Housing is sold to a member of the general public; and (ii), in the case of a rental, 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 of this Agreement.

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## 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 Notes. The Developer understands that the Tax Increments pledged to payment of the TIF Notes 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 until the Maturity Date. 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 attorney fees.

Section 6.2. Reduction of Taxes. The Developer agrees that after the date of certification of the Tax Increment 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 of this Agreement.

The Developer also agrees that it will not, during the period of time that it owns any portion of the Minimum Improvements: (i) seek exemption from property tax for the Development Property; or (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.

Section 6.3. Suspension or Reduction of Payments on TIF Notes. The Developer or any owner of an Owner-Occupied Housing unit may seek through petition or other means to have the County Assessor's estimated market value for all or a portion of the Development Property reduced. Upon receiving notice or otherwise learning of the intent to seek a decrease in the market value of the Development Property, the Authority may suspend or reduce payments due under the TIF Notes until the actual amount of the reduction is determined, whereupon the Authority will make the suspended or reduced payments less any amount that the Authority is required to repay the County as a result of any reduction in market value of the Development Property. During the period that the payments are subject to suspension or reduction, the Authority may make partial payments on the TIF Notes 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.

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

Section 6.4. Qualifications. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that upon Transfer of the Development Property to another person or entity, the Developer will remain obligated under Sections 6.1 and 6.2 hereof until the Maturity Date, unless the Developer is released from such obligations in accordance with the terms and conditions of Section 8.2(b) or 8.3 hereof. Sections 6.1, 6.2, and 6.3 shall not be applicable to individual units of Owner-Occupied housing once each individual unit of Owner-Occupied Housing is sold to a member of the general public.

## 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 paragraph (a) 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, acquisition, or permanent financing, under terms and conditions reasonably acceptable to the Authority and the entity requesting the subordination. An agreement to subordinate this Agreement must be approved by the Board of the Authority. Upon request, the Authority will provide an estoppel certificate affirming factual matters related to this Agreement.

Section 7.4. Termination. All the provisions of this Article VII (except the provisions of Section 7.3) 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 as described in Section 7.1, 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 pursuant to Section 7.3. Subordination agreements approved by the Authority prior to the Certificate of Completion will not be affected by the provisions of this Section.

## 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 the 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 constructing 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 the Agreement or the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same (except a lease to a residential occupant), 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. In addition, the Developer must provide the Authority with prior notice of a sale of the Minimum Improvements pursuant to Section 4.5 hereof.

(b) In the event the Developer, upon transfer or assignment of all or any portion 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.

(c) The prohibition against transfer shall not be applicable to the sale of individual units of Owner-Occupied Housing to the general public.

Notwithstanding anything to the contrary in this Agreement, after issuance of the Certificate of Completion for the Minimum Improvements, the Developer may, without the Authority's consent, transfer or assign the Development Property related to the completed Minimum Improvements or the Developer's interest in this Agreement related to the completed Minimum Improvements and the transferee or assignee is bound by all the Developer's remaining obligations hereunder with respect to the Minimum Improvements. 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. Upon receipt by the Authority of such written evidence of transfer or assignment, the Developer shall be released from all of its remaining 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 board 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; provided, however, this provision will not apply to any claims arising from or related to the ownership, use, or enjoyment of any unit of Owner-Occupied Housing after the Developer sells such unit to a member of the general public. As to any willful misrepresentation, gross negligence or any willful or wanton misconduct of the Authority, or its board 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.

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## 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 any covenant, condition or agreement imposed as part of the City approval of the PUD; or

(b) 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; or

(v) is adjudicated as bankrupt or insolvent; or

(vi) if the Developer does not substantially complete construction of at least 64 Owner-Occupied Housing Units on the Development Property on or before the completion date set forth in Section 4.3 hereof.

Section 9.2. Remedies on Default. Whenever any Event of Default referred to in Section 9.1 of this Agreement occurs and is continuing, 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 the Agreement until it receives assurances that the defaulting party will cure its default and continue its performance under the Agreement.

(b) Cancel and rescind or terminate the Agreement, subject to the provisions of Section 9.3 hereof.

(c) Upon a default by the Developer, the Authority may suspend payments under the TIF Notes or terminate the TIF Notes and the TIF District, subject to the provisions of Section 9.3 hereof.

(d) 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 Notes. After the Authority has issued a TIF Note attributable to any Phase of the Minimum Improvements, the Authority may exercise its rights under Section 9.2 for such TIF Note only for the following Events of Default:

(a) the Developer fails to pay real estate taxes or assessments for the portion of the Development Property on which such Phase is constructed, or any part thereof (excluding, however, any portion of such Development Property on which an Owner-Occupied Housing unit that has been sold to a member of the general public is located), when due, and such taxes or assessments shall not have been paid, or provision satisfactory to the Authority made for such payment, within 18 months after written demand by the Authority to do so; or

(b) the Developer fails to comply with Developer's obligation to operate and maintain, to preserve and to keep the portion of the Minimum Improvements constructed within such Phase or cause the portion of the Minimum Improvements within such Phase 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; provided that, upon such a failure by the Developer to comply with its obligations under Section 4.1 or 5.1, if uncured after 30 days' written notice to the Developer of such failure, the Authority may only suspend payments under the TIF Note attributable to such Phase until such time as the 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 respective TIF Note.

Section 9.4. Revesting Title in Authority Upon Happening of Event Subsequent to Conveyance to Developer. In the event that subsequent to conveyance of the HRA Property to the Developer, the Developer, subject to Unavoidable Delays, fails to commence construction of the Minimum Improvements by the date specified in Section 4.3 hereof, and such failure to commence the Minimum Improvements is not cured within 90 days after written notice from the Authority to the Developer to do so; then the Authority shall have the right to re-enter and take possession of the HRA Property and to terminate and revest in the Authority the HRA Property, it being the intent of this provision, together with other provisions of the Agreement, that the conveyance of the HRA Property to the Developer 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 Developer in performance of the obligations specified in this Section 9.4 and failure on the part of the Developer 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 HRA Property and that such title and all rights and interests of the Developer, and any assigns or successors in interest to and in the HRA 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.

Notwithstanding the foregoing, if the Authority determines to exercise its rights to revest title to the HRA Property after the Developer has platted the Development Property, the Developer and the Authority agree that the Developer will be obligated to only convey to the Authority 20,000 square feet of the Development Property that is contiguous, subject to any easements or similar rights granted or created in connection with the Apartments Project, and the Developer will not be required to convey to the Authority the HRA Property in the form it was originally conveyed to Developer. Sections 9.4 and 9.5 shall apply to the 20,000 square feet of the Development Property conveyed to the Authority as if such property was the HRA Property.

Section 9.5. Resale of Reacquired Property; Disposition of Proceeds. Upon the reversion in the Authority of title to and/or possession of the HRA Property, the Authority shall, pursuant to their responsibilities under law, use their best efforts to sell the HRA 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 their stead as shall be satisfactory to the Authority in accordance with the uses specified for the HRA 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 HRA Property, the proceeds thereof shall be applied:

(a) First, to reimburse the Authority for all costs and expenses incurred by them, including but not limited to salaries of personnel, in connection with the recapture, management, and resale of the HRA 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 HRA Property or part thereof (or, in the event the HRA 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 HRA Property were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the HRA Property, or part thereof at the time of reversion 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 Developer, 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 HRA Property; and any amounts otherwise owing the Authority by the Developer and its successor or transferee; and

(b) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the portion of the HRA Property Purchase Price paid by the Developer under Section 3.2 and the amount actually invested by it in making any of the subject improvements on the HRA Property or part thereof, less any gains or income withdrawn or made by it from the Agreement or the HRA Property.

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

Section 9.6. 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, 9.3, 9.4, 9.9, or as otherwise expressly provided in this Agreement.

Section 9.7. 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 9.8. Attorney 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 ten 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.

Section 9.9. Right of Purchase and Right of First Refusal Agreement. Following the conveyance of the HRA Property to the Developer, if the Developer, subject to Unavoidable Delays, fails to commence construction of the Minimum Improvements by the date specified in Section 4.3 hereof, and such failure to commence is not cured within 90 days after written notice from the Authority to the Developer to do so, then the Authority shall have the right to repurchase the HRA Property for the price the Developer paid for the HRA Property (the HRA Property Purchase Price) or purchase all of the Development Property from the Developer for the price the Developer paid for the Developer Property. In addition, prior to the issuance of a Certificate of Completion for of the Minimum Improvements, if the Developer determines to sell all or any part of the Development Property within the Minimum Improvements, the Authority shall have the right to purchase the portion of the Development Property to be sold to a third party by the Developer for the lower of (i) the price the third party has agreed to pay for such property or (ii) the price the Developer paid for such property, including relocation benefits. To memorialize the Authority's right of purchase and right of first refusal, the Developer and the Authority shall enter into a Right of Purchase and Right of First Refusal Agreement in substantially the form set forth in EXHIBIT E, which shall be recorded against the Development Property acquired by the Developer.

Notwithstanding the foregoing, if the Authority determines to exercise its rights to repurchase the HRA Property after the Developer has platted the Development Property, the Developer and the Authority agree that the Developer will be obligated to only convey to the Authority 20,000 square feet of the Development Property that is contiguous, subject to any easements or similar rights granted or created in connection with the Apartments Project, and the Developer will not be required to convey to the Authority the HRA Property in the form it was originally conveyed to Developer. Section 9.9 shall apply to the 20,000 square feet of the Development Property conveyed to the Authority as if such property was the HRA Property.

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## 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 the Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his 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 the 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 the 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 affordable housing in accordance with the terms of this Agreement, 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 the 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 the 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 7455 France Avenue South, Suite 351, Edina, Minnesota 55435, Attn: Adam Seraphine; and

(b) in the case of the Authority, is addressed to or delivered personally to the Authority at 6700 Portland Ave. So., 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 County Recorder or the Registrar of Titles of the County, as the case may be. The Developer shall pay all costs for recording.

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

Section 10.10. Preliminary Development Agreement. On the date of this Agreement, the provisions of the Preliminary Development Agreement, dated March 19, 2018, between the Authority, the City, and the Developer that relate to the Minimum Improvements shall terminate.

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



IN WITNESS WHEREOF, the Authority has caused this Agreement to be duly executed in its name and behalf and the Developer 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 Chair

(SEAL)

By \_\_\_\_\_  
Its Executive Director

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2018, by Mary B. Supple, the Chair of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2018, by Steven L. Devich, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

**CEDAR POINT INVESTMENTS LLC**

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

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2018, by \_\_\_\_\_, the \_\_\_\_\_ of Cedar Point Investments LLC, a Minnesota limited liability company, on behalf of the Developer.

\_\_\_\_\_  
Notary Public

(Signature Page of Developer to the Contract for Private Development)

**EXHIBIT A**

**DEVELOPMENT PROPERTY**

**Development Property owned by HRA**

Lots 3 and 6, Block 1, Iverson's Second Addition, according to the recorded plat thereof, Hennepin County, Minnesota

Lots 1 and 2, Block 2, Iverson's Second Addition, according to the recorded plat thereof, Hennepin County, Minnesota

**Development Property to be acquired by Developer**

Lots 2, 4, 5, 7, and 8, Block 1, Iverson's Second Addition, according to the recorded plat thereof, Hennepin County, Minnesota

Lots 3, 4, 5, 6, 7, and 8, Block 2, Iverson's Second Addition, according to the recorded plat thereof, Hennepin County, Minnesota

**The parties understand and acknowledge that final platted legal description for the Townhomes will result in less square footage of property than the legal descriptions above.**

**EXHIBIT B**  
**FORM OF TIF NOTES**

UNITED STATE OF AMERICA  
STATE OF MINNESOTA  
COUNTIES OF HENNEPIN  
HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE  
CITY OF RICHFIELD

No. R-1 \$ \_\_\_\_\_

TAX INCREMENT LIMITED REVENUE NOTE  
SERIES \_\_\_\_\_

<u>Rate</u>	<u>Date</u> <u>of Original Issue</u>
_____ %	_____

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 Cedar Point Investments LLC, or registered assigns (the "Owner"), the principal sum of \$\_\_\_\_\_ and to pay interest thereon at the rate of \_\_\_\_\_ percent per annum, as and to the extent set forth herein.

1. Payments. Principal and interest ("Payments") shall be paid on August 1, 2021, and each February 1 and August 1 (each a "Payment Date") and thereafter to and including February 1, 20\_\_\_, 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 herein 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 360 days and charged for actual days principal is unpaid.

3. Available Tax Increment. Subject to the provisions of Section 10 below, payments on this Note are payable on each Payment Date in the amount of and solely payable from "Available Tax Increment," which will mean, on each Payment Date, seventy percent (70%) of the Tax Increment (as defined in the Agreement) attributable to the Development Property (as defined in the Agreement) and paid to the Authority by Hennepin County in the six months preceding the Payment Date, all as the terms are defined in the Contract for Private Development, dated \_\_\_\_\_, 2018 (the "Agreement"), between the Authority and Owner. The principal of and interest on this Note shall be payable each Payment Date solely from Available Tax Increment. Available Tax Increment will not include any Tax Increment if, as of any Payment Date, there is an uncured Event of Default under the Agreement.

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 Hennepin 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 as defined in Section 9.1 of the Agreement, but only if the Event of Default has not been cured within the applicable time periods provided in the Agreement and the Authority has the right to terminate the Note under Sections 9.2 and 9.3 of the Agreement.

6. Nature of Obligation. This Note is issued to aid in financing certain public development costs and administrative costs of a housing 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 Authority on \_\_\_\_\_, 2018, 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 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 the 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 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, the 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 of 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 the 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 in 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 the TIF Note may be approved by the Executive Director of the Authority without action of the Authority's Board, 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 a resolution of the Board of the Authority and is entitled to the benefits thereof, which Resolution is incorporated herein by reference.

10. Parity Obligation. This Note is one of three TIF Notes issued in the total principal amount of \$2,400,000 and on a parity basis. When more than one TIF Note is outstanding, the principal of and interest on this Note shall be paid with Available Tax Increment on a parity basis based on the amount of principal outstanding for each TIF Note.

11. Principal Reduction. The principal of this Note is subject to reduction pursuant to the provisions of Section 4.8 of the Agreement.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to 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**

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Executive Director

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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

Cedar Point Investments LLC  
Federal ID # \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## EXHIBIT C

### 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 of the Authority adopted on \_\_\_\_\_, 2018 (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 Contract for Private Development, dated \_\_\_\_\_, 2018 (the “Contract”), 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 advisors in connection with the TIF District, the Contract 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 Contract 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.

(Remainder of this page intentionally left blank)

**CEDAR POINT INVESTMENTS LLC**

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

Dated: \_\_\_\_\_, 20\_\_



## EXHIBIT E

### RIGHT OF PURCHASE AND RIGHT OF FIRST REFUSAL AGREEMENT

THIS RIGHT OF PURCHASE AND RIGHT OF FIRST REFUSAL AGREEMENT (the “Agreement”) is given as of this \_\_\_ day of \_\_\_\_\_, 2018 (the “Effective Date”), by CEDAR POINT INVESTMENTS LLC, a Minnesota limited liability company (the “Developer”), to 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”).

1. Contract for Private Development. The Developer and the Authority have entered into a Contract for Private Development, dated \_\_\_\_\_, 2018 (the “Contract”), pursuant to which the Authority will convey certain real property to the Developer as legally described in SCHEDULE A (the “HRA Property”) and the Developer will obtain certain parcels adjacent to the HRA Property as legally described in SCHEDULE B (the “Developer Property”). Pursuant to the Contract, the Developer has agreed to construct on the HRA Property and the Developer Property (together, the “Development Property”) the Minimum Improvements (as defined in the Contract). All terms capitalized herein and not defined herein shall have the meaning given such term in the Contract.
2. Grant. For valuable consideration, and subject to the conditions set forth below, the Developer hereby grants to the Authority the right to purchase and the right of first refusal pursuant to the provisions of this Agreement.
3. Right to Purchase. Following the conveyance of the HRA Property to the Developer, if the Developer, subject to Unavoidable Delays, fails to commence construction of the Minimum Improvements by the date specified in Section 4.3 of the Contract, and such failure to commence is not cured within 90 days after written notice from the Authority to the Developer to do so, then the Authority shall have the right to repurchase the HRA Property for the price the Developer paid for the HRA Property or purchase all of the HRA Property and the Developer Property from the Developer for the price the Developer paid for such property. The Authority shall have 60 days following the 90-day cure period set forth in this Section to notify the Developer of its intent to repurchase the HRA Property or purchase all of the HRA Property and the Developer Property. The Authority shall have 120 days to complete the purchase of the HRA Property and, if applicable, the Developer Property.
4. Right of First Refusal. Prior to the receipt of a Certificate of Completion for each Phase of the Minimum Improvements, if the Developer determines to sell all or any part of the HRA Property and the Developer Property, the Authority shall have the right to purchase the portion of the Development Property to be sold to a third party by the Developer for the lower of (i) the price the third party has agreed to pay for such property or (ii) the price the Developer paid for such property (including the costs of any improvements to the property).
  - a. Notice of Acceptable Offer. If at any time prior to the receipt of a Certificate of Completion for each Phase of the Minimum Improvements, the Developer receives an offer acceptable to the Developer for the purchase of all or any part of the HRA Property or the Developer Property, then the Developer shall forthwith forward a copy of such offer (the “Acceptable Offer”) to the Authority.
  - b. Exercise by Authority. The Authority shall have a period of 30 days after receiving such copy of the Acceptable Offer within which to notify the Developer that the Authority elects to purchase the Property (or the portion thereof covered by the Acceptable Offer) (the “Sale Property”) on the terms contained therein. Any such notice from the Authority shall be accompanied by any

earnest money required under the terms of the Acceptable Offer, which shall then constitute a contract between the Developer and the Authority even though neither has signed it.

c. Waiver by Authority. If the Authority does not notify the Developer within the 30-day period described in Section 6 of the Authority's election to purchase such Sale Property, the Developer shall be free to sell such Sale Property to the person who submitted the Acceptable Offer (or to such person's permitted assigns) on the terms specified therein, and the Authority shall upon request execute and deliver an instrument in recordable form appropriate to evidence the Authority's relinquishment of its rights under this Agreement with respect to such transaction. Notwithstanding any such relinquishment, the Authority's rights under this Agreement shall remain in effect with respect to any part of the Property not covered by the Acceptable Offer, and, if the transaction contemplated by the Acceptable Offer fails for any reason to close, with respect to any subsequent offer to purchase all or any part of the Property covered by such Acceptable Offer.

5. Contract Restrictions on Transfer of Property. If the Authority determines to waive or is deemed to have waived its right to purchase the Sale Property pursuant to Section 4(c), the Developer remains obligated to comply with the requirements set forth in Section 8.2 of the Contract related to transfers of the Development Property and the assignment of the Contract.

6. Term. This Agreement shall commence on the Effective Date and terminate on the earlier of: (i) for each Phase of the Minimum Improvements, the date the Developer obtains a Certificate of Completion for such Phase; and (ii) upon sale of all of the HRA Property and the Developer Property pursuant to the terms of an Acceptable Offer for which the Authority has been provided notice and has not exercised its right to purchase such property in accordance with the provisions of this Agreement. Notwithstanding the foregoing, for any portion of the HRA Property or the Developer Property that is sold pursuant to an Acceptable Offer, this Agreement shall terminate with respect to such portion of HRA Property or the Developer Property at the end of the 30-day period described in Section 4 if the Authority does not notify the Developer of its election to purchase such portion of the Property. For any portion of the HRA Property or the Developer Property for which the Developer has received a Certificate of Completion for the Minimum Improvements to be constructed thereon, this Agreement shall terminate with respect to such portion of HRA Property or the Developer Property on the date of receipt of the Certificate of Completion.

7. Impact of Platting of Development Property. Notwithstanding anything herein to the contrary, if the Authority determines to exercise its rights under Sections 3 or 4 of this Agreement after the Developer has platted the Development Property, the Developer and the Authority agree that the Developer will be obligated to only convey to the Authority 20,000 square feet of the Development Property that is contiguous, subject to any easements or similar rights granted or created in connection with the Apartments Project, and the Developer will not be required to convey to the Authority the HRA Property in the form it was originally conveyed to Developer. Sections 3 and 4 shall apply to the 20,000 square feet of the Development Property conveyed to the Authority as if such property was the HRA Property.

8. Notices. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed given upon personal delivery or on the second business day after mailing by registered or certified United States mail, postage prepaid, to the appropriate party at its address stated below:

- a. If to Developer: Cedar Point Investments LLC  
7455 France Avenue South  
Suite 351  
Edina, Minnesota 55435  
Attn: Adam Seraphine

- b. If to Authority: Housing and Redevelopment Authority in and for the City of Richfield  
6700 Portland Ave. South  
Richfield, MN 55423  
Attn: Community Development Director

Either party may change its address for notices by notice to the other party as provided above.

9. Binding Effect and Transferability. The provisions of this Agreement shall bind and benefit the Developer and the Authority and their respective successors and assigns.

10. Assignment. The Authority may assign this Agreement only to a wholly owned subsidiary of the Authority.

11. Miscellaneous. This Agreement may be executed in counterparts, all of which shall constitute an original of this Agreement. This Agreement may be recorded by the Authority with the Hennepin County Recorder's Office and/or Hennepin County Registrar of Titles' Office. All disputes related to this Agreement shall be governed by Minnesota law without application to its internal choice of law statutes or doctrines. All actions commenced relating to this Agreement shall only be brought before the courts located in Hennepin County, Minnesota. In any action to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of all its reasonably expended costs and attorneys' fees, including appeal and collection costs and fees. The Developer shall execute and deliver to the Authority all documents reasonably necessary to record this Agreement or to otherwise evidence the Authority's rights as contained herein.

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

IN WITNESS WHEREOF, the Authority and the Developer have executed this Agreement on the date set forth in the Developer's acknowledgement, intending it to take effect as of the date first mentioned above.

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

By \_\_\_\_\_  
Its Chair

(SEAL)

By \_\_\_\_\_  
Its Executive Director

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2018, by Mary B. Supple, the Chair of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2018, by Steven L. Devich, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

THIS INSTRUMENT WAS DRAFTED BY:  
Kennedy & Graven, Chartered (JAE)  
470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402  
(612) 337-9300

Execution page of the Developer to this Agreement, dated as of the date and year first above written.

**CEDAR POINT INVESTMENTS LLC**

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

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2018, by \_\_\_\_\_, the \_\_\_\_\_ of Cedar Point Investments LLC, a Minnesota limited liability company, on behalf of the Developer.

\_\_\_\_\_  
Notary Public



SCHEDULE A TO RIGHT OF PURCHASE AND RIGHT OF FIRST REFUSAL AGREEMENT

HRA PROPERTY DESCRIPTION

**Development Property owned by HRA**

Lots 3 and 6, Block 1, Iverson's Second Addition, according to the recorded plat thereof, Hennepin County, Minnesota

Lots 1 and 2, Block 2, Iverson's Second Addition, according to the recorded plat thereof, Hennepin County, Minnesota

SCHEDULE B TO RIGHT OF PURCHASE AND RIGHT OF FIRST REFUSAL AGREEMENT

DEVELOPER PROPERTY DESCRIPTION

**Developer Property to be acquired by Developer**

Lots 2, 4, 5, 7, and 8, Block 1, Iverson's Second Addition, according to the recorded plat thereof, Hennepin County, Minnesota

Lots 3, 4, 5, 6, 7, and 8, Block 2, Iverson's Second Addition, according to the recorded plat thereof, Hennepin County, Minnesota

**EXHIBIT F**

**OWNER-OCCUPIED HOUSING FORM**

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PROPERTY INFORMATION

Legal description of property to be sold: Lot \_\_\_\_\_ Block \_\_\_\_\_  
Subdivision \_\_\_\_\_

Parcel Identification No. \_\_\_\_\_

Postal Address of Parcel \_\_\_\_\_

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PURCHASER INFORMATION

Name of Purchaser \_\_\_\_\_

Current Address \_\_\_\_\_

Current Phone # \_\_\_\_\_

Number of family/household members: \_\_\_\_\_

Annual Household Income\* \$ \_\_\_\_\_

*\*Annual Household Income must be supported by documentation (i.e. copy of most current 1040's, etc.). Failure to provide verification will constitute a "non-qualifying family".*

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INCOME LIMIT INFORMATION

<u>Family Size</u>	<u>20_____ Income Limits</u> <u>Income</u>
1	
2	
3	
4	
5	
6	
7	
8	

Does the Purchaser meet these limits and has appropriate documentation been submitted?

\_\_\_\_\_ YES \_\_\_\_\_ NO

If No, purchaser is not eligible to acquire the home. If Yes, the purchaser is eligible to acquire the property.

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Signature of Purchaser(s) \_\_\_\_\_ Date \_\_\_\_\_

Signature of Seller \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Date \_\_\_\_\_

Reviewed and approved on behalf [HOUSING CONSULTANT]

By \_\_\_\_\_ Date \_\_\_\_\_



**STAFF REPORT NO. 33**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**9/20/2021**

REPORT PREPARED BY: Celeste McDermott/Kate Aitchison, Housing Specialists

OTHER DEPARTMENT REVIEW:

EXECUTIVE DIRECTOR REVIEW: John Stark, Executive Director  
9/15/2021

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of a request for a subordination of a Housing and Redevelopment Authority Transformation Program loan at 6331 Blaisdell Avenue South.**

**EXECUTIVE SUMMARY:**

Kevin and Kelly Larson (Homeowners), owners of 6331 Blaisdell Avenue South, received a \$15,000 Transformation Loan from the Housing and Redevelopment Authority (HRA) on February 18, 2004. The Homeowners are seeking to refinance their first mortgage and are requesting a subordination of the HRA lien.

The HRA's lien is a 30-year, forgivable, zero-interest loan that is currently in second position behind a primary mortgage. There is also a Home Equity Line of Credit (HELOC) that is in third position. The Homeowners are proposing to consolidate their Home Equity Line of Credit (HELOC) as well as other credit card debt into the first mortgage. The HELOC and credit card debt being consolidated totals \$79,347. The HRA's lien would be in second position behind a new, 30-year primary mortgage of \$260,000. Consolidating these debts would lower the Homeowner's monthly payments, resulting in a savings of \$1,324 each month.

The subordination request fails to meet the HRA's Subordination Policy in two areas:

- The amount of equity or cash being removed to cover the HELOC and credit card debt is \$79,347, which exceeds the allowable amount of \$2,000 for non-housing-related expenses. While a portion of the Homeowner's debt went towards home improvements, most of it was not housing-related.
- The amount of debt in front of the HRA lien is increasing 54 percent, which exceeds the allowable amount of 50 percent.

The HRA's Subordination Policy does allow the Executive Director to make some administrative exceptions to both the cash-out and debt increase provisions under certain conditions; however, the subordination request does not meet the criteria for an administrative exception, so the subordination request was denied.

The Homeowners are appealing the denial and have asked that their request be brought to the HRA for consideration. They are seeking to improve their financial situation with the refinance and believe the circumstances that led to the debt warrant special consideration. The debts were incurred over the years due to costs associated with the care of their two children with special needs. Costs associated with therapy copay, special diets and handicap-accessible vehicles have been reduced as the children have gotten older. Now the household is attempting to gain their financial footing and move forward with delayed maintenance to the home, including painting and air conditioning. Given these unique hardship circumstances and the fact that the debt consolidation will improve the Homeowners' monthly financial situation, staff recommends that the HRA approve the appeal request.

## **RECOMMENDED ACTION:**

**By motion: Approve the request for a subordination of a Housing and Redevelopment Authority Transformation Program loan at 6331 Blaisdell Avenue South.**

## **BASIS OF RECOMMENDATION:**

### **A. HISTORICAL CONTEXT**

- In 2004, the Homeowners received a Transformation Home Loan for \$15,000 to complete a second-story addition on their home.
- They have two children with special needs, which have required significant resources, and have required one of the parents to stay home as a full-time caregiver.
- Approximately \$10,000 of the debt being consolidated is related to the home improvements related to the Transformation Home Loan.
- In 2014, the HRA agreed to subordinate for a refinance of the principal mortgage. The principal mortgage amount at that time was \$192,000.

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

According to the HRA Subordination and Satisfaction Policy (Policy), the HRA will subordinate its mortgage interest if the following conditions are met:

- **Loan to Value:** The total debt secured by the property, including the HRA lien and all superior mortgages, shall not exceed 80 percent of the documented market value of the property. A staff-authorized administrative exception of the Policy can be granted if the new mortgage improves homeowner's ability to make monthly payments and avoid financial hardship.
- **Superior Debt:** The overall value of superior debt must not be increased by more than 50 percent.
- **Closing Costs:** Closing costs do not exceed three percent.
- **Financial Means:** Payment terms are within the financial means of the borrower.
- **Equity Removal:** Equity being removed must be no more than \$2,000 or must be for qualified home improvements.
- **Property Taxes:** Property taxes must be current.
- **Prior Subordinations:** No more than one subordination has been granted to the loan within the past five years.
- The Executive Director may make an administrative exception when the Loan to Value exceeds 80 percent if the new mortgage improves the homeowner's ability to make monthly payments and avoid foreclosure and/or financial hardship.
- The Executive Director may make an administrative exception to cash being removed for something other than home improvements in an amount up to \$15,000.
- The Executive Director may make an administrative exception to the amount of superior debt increasing if sufficient equity is present and/or if a home improvement project is being financed.
- Subordination requests that don't meet either the standard or the administrative exception requirements may appeal the decision to the HRA.

### **C. CRITICAL TIMING ISSUES:**

- The Homeowners are planning to use their monthly savings from the debt consolidation towards repainting their house and other home improvements. If the HRA does not subordinate then they would need to delay these projects.
- The Homeowners are hoping to move quickly in order to lock in the interest rate on their refinance.

### **D. FINANCIAL IMPACT:**

- Consolidating the HELOC and credit card debts into the primary mortgage will result in the Homeowners saving \$1,324 per month due to the lower interest rate.
- Without the subordination granted, the homeowners will continue to pay approximately \$500 per month in credit card debt.
- The current appraised value of the property is \$325,000.
- There would be no direct costs to the HRA and the term of the mortgage would not be extended.

**E. LEGAL CONSIDERATION:**

- N/A

**ALTERNATIVE RECOMMENDATION(S):**

- Deny the subordination request.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

Kevin Larson, Homeowner

**ATTACHMENTS:**

	Description	Type
□	Appeal Letter from Homeowner	Backup Material
□	Subordination Policy	Backup Material
□	Subordination Summary	Backup Material

Dear HRA Board,

I would like you to consider subordinating our \$15,000 remodeling loan. We are refinancing our house to be able to consolidate our debt. When we completed the remodel project, approximately \$10,000 of our debt had to cover the overage that we were not able to get in the mortgage when the remodel project was completed. We have two children with special needs. My wife has had to stay at home to be with our children and was not able to work. Our children attended an online public school and she had to monitor their progress. During the early 2000's, we would be going to 3 therapies a week having to cover the copay. Along the way, we had to give them a special diet that also cost extra. Happy to say, our children are now young adults. My Son is a Sophomore in College and my Daughter is a Senior in High School while still living with us. With their wheel-chairs, they are able to thrive and pursue their dreams. We are down to one handicap vehicle to be able to transport our children. I take public transportation to work to cut down on expenses. Now that my children are young adults, I would like to focus on our financial situation. During the past 18 months, we have not increased our debt. The refinance of our house will allow us to save around \$1,300 a month if you allow us to subordinate the loan. This will allow us to be free of all credit card debt in the near future. Once this is done, I will be able to focus on saving money and put more money into our house. I was planning on getting our house painted next year. After that, I would save to replace our Air Conditioner which is over 25 years old and also save on replacing the furnace in the near future as it is now 17 years old. If I am not able to get the \$15,000 loan subordinated, I will still have \$15,000 in credit card debt, I would be paying an additional \$600 per month and it will take longer to pay off the credit cards before I can work on home improvements.

Thank you for taking the time to consider subordinating our \$15,000 remodeling loan. We enjoy living in Richfield and foresee ourselves living here for years to come.

Kevin Larson



**RICHFIELD HOUSING AND REDEVELOPMENT AUTHORITY  
SUBORDINATION & SATISFACTION POLICY**

EFFECTIVE NOVEMBER 2020

**Subordinations**

Richfield Housing and Redevelopment Authority (HRA) loan recipients requesting subordination of the interest of the HRA in real property must submit a Subordination Request Form, the required supporting documentation, and a processing fee. Forms are available on the City of Richfield website (<http://www.richfieldmn.gov/subordinations>) or by calling the Community Development Department at 612-861-9760. Requests will not be considered until all documents and the processing fee have been received.

**Required Documents**

The following information must be submitted with the Subordination Request Form:

1. A typed letter dated and signed by the mortgagor or lender, stating the reason for the requested subordination and the use of any equity being removed as part of the loan transaction.
2. A copy of the current appraisal (dated within six months of application) or other evidence of market value of the property that is acceptable to the HRA.
3. A copy of current title work (must indicate all debt against the property).
4. Explanation of any debts to be paid off or consolidated as part of the subordination process, along with supporting documentation (if applicable).
5. Estimated closing costs/settlement statement, where applicable.
6. A copy of the mortgagor's loan application.
7. Additional documentation may be required.

**Evaluation Criteria**

The Richfield HRA will subordinate its mortgage interest if all of the following conditions are met, to the extent that they are applicable:

1. Closing costs are reasonable. Generally this shall mean that the sum of all discount points, origination fees, and lender ancillary fees generally shall not exceed 3% of the new first mortgage amount.
2. If the HRA believes that the payment terms of the refinance are within the financial means of the borrower.
3. The total debt secured by the property, including the HRA lien and all superior mortgages, does not exceed 80% of the documented market value of the property.
4. Any equity being removed beyond the cost of the loan transaction will be used to improve the property. A typed letter, dated and signed by the applicant, must be submitted stating the use of any equity being removed.
5. The overall value of superior debt must not be increased by more than 50%.

6. No more than two subordination request may be approved by the HRA per five year period.
7. Property taxes, if not escrowed by the superior mortgage holder, must be current.

The HRA will not subordinate to reverse mortgages. In most cases, interest-only loans or loans with interest-only options, revolving lines of credits or debt consolidation will not be allowed unless the HRA determines that an acceptable reason warrants this type of loan.

The HRA may approve other subordination requests not meeting the conditions above on a case-by-case basis that are clearly in the best interests of the HRA, where the security of the HRA loan remains acceptable and denial of the request will cause or contribute to a documented hardship on the part of the borrower.

As a condition of approval, the HRA may require the Borrower to receive financial counseling. While many courses are available at no charge, the Borrower is responsible for any costs associated with the counseling. The course must be approved by the HRA.

### Appeal Process

In cases where a subordination request does not meet the Policy, the Executive Director may grant an Administrative Exception per the criteria listed in the table below.

If an application is denied an Administrative Exception, the applicant may request an appeal in writing. Appeals will be submitted by staff to the HRA at the next regularly scheduled meeting, provided the request is made at least 10 days prior to that meeting. The HRA meets on the third Monday of each month.

CRITERIA	POLICY	ADMINISTRATIVE EXCEPTION	HRA Appeal
Loan to Value	No greater than 80%	Greater than 80% if: <ul style="list-style-type: none"> <li>• Amount of increase to mortgage is only due to financing charges (closing costs), or;</li> <li>• New mortgage improves the homeowner's ability to make monthly payments and avoid foreclosure and/or financial hardship.</li> <li>• Homeowner is financing or refinancing a documented home improvement project. Refinance must be completed within 1 year of project completion.</li> </ul>	Greater than 80%, if the administrative exception criteria do not apply

Cash-out/equity removal	<ul style="list-style-type: none"> <li>Housing-related expenses allowed</li> <li>Up to \$2,000 in cash-out allowed at closing.</li> </ul>	For non-housing-related cash out: <ul style="list-style-type: none"> <li>Up to \$15,000 in cash-out, subject to the approval of the Executive Director</li> <li>Must include explanation of use of funds</li> <li>Must meet all other subordination criteria of the existing policy.</li> </ul>	<ul style="list-style-type: none"> <li>Non-housing related expenses beyond \$15,000, or;</li> <li>Denied an Administrative Exception</li> </ul>
Increase in amount of superior debt	Can increase no more than 50%.	May increase more than 50%, when: <ul style="list-style-type: none"> <li>Superior debt is unusually low and sufficient equity protection exists.</li> <li>Homeowner is financing or refinancing a documented home improvement project. Refinance must be completed within 1 year of project completion.</li> </ul>	Proposed increase of more than 50%, without the exceptions made for through an Administrative Exception.

### **Fees**

The fee for a subordination request is established by the HRA. If the subordination request is denied, the fee will be returned with a letter explaining the reason(s) for denial. An additional fee is required for an appeal to the HRA and is non-refundable.

### **Processing**

Subordination requests will be processed by HRA staff, who will submit the request with a recommendation for action, to the Executive Director. The Executive Director has the authority to grant a subordination request when, based on his or her discretion, the subordination is reasonable based on the criteria set forth in this Policy. The Executive Director may request review and final decision by the HRA. Requests for subordination should be submitted 30 days prior to the date the agreement to subordinate is needed. Exceptions may be made on a case-by-case basis.

### **Satisfactions**

When a loan made by the HRA is paid in full, a document satisfying the lien will be prepared by the HRA, executed by the Executive Director or his or her delegate and delivered to the borrower for recording. The borrower is responsible for the cost of recording the satisfaction.

More information can be found online at: <http://www.richfieldmn.gov/subordinations>

**Name:** Kevin & Kelly Larson

**Address:** 6331 Blaisdell Ave S

**LoanType:** Transformation Loans

**Loan Date** 2/18/2004

Existing Mortgage Balance	\$168,677.00		
Other Liens to be Paid off:	\$79,347.00		
Closing Costs:	\$4,182.05	2%	of Mortgage Amt
Estimated Prepaid Items:	\$4,740.42		
<u>Estimated Cash Out / (In):</u>	<u>\$3,053.53</u>		
New Mortgage Amount:	\$260,000.00	54.1%	Debt Increases

**Summary of indebtedness**

New Mortgage Amount:	\$260,000.00
Other Superior Debt:	\$0.00
HRA Loan:	<u>\$15,000.00</u>
Total Indebtedness:	\$275,000.00

**Combined Loan to Value ratio:**

<u>Total Indebtedness:</u>	<u>\$275,000.00</u>	84.6	% CLTV
Home Appraisal Value:	\$325,000.00		

Current mortgage terms: 13 years remaining at 4.5%

New mortgage terms: 30 years at 4.875%

**Notes**

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Executive Director