



**REGULAR HOUSING AND REDEVELOPMENT AUTHORITY MEETING
RICHFIELD MUNICIPAL CENTER, COUNCIL CHAMBERS
SEPTEMBER 17, 2018
7:00 PM**

Call to Order

Approval of the minutes of the: (1) Special concurrent City Council, Housing and Redevelopment Authority, and Planning Commission meeting of August 20, 2018; and (2) Regular Housing and Redevelopment Authority meeting of August 20, 2018.

AGENDA APPROVAL

1. Approval of the Agenda
2. **Consent Calendar contains several separate items which are acted upon by the HRA in one motion. Once the Consent Calendar has been approved, the individual items and recommended actions have also been approved. No further HRA action on these items is necessary. However, any HRA Commissioner may request that an item be removed from the Consent Calendar and placed on the regular agenda for HRA discussion and action. All items listed on the Consent Calendar are recommended for approval.**
 - A. Consideration of the approval of a contract with TMS Companies, Inc. for the demolition of 1430 66th Street East (El Jalapeno Market).

Staff Report No. 38
 - B. Consideration of the adoption of a resolution approving a Subordination Agreement related to Cedar Point II.

Staff Report No. 39
3. Consideration of items, if any, removed from Consent Calendar

RESOLUTIONS

4. Consideration of the adoption of a resolution amending the Bylaws of the Richfield Housing and Redevelopment Authority.

Staff Report No. 40
5. Consideration of the adoption of a resolution approving an amended Contract for Private Development with Cedar Point Investments, LLC for redevelopment of the Cedar Point II Housing area with up to 80 units of for-sale townhomes.

Staff Report No. 41

PUBLIC HEARINGS

6. Public hearing and consideration of the adoption of a resolution approving a Contract for Private Development with NHH Companies, LLC for the redevelopment of the Cedar Point II Housing area with 218 units of apartments.

Staff Report No. 42

OTHER BUSINESS

7. Consideration of the acceptance of the Richfield Housing and Redevelopment Authority Tax Increment District Status Update.

Staff Report No. 43

8. Consideration of the appointment of a new Executive Director of the Housing and Redevelopment Authority to serve following the retirement of current Executive Director Steve Devich.

Staff Report No. 44

HRA DISCUSSION ITEMS

9. HRA Discussion Items

EXECUTIVE DIRECTOR REPORT

10. Executive Director's Report

CLAIMS AND PAYROLLS

11. Claims and Payrolls

12. 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

Special Concurrent City Council, Housing and Redevelopment Authority and Planning Commission Work Session

August 20, 2018

CALL TO ORDER

The work session was called to order by Chair Supple at 6:33 p.m. in the Bartholomew Room.

HRA Members Present: Mary Supple, Chair; Michael Howard; Sue Sandahl; Erin Vrieze Daniels; and Pat Elliot.

Council Members Present: Pat Elliot; Mayor; Edwina Garcia; Michael Howard; Maria Regan Gonzalez; and Simon Trautmann.

Planning Commission Members Present: Sean Hayford Oleary, Chair; Susan Rosenberg; Bryan Pynn; and Kathryn Quam.

Planning Commission Absent: James Rudolph; Daniel Kitzberger; and Allysen Hoberg.

Staff Present: Steven L. Devich, City Manager; John Stark, Community Development Director; Melissa Poehlman, Assistant Community Development Director; and Julie Urban, Housing Manager.

Item #1

HOUSING PROPOSAL ON PORTLAND AVENUE BETWEEN 66TH AND 67TH STREETS

Housing Manager Urban introduced the project and the developer.

Victoria Perbix, Interstate Development, presented an affordable family housing concept near the corner of 66th Street and Portland Avenue. She showed a site plan for the building and a rendering of the exterior.

ADJOURNMENT

The work session was adjourned by unanimous consent at 7:00 p.m.

Date Approved: September 17, 2018

Mary B. Supple
HRA Chair

Kate Aitchison
Housing Specialist

Steven L. Devich
Executive Director



HOUSING AND REDEVELOPMENT AUTHORITY MEETING MINUTES

Richfield, Minnesota

Regular Meeting

August 20, 2018

CALL TO ORDER

The meeting was called to order by Chair Supple at 7:05 p.m. in the Council Chambers.

HRA Members Present: Mary Supple, Chair; Pat Elliott; Michael Howard; Sue Sandahl; and Erin Vrieze Daniels.

Staff Present: Steve Devich, Executive Director; John Stark, Community Development Director; Julie Urban, Housing Manager; Julie Eddington, HRA Attorney; Chris Regis, Finance Director; Myrt Link, HRA Accountant, and Kate Aitchison, Housing Specialist.

APPROVAL OF THE MINUTES OF THE: (1) SPECIAL CONCURRENT CITY COUNCIL AND HOUSING AND REDEVELOPMENT AUTHORITY MEETING OF JULY 16, 2018; AND (2) REGULAR HOUSING AND REDEVELOPMENT AUTHORITY MEETING OF JULY 16, 2018.

M/Vrieze Daniels, S/Howard to approve the minutes of the: (1) Special concurrent City Council and Housing and Redevelopment Authority meeting of July 16, 2018; and (2) Regular Housing and Redevelopment Authority meeting of July 16, 2018.

Motion carried 5-0.

Item #1	APPROVAL OF THE AGENDA
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M/Elliott, S/Vrieze Daniels to approve the agenda.

Motion carried 5-0.

Item #2	CONSENT CALENDAR
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Executive Director Devich presented the Consent agenda:

- A. Consideration of the adoption of a resolution amending Resolution No. 1199 regarding an advance of certain costs in connection with property located within the Cedar Avenue Tax Increment Financing District. (S.R. No. 28)
- B. Consideration of the adoption of a resolution amending Resolution No. 1300 regarding an advance of certain costs in connection with property located within Tax Increment Financing District 2018-1 (Cedar Point II). (S.R. No. 29)

C. Cancellation of the public hearing regarding the sale of 6310 Irving Avenue to Neighborworks Home Partners, LLC. (S.R. No. 30)

M/Elliott, S/Sandahl to approve of the consent calendar.

Motion carried 5-0.

Item #3	CONSIDERATION OF ITEMS, IF ANY, REMOVED FROM CONSENT CALENDAR
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None.

Item #4	PUBLIC HEARING AND CONSIDERATION OF THE ADOPTION OF A RESOLUTION AUTHORIZING THE SALE OF 7300 PORTLAND AVENUE TO TWIN CITIES HABITAT FOR HUMANITY, INC., AND APPROVAL OF A CONTRACT WITH TWIN CITIES HABITAT FOR HUMANITY, INC. FOR THE DEVELOPMENT OF A SINGLE-FAMILY HOME. (S.R. NO. 31)
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Housing Specialist Aitchison presented Staff Report No. 31.

Chad Dipman, Land Acquisition Manager for Twin Cities Habitat for Humanity stated he is excited to work with staff and the community to redevelop this property.

M/Sandahl, S/Elliott to close the public hearing

M/Elliott, S/Vrieze Daniels to adopt a resolution authorizing the sale of 7300 Portland Avenue to Twin Cities Habitat for Humanity, Inc., and approve a contract with Twin Cities Habitat for Humanity, Inc. for the development of a single-family home.

Commissioner Vrieze Daniels stated she is happy to see this property is being kept affordable, and is thrilled to see it be sold to Habitat for Humanity

Chair Supple stated liked the new site plan that meet setbacks and pulled the home off of the front property line.

Motion carried 5-0.

Commissioner Sandahl asked how many substandard homes have been purchased by the city.

Housing Manager Julie Urban stated that with Richfield Rediscovered and the New Home Programs combined, the city has purchased over 150 homes.

Item #5	PUBLIC HEARING AND CONSIDERATION OF THE ADOPTION OF A RESOLUTION APPROVING A CONTRACT FOR PRIVATE DEVELOPMENT WITH NHH COMPANIES, LLC FOR REDEVELOPMENT OF THE CEDAR POINT II HOUSING AREA WITH UP TO 80 UNITS OF FOR-SALE TOWNHOMES. (S.R. NO. 32)
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Housing Manager Urban presented Staff Report No. 32.

Commissioner Vrieze Daniels asked if there were any milestones that the developer did not meet. Housing Manager Urban stated that the plan to apply to Minnesota Housing for financing assistance didn't work, but that they plan to apply next year.

Commissioner Vrieze Daniels asked if the HRA is essentially agreeing to splitting the projects into two separate pieces. Housing Manager Urban responded yes.

Commissioner Vrieze Daniels asked for clarification on the strategy of splitting the district if the affordability requirement is being met. Housing Manager Urban explained the rationale for splitting the project in order to meet affordability requirements with the townhome portion of the project, and leaving the apartment building market-rate. Community Development Director John Stark stated the developer is trying to differentiate from the Chamberlaine's product, and that they are looking at the whole site cumulatively, despite splitting the project into two components.

Commissioner Elliott stated he is in support of the affordable component being in homeownership opportunities rather than rental.

Commissioner Howard stated he would like to see affordability on the rental side as well. He asked if that has been explored by the developer. Community Development Director John Stark stated that they have been discussing it with the developer, but it would likely require the city to put more funding into the project.

Chair Supple asked if the developer has obtained the purchase agreements needed to make the start of construction possible. Housing Manager Urban replied that all the homes on the 6300 block have purchase agreements and construction would be able to move forward.

Tony Simmons, developer with NHH Properties, stated that they hope to create diversity in housing stock by bringing a high-end product to city.

M/Sandahl, S/Elliott to close public hearing.

Motion carried 5-0.

M/Elliott, S/Vrieze Daniels to adopt a resolution approving a Contract for Private Development with NHH Companies, LLC for the Cedar Point II Housing area and selling HRA owned properties located within the development area to NHH Companies, LLC.

Commissioner Howard stated these are opportunities to educate themselves and public about TIF. He asked for clarification on the TIF benefits to the city. Community Development Director John Stark briefly explained Tax Increment Financing.

Commissioner Howard stated his support for all the parties moving forward, but would like to see more affordability in the rental units. Community Development Director John Stark stated that staff will continue to look into affordability and that the developer has done a great job communicating with the neighborhoods. Commissioner Vrieze Daniels stated her agreement in looking into the affordability of the apartments.

Motion carried 5-0.

Item #6	CONTINUE THE PUBLIC HEARING ON THE SALE OF PROPERTY AND CONSIDERATION OF A CONTRACT FOR PRIVATE DEVELOPMENT WITH NHH COMPANIES, LLC FOR REDEVELOPMENT OF THE CEDAR POINT II HOUSING AREA WITH 218 UNITS OF APARTMENTS TO SEPTEMBER 17, 2018. (S.R. NO. 33)
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Housing Manager Urban presented Staff Report No. 33.

M/Sandahl, S/Elliott to continue the public hearing to September 17, 2018.

Chair Supple stated her support for the project, acknowledging that there's currently a shortage of rental housing and a very low vacancy rate. Housing Manager Urban stated that postponing the second contract until September will not impede any progress for the overall project.

Motion carried 5-0.

Item #7	CONSIDERATION OF THE APPROVAL OF AN ASSIGNMENT OF A HOUSING AND REDEVELOPMENT AUTHORITY TRANSFORMATION HOME LOAN AT 6701 WASHBURN AVENUE TO EQUIHANCE PARTNERS, LLC AND THE EXECUTION OF ALL RELATED DOCUMENTS BY THE EXECUTIVE DIRECTOR AND BOARD CHAIR. (S.R. NO. 34)
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Housing Specialist Kate Aitchison presented Staff Report No. 34.

M/Sandahl, S/Howard to approve an assignment of a Housing and Redevelopment Authority lien against 6701 Washburn Avenue to Equihance Partners, LLC for \$2,800 and the execution of all related documents by the Executive Director and Board Chair.

Commissioner Sandahl stated her support for this type of action on foreclosed properties and HRA liens.

Motion carried 5-0.

Item #8	CONSIDERATION OF THE ADOPTION OF A RESOLUTION AUTHORIZING THE PURCHASE OF REAL PROPERTY LOCATED AT 6501 PENN AVENUE, PENDING A FINDING OF CONSISTENCY BY THE RICHFIELD PLANNING COMMISSION. (S.R. NO. 35)
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Community Development Director John Stark presented Staff Report No. 35.

Commissioner Elliott shared his concerns over the grade of the property and the high cost of the land. Community Development Director Stark stated his confidence in the Penn Corridor and explained a number of options for parking and redevelopment.

Commissioner Sandahl stated her support for this investment in the Penn Central area.

Commissioner Vrieze Daniels said she hopes to do something creative on this site and not hold it too long.

Executive Director Devich recalled many discussions about this property over the years. It is a significant site in terms of size, and we need to take control of it is not left as-is. He stated it could be very prominent and a great opportunity.

M/Sandahl, S/Howard to adopt a resolution authorizing the purchase of real property located at 6501 Penn Avenue, pending a finding of consistency by the Richfield Planning Commission.

Commissioner Vrieze Daniels asked about the contingency request of the seller. Community Development Director Stark clarified the requests of the sellers.

Motion carried 5-0.

Item #9	CONSIDERATION OF THE ADOPTION OF RESOLUTIONS REGARDING THE MODIFICATION OF THE REDEVELOPMENT PLAN FOR THE RICHFIELD REDEVELOPMENT PROJECT AREA, THE MODIFICATION TO THE TAX INCREMENT FINANCING PLAN FOR THE CEDAR AVENUE TAX INCREMENT FINANCING DISTRICT, AND THE ESTABLISHMENT OF TAX INCREMENT FINANCING DISTRICT NO. 2018-1. (S.R. NO. 36)
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Housing Manager Julie Urban presented Staff Report No. 36.

Chair Supple asked if the item should have two separate motions. Housing Manager Urban responded that two motions were required.

Commissioner Vrieze Daniels asked for further clarification on the need to separate the two components. Housing Manager Urban stated that the development teams differ for each component, and that the financials need to pencil out on each side. Community Development Director Stark explained the various types of TIF districts, and explained how they functioned with this project.

M/Supple, S/Sandahl to adopt a resolution adopting a modification to the Tax Increment Financing Plan for the Cedar Avenue Tax Increment Financing District within the Richfield Redevelopment Project Area.

Motion carried 5-0.

M/Sandahl, S/Elliott to adopt a resolution adopting a modification to the Redevelopment Plan for the Richfield Redevelopment Project Area and establishing Tax Increment Finance District No. 2018-1 therein and the adoption of the Tax Increment Financing Plan therefor.

Motion carried 5-0.

Item #10	CONSIDERATION OF THE ADOPTION OF RESOLUTIONS APPROVING PROPOSED PROPERTY TAX LEVY FOR PAYABLE 2019 FOR CERTIFICATION TO HENNEPIN COUNTY. (S.R. NO. 37)
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Community Development Director John Stark presented Staff Report No. 37.

Commissioner Sandahl stated her experience previously on the HRA when the full amount was levied, and stated she supported staff but was concerned about leaving funds unlevied.

Executive Director Devich stated the amount left over was about \$8,900, which would be a minimal impact on a typical Richfield household. He stated it is the HRA's decision.

Commissioner Vrieze Daniels stated she supports either taking the full amount, or reducing it significantly to truly save homeowners money.

Commissioner Howard stated is support for the staff recommendation.

Community Development Director Stark explained the budget process and approach.

Chair Supple, Commissioner Elliott and Commissioner Vrieze Daniels stated they would support the staff's recommendation.

Commissioner Howard asked how does the environment that we're in now (in terms of redevelopment) shape the HRA budget. Community Development Director Stark stated the biggest threat to HRA is that some of the larger TIF districts in the community will expire in the future. Additionally, the tax impacts of new developments will be good for the community. Executive Director Devich agreed on this statement.

M/Howard, S/Vrieze Daniels to adopt resolutions approving the 2019 Proposed Housing and Redevelopment Authority Budget and Tax Levy and 2018 Revised Housing and Redevelopment Authority Budget.

Motion carried 5-0.

Item #11	HRA DISCUSSION ITEMS
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Commissioner Vrieze Daniels asked for an update on the 2018 Home Tour.

Housing Specialist Aitchison stated that it has been cancelled due to a lack of available participants.

Item #12	EXECUTIVE DIRECTOR REPORT
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None.

Item #13	CLAIMS AND PAYROLL
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M/Sandahl, S/Elliott that the following claims and payroll be approved:

U.S. BANK	8/20/2018
Section 8 Checks: 129961-130041	\$155,887.20
HRA Checks: 33490-33511	\$ 95,227.52
TOTAL	\$251,114.72

Motion carried 5-0.

ADJOURNMENT

The meeting was adjourned by unanimous consent at 8:21 p.m.

Date Approved: September 17, 2018

Mary B. Supple
HRA Chair

Kate Aitchison
Housing Specialist

Steven L. Devich
Executive Director



STAFF REPORT NO. 38
HOUSING AND REDEVELOPMENT AUTHORITY
MEETING
9/17/2018

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

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director
9/12/2018

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich, Executive Director
9/13/2018

ITEM FOR COUNCIL CONSIDERATION:

Consideration of the approval of a contract with TMS Companies, Inc. for the demolition of 1430 66th Street East (El Jalapeno Market).

EXECUTIVE SUMMARY:

In June 2018, the Housing and Redevelopment Authority (HRA) acquired the vacant commercial property at 1430 66th Street East. The property operated as the El Jalapeno Market since approximately 2000, but has been vacant since 2015 when it was foreclosed on and subject to sheriff's sale. The property was in poor condition while operational and has fallen into further disrepair since. While vacant, code violations occurred frequently and the building is unsafe to enter due to a large hole in the floor. The structure was recently abated of asbestos and other hazardous materials in preparation for demolition. To reduce potential risks, holding costs, and negative impacts to the surrounding neighborhood, the building should be demolished at this time. Once demolished, staff will then market the property as a redevelopment site. The HRA received two bids for the demolition of the property. The lowest bid was submitted by TMS Companies, Inc. in the amount of \$39,000.

RECOMMENDED ACTION:

By motion: Approve a contract with TMS Companies, Inc. for the demolition of 1430 66th Street East.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

- The property has been vacant since 2015 when it was foreclosed upon.
- The HRA purchased the property in June 2018.
- In September 2018 the building was abated of hazardous material.

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

- In the City Council's 2018 goal setting meeting on March 22, the Council discussed capitalizing on opportunities for redeveloping the east side, including acquisition of vacant and/or underdeveloped properties.

C. CRITICAL TIMING ISSUES:

- Given the building's condition, it is important to remove the structure as soon as possible.
- The Contract requires the building to be removed by November 15, 2018.

D. FINANCIAL IMPACT:

- The bid of \$39,000 was the lowest of two bids that were received. A second bid was received from Frattalone Companies for \$59,000.
- Funds are available in the Housing and Redevelopment Fund to pay the cost of demolition.

E. LEGAL CONSIDERATION:

- Legal counsel drafted the Contract for Demolition.

ALTERNATIVE RECOMMENDATION(S):

- Do not approve the Contract for Demolition.

PRINCIPAL PARTIES EXPECTED AT MEETING:

None

ATTACHMENTS:

Description	Type
□ Demolition Contract 1430 E 66th St	Contract/Agreement

CONTRACT FOR DEMOLITION

THIS CONTRACT is made and entered into this ____ day of _____, 2018, by and between **TMS Companies, Inc.** (the “**Contractor**”) and **the Housing and Redevelopment Authority in and for the City of Richfield, State of Minnesota** (the “**HRA**”) (collectively, the “**Parties**”), for the demolition of buildings located at 1430 E 66th Street, Richfield, MN 55423 (the “**Property**”).

RECITALS

WHEREAS, the HRA requires the demolition of buildings at the Property (the “**Work**”).

WHEREAS, the HRA has awarded the Work to the Contractor;

WHEREAS, the Contractor represents that it has the necessary personnel, experience, competence, and legal right to perform the Work;

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

Section 1. Definitions

“**City**” means the City of Richfield, Minnesota.

“**Contract**” or “**Agreement**” means this agreement between the HRA and Contractor for the performance of the Work, together with all exhibits, amendments, or modifications to the Contract.

“**Final Completion**” means all items of the Work, “punch list items” and site work are completed and Contractor is eligible for Final Payment.

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

“**Property**” means 1430 E 66th Street, Richfield, MN 55423.

“**Substantial Completion**” means the time at which the HRA determines that the Work has progressed to a point where it is sufficiently complete, leaving only minor “punch list” and close out items and other minor site work required to be completed for full payment of the contract price.

“Work” means the entire completed demolition and all other activities to be performed by Contractor on the Property as provided for in this Contract.

Section 2. General Requirements

2.1. Rights of the HRA. The HRA and the City reserve the right to reject any or all proposals or parts of proposals, to accept part or all of proposals on the basis of considerations other than lowest cost, and to create a project of lesser or greater expense and reimbursement than described in this Contract. The HRA also reserves the right to cancel the Contract without penalty, if circumstances arise which prevent the HRA from completing the project. In the event of any conflict between the General Conditions and this Contract, this Contract shall control.

2.2. Interest of Members of City or HRA. The Contractor agrees that no member of the governing body, officer, employee, or agent of the City or the HRA shall have any interest, financial or otherwise, direct or indirect, in the Contract.

2.3. Equal Opportunity Statement. Contractor agrees to comply with the provisions of all applicable federal, state, and City statutes, ordinances, and regulations pertaining to civil rights and nondiscrimination including without limitation Minnesota Statutes, Section 181.59 as amended, incorporated herein by reference.

2.4. Transfer of Interest. The Contractor shall not assign any interest in the Contract, and shall not transfer any interest in the same either by assignment or novation, without the prior written approval of the HRA, provided, however, that claims for money due or to income due to the Contractor may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy without such approval. Notice of any such assignment or transfer shall be furnished to the HRA. Notwithstanding the foregoing, Contractor shall be entitled to use subcontractors to perform the Work.

2.5. Independent Contractor. It is expressly understood that the Contractor is an “independent contractor” and not an employee of the City or the HRA. The Contractor shall have control over the manner in which the services are performed under this Agreement. The Contractor shall supply, at its own expense, all materials, supplies, equipment and tools required to accomplish the work contemplated by this Agreement. The Contractor shall not be entitled to any benefits from the City or the HRA, including, without limitation, insurance benefits, sick and vacation leave, workers’ compensation benefits, unemployment compensation, disability, severance pay, or retirement benefits.

2.6. Accounting Standards. The Contractor agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by normally accepted accounting practices to properly account for expenses incurred under this contract.

2.7. Retention of Records. The Contractor shall retain all records pertinent to expenditures incurred under this Contract for a period of three years after the resolution

of all audit findings. Records for non-expendable property acquired with funds under this contract shall be retained for three years after final disposition of such property.

2.8. Government Data. The Contractor agrees to comply with the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, and all other applicable state and federal laws relating to data privacy or confidentiality, as those laws may be amended. The Contractor shall immediately report to the HRA any requests from third parties for information relating to this agreement. All data created, collected, received, stored, used, maintained, or disseminated by the Contractor in performing its obligations is subject to the requirements of the Act, and the Contractor must comply with those requirements as if it were a government entity. The HRA agrees to promptly respond to inquiries from the Contractor concerning data requests. The Contractor agrees to hold the City and the HRA, its officers, department heads and employees harmless from any claims resulting from the Contractor's failure to disclose data maintained by the Contractor and authorized for release by the HRA, and from Contractor's unlawful disclosure or use of data protected under state and federal laws.

Section 3. Contract Price

3.1. Upon compliance with all the requirements of this Contract, Contractor shall be paid the Contract Price of \$39,000, pursuant to Section 28 of this Contract.

Section 4. Project Schedule

4.1. Contractor shall commence the Work on or after Contract execution and Substantial Completion of the Work shall be achieved no later than November 15, 2018 or (5) days thereafter. If the Work is not substantially completed by November 20, 2018, damages of \$100.00 will be deducted from the Contract Price for each day the requirements of this contract have not been fulfilled.

Section 5. Local Permit Requirements and Related Submittals

5.1. Contractor shall obtain permits required by the City, including a plumbing permit (for water & sanitary sewer disconnects) and a demolition permit. Questions about these permits, permit fees, and the scheduling process for the required inspections should be directed to the Building Inspections Department at Richfield City Hall (612-861-9816).

5.2. No less than 2 days prior to beginning the Work, the Contractor shall provide:

- Description of proposed dust and noise control measures for the Property.

5.3. Upon completion of the Work, Contractor shall provide:

- Copies of any permits required by government agencies other than the City, such as transport or disposal permits.

- Copies of any test results required by government agencies other than the City, including but not limited to testing required as part of the asbestos abatement process.
- Copies of all landfill records indicating receipt and acceptance of hazardous wastes by a landfill licensed to accept hazardous wastes.

Section 6. Job Conditions - General

6.1. Contractor will disconnect and abandon utilities serving the Property, including water, sanitary sewer, electricity, gas and telecommunications; or arrange for disconnection and abandonment of same. Contractor shall not begin work before field-verifying that disconnection and abandonment has been completed.

6.2. HRA shall ensure that the buildings are vacated and use of the property is discontinued prior to start of work.

6.3. HRA assumes no responsibility for actual condition of structures to be demolished. Conditions existing at time of inspection for bidding purposes will be maintained by HRA to the extent practicable. Contractor may salvage any and all materials and equipment from the Property. Variations within structures may occur due to removal and salvage operations prior to the start of demolition work.

6.4. Contractor shall provide all labor, materials, equipment, employee training, compliance with all regulations, permits, notifications, licenses and agreement necessary to perform the work described in this Contract.

6.5 The Contractor operations shall not at any time encroach on adjacent residential properties. Where residents occupy the adjacent properties, the Contractor shall stake and mark the boundaries of the property to identify the limits of operations for its employees and subcontractors.

6.6 Where adjacent buildings are occupied, the HRA requires Contractors to advise the inhabitants as to when they will start work activities and of what hazards are involved. Each Contractor shall also furnish the occupants of the adjoining properties a phone number where they can reach the Contractor in case of an emergency or problem.

6.7 As directed by the City Inspector, a silt fence or other appropriate erosion control measures shall be erected around the perimeter of the Property to prevent erosion and unwanted run-off onto adjacent properties, streets, and alleys. Silt fences must conform to standards set by the Minnesota Pollution Control Agency and the City.

6.8. All materials from undertaking the Work shall become the property and responsibility of the Contractor.

6.9. Contractor may choose to salvage materials and equipment. Any salvaged items must be removed from the Property in a timely manner as they are salvaged. On site storage or sale of salvaged items is prohibited.

6.10. The use of explosives and on site burning by the Contractor are prohibited.

6.11. Contractor shall provide water, electricity, communications and toilet facilities on site as necessary to complete the work.

6.12. Contractor shall provide and maintain uninterrupted vehicular access to the Property, including temporary demolition facilities, storage and work areas, for not only persons and equipment involved in the project but also emergency vehicles.

6.13. Contractor shall keep fire hydrants and water control valves free from obstruction and accessible for use.

6.14. Contractor shall take all necessary safeguards to prevent damage or injury to neighboring property.

6.15. Prior to closing or rerouting existing traffic lanes or sidewalks in any public street easement or right-of-way adjacent to streets, the Contractor shall obtain written permission from the City Engineer. Expenses related to lane closures, including but not limited to traffic barriers, signs and similar equipment as well as traffic control personnel, shall be the responsibility of the Contractor.

6.16. The Contractor may conduct work on the Property from 7 a.m. to 7 p.m. Monday through Friday and 9 a.m. to 5 p.m. on Saturdays. No work shall be conducted on Sundays or legal holidays.

6.17. The Contractor shall not crush any materials on-site.

6.18. Contractor shall maintain the Property in a safe and neat manner. Adjacent properties, streets and right-of-ways shall be kept free of dirt and debris.

6.19. If Contractor is negligent in carrying out any of the conditions in this Section 6, the HRA reserves the right to perform this work with its own workforce at overtime rates. The costs of such work will be charged to the Contractor.

Section 7. [Left Blank]

Section 8. [Left Blank]

Section 9. Demolition

9.1. Contractor shall use water sprinkling, temporary enclosures and other suitable methods to limit dust and dirt rising and scattering in air. Contractor shall comply with any and all governing regulations pertaining to environmental protection. Contractor shall not use water when it may create hazardous or objectionable conditions such as flooding or pollution.

9.2. Contractor shall clean adjacent structures and improvements of dust, dirt and debris caused by demolition operations and return adjacent areas to condition existing prior to start of work.

9.3. Contractor shall demolish buildings, other structures, improvements, and landscaping completely and remove all debris from the Property. Contractor may use such methods as required to complete the work subject to the limitations of governing regulations.

9.4. Contractor shall proceed with demolition in a systematic manner, from top of structures to ground, and will complete demolition work above each floor or tier before disturbing supports on lower levels.

9.5 After the Building has been removed from the Property, Contractor shall remove all foundation walls and the basement floor slab, and shall remove all other at grade masonry, concrete slabs, sidewalks, steps, and driveways from the Property. ALL ASPHALT, MASONRY, AND NON-MASONRY MATERIAL MUST BE TRANSPORTED AWAY FROM THE SITE.

9.6 Immediately upon the removal of the Building from its foundation, Contractor shall furnish and erect on the Property a wood slat snow fence or an approved substitute, either one being in good repair and reasonably acceptable to HRA. The fence shall be at least four feet in height, shall completely enclose the open basement, and shall remain in place until the basement is filled, at which time it shall be removed;

9.7. Contractor shall locate demolition equipment throughout the building and remove materials so as to not impose excessive loads to supporting walls, floor or framing.

9.8. Contractor shall provide and maintain interior and exterior shoring, bracing or other structural support to preserve structural stability and prevent movement, settlement or collapse of the building.

9.9. Contractor shall break up any concrete slabs-on-grade and remove from the Property.

9.10. Contractor shall demolish footings, foundation walls, tunnels and other below-grade structures and remove from the Property.

9.11. After removing all foundation walls and the basement floor slab, as provided above, Contractor shall fill the basement to ground surface level with clean compactable

soil. The basement hole MUST BE inspected by the City Inspector prior to filling, and any unauthorized debris removed. The fill must not contain any hazardous substance or disposed building material.

9.12. All sheds and other accessory structures, clothesline and other poles, and landscape structures shall be removed from the Property.

9.13. Contractor may not cut or remove a tree from the Property without prior permission from HRA. If any trees are cut or destroyed by Contractor without prior approval, Contractor will pay to HRA damages of \$200 per tree. Any such damages shall be deducted from Contractor's payment. Any trees approved by the HRA for removal and cut or felled in the moving process shall be removed immediately, and the tree stumps may remain.

9.14 Contractor shall provide certificate of well abandonment if required.

Section 10. Debris Control

10.1. Contractor shall maintain the Property free of extraneous debris.

10.2. Contractor shall prohibit overloading of trucks to prevent spillage on access and haul routes.

10.3. Contractor shall maintain a sweeping and clean-up program to prevent deposition, release and disbursement of soils and debris onto paved surfaces.

Section 11. Disposal

11.1. Contractor shall move from the Property all debris, rubbish and other materials resulting from demolition operations.

11.2. Contractor shall transport materials from the Property and legally dispose of them off-site in accordance with governing regulations.

Section 12. Earthwork

12.1. Contractor shall rough grade the Property using clean fill after completing all abatement and demolition activities; taper edges of all excavated areas to minimize slope of 2 to 1, keeping soil disturbance to a minimum. Property must be seeded, and erosion control measures must remain in place until turf is established. The Contractor must comply with all requirements of the Minnehaha Creek Watershed District related to the Work. Final payment will not be made until turf is established.

Section 13. Excusable Delays

13.1. The following circumstances, and only these circumstances, will, at the HRA's discretion, be considered legitimate cause for a change in the commencement and/or completion dates specified in Section 4 of this Agreement:

- a. Material delay -- material delays that are beyond the control of the Contractor, which can be shown to have directly caused the overall late completion.
- b. Adverse weather and emergency conditions -- weather or emergency conditions that directly affect the scheduling of exterior work over a significant portion of the term of this Agreement.
- c. Strikes -- Contractors who face union work stoppage in the case where they have to rely on such a work force in order to complete the Work.
- d. Amendments -- amendments in the original scope of work, which can be reasonably shown to require an extension of the time allowed for completion.
- e. Other delays -- act or neglect of the HRA, or of an employee of either, or of a separate contractor employed by the HRA, or by changes ordered in the Work or by unavoidable casualties or other causes beyond the Contractor's control.

Section 14. Change Order

14.1. The HRA has the right, within the general scope of the Work and without notice to any surety or sureties of the Contractor, if any, to make changes in the Work, either by altering the nature of the same or by adding to or deducting from it.

14.2. This is a lump sum contract. The Contractor must immediately contact the HRA prior to exceeding the Contract Price set out in Section 3.1. In the event an unknown condition is encountered during the Contractor's performance of the Work, the Contractor must notify the HRA's project manager immediately. The appropriate course of action will be determined and, if necessary, a change order will be authorized prior to the start of the work. Change orders for additional payment will not be granted due to the Contractor underestimating quantities of material(s), winter weather conditions or the amount of labor required in order to perform the Work. For change orders related to Hazardous or Regulated Materials, the HRA reserves the right to subcontract the work to another contractor.

14.3. All changes shall, except in the case of emergencies endangering the safety of persons or property, be made by written change order. The parties shall determine the effect of any change order on the Contract Price and project schedule by mutual

agreement. The Contractor must promptly comply with any and all written change orders. No such change order shall be deemed to invalidate the remaining terms and conditions contained in this Contract.

Section 15. Waiver of Liability

15.1 It is agreed that the Work is undertaken at the sole risk of the Contractor. The Contractor does expressly forever release the HRA and the City from any claims, demands, injuries, damage actions, or causes of action whatsoever, arising out of or connected with the Work.

Section 16. Indemnification

16.1. Any and all claims that arise or may arise as a consequence of any act or omission on the part of the Contractor, its agents, servants, or employees while engaged in the performance of the Work shall in no way be the obligation or responsibility of the HRA or the City. To the fullest extent permitted by law, the Contractor agrees to defend, indemnify and hold harmless the City and the HRA, and their employees, officials, volunteers and agents from and against all claims, actions, damages, losses and expenses, including attorney fees, arising out of the Contractor's negligence or the Contractor's performance or failure to perform its obligations under this Agreement. The Contractor's indemnification obligation shall apply to the Contractor's subcontractor(s), or anyone directly or indirectly employed or hired by the Contractor, or anyone for whose acts the Contractor may be liable. The Contractor agrees this indemnity obligation shall survive the completion or termination of this Agreement.

Section 17. Insurance

17.1. The Contractor agrees that in order to protect itself, the HRA, and the City under the indemnity provisions set forth in Section 16 of this Agreement, it will at all times during the term of this Agreement, maintain, at a minimum, the following insurance policies:

- a. Workers Compensation Insurance. The Contractor shall maintain worker's compensation insurance in compliance with all applicable statutes including Chapter 176 of the Minnesota Statutes. Such policy shall include Employer's Liability Coverage and at least such amount(s) as are customarily provided in worker's compensation policies issued in Minnesota. Contractor further agrees to require all subcontractors and independent contractors to maintain worker's compensation insurance in compliance with all applicable statutes and to monitor the compliance of such subcontractors and independent contractors with the applicable statutes.
- b. Commercial General Liability Insurance. The Contractor shall maintain Occurrence Based Commercial General Liability Insurance ("CGL"),

providing coverage on an "occurrence", rather than on a "claims made" basis, which policy shall include coverage for the Completed Operations Hazard, and which shall also include a Broad Form General Liability Endorsement, ISO number GL 0404, or an equivalent form (or forms), so long as such an equivalent form (or forms) *affords* coverage which is in all material respects at least as broad. Any equivalent form (or forms) of coverage shall be approved by the HRA.

The Contractor agrees to maintain total liability policy limits of at least One Million Dollars (\$1,500,000), applying to liability for Bodily Injury, Personal Injury, and Property Damage, which total limits may be satisfied by the limits afforded under its Occurrence Based CGL policy as specified above, or by such policy in combination with the limits afforded by an Umbrella Liability Policy (or policies) provided, however, that the coverage afforded under any such Umbrella Liability Policy shall be at least as broad as that afforded by the underlying occurrence based CGL Policy as specified above.

- c. Automobile Liability Insurance. The Contractor shall maintain automobile liability insurance covering liability for Bodily Injury and Property Damage arising out of the ownership, use, maintenance, or operation of all owned, non-owned, and hired automobiles and other motor vehicles. Such policy shall provide total liability limits for combined Bodily Injury and/or Property Damage in the amount of at least One Million Dollars (\$1,500,000) per accident, which total limits may be satisfied by the limits afforded under such policy, or by such policy in combination with the limits afforded by an Umbrella Liability Policy (or policies) provided, however, that the coverage afforded under any such Umbrella Liability Policy shall be at least as broad as that afforded by the underlying automobile liability insurance policy.

The HRA and the City shall be named as "additional insured" parties with respect to the insurance policies specified in (b) and (c) above. The Contractor shall not commence work until a Certificate of Insurance evidencing all of the insurance policies required above is approved and a written Notice to Proceed is issued by an authorized representative of the HRA. The HRA shall, at any time during the term of this agreement, have the right to require that the Contractor secure any additional insurance, or additional feature to existing insurance, as the HRA may reasonably require for the protection of its interests or those of the public. It is expressly understood that the HRA does not in any way represent that the minimum insurance coverage set forth in this paragraph is sufficient or adequate to protect the interest or liabilities of the Contractor.

Section 18. Bond

18.1. No payment or performance bonds for the Work shall be required pursuant to Minn. Stat. § 574.26.

[Alternate language: Before undertaking any work under this Contract, the Contractor shall provide the HRA with a performance and payment bond for the Contract Price in accordance with the Public Contractors' Performance and Payment Bond Act set forth in Minnesota Statutes Chapter 574. The bonds must be non-revocable and otherwise in a form acceptable to the HRA. The Contractor is responsible for ensuring that the required bonds are in effect over the entire term of this Contract.]

Section 19. Lien Waiver

19.1. Neither the Contractor nor any subcontractor or other person or entity furnishing labor, equipment, or materials in connection with the Work shall file any mechanic's lien against the HRA's buildings, structures or land or any part thereof, provided that the HRA makes all payments due to Contractor under this Contract. The Contractor shall protect, defend, indemnify, and hold harmless the HRA and the City from any and all claims, demands, or actions of whatever nature arising out of work, labor, equipment, or materials furnished by the Contractor or its subcontractors in connection with the Work, provided that the HRA makes all payments due to Contractor under this Contract. Payment of the Contract Price shall not be due until the Contractor has delivered to the HRA lien waivers acceptable to the HRA, which release the HRA from all liens that may arise in connection with the Work. The Contractor shall list on the attached Exhibit A the names of all suppliers and/or subcontractors that will provide materials, services, or labor in connection with the Work. The Contractor will notify the HRA of any changes in this list prior to the commencement of the Work.

Section 20. Subcontractors

- 20.1. Contractor agrees to bind every subcontractor by the terms, conditions, and provisions set forth in the Contract that are applicable to the subcontractor's work, unless otherwise specifically agreed otherwise in writing by the HRA.
- 20.2. Contractor agrees to pay every subcontractor within 10 days of receipt of payment from the HRA pursuant to Minn. Stat. § 471.425.

Section 21. Assignment

21.1. This Contract shall be binding upon the Contractor, its legal representatives, heirs, successors, and assigns. No assignment or attempted assignment of this Contract or any rights hereunder shall be effective unless the written consent of the HRA is first obtained. No such assignment, even if consented to by the HRA, shall relieve the Contractor from liability under this Contract for the performance and completion of the Work in accordance with the Contract. Notwithstanding the foregoing, Contractor shall be entitled to use subcontractors to perform the Work.

Section 22. Entire Agreement

22.1. The Contract contains all the terms, conditions, and provisions pertaining to the Work to be completed by the Contractor, there being no other understandings, agreements, or warranties, express or implied. All prior negotiations and dealings regarding the subject matter of the Agreement are superseded by and merged into the Contract.

Section 23. Default

23.1. The occurrence of any of the following shall constitute default by the Contractor and, if not corrected within 15 days of the HRA providing the Contractor with notice of the default, shall allow the HRA to terminate this Agreement: (1) failure to perform the Work as stated in this Contract; (2) failure to perform or complete the Work by the completion date as set forth in this Contract or as otherwise agreed to by the parties; (3) filing bankruptcy; (4) making a material misrepresentation; (5) disregarding laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; (6) failure to make satisfactory progress toward completion of the Work; or (7) failure to perform any other material provision of this Agreement. The HRA may lawfully terminate this Contract if, after providing the Contractor with 15 days notice of the default, the Contractor does not correct the default. Upon default of this Agreement by the Contractor, the HRA may withhold any payment due the Contractor for purposes of set-off until such time as the exact amount of damages due is determined. Furthermore, the HRA may use any unpaid or retained amounts to correct any defective work or materials and to complete the Work as needed. Such withholding shall not constitute default or failure to perform on the part of the HRA.

Section 24. Governing Law

24.1. This Contract shall be construed in accordance with and governed by the laws of the state of Minnesota.

Section 25. Amendment

25.1. This Contract may be modified or amended only with the written approval of the HRA and the Contractor.

Section 26. Construction

26.1. In the event that any one or more of the provisions of this Contract, or any application thereof, shall be found to be invalid, illegal, or otherwise unenforceable, the validity, legality, and enforceability of the remaining provisions or any application thereof shall not in any way be affected or impaired thereby.

Section 27. Authority

27.1. Each of the undersigned parties warrants that it has the full authority to execute this Contract, and each individual signing this Contract on behalf of a corporation hereby

warrants that he or she has full authority to sign on behalf of the corporation and that he or she represents and binds such corporation thereby.

Section 28. Waiver

28.1. No failure by the HRA to insist upon the strict performance of any covenant, duty, agreement, or condition contained in this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term, or condition, nor does it imply that such covenant, agreement, term, or condition may be waived again.

Section 29. Nondiscrimination

29.1 In the hiring of employees to perform work under this Contract, the Contractor shall not discriminate against any person by reason of any characteristic protected by state or federal law.

Section 30. Notices

30.1 All notices and other communications under this Agreement must be in writing and must be given by registered or certified mail, postage prepaid, or delivered by hand at the addresses set forth below:

Notice to HRA: Attn: Housing Specialist
6700 Portland Avenue
Richfield, MN 55423

Notice to Contractor: TMS Companies, Inc.
5990 Meadow Lark Lane
Prior Lake, MN 55372

Working Hours Cell Phone: 952-226-6300
Non-working Hours Cell Phone: 612-414-5700

Section 31. Savings Clause

31.1 If any court finds any portion of this Agreement to be contrary to law, invalid, or unenforceable, the remainder of the Contract will remain in full force and effect.

Section 32. Payments to Contractor and Completion

32.1. The Contractor shall be paid upon completion of the Work in accordance with the payment schedule of the HRA, if any, and this section.

32.2. Prior to receiving payment for Substantial Completion of the Work, the Contractor shall in writing state that the respective portion of the Work has been

substantially completed and is free and clear of all liens as provided in this Contract. Upon Substantial Completion and inspection and verification by the HRA, the payment for that portion of the Work shall be made. Final payment shall be made when Contractor certifies that Final Completion has been achieved and verified by the HRA.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed in their names and behalves and on or as of the date and year first above written.

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

By _____
Mary B. Supple
Its Chair

By _____
Steven L. Devich
Its Executive Director

TMS Companies, Inc.

By _____
Its _____

By _____
Its _____

THIS INSTRUMENT DRAFTED BY:

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

EXHIBIT A

LIST OF SUPPLIERS AND SUBCONTRACTORS



STAFF REPORT NO. 39
HOUSING AND REDEVELOPMENT AUTHORITY
MEETING
9/17/2018

REPORT PREPARED BY: Julie Urban, Housing Manager

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director
9/12/2018

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich, Executive Director
9/13/2018

ITEM FOR COUNCIL CONSIDERATION:

Consideration of the adoption of a resolution approving a Subordination Agreement related to Cedar Point II.

EXECUTIVE SUMMARY:

On August 20, 2018, the Housing and Redevelopment Authority (HRA) approved a contract for private development (Contract) with NHH Companies, LLC (Developer) to redevelop a portion of the Cedar Point II redevelopment area (63rd to 65th Street and 16th Avenue to Richfield Parkway) with up to 80 townhome units. Under the terms of the Contract, the Developer may request that the HRA subordinate the Contract to the construction and/or permanent financing loan. The Developer plans to close on a portion of its construction financing in September in order to acquire property from the existing residential homeowners. The Lender is requesting a subordination of that acquisition loan at this time.

RECOMMENDED ACTION:

By motion: Adopt a resolution approving a Subordination Agreement related to construction financing for the Cedar Point II redevelopment project.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

- The HRA entered into a Contract to provide assistance to the townhome portion of the redevelopment project on August 20, 2018.
- The Developer is seeking acquisition funds from its construction lender in order to acquire property for the development.
- The Lender is requiring that the HRA to approve a subordination of the Development Agreement prior to issuing the loan.

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

- The Lender is requiring the HRA to approve a Subordination Agreement prior to issuing a loan to NHH Companies, LLC.

C. CRITICAL TIMING ISSUES:

- The Developer is anticipating closing on their acquisition financing in September. Prior to making

the loan, their Lender is requiring a Subordination Agreement from the HRA.

D. FINANCIAL IMPACT:

- There is no financial impact to the HRA.

E. LEGAL CONSIDERATION:

- The HRA retains its rights under the Contract.
- The HRA Attorney will approve the final form to be executed by the HRA Chair and Executive Director.

ALTERNATIVE RECOMMENDATION(S):

- Deny the subordination request.

PRINCIPAL PARTIES EXPECTED AT MEETING:

N/A

ATTACHMENTS:

Description		Type
<input type="checkbox"/>	Resolution	Resolution Letter
<input type="checkbox"/>	Subordination Agreement	Contract/Agreement

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

RESOLUTION NO. _____

**RESOLUTION APPROVING SUBORDINATION AGREEMENT RELATING TO TOWNHOMES
DEVELOPMENT**

WHEREAS, the City of Richfield, Minnesota (the “City”) and the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the “Authority”) have approved the creation of Tax Increment Financing District No. 2018-1 (a housing district) (the “TIF District”) within the Richfield Redevelopment Project in the City (the “Redevelopment Project”) and have adopted a tax increment financing plan for the purpose of financing certain improvements within the Redevelopment Project; and

WHEREAS, on the date hereof, the Board of Commissioners of the Authority (the “Board”) approved a Contract for Private Development (the “Development Agreement”) between the Authority and NHH Companies L.L.C., a Minnesota limited liability company (the “Developer”), pursuant to which the Developer agreed to acquire 15 parcels of property (the “Development Property”) located within the TIF District, including four properties owned by the Authority, and construct on the Development Property a development which will include approximately 80 owner-occupied affordable townhomes and necessary public infrastructure, including streets and utilities (the “Minimum Improvements”), and the Authority agreed to reimburse the Developer for a portion of land acquisition costs and certain site improvement costs related thereto with tax increment generated from the Development Property; and

WHEREAS, to make the Minimum Improvements more economically feasible, Hometown Bank (the “Bank”) has agreed to make a loan in the amount of \$2,350,000 to Cedar Point II, LLC, an affiliate of the Developer (the “Borrower”); and

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

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

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

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

Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota
this 17th day of September, 2018.

Mary Supple, Chair

Erin Vrieze Daniels, Secretary

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT ("Agreement") is made the __ day of September, 2018, by and between Housing and Redevelopment Authority in and for the City of Richfield ("HRA"), Hometown Bank ("Bank"), and Cedar Point II, LLC ("Borrower").

RECITALS:

A. Borrower intends to acquire certain property located in the City of Richfield for purposes of construction of affordable townhomes a portion of which is legally described on Exhibit A ("Property").

B. Bank is making a loan in the amount of \$2,350,000 ("Loan") to Borrower under which repayment is to be secured by the Property.

C. The HRA has established Tax Increment Financing District No. 2018-1 in order to facilitate redevelopment of the Property and Borrower and HRA have entered into a Contract for Private Development, dated September 17, 2018 (the "Development Contract"), a Right of Purchase and Right of First Refusal, dated September 17, 2018 (the "Right of Purchase," and collectively with the Development Contract, the "Subordinated Documents") which provide the HRA with certain rights to the Property including but not limited to, a right to re-enter and revest the Property and a right to purchase the Property under certain circumstance.

D. As a condition precedent to Bank's disbursement of proceeds under the Loan, Bank requires the execution of this Agreement. Bank is disbursing the proceeds under the Loan in reliance upon the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the sum of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Subordination. Except as otherwise provided in this Agreement, the rights of the HRA against the Borrower, or any of Borrower's assets set forth in the Subordinated Agreements, including, but not limited to any rights in the Property, are hereby subjected and subordinated, and shall remain in all respects and for all purposes subject and subordinate, to the Loan and to the rights and interest of Bank granted in the Mortgage. Specifically, the lien of that certain Mortgage in favor of Hometown Bank, as Mortgagee, in the original principal amount of \$2,350,000.00, dated September __, 2018, and recorded on _____ as Document No. _____, is hereby subordinated to any lien evidenced by the Development Contract. Except as specifically agreed to herein, this Subordination Agreement shall not limit the ability of the HRA to exercise its rights or remedies under the Development Contract.

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

3. Successors and Assigns. This Agreement and each and every covenant, agreement and other provisions hereof shall be binding upon the parties hereto and their successors and assigns. As used here, the words "successors and assigns" shall include the heirs, administrators and representatives of any natural person who is a party to this Agreement.

4. Choice of Law. This Agreement is made and executed under and in all respects is to be governed and construed by the laws of the State of Minnesota.

5. Captions and Headings. The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as confining or limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

6. Notices. Any notices and other communications permitted or required by the provisions of this Agreement (except for telephonic notices expressly permitted) shall be in writing and shall be deemed to have been properly given or served by depositing the same with the United States Postal Service, or any official successor thereto, designated as Certified Mail, Return Receipt Requested, bearing adequate postage, or deposited with reputable private courier or overnight delivery service, and addressed as hereinafter provided. Each such notice shall be effective upon being deposited or delivered as aforesaid. The time period within which a response to any such notice must be given, however, shall commence to run from the date of receipt of the notice by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice sent. By giving to the other party hereto at least ten (10) days' notice thereof, either party hereto shall have the right from time to time to change its address and shall have the right to specify as its address any other address within the United States of America.

Each notice to Bank shall be addressed as follows:

Hometown Bank
950 Vierling Drive W
Shakopee, Minnesota 55379

Each notice to Borrower shall be addressed as follows:

Cedar Point Investments LLC
7455 France Avenue South
Suite 351
Edina, Minnesota 55435
Attn: Adam Seraphine

Each notice to HRA shall be addressed as follows:

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

14. Counterparts. This Agreement may be executed separately and independently in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterpart shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have each caused this Subordination Agreement to be executed as of the date first above written.

BANK: HOMETOWN BANK

By:
Its:

STATE OF MINNESOTA)
) ss.
COUNTY OF)

This instrument was acknowledged before me on the 12th day of September, 2018, by _____, the _____ of Hometown Bank, a Minnesota banking corporation, on behalf of the corporation.

Notary Public

BORROWER: CEDAR POINT II, LLC.

By:
Its:

STATE OF MINNESOTA)
) ss.
COUNTY OF)

This instrument was acknowledged before me on the 12th day of September, 2018, by _____, the _____ of Cedar Point II, LLC, a Minnesota limited liability company, on behalf of the company.

Notary Public

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 _____, 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

EXHIBIT A

Parcel A:

Lot 3, Block 1, Iverson's Second Addition, Hennepin County, Minnesota

Parcel B:

Lot 6, Block 1, Iverson's Second Addition, Hennepin County, Minnesota

Parcel C:

Lot 1, Block 2, Iverson's Second Addition, Hennepin County, Minnesota

Parcel D:

Lot 2, Block 2, Iverson's Second Addition, Hennepin County, Minnesota

Parcel E:

Lot 2, Block 1, Iverson's Second Addition, Hennepin County, Minnesota

Parcel F:

Lot 4, Block 1, Iverson's Second Addition, Hennepin County, Minnesota

Parcel G:

Lot 5, Block 1, Iverson's Second Addition, Hennepin County, Minnesota

Parcel H:

Lot 8, Block 1, Iverson's Second Addition, Hennepin County, Minnesota

Parcel I:

Lot 3, Block 2, Iverson's Second Addition, Hennepin County, Minnesota

Parcel J:

Lot 4, Block 2, Iverson's Second Addition, Hennepin County, Minnesota

Parcel K:

Lot 6, Block 2, Iverson's Second Addition, Hennepin County, Minnesota

Parcel L:

Lot 7, Block 2, Iverson's Second Addition, Hennepin County, Minnesota

Parcel M:

Lot 8, Block 2, Iverson's Second Addition, Hennepin County, Minnesota



STAFF REPORT NO. 40
HOUSING AND REDEVELOPMENT AUTHORITY
MEETING
9/17/2018

REPORT PREPARED BY: John Stark, Community Development Director

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director
9/10/2018

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich, Executive Director
9/13/2018

ITEM FOR COUNCIL CONSIDERATION:

Consideration of the adoption of a resolution amending the Bylaws of the Richfield Housing and Redevelopment Authority.

EXECUTIVE SUMMARY:

Steve Devich has served, with distinction, as the Housing and Redevelopment Authority (HRA) Executive Director since 2005. Mr. Devich has announced his retirement from this role effective November 30, 2018. Upon the announcement of his retirement, staff has reviewed the HRA Bylaws related to the Executive Director position as described in Article II, Section 5. Based on this review, staff is recommending several minor modifications, including:

- Wording to indicate that the Executive Director is "charged with the management of the housing and redevelopment projects of the Authority"
- An additional sentence stating that, "Regardless of who is appointed, the City Manager of the City of Richfield shall have ultimate authority in recommending an annual levy and budget."
- A change in language removing the requirement that an Acting Executive Director, as designated by the Executive Director, must be the Community Development Director.

Furthermore, the Bylaws have been changed several times over the past fifteen years, some by resolution and others by a simple motion. To make it easier to retrieve the most up-to-date set of Bylaws, the Bylaws in their entirety, are attached to this resolution.

RECOMMENDED ACTION:

By motion: Adopt a resolution Amending the Bylaws of the Richfield Housing and Redevelopment Authority.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

- HRA staff routinely reviews the HRA Bylaws to ensure that they meet both current practice and the future needs of the Authority.

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

- The Levy and Annual Budget of the Richfield HRA has an impact on the overall tax impacts of the

City as a whole. The authority to formally recommend a Levy and an Annual Budget, therefor, should be placed with the City Manager of the City of Richfield.

C. CRITICAL TIMING ISSUES:

- The current Executive Director of the HRA has announced his retirement, effective November 30, 2018. Staff recommends that the Bylaws related to the Executive Director should be modified prior to his departure.

D. FINANCIAL IMPACT:

- None

E. LEGAL CONSIDERATION:

- HRA Legal Counsel has been apprised of this recommended action.

ALTERNATIVE RECOMMENDATION(S):

- Do not approve a resolution modifying the HRA Bylaws, or;
- Approve a modified version of the attached resolution modifying the HRA Bylaws to better reflect the direction of the Authority.

PRINCIPAL PARTIES EXPECTED AT MEETING:

N/A

ATTACHMENTS:

Description		Type
□	Resolution and Bylaws	Resolution Letter

HRA RESOLUTION NO.

**RESOLUTION AMENDING THE BYLAWS OF THE HOUSING AND
REDEVELOPMENT AUTHORITY OF THE CITY OF RICHFIELD, MINNESOTA**

WHEREAS, the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (Authority) has established Bylaws; and

WHEREAS, from time to time it is appropriate for the Bylaws to be amended; and

WHEREAS, Article II, Section 5 of the Bylaws describes the employment of an Executive Director and briefly describes their responsibilities; and

WHEREAS, the role of the Executive Director is further defined by Minnesota State Statutes, including 469.012 subd. 1b and 1c; and

WHEREAS, the announced retirement of the current Executive Director has led to a review of the HRA Bylaws relating to the Executive Director position.

WHEREAS, since there have been several modifications to the HRA Bylaws over the years, some of which were approved as a Resolution and others approved by motion, the entirety of the HRA Bylaws are attached to this Resolution

NOW, THEREFORE, BE IT RESOLVED by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota that the Article II, Section 5 is amended to read as follows:

Section 5. Executive Director. The Authority shall employ an Executive Director who shall have general supervision over the administration of its business and affairs, subject to the direction of the Authority. He or she shall be charged with the management of the housing and redevelopment projects of the Authority. Regardless of who is appointed, the City Manager of the City of Richfield shall have ultimate authority in recommending an annual levy and budget. The Executive Director may designate an acting Executive Director during periods when he or she is absent or incapacitated.

AND, BE IT FURTHER RESOLVED by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota that the entirety of the HRA Bylaws are attached hereto for future reference.

Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota this 17th day of September 2018.

Mary Supple, Chair

ATTEST:

Erin Vrieze Daniels, Secretary

**BYLAWS OF THE
HOUSING AND REDEVELOPMENT AUTHORITY
OF RICHFIELD, MINNESOTA**

ARTICLE I – THE AUTHORITY

Section 1. Name of Authority. The name of the Authority shall be the “Housing and Redevelopment Authority of Richfield, Minnesota”.

Section 2. Seal of Authority. The seal of the Authority shall be in the form of a circle and shall bear the name of the Authority.

Section 3. Office of Authority. The offices of the Authority shall be at City Hall in the City of Richfield, Minnesota, but the Authority may hold its meetings at such other place or places as it may designate by resolution.

Section 4. Official Newspaper. The official newspaper shall be the official newspaper designated by the City as its official newspaper each year.

ARTICLE II – OFFICERS

Section 1. Officers. The officers of the Authority shall be a Chairperson, a Vice-Chairperson, and a Secretary.

Section 2. Chairperson. The Chairperson shall preside at all meetings of the Authority. Except as otherwise authorized by resolution of the Authority, the Chairperson shall sign all contracts, deeds, resolutions and other instruments made by the Authority. At each meeting the Chairperson shall submit such recommendations and information he or she may consider proper concerning the business, affairs and policies of the Authority.

Section 3. Vice-Chairperson. The Vice-Chairperson shall perform the duties of the Chairperson in the absence or incapacity of the Chairperson; and in case of the resignation or death of the Chairperson, the Vice-Chairperson shall perform such duties as are imposed on the Chairperson until such time as the Authority shall select a new Chairperson.

Section 4. Secretary. The Secretary shall perform the duties of a Secretary for the Authority. The Secretary shall perform the duties as the Chairperson in cases where both the Chairperson and Vice-Chairperson are absent or incapacitated.

Section 5. Executive Director. The Authority shall employ an Executive Director who shall have general supervision over the administration of its business and affairs, subject to the direction of the Authority. He or she shall be charged with the management of the housing and redevelopment projects of the Authority. Regardless of who is appointed, the City Manager of the City of Richfield shall have ultimate authority in recommending an annual levy and budget. The Executive Director may

designate an acting Executive Director during periods when he or she is absent or incapacitated.

Section 6. Other Administrative Officers. The Authority may designate an assistant to the Secretary who shall keep the records of the Authority, shall act as recorder of the meetings of the Authority and record all votes, and shall keep a record of the proceedings of the Authority in a journal of proceedings to be kept for such purpose, and shall perform all duties incidental to his office. He or she shall keep in safe custody the seal of the Authority and shall have power to affix such seal to all contracts and instruments authorized to be executed by the Authority.

The Authority may designate a Treasurer who shall have the care and custody of all funds of the Authority and shall deposit the same in the name of the Authority in such bank or banks as the Authority may select. The Executive Director and Treasurer shall sign all orders and checks for the payment of money and shall pay out and disburse such moneys under the direction of the Authority. Except as otherwise authorized by resolution of the Authority, all such orders and checks shall also be countersigned by the Chairperson. The Treasurer shall keep regular books of accounts showing receipts and expenditures and shall render to the Authority, at each regular meeting (or more often when requested), an account of his transactions and also of the financial condition of the Authority. He or she shall give such bond for the faithful performance of his duties as the Authority may determine

ARTICLE III – MEETINGS

Section 1. Annual Meeting. The annual meeting of the Authority shall be held on the third Tuesday in January at 7:00 p.m. at the regular meeting place of the Authority.

Section 2. Regular Meetings. Monthly meetings shall be held without notice at the regular meeting place of the Authority on the third Monday of each month, at 7:00 p.m. unless the same shall be a legal holiday, in which event said meeting shall be held on the next succeeding secular day.

Section 3. Special Meetings. Special meetings of the Authority may be called by the Chairperson, or two members of the Authority for the purpose of transacting any business designated in the call. The call for a special meeting may be delivered at any time prior to the time of the proposed meeting to each member of the Authority or may be mailed to the business or home address of each member of the Authority at least two (2) days prior to the date of such special meeting. At such special meeting no business shall be considered other than as designated in the call, but if all of the members of the Authority are present at a special meeting, any and all business may be transacted at such special meeting.

Section 4. Quorum. The powers of the Authority shall be vested in the Commissioners thereof in office from time to time. Three Commissioners shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes, but a smaller number may adjourn from time to time

until a quorum is obtained. When a quorum is in attendance, action may be taken by the Authority upon a vote of a majority of the Commissioners present.

Section 5. Order of Business. At the regular meetings of the Authority the following shall be the order of business:

1. Roll Call.
2. Approval of the Minutes of the Previous Meeting.
3. Reports of the Executive Director.
4. Unfinished Business.
5. New Business.
6. Adjournment.

All resolutions shall be in writing and shall be copied in the journal of the proceedings of the Authority.

Section 6. Manner of Voting. The voting on all questions coming before the Authority shall be by roll call and the yeas and nays shall be entered upon the minutes of such meeting.

Section 7. Combining Administrative Offices: Compensation. The compensation of the Executive Director and other personnel of the Authority shall be determined by the Authority. Any two or more administrative offices may be combined.

Section 8. Additional Duties. The officers of the Authority shall perform such other duties and functions as may from time to time be required by the Authority or the Bylaws or rules and regulations of the Authority.

Section 9. Election of Appointment. The first Chairperson shall, pursuant to this appointment, serve in the capacity of Chairperson until the expiration of his term of office as Commissioner. The Vice-Chairperson, Secretary and, except in the case of the First Chairperson, the Chairperson shall be elected at the annual meeting of the Authority from among the Commissioners of the Authority, and shall hold office for one year or until their successors are elected and qualified.

The Executive Director shall be appointed by the Authority. Any person appointed to fill the office of Executive Director or any vacancy therein, shall have such term as the Authority fixes, but no Commissioner of the Authority shall be eligible for this office.

Section 10. Vacancies. Should the office of Chairperson, Vice-Chairperson or Secretary become vacant, the Authority shall elect a successor from its membership at the next regular meeting, and such election shall be for the unexpired term of said office.

Section 11. Additional Personnel. The Authority may from time to time employ or contract for such personnel as it deems necessary to exercise its powers, duties and functions as prescribed by the Municipal Housing and Redevelopment Law of Minnesota applicable thereto. Such personnel may be employees of the Authority, employees of other governmental organizations, or independent contractors. The selection and compensation of such personnel shall be determined by the Authority subject to the laws of the State of Minnesota.

ARTICLE IV – AMENDMENTS

Section 1. Amendments to Bylaws. The Bylaws of the Authority shall be amended only with the approval of at least three of the members of the Authority at a regular or a special meeting.

Amended	04/21/80
Amended	01/21/86
Amended	12/15/86
Amended	08/18/03
Amended	02/18/14
Amended	09/17/18



STAFF REPORT NO. 41
HOUSING AND REDEVELOPMENT AUTHORITY
MEETING
9/17/2018

REPORT PREPARED BY: Julie Urban, Housing Manager

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director
9/12/2018

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich, Executive Director
9/13/2018

ITEM FOR COUNCIL CONSIDERATION:

Consideration of the adoption of a resolution approving an amended Contract for Private Development with Cedar Point Investments, LLC for redevelopment of the Cedar Point II Housing area with up to 80 units of for-sale townhomes.

EXECUTIVE SUMMARY:

The Richfield Housing and Redevelopment Authority (HRA) approved a Development Agreement (Agreement) with NHH Companies, LLC (Developer) on August 20, 2018, for the development of the west half of the Cedar Point II Housing area (63rd to 65th Streets, 16th Avenue to Richfield Parkway) with up to 80 units of for-sale townhomes.

Further work on the Agreement for the apartment portion of the project has revealed the need to make revisions to the townhome Agreement to ensure consistency and collaboration between the two project components. The following revisions are proposed:

- Change the name of the entity to Cedar Point Investments, LLC to represent the partnership that will be developing the townhomes.
- Allow for a completion date of December 31, 2022, instead of 2021.
- Clarify the means by which the HRA will buy back its property in the event not all 80 townhomes are constructed, given the fact that property lines will change once construction begins.
- Remove the cross-default provision that allows the HRA to pursue remedies of default if the apartment project does not proceed. The provisions in both Agreements for buying back the property in the event of default addresses these concerns and allows financing for the two project components to proceed.
- Make technical changes requested by the Developer's Attorney and agreed to by the HRA Attorney.

RECOMMENDED ACTION:

By motion: Adopt a resolution approving an amended Contract for Private Development with Cedar Point Investments, LLC for the Cedar Point II Housing area.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

- In March of 2018, the HRA signed a pre-development agreement with NHH Properties (dba NHH Companies, LLC) to redevelop the area with 218 market-rate apartments and up to 80 townhomes

affordable to households earning 100/115% of the area median income.

- On August 20, 2018, the HRA approved a Contract for Private Development with NHH Companies, LLC for the townhome portion of the development.

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

- In order for private redevelopment with public assistance to occur, a developer must have a Contract with the HRA.

C. CRITICAL TIMING ISSUES:

- The Developer would like to begin site work this Fall on the townhomes with primary construction work occurring in 2019.

D. FINANCIAL IMPACT:

- The financial terms of the Contract remain the same.

E. LEGAL CONSIDERATION:

- HRA legal counsel drafted the proposed Contract in cooperation with staff and the Developer.
- There are occasionally changes of an administrative or technical nature that are required of a contract as more information becomes available; however, several of the proposed changes go beyond technical and require consideration by the HRA.

ALTERNATIVE RECOMMENDATION(S):

- Do not approve the revisions to the Contract for Private Development.

PRINCIPAL PARTIES EXPECTED AT MEETING:

Julie Eddington, HRA Legal Counsel Representative(s) of Cedar Point Investments, LLC

ATTACHMENTS:

Description	Type
☐ Resolution	Resolution Letter
☐ Contract for Private Development	Contract/Agreement

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

RESOLUTION NO. _____

**RESOLUTION APPROVING CONTRACT FOR PRIVATE DEVELOPMENT
WITH NHH COMPANIES L.L.C. WITH RESPECT TO A TOWNHOMES DEVELOPMENT**

WHEREAS, the City of Richfield, Minnesota (the “City”) and the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the “Authority”) have approved the creation of Tax Increment Financing District No. 2018-1 (a housing district) (the “TIF District”) within the Richfield Redevelopment Project in the City (the “Redevelopment Project”) and have adopted a tax increment financing plan for the purpose of financing certain improvements within the Redevelopment Project; and

WHEREAS, on August 20, 2018, the Board of Commissioners of the Authority (the “Board”) approved a Contract for Private Development (the “Development Agreement”) between the Authority and NHH Companies L.L.C., a Minnesota limited liability company (the “Developer”), pursuant to which the Developer agreed to acquire 15 parcels of property (the “Development Property”) located within the TIF District, including four properties owned by the Authority, which are legally described in EXHIBIT A attached hereto (the “Authority Property”), and construct on the Development Property a development which will include approximately 80 owner-occupied affordable townhomes and necessary public infrastructure, including streets and utilities (the “Minimum Improvements”), and the Authority agreed to reimburse the Developer for a portion of land acquisition costs and certain site improvement costs related thereto with tax increment generated from the Development Property; and

WHEREAS, following a duly noticed public hearing held on August 20, 2018, the Board also approved the sale of the Authority Property to the Developer in accordance with Minnesota Statutes, Section 469.029, subdivision 2; and

WHEREAS, following the approval of the Development Agreement, the Authority and the Developer have made substantive changes to the terms of the Development Agreement, and the Authority has determined to reconsider the Development Agreement in substantially the form now on file with the Board; 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 revised Development Agreement is hereby in all respects authorized, approved, and confirmed, and the Chair and the Executive Director are hereby authorized and directed to execute the Development Agreement for and on behalf of the Authority in substantially the form now on file with the Community Development Director but with such modifications as shall be deemed necessary, desirable, or appropriate, the execution thereof to constitute conclusive evidence of their approval of any and all modifications therein.

2. The Board ratifies the approval of the conveyance of the Authority Property to the Developer.

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

Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota
this 17th day of September, 2018.

Mary Supple, Chair

Erin Vrieze Daniels, Secretary

EXHIBIT A

LEGAL DESCRIPTION OF THE AUTHORITY PROPERTY

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

**Eighth Draft
September 13, 2018**

**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

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 17th 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:

Phase	Maximum Amount	When TIF Notes Issued
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.

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

ARTICLE VI

Tax Increment; Taxes

Section 6.1. Right to Collect Delinquent Taxes. The Developer acknowledges that the Authority is providing substantial aid and assistance in furtherance of the redevelopment through issuance of the TIF 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 old 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 revesting 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 revesting of title thereto in the Authority, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the 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**

(SEAL)

By _____
Its Chair

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**

Executive Director

Chair

REGISTRATION PROVISIONS

The ownership of the unpaid balance of the within Note is registered in the bond register of the Authority’s Executive Director, in the name of the person last listed below.

Date of Registration

Registered Owner

Signature of Executive Director

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 D

CERTIFICATE OF COMPLETION

The undersigned hereby certifies that Cedar Point Investments LLC, a Minnesota limited liability company (the "Developer"), has fully complied with its obligations under Articles III and IV of that document titled "Contract for Private Development," dated _____, 2018 (the "Agreement"), between the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota and the Developer, a memorandum of which was recorded in the Office of [County Recorder] [Registrar of Titles] of Hennepin County, Minnesota on _____, as Document No. _____, with respect to construction of the Minimum Improvements in accordance with Article IV of the Agreement, and that the Developer is released and forever discharged from its obligations with respect to acquisition of the HRA Property (as defined in the Agreement) and construction of the Minimum Improvements under Articles III and IV of the Agreement.

Dated: _____, 20__.

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

By _____
Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____, 20__, by _____, 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

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**

(SEAL)

By _____
Its Chair

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

PROPERTY INFORMATION

Legal description of property to be sold: Lot _____ Block _____
Subdivision _____

Parcel Identification No. _____

Postal Address of Parcel _____

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".*

INCOME LIMIT INFORMATION

<u>20_____Income Limits</u>	
<u>Family Size</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.

Signature of Purchaser(s) _____ Date _____

Signature of Seller _____ Date _____
Reviewed and approved on behalf [HOUSING CONSULTANT]
By _____ Date _____



STAFF REPORT NO. 42
HOUSING AND REDEVELOPMENT AUTHORITY
MEETING
9/17/2018

REPORT PREPARED BY: Julie Urban, Housing Manager

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director
9/12/2018

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich, Executive Director
9/13/2018

ITEM FOR COUNCIL CONSIDERATION:

Public hearing and consideration of the adoption of a resolution approving a Contract for Private Development with NHH Companies, LLC for the redevelopment of the Cedar Point II Housing area with 218 units of apartments.

EXECUTIVE SUMMARY:

The Richfield Housing and Redevelopment Authority (HRA) approved a Preliminary Development Agreement (Agreement) with NHH Companies, LLC (Developer) on March 19, 2018, for the development of the Cedar Point II Housing area (63rd to 65th Streets, 16th Avenue to Richfield Parkway). The Agreement identified several issues to be worked out and established milestones for the Developer to meet, including negotiating a Contract for Private Development (Contract) with staff by August 20, 2018.

Since that time, the Developer has accomplished the following:

- Submitted plans for sketch plan review.
- Submitted land use plans.
- Submitted financial pro formas.
- Submitted grant applications to the Metropolitan Council and the Department of Employment and Economic Development.
- Reached out to all property owners located within the development area.
- Negotiated purchase agreements with eight of the remaining eleven property owners.
- Closed on the acquisition of two properties.

Further study of the financial components of the project has led the Developer to propose that two separate Tax Increment Financing (TIF) Districts and therefore two separate Contracts be prepared for the development.

The Contract for the Apartment portion of the development provides the following terms:

- Minimum improvements of 218 market-rate apartments, 188 underground parking spaces, and necessary public infrastructure, including streets and utilities, with a minimum market value of \$33,136,000.
- The Developer has identified a need for public assistance.
- The public assistance that is identified in this Contract includes a TIF note from the HRA of approximately \$3.96 million to the Developer.

- Additionally, 10% of the TIF will be distributed annually to the HRA for administrative expenses. Beginning in Year 9, an additional 10% of the tax increment will be distributed to the Housing & Redevelopment Fund (Fund). In years 21-23 of the district, 90% of the tax increment will be distributed to the Fund for a total present value of \$486,000.
- The TIF will be distributed "pay as you go," meaning that payments will only be made subject to sufficient tax increment being generated on the property to meet the payment obligation.
- The TIF District will expire in year 24 of the project.
- The HRA will sell the 14 parcels it owns, located along Richfield Parkway between 63rd and 65th Streets, to the Developer for their appraised value of \$1.11 million. The HRA will utilize those sales proceeds to pay the existing \$780,000 assessment on the property.
- The Developer will provide one to three pieces of public art within the project area (for a total of three pieces in the total project area).
- The terms of the Contract require closing on the property to occur by September 20, 2019, construction of the apartments to begin by December 31, 2019, and be completed by December 31, 2021.
- In accordance with newly-adopted HRA policies, the Developer cannot discriminate against tenants who are recipients of Section 8 housing vouchers and must provide the HRA with at least 90 days' notice of sale of the project.

The HRA's policy is to support mixed-income projects with 20% of the units being affordable or to require that 15% of the tax increment generated by the project be contributed to the City's Housing and Redevelopment Fund. In the case of the Cedar Point II project, 25% of the total housing units will be affordable; however, that affordability is being provided entirely by the townhome component (state law governing Housing TIF Districts require that 95% of the townhomes be affordable). So while the project as a whole is consistent with the HRA's policy, there is also sufficient tax increment to provide a contribution to the Housing and Redevelopment Fund, beginning in Year 8 of the District, and still have a financially viable project. The cumulative net present value of the variable contribution to the Housing and Redevelopment Fund is the equivalent of a fixed annual contribution of more than 9.5%.

RECOMMENDED ACTION:

Conduct and close the public hearing and by motion: Adopt a resolution approving a Contract for Private Development with NHH Companies, LLC for the Cedar Point II Housing area and selling HRA-owned properties located within the development area to NHH Companies, LLC.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

- A 1999-2000 study commissioned by the City of Richfield and the Metropolitan Airports Commission (MAC) concluded that many of the structures in this area, including all single-family homes, were not capable of withstanding the negative impacts of low frequency noise. As a result of the study, this area was identified as a Redevelopment Area in 2000.
- In 2004, the Minnesota Legislature approved the creation of a special Redevelopment TIF District to provide a funding mechanism for redevelopment of the area.
- During the economic downturn from 2007-2011, there was little interest in developing this area due to weak market conditions.
- Upon conclusion of the recession, HRA staff concentrated their development efforts on the Cedar Point II area. The challenge of property acquisitions and the significant financial gap in the project made it difficult to find a developer and project that could succeed.
- In 2014, homes along 17th Avenue were purchased for the construction of Richfield Parkway from 63rd to 66th Streets leaving 14 fewer homes to be purchased in the development area.
- In 2015, the HRA signed a pre-development agreement with Boisclair Corporation to redevelop the area with single family homes and townhomes. In 2017, the HRA cancelled the agreement with Boisclair due to slow progress in solving the property acquisition and other development issues.
- In the Fall of 2017, NHH Properties and Boisclair Corporation approached the HRA and Council with a new development team and plan for acquiring the remaining single family homes and closing the financial gap.
- In March of 2018, the HRA signed a pre-development agreement with NHH Properties (dba NHH

Companies, LLC) to redevelop the area with 218 market-rate apartments and up to 80 townhomes affordable to households earning 100/115% of the area median income.

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

- In order for private redevelopment with public assistance to occur, a developer must have a Contract with the HRA.
- The development is located within the existing Cedar Avenue Redevelopment Tax Increment District (District) created in 2006 and extended in 2017. The terms and timing of the district are subject to the rules in place at the time the District was created.

C. CRITICAL TIMING ISSUES:

- The Developer would like to begin site work this Fall with primary construction work starting in the Spring of 2019.
- The project's land use application is scheduled for final consideration by the City Council on September 25, 2018.
- The public hearing on the sale of land was continued from the HRA meeting on August 20, 2018.

D. FINANCIAL IMPACT:

- The Developer has identified a need for public assistance to redevelop this site.
- The Contract has been prepared and reviewed by the HRA's legal counsel and financial consultant.
- The HRA will withhold 10% of the available TIF to be used to reimburse the HRA for administrative expenses.
- The apartments will be 100% market-rate. The affordability component of the project is being provided by the townhome portion of the project (95% off the units will be affordable at 100/115% of the Area Median Income); however, the apartment component of the project is able to contribute a total of \$486,000 (present value) of the TIF to the Housing & Redevelopment Fund beginning in Year 8 of the District.
- The terms of the proposed Contract provide for the issuance of Pay-As-You-Go TIF Notes. Payments made on these Notes are subject to the generation of sufficient tax increment.

E. LEGAL CONSIDERATION:

- HRA legal counsel drafted the proposed Contract in cooperation with staff and the Developer.
- There are occasionally changes of an administrative or technical nature that are required of a contract as more information becomes available. HRA legal counsel may be given authority to make these changes without further HRA consideration.

ALTERNATIVE RECOMMENDATION(S):

- Approve the Contract for Private Development with additional provisions or modifications.
- Do not approve the Contract for Private Development.

PRINCIPAL PARTIES EXPECTED AT MEETING:

Julie Eddington, HRA Legal Counsel
Rebecca Kurtz, Ehlers & Associates Representative(s) of NHH Companies, LLC

ATTACHMENTS:

Description	Type
□ Resolution	Resolution Letter
□ Contract for Private Development	Contract/Agreement

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

RESOLUTION NO. _____

**RESOLUTION APPROVING CONTRACT FOR PRIVATE DEVELOPMENT
WITH NHH COMPANIES L.L.C. WITH RESPECT TO A
MULTIFAMILY HOUSING DEVELOPMENT AND AUTHORIZING THE CONVEYANCE OF
INTEREST IN CERTAIN LAND**

WHEREAS, the City of Richfield, Minnesota (the “City”) and the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the “Authority”) have approved the creation of the Cedar Avenue Tax Increment Financing District (a redevelopment district) (the “TIF District”) within the Richfield Redevelopment Project in the City (the “Redevelopment Project”) and have adopted a tax increment financing plan for the purpose of financing certain improvements within the Redevelopment Project; and

WHEREAS, the Authority owns certain property within the TIF District and legally described in EXHIBIT A attached hereto (the “Development Property”); and

WHEREAS, NHH Companies L.L.C., a Minnesota limited liability company (the “Developer”), has proposed to acquire the Development Property from the Authority and construct on the Development Property a development which will include (i) multifamily housing with approximately 218 units; (ii) ramp and surface parking with sufficient spaces to comply with the PUD (as defined herein); and (iii) necessary public infrastructure, including streets and utilities (the “Minimum Improvements”); and

WHEREAS, there has been presented before this Board of Commissioners of the Authority (the “Board”) a Contract for Private Development (the “Development Agreement”) proposed to be entered into between the Authority and the Developer, pursuant to which the Developer will agree to construct the Minimum Improvements and the Authority will agree to reimburse the Developer for a portion of land acquisition costs and certain site improvement costs related thereto with tax increment generated from the Development Property; and

WHEREAS, on the date hereof, the Board conducted a duly noticed public hearing on the conveyance of the Development Property to the Developer in accordance with Minnesota Statutes, Section 469.029, subdivision 2; 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 Development Agreement is hereby in all respects authorized, approved, and confirmed, and the Chair and the Executive Director are hereby authorized and directed to execute the Development Agreement for and on behalf of the Authority in substantially the form now on file with the Community Development Director but with such modifications as shall be deemed necessary, desirable, or appropriate, the execution thereof to constitute conclusive evidence of their approval of any and all modifications therein.

2. The Board finds that the proposed conveyance of the Development Property is in accordance with the redevelopment plan approved for the Redevelopment Project.

3. The conveyance of the Authority's right, title, and interest in the Development Property to the Developer described herein is hereby approved.

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

Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota this 17th day of September, 2018.

Mary Supple, Chair

Erin Vrieze Daniels, Secretary

EXHIBIT A

LEGAL DESCRIPTION OF THE DEVELOPMENT PROPERTY

Lots 9, 10, 11, 12, 13, 14, Block 1, Iverson's Second Addition, according to the recorded plat thereof,
Hennepin County, Minnesota

Lots 9, 10, 11, 12, 13, 14, 15, 16, Block 2, Iverson's Second Addition, according to the recorded plat thereof,
Hennepin County, Minnesota

**Eighth Draft
September 13, 2018**

**CONTRACT
FOR
PRIVATE DEVELOPMENT
between**

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

and

NHH COMPANIES L.L.C.

Dated: _____, 2018

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 ___ day of _____, 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 NHH COMPANIES L.L.C., 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 has established the Cedar Avenue Tax Increment Financing District (a redevelopment district) (the “TIF District”) within the Richfield Project pursuant to Minnesota Statutes, Sections 469.174 to 469.1794, as amended (the “TIF Act”) and Laws of Minnesota 2005, Chapter 152, Article 2, Section 25, as amended by Laws of Minnesota 2017, 1st Special Session, Chapter 1, Article 6, Section 18 (collectively, the “Special Law”) 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 property within the TIF District from the Authority (the “Development Property”) and construct a development which will include (i) multifamily housing with approximately 218 units; (ii) a parking ramp with approximately 188 spaces; and (iii) 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 the 14 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.

“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 a percentage of the Tax Increment to be used to reimburse the Authority for administrative expenses and 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. The percentage of Tax Increment to be provided to the Authority varies as follows:

Years in which Tax Increment Received	Tax Increment to Developer	Tax Increment to Authority
Year 1-8	90%	10%
Year 9-21	80%	20%
Year 22-23	0%	100%

“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 NHH Companies L.L.C., a Minnesota limited liability company, or its permitted successors and assigns.

“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.

“Hazardous Materials” means any substance, chemical, waste or material that is or becomes regulated under applicable law because of its toxicity, infectiousness, radioactivity, explosiveness, ignitability, corrosiveness or reactivity, including asbestos, urea formaldehyde, polychlorinated biphenyls, nuclear fuel or materials, radioactive materials, explosives, known carcinogens, petroleum products and by-products and any substance, chemical, waste or material regulated by any Hazardous Material Law.

Hazardous Material Laws means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, as such acts may be amended from time to time, and any other Federal, state, county, municipal, local or other law, statute, code, ordinance, rule or regulation which relates to or deals with human health or the environment in the jurisdiction in which the Development Property is located.

“Holder” means the owner of a Mortgage.

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

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

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

“Minimum Improvements” means the development on the Development Property of (i) multifamily housing with approximately 218 units; (ii) a parking ramp with approximately 188 spaces; and (iii) necessary public infrastructure, including streets and utilities.

“Minimum Market Value” means a minimum market value of \$32,732,700 for the Minimum Improvements (\$150,150 per apartment unit).

“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.

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

“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, parking ramp construction 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 TIF District, as approved by the City Council of the City on September 26, 2006, as amended and as it may be further 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 Cedar Avenue Tax Increment Financing District, a redevelopment district, created pursuant to the TIF Act and Laws of Minnesota 2005, Chapter 152, Article 2, Section 25, as amended by Laws of Minnesota 2017, 1st Special Session, Chapter 1, Article 6, Section 18.

“TIF Note” means the Tax Increment Limited Revenue Note, substantially in the form contained in EXHIBIT B, to be delivered by the Authority to the Developer pursuant to Section 3.3(b) hereof and payable from Available Tax Increment received from the TIF District.

“Townhomes Project” means the development on the property adjacent to the Development Property of (i) approximately 80 affordable owner-occupied townhomes; and (ii) necessary public infrastructure, including streets and utilities.

“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, parking ramp construction 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 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, subject to the terms and conditions of this Agreement, 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) 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.

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

ARTICLE III

Property Acquisition; Financing

Section 3.1. Status of Development Property. The Authority currently owns all of the 14 parcels that make up the Development Property as more fully described in EXHIBIT A and shall convey the Development Property to the Developer pursuant to the provisions of Section 3.2 hereof.

Section 3.2. Conveyance of Development Property.

(a) The Authority will convey the Development Property to the Developer via a quit claim deed. The conveyance of the Development Property to the Developer is contingent on (i) the Board of the Authority holding a public hearing and approving the sale of the Development 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 October 31, 2018. The Development 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 obtain a survey and give the Authority written notice of any alleged title or survey defect(s) that might impair or impede the Developer’s ability to develop the Minimum Improvements or impair the marketability of the Authority’s actual and/or record title to the Development Property, or any portion thereof (“Objections”) and request that the Authority cure such defects. The Developer’s failure to make Objections to defects 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 cure the Objections. The Authority shall have up to 45 days from the Authority’s receipt of the Developer’s Objections to use good faith efforts to cure the Objections. In no event will the Authority be required to expend more than \$1,000 in its good faith efforts to cure the Objections. If the Authority cures the Objections 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 cure the Objections 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 Development 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. If, during the course of Developer’s investigation of the Development Property, it determines that any Hazardous Materials must be removed or remediated pursuant to Hazardous Material Laws for Developer to complete the Minimum Improvements, Developer shall have the option of terminating this Agreement or proceeding to Closing.

(d) On the date the Development 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 Development 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 regarding liens, judgments, residence, tax liens, bankruptcies, parties in possession, survey and mechanics’ or materialmens’ liens and other matters affecting title to the Development Property and/or as may be reasonably required by Title Company to delete the so-called “standard exceptions” from the Title Policy (as defined below).

(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 Development 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 Development Property to the Developer for a purchase price of \$1,110,000. The Authority shall pay all outstanding special assessments on the Development Property in the amount of \$780,000.

(f) The Developer’s obligation to consummate the Closing is expressly conditioned on satisfaction of each of the following conditions: (i) on or before July 31, 2019, 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.

(g) In the event that the Closing has not taken place by September 30, 2019, 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 Development 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. Issuance of Pay-As-You-Go TIF Note.

(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 the TIF Note in the principal amount of \$3,960,000 in substantially the form set forth in EXHIBIT B. The Authority and the Developer agree that the consideration from the Developer for the purchase of the TIF Note shall consist of the Developer's payment of the Public Redevelopment Costs in at least the principal amount of the TIF Note.

The Authority shall deliver the TIF Note upon delivery by the Developer of an investment letter in substantially the form attached 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 Note shall be payable each Payment Date solely from Available Tax Increment derived from the TIF District.

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

(c) The Authority acknowledges that the Developer may assign the TIF Note to 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 Note, the TIF Note may be assigned if the assignee executes an investment letter in the form set forth in EXHIBIT C.

Section 3.4. Termination of TIF District. At anytime following the payment in full of the principal of and interest on the TIF Note, 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 3.5. 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 3.6. [Intentionally Omitted.]

Section 3.7. Records. The Authority and its representatives shall have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and records of Developer relating to the

Minimum Improvements and the costs for which the Developer has been reimbursed with Available Tax Increment.

Section 3.8. Purpose of Assistance. The parties agree and understand that the purpose of the Authority's financial assistance to the Developer is to facilitate development of housing, and is not a "business subsidy" within the meaning of Minnesota Statutes, Sections 116J.993 to 116J.995.

Section 3.9. 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 Townhomes 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 Development 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.

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; (vii) the Construction Plans for the Minimum Improvements provide for the construction of Minimum Improvements having an estimated market value of at least the Minimum Market Value; and (viii) 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 December 31, 2019 and be substantially complete with the construction of the Minimum Improvements on or before December 31, 2021.

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. Housing Provisions – Section 8 and Notice of Sale.

(a) During the term of this Agreement, the Developer shall not adopt any policies specifically excluding rental to tenants holding Section 8 certificate/voucher.

(b) In consideration of the financial assistance provided to the Developer pursuant to Article III of this Agreement, the Developer agrees to provide the Authority with at least ninety (90) days' notice of any sale of the Minimum Improvements.

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ARTICLE V

Insurance

Section 5.1. Insurance.

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

(i) Insurance against loss and/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

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

(e) Notwithstanding anything to the contrary contained in this Agreement, in the event of damage to the Minimum Improvements in excess of \$100,000 and the Developer fails to complete any repair, reconstruction or restoration of the Minimum Improvements within 18 months from the date of damage, the Authority may, at its option, terminate the TIF Note as provided in Section 9.3(b) hereof. If the Authority terminates the TIF Note, such termination shall constitute the Authority's sole remedy under this Agreement as a result of the Developer's failure to repair, reconstruct or restore the Minimum Improvements. Thereafter, the Authority shall have no further obligations to make any payments under the TIF Note.

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

Section 5.2. Subordination. Notwithstanding anything to the contrary contained in this Article V, the rights of the Authority with respect to the receipt and application of any proceeds of insurance shall, in all respects, be subject and subordinate to the rights of any lender under a Mortgage approved pursuant to Article VII 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 Note. The Developer understands that the Tax Increments pledged to payment of the TIF Note are derived from real estate taxes on the Development Property, which taxes must be promptly and timely paid. To that end, the Developer agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Development Property and the Minimum Improvements 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 TIF District and prior to completion of the Minimum Improvements, it will not cause a reduction in the real property taxes paid in respect of the Development Property through: (A) willful destruction of the Development Property or any part thereof (except for the demolition of structures required for construction of the Minimum Improvements); or (B) willful refusal to reconstruct damaged or destroyed property pursuant to Section 5.1 of this Agreement.

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

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

Section 6.3. Suspension or Reduction of Payments on TIF Note. Upon receiving notice that the Developer seeks a reduction in the Minimum Market Value of all or any portion of the Development Property, or otherwise learning of the Developer's intentions, the Authority may suspend or reduce payments due under the TIF Note except for the portion of such payments from Available Tax Increment based on the Minimum Market Value, or the assessor's estimated market value for the year in which the Minimum Improvements have been completed, if less than the Minimum Market Value, until the actual amount of the reduction in market value is determined, whereupon the Authority will make the suspended payments less any amount that the Authority is required to repay the County as a result of any retroactive reduction in market value of the Development Property.

During the period that the payments are subject to suspension, the Authority may make partial payments on the TIF Note, from the amounts subject to suspension, if it determines, in its sole and absolute discretion, that the amount retained will be sufficient to cover any repayment which the County may require.

The Authority's suspension of payments on one or both of the TIF Note 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.

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ARTICLE VII

Financing

Section 7.1. Mortgage Financing.

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

(b) If the Authority finds that the financing is sufficiently committed and adequate in amount to pay the costs specified in 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.

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. 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.

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.

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

(a) the Developer fails to pay real estate taxes or assessments on the Development Property or any part thereof when due, and such taxes or assessments shall not have been paid, or provision satisfactory to the Authority made for such payment, within 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, preserve and keep the Minimum Improvements or cause such improvements to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition, pursuant to Sections 4.1 and 5.1; provided that, upon Developer's failure to comply with Developer's 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 until such time as Developer complies with said obligations. If the Developer fails to comply with said obligations for a period of 18 months, the Authority may terminate the TIF Note and the TIF District.

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 Development Property to the Developer, the Developer, subject to Unavoidable Delays, fails to commence construction of the Minimum Improvements by the dates 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 Development Property and to terminate and revest in the Authority the Development Property, it being the intent of this provision, together with other provisions of the Agreement, that the conveyance of the Development 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 Development Property and that such title and all rights and interests of the Developer, and any assigns or successors in interest to and in the Development Property, shall revert to the Authority, as applicable, but only if the events stated in this Section have not been cured within the time periods provided above. The Authority understands and acknowledges that if it re-enters and takes possession of the Development Property that the Development Property may be subject to mortgage liens. The Authority will use the proceeds of the sale of the Development Property to discharge such liens if the proceeds are sufficient, as more fully described in Section 9.5(a).

Notwithstanding the foregoing, if the Authority determines to exercise its rights to revest title to the Development Property after the Developer has platted the Development Property, the Authority and the Developer understand and acknowledge that the Authority will revest the Development Property as platted and the Development Property may have easements recorded against it.

Section 9.5. Resale of Reacquired Property; Disposition of Proceeds. Upon the revesting in the Authority of title to and/or possession of the Development Property, the Authority shall, pursuant to their responsibilities under law, use their best efforts to sell the Development 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 Development 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 Development 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 Development 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 Development Property or part thereof (or, in the event the Development 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 Development Property were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Development Property, or part thereof at the time of reversioning 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 Development 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 purchase price of the Development Property paid by the Developer under Section 3.2 and the amount actually invested by it in making any of the subject improvements on the Development Property or part thereof, less any gains or income withdrawn or made by it from the Agreement or the Development Property.

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

Section 9.6. No Remedy Exclusive. Except as otherwise expressly provided herein, 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 Development Property to the Developer, if the Developer, subject to Unavoidable Delays, fails to commence construction of the Minimum Improvements by the dates specified in Section 4.3 hereof, and such failure to commence is not cured within 90 days after written notice from the Authority to the Developer to

do so, then the Authority shall have the right to repurchase the Development Property for the price the Developer paid for the Development 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. 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.

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

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**

(SEAL)

By _____
Its Chair

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

NHH COMPANIES L.L.C.

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____, 2018, by
_____, the _____ of NHH Companies L.L.C., 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

Lots 9, 10, 11, 12, 13, 14, Block 1, Iverson's Second Addition, according to the recorded plat thereof,
Hennepin County, Minnesota

Lots 9, 10, 11, 12, 13, 14, 15, 16, Block 2, Iverson's Second Addition, according to the recorded plat thereof,
Hennepin County, Minnesota

[Above legal description will be replaced with platted description for the Apartments upon final approval of the plat]

EXHIBIT B
FORM OF TIF NOTE

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 _____

Rate Date
of Original Issue

[lesser of 5.0% or the Owner's actual rate of financing] _____

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 NHH Companies L.L.C., 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 _____, 20____, and each February 1 and August 1 (each a "Payment Date") and thereafter to and including _____, 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" (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.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to exist, to happen, and to be performed in order to make this Note a valid and binding limited obligation of the Authority according to its terms, have been done, do exist, have happened, and have been performed in due form, time and manner as so required.

IN WITNESS WHEREOF, the Board of Commissioners of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, has caused this Note to be executed with the manual signatures of its Chair and Executive Director, all as of the Date of Original Issue specified above.

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

Executive Director

Chair

REGISTRATION PROVISIONS

The ownership of the unpaid balance of the within Note is registered in the bond register of the Authority's Executive Director, in the name of the person last listed below.

Date of Registration

Registered Owner

Signature of Executive Director

NHH Companies L.L.C.
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)

NHH COMPANIES L.L.C.

By _____
Its _____

Dated: _____, 20__

EXHIBIT D

CERTIFICATE OF COMPLETION

The undersigned hereby certifies that NHH Companies L.L.C., a Minnesota limited liability company (the "Developer"), has fully complied with its obligations under Articles III and IV of that document titled "Contract for Private Development," dated _____, 2018 (the "Agreement"), between the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota and the Developer, a memorandum of which was recorded in the Office of [County Recorder] [Registrar of Titles] of Hennepin County, Minnesota on _____, as Document No. _____, with respect to construction of the Minimum Improvements in accordance with Article IV of the Agreement, and that the Developer is released and forever discharged from its obligations with respect to acquisition of the Development Property (as defined in the Agreement) and construction of the Minimum Improvements under Articles III and IV of the Agreement.

Dated: _____, 20__.

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

By _____
Executive Director

STATE OF MINNESOTA)
) SS.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____, 20__, by _____, 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

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 NHH COMPANIES L.L.C., 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 “Development Property”). Pursuant to the Contract, the Developer has agreed to construct on 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 Development Property to the Developer, if the Developer, subject to Unavoidable Delays, fails to commence construction of the Minimum Improvements by the dates 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 Development Property for the price the Developer paid for the Development 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 Development Property. The Authority shall have 120 days to complete the purchase of the Development Property.
4. Right of First Refusal. Prior to the receipt of a Certificate of Completion for the Minimum Improvements, if the Developer determines to sell all or any part of the Development 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 or times prior to the receipt of a Certificate of Completion for the Minimum Improvements, the Developer receives an offer acceptable to the Developer for the purchase of all or any part of the Development 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) the date the Developer obtains a Certificate of Completion for the Minimum Improvements; and (ii) upon sale of all of the Development 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 Development Property that is sold pursuant to an Acceptable Offer, this Agreement shall terminate with respect to such portion of Development 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.

7. 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: NHH Companies L.L.C.
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.

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

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

10. 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**

(SEAL)

By _____
Its Chair

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.

NHH COMPANIES L.L.C.

By _____
Its _____

STATE OF MINNESOTA)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____, 2018, by
_____, the _____ of NHH Companies L.L.C., a Minnesota
limited liability company, on behalf of the Developer.

Notary Public

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

DEVELOPMENT PROPERTY DESCRIPTION

Lots 9, 10, 11, 12, 13, 14, Block 1, Iverson's Second Addition, according to the recorded plat thereof,
Hennepin County, Minnesota

Lots 9, 10, 11, 12, 13, 14, 15, 16, Block 2, Iverson's Second Addition, according to the recorded plat thereof,
Hennepin County, Minnesota



STAFF REPORT NO. 43
HOUSING AND REDEVELOPMENT AUTHORITY
MEETING
9/17/2018

REPORT PREPARED BY: Myrt Link, Community Development Accountant

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director
 9/10/2018

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich, Executive Director
 9/13/2018

ITEM FOR COUNCIL CONSIDERATION:

Consideration of the acceptance of the Richfield Housing and Redevelopment Authority Tax Increment District Status Update.

EXECUTIVE SUMMARY:

The Tax Increment District Status Update (TIF Status Update) is presented to the Richfield Housing and Redevelopment Authority (HRA) annually for review. There are currently 12 active TIF Districts. This year, the TIF Status Update shows that the HRA is able to meet all of its Pay-As-You-Go Note and General Obligation Tax Increment Bond obligations.

HRA staff and financial consultant, Rebecca Kurtz, will provide a brief summary of the TIF Status Update at this meeting.

RECOMMENDED ACTION:

By motion: Accept the Richfield Housing and Redevelopment Authority Annual Tax Increment District Status Update.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

- The annual TIF Status Update is provided to the HRA to summarize tax increment financial activity and comment on the status of the HRA's ability to meet its tax increment obligations.

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

- The TIF Status Update is presented annually to keep the HRA informed of the ability to meet outstanding obligations.

C. CRITICAL TIMING ISSUES:

- None

D. FINANCIAL IMPACT:

- See detailed TIF Status Update document.

E. LEGAL CONSIDERATION:

- N/A

ALTERNATIVE RECOMMENDATION(S):

- None

PRINCIPAL PARTIES EXPECTED AT MEETING:

Rebecca Kurtz, Ehlers & Associates

ATTACHMENTS:

Description	Type
☐ Tax Increment District Status Update	Backup Material



Tax Increment District Status Update



Richfield Housing and Redevelopment Authority

September 17, 2018

Tax Increment Financing District Summary

The City of Richfield and the Housing and Redevelopment Authority (“HRA”) have utilized tax increment financing (“TIF”) for key redevelopment and housing projects in the City since the 1980s. Utilizing this tool to accomplish the various goals of the City and HRA has strengthened the overall diversity of housing options, land uses and tax base, while redeveloping blighted sites and increasing employment opportunities.

Project Area and TIF Districts

The HRA has 12 active TIF districts:

- Interchange (Dick’s Sporting Goods)
- Urban Village (Oaks on Pleasant and Houlihan’s)
- Gramercy (Gramercy Park Senior Housing)
- Interchange West/Lyndale Gateway (Best Buy and Main Street Village)
- City Bella (City Bella Housing Cooperative)
- Lyndale Gateway West (Kensington Park)
- Cedar Corridor (along Cedar Ave.)
- 2010 – 1 Housing (Lyndale Plaza / Woodlake Housing)
- Lyndale Gardens (Lakewinds Co-op and former Lyndale Gardens site)
- 2014-1 TIF District (former City garage site)
- 2017-1 TIF District (Chamberlain)
- 2018-1 TIF District (NHH Companies, LLC)

All of the Districts are located within the Richfield Redevelopment Project area. The boundaries of the Project Area are coterminous with the City boundaries, which provide the HRA a maximum area of tax increment spending authority.

Obligations

Three types of obligations are associated with the HRA’s TIF districts:

1. **Pay-As-You-Go TIF Revenue Note.** Pay-As-You-Go Notes pledges to the note holder a certain percent of the available tax increment from the specific district or specific parcels. With this type of obligation, the developer pays for the expenses and is reimbursed with tax increment over the term of the TIF district. Less tax increment revenue results in lower pay-as-you-go note payments and the obligation may not be paid in full at the time of decertification of the TIF district. To the extent that the increment is not available to make a payment, the HRA is not obligated to make up any shortfalls. This type of obligation provides the lowest risk to the City and HRA.
2. **General Obligation Tax Increment Bond.** General Obligation (“G.O.”) Bonds are intended to be paid with tax increment revenue; however, they are general obligations of the City and pledge the City’s full faith and credit. If on an annual basis there is not enough tax increment to pay the debt service payment, the City agrees to levy a property tax to pay the shortfall. This type of obligation provides the most risk to the City and tax payers.
3. **Interfund Loan.** Interfund Loans are issued when the City or HRA provides up-front money from various sources to assist with projects. Most interfund loans have a maximum amount and are used to reimburse the HRA for administration and preliminary expenses. The outstanding loan may be less than the maximum set forth in the resolution and the outstanding balance may increase or decrease over time, depending on the status of the project.

An interfund loan resolution must be adopted prior to the expenditure in order to use tax increment to reimburse for the expenditure. The loans are normally repaid from tax increment or land sale revenue. This type of obligation provides some risk to the City and HRA that the loan may not be repaid in full. It is not a general obligation, so taxes do not need to be levied to pay the loan, and the City and HRA have the option to write-off the loan or unpaid balances.

Administration

In all Districts, the City may retain a maximum of 10% of the tax increment revenue for administration expenses. The revenue can only be spent on qualified administration expenses for the TIF districts, and the amount taken for administration is included in the maximum pooling limit. In addition, the HRA must have documentation of administration expenses.

Pooling

The HRA is able to retain a maximum of 25% through pooling for *some* redevelopment TIF districts. These funds are redevelopment tax increment and **must** be spent on qualified redevelopment expenses. The funds may be spent outside the boundaries of the tax increment district but must be spent within the boundaries of the Project Area.

The 25% maximum includes the amount retained for administration. For example, if the HRA is retaining 10% for administration, an additional 15% of the tax increment from the District may be retained for activities outside the TIF district but within the Project Area. If less than 10% is retained for administration, the amount available for redevelopment expenditures may increase.

Currently, pooling funds are being used to fund the Housing and Redevelopment Fund.

Assumptions

All projections are based on the most conservative assumptions. The calculations do not include inflation on property market values or interest on invested cash.

Interchange TIF District

The Interchange District is a redevelopment project comprised of the **Dick's Sporting Goods** store located along I-494 and I-35W.

- TIF District Adopted: 10/28/1996
- Certification Date: 4/3/1997
- First Year of Increment: 1998
- Required Decertification: 2023 or after the obligation is paid
- Pooling: No

Obligations	Funding Source / Repayment Source
\$3,323,309 Pay-As-You-Go Note	Developer / TIF
\$400,000 HRA Interfund Loan	HRA Capital Improvement Fund / Repaid with 90% from TIF

In August 2011, the HRA adopted a Spending Plan, as authorized by the 2010 Jobs Bill and extended by the Legislature in 2011. A portion of the cash balance from the Interchange TIF District was included in the Spending Plan.

Conclusions

The HRA will be able to meet all its obligations. In January 2017 the HRA received an invoice from the County for \$330,676.56 due to over payment of tax increment. The County had settled several years of market value petitions for the Dick's Sporting Goods development, and the settlement resulted in a reduced market value and overpayment of past years' tax increment. The HRA established an Interfund Loan on February 21, 2017, to make the payment to Hennepin County, and beginning in February 2017, tax increment from the District is used to make payments on the Interfund Loan instead of the Pay-As-You-Go Note.

In addition, the Development Agreement states a final payment date of February 1, 2019 for the Pay-As-You-Go Note. With 2018, semi-annual net tax increment of approximately \$77,350, and a currently Interfund Loan balance of \$105,625, it is not anticipated that additional payments will be made on the Pay-As-You-Go Note. Due to changes in the property tax class rates and market values, the annual amount of tax increment decreased. As a result, the Pay-As-You-Go Note in this district will never be paid in full; however, the HRA is not required to pay the shortfall.

There will be sufficient increment to pay the Interfund Loan in full prior to decertification of the District. The District is required to be decertified after the earlier of the obligations being paid in full or 2023. **It is anticipated that the Interfund Loan will be paid in August 2019** at which time the District may be decertified, and the project will be on the tax roll at full value. Based on 2018 market values, **the City would see an increase in the tax capacity of approximately 130,130 for 2020.**

Urban Village TIF District

The Urban Village TIF District is a mixed-use redevelopment project located on the **southeast corner of Lyndale and 66th Street**. Development includes **Houlihan's, the Oaks on Pleasant apartments, and BMO Bank**. Tax increment revenue is pledged to assist with property acquisition and excess site development expenses.

- TIF District Adopted: 11/23/1998
- Certification Date: 7/15/1999
- First Year of Increment: 2000
- Decertification: 2025
- Pooling: Maximum of 15%

Obligations	Funding Source / Repayment Source
\$2,500,000 Tax Exempt Pay-As-You-Go Note, Series 2001A	Developer / TIF
\$7,000,000 Taxable Pay-As-You-Go Note, Series 2001B	Developer / TIF

Conclusions

The HRA will be able to meet all of its Pay-As-You-Go obligations. Due to changes in the property tax class rates and market values, the annual amount of tax increment decreased. As a result, the Pay-As-You-Go Notes in this district may not be paid in full; however, the HRA is not required to pay the shortfall.

Gramercy TIF District

The Gramercy TIF District is a redevelopment project that includes the **Gramercy Park Senior Housing Cooperative**. Tax increment revenue is pledged to the project to assist with property acquisition expenses.

- TIF District Adopted: 6/22/1998
- Certification Date: 4/22/1999
- First Year of Increment: 2000
- Decertification: 2025 or after the obligation is paid
- Pooling: Maximum of 15%

Obligations	Funding Source / Repayment Source
\$1,977,000 Pay-As-You-Go Note	Developer / TIF

Conclusions

The HRA will be able to meet its Pay-As-You-Go obligation.

The District is required to be decertified after the earlier of the obligations being paid in full or 2025. **It is anticipated that the Pay-As-You-Go Note will be paid in August 2019** at which time the District may be decertified, and the project will be on the tax roll at full value. Based on 2018 market values, **the City would see an increase in the tax capacity of approximately 287,365 for 2020.**

Interchange West / Lyndale Gateway TIF District

The Interchange West / Lyndale Gateway TIF District has two components: (1) Interchange West; and (2) Lyndale Gateway.

- TIF District Adopted: 6/14/1999
- Certification Date: 7/29/1999
- First Year of Increment: 2000 (Full increment for Lyndale Gateway – 2002; Full increment for Best Buy -- 2004)
- Decertification: 2025
- Pooling: Maximum of 15%

Interchange West Component

The Interchange West component is comprised of the **Best Buy Corporate Headquarters** located on the intersection of I-494 and Penn Ave. Tax increments are pledged to the Best Buy project to assist with site assembly activities. The HRA retains 25% of the annual tax increment for administration (up to 10% maximum) and for the Housing and Redevelopment Fund for use on TIF eligible, redevelopment expenses.

Obligations	Funding Source / Repayment Source
\$6,355,000 Tax Exempt General Obligation Tax Increment Refunding Bonds, Series 2010B*	Bonds of 2001A / TIF
\$48,073,127 Pay-As-You-Go Note	Developer / TIF

**Refunded the \$8,350,000 Tax Exempt General Obligation Tax Increment Bond, Series 2001A*

Conclusions

The HRA will be able to meet all obligations related to the Interchange West component. Due to changes in the property tax class rates and market values, the annual amount of tax increment is lower than projections at the time the district was established. The Development Agreement with Best Buy includes an Assessment Agreement with a minimum market value of \$118,500,000. It is projected that the minimum market value is sufficient to generate increment in excess of that required for the Bond payments.

As a result of the decreased tax increment, the Pay-As-You-Go Note will never be paid in full; however, the HRA is not required to pay the shortfall.

Best Buy filed tax petitions to reduce the market value for 2015, 2016, 2017 and 2018, and the petitions were settled with a reduced market value in 2018. During the petition period, the HRA withheld a portion of the tax increment to reimburse the County for any reduced taxes. In December 2018, the HRA reconciled the payments and paid the amount due to Best Buy.

The HRA will need to continue to monitor the pooling expenses for this District to ensure that it meets statutory limits within the life of the TIF District. Based on both the allocation of TIF stated in the Contract for Private Development and the projected collection of increment over the life of the District, it is anticipated that the HRA will not be able to annually collect the full 25% allowed for administration and pooling through the term of the District.

Lyndale Gateway Component

The Lyndale Gateway component is comprised of the Richfield Senior Housing project (**Main Street Village**) and the Minnstar Builders, Inc. project (**Casteel Place Townhouses**). Tax increment revenue is pledged to the project to assist with site assembly expenses.

Obligations	Funding Source / Repayment Source
\$4,155,944 Pay-As-You-Go Note	Developer / TIF

The Contract for Private Redevelopment for the Casteel Place Townhomes included a “look back” provision that required a review of the developer’s costs. To the extent that certain costs would go up or down under the estimate, the associated Pay-As-You-Go Note would be reduced by a like amount. The “look back” provision analysis was completed in 2002, which called for a reduction in the Pay-As-You-Go Note from \$100,000 to \$19,985.23, and the obligation was paid in 2005. The cost savings of this tax increment is being used as additional gap funding for the Cornerstone/ Kensington Park redevelopment project in the Lyndale Gateway West District.

Conclusions

The HRA will be able to meet its Pay-As-You-Go obligation. Due to changes in the property tax class rates and market values, the annual amount of tax increment decreased. As a result, the Pay-As-You-Go Note in this district will never be paid in full; however, the HRA is not required to pay the shortfall.

City Bella TIF District

The **City Bella** project is a redevelopment district consisting of a housing project with a retail component located on Lyndale Ave. and 66th Street. Tax increment revenue is pledged to the project to assist with property acquisition and site improvement expenses.

- TIF District Adopted: 6/11/2002
- Certification Date: 5/8/2003
- First Year of Increment: 2005
- Decertification: 2030
- Pooling: Maximum of 15%

Obligations	Funding Source / Repayment Source
\$8,473,460 Pay-As-You-Go Note	Developer / TIF

The Pay-As-You-Go Note was sold to a third party, but for HRA purposes, the Note is a Pay-As-You-Go Note. The City and HRA made no representation that the increment collected would be sufficient to amortize the debt and gave no opinion to the structuring of the sale of the Note.

The obligations included a \$450,000 Interfund Loan for land acquisition, which was being paid with 15% of the tax increment. The Loan was paid in full in December 2016. Starting in 2017, 15% of the annual tax increment is being contributed to the Housing and Redevelopment Fund for use on TIF eligible redevelopment and housing expenses.

Conclusions

The HRA will be able to meet its Pay-As-You-Go obligation. Due to changes in the property tax class rates and market values, the annual amount of tax increment decreased. As a result, the Pay-As-You-Go Note in this district will never be paid in full; however, the HRA is not required to pay the shortfall.

Lyndale Gateway West TIF District

The Lyndale Gateway West TIF District is comprised of the Cornerstone / **Kensington Park** mixed-use redevelopment project located on Lyndale Avenue. Development in this District includes **condominiums and townhomes along with Chipotle, Noodles & Company, Starbuck's, and Potbelly**. Tax increment revenue is pledged to the project to assist with site assembly expenses.

- TIF District Adopted: 12/10/2002
- Certification Date: 5/8/2003
- First Year of Increment: 2004 (full increment in 2006)
- Decertification: 2029
- Pooling: No

Obligations	Funding Source / Repayment Source
\$2,970,000 Taxable G.O. Tax Increment Refunding Bonds, Series 2012B*	Bond of 2003C / TIF
\$1,100,000 Interfund Loan	Bonds of 1996 / TIF
\$650,000 Interfund Loan	HRA General Fund/ TIF

** Refunded the 3,470,000 Taxable General Obligation Tax Increment Bonds, Series 2003C*

The \$1,100,000 Interfund Loan was originally two loans. It was anticipated that \$500,000 of the Loan would be paid by the developer in 2012 or at the time of refinancing; however, the project went into bankruptcy in 2012. The balance of \$600,000 of the Loan was to be paid from excess tax increment after the Bond payments. The interest on the entire Loan was to be paid from tax increment.

Fifteen percent (15%) of the tax increment from the Casteel Place town home project in the Lyndale Gateway District is being used to pay debt service on the General Obligation Bonds related to the Kensington project. An annual calculation must be completed to insure that the City is not in violation of the pooling rules.

Conclusions

Currently it is anticipated that the HRA will be able to meet its debt obligation solely with tax increment funds for the Series 2012B bonds *by the time the District is decertified in 2029*. As in past years' projections, ultimately, there will be money to pay the Bonds solely from TIF. However, starting in 2016, the annual increment is not sufficient to cover debt payments.

The maximum cumulative shortfall is estimated to be \$365,838 in 2025, which is the year the Bonds mature. This estimate is likely to change – either increase or decrease – depending on future tax increment. The HRA adopted an Interfund Loan Resolution to allow reimbursement through future tax increment after the Bonds are paid in full. It is projected that the loan could be paid off in 2026 from the increment. These Bonds are general obligations of the City, so the City also has the option to levy taxes for the shortfall.

In addition, it is projected that there will not be sufficient tax increment to pay the \$1,100,000 Interfund Loan in its entirety (principal and interest). Currently it is projected that \$740,900 will be available to pay a portion of the \$1,100,000 Interfund Loan. To the extent that market values increase, or increment is pooled from other TIF districts, the shortfall could be reduced. However, to the extent that market values decrease, the shortfall may be larger than currently estimated. The HRA is not required to repay itself for the loan and interest.

Cedar Corridor TIF District

The Cedar Corridor TIF District is a redevelopment district comprised of the commercial/retail redevelopment in the Airport Noise Impact Area. This area is located **along Cedar Avenue** and 66th Street. This District was established in 2006 using Special Legislation from the *Laws of Minnesota 2005, Chapter 152, Article 2, Section 25*.

The term of the District was extended by 10 years through Special Legislation in 2017.

- TIF District Adopted: 9/26/2006
- Certification Date: May 21, 2007
- First Year of Increment: 2008
- Decertification: 2043 (extended from 2033)
- Pooling: Maximum of 15%

Obligations	Funding Source / Repayment Source
\$200,000 maximum Interfund Loan for administration and qualified costs	HRA General Fund / TIF Administration
\$780,000 Interfund Loan for HRA assessments related to Richfield Parkway*	City PIR Fund / Land sale proceeds

*This obligation is in the HRA General Fund – versus assigned to a TIF District – because it was supposed to be paid upfront with sale proceeds. At the time the repayment source is finalized the obligation will be paid in full or be part of the obligations in the TIF District.

Conclusions

The District currently does not have any financial obligations with a third party. Development and increment will be needed to repay the interfund loans. It is intended that the Loan from the PIR Fund will be paid at the time the land is sold; however, the first payment is scheduled for 2017.

2010-1 Housing TIF District

The 2010-1 Housing TIF District is a housing district comprised of the **Lyndale Plaza / Woodlake Housing** development at the site of the former Woodlake Plaza Shopping Center site. The apartment complex contains 94 units of rental housing, including 19 units that are affordable to families at or below 50% of the area median income for Hennepin County, as determined annually by the Minnesota Housing Finance Agency. These units will remain affordable for the term of the Pay-As-You-Go Note.

- TIF District Adopted: 2002
- Certification Date: March 29, 2012
- First Year of Increment: 2014
- Decertification: 2039
- Pooling: No

Obligations	Funding Source / Repayment Source
\$85,000 HRA Property Reimbursement Note for land acquisition (matures 2/1/2023)	HRA General Fund / TIF
\$822,000 Pay-As-You-Go Note A (matures 8/1/2031)	Developer / TIF
\$500,000 Pay-As-You-Go Note B	Developer / TIF
\$200,000 maximum Interfund Loan for administration and qualified costs	HRA General Fund / TIF Administration

Conclusions

The HRA will be able to meet its debt obligations. Tax increment is first pledged to the set semi-annual payment on the HRA Note. Second priority is the set semi-annual payment for the Pay-As-You-Go Note A. Any remaining increment is pledged to the Pay-As-You-Go Note B.

The HRA will continue to annually collect and monitor information on residents' income for compliance with the requirement that 20% of the units be available for persons at or below 50% of Area Median Income (AMI), per TIF Statutes and the Development Agreement.

Lyndale Gardens TIF District

The Lyndale Gardens TIF District is a redevelopment district comprised of the **former Lyndale Gardens site**, located at 6400 Lyndale Avenue South. To date the development includes the **Lakewinds Food Co-op**. Additional development is proposed to include 66 rental apartments, 8 rental townhomes, 30 owner occupied townhomes and 6,000 square feet of retail space. The development is also anticipated to include public space and trail connections in a quasi-public setting.

- TIF District Adopted: 8/9/2011
- Certification Date: March 29, 2013
- First Year of Increment: 2014
- Decertification: 2039
- Pooling: No

ANTICIPATED Obligations	Funding Source / Repayment Source
\$2,742,400 Master Developer TIF Note	Developer / TIF
\$1,491,077 Secondary Developer TIF Note	Developer / TIF

Conclusions

The Notes have not been issued and won't be issued until the developer submits qualified costs.

2014-1 TIF District

The 2014-1 TIF District is a redevelopment district located on the **former City garage site** and adjacent parcels between 76th and 77th Streets and Pleasant and Pillsbury Avenues. The HRA has entered into an Agreement with Mesaba Capital Development for the development of 60 assisted living units and 28 memory care units. Construction is anticipated to begin by September 1 and be completed by December 2017.

- TIF District Adopted: March 18, 2014
- Certification Date: March 28, 2016
- First Year of Increment: 2017
- Decertification: 2042
- Pooling: Maximum of 15%

Obligations	Funding Source / Repayment Source
\$2,400,000 Pay-As-You-Go Note	Developer / TIF
\$300,000 Interfund Loan for Administrative/Qualified Costs	HRA General Fund / TIF

The Interfund Loan for demolition and other qualified costs was paid in full at the time the land was sold to the Developer.

Conclusions

The first year of tax increment is 2018 and full increment will be generated starting in 2019.

2017-1 TIF District

The 2017-1 TIF District is a housing district located **south of 66th Street near Cedar Avenue**. The HRA has entered into an Agreement with Inland Development Partners for the rehabilitation of 33 units of affordable, rental housing and 283 units of mixed income rental housing. Construction began in July 2018 and is anticipated to be completed by December 2020.

- TIF District Adopted: November 28, 2017
- Certification Date: TBD (requested June 19, 2018)
- First Year of Increment: est. 2020
- Decertification: est. 2045
- Pooling: No

ANTICIPATED Obligations	Funding Source / Repayment Source
\$8,492,000 (est.) Pay-as-you-go Note	Developer / TIF
\$1,411,445 Developer Surplus Cash Note	HRA / TIF or Kraus-Anderson
\$200,000 maximum Interfund Loan for Administrative/Qualified Costs	HRA General Fund / TIF

Conclusions

The Notes will not be issued until the developer submits qualified costs.

2018-1 TIF District

The 2018-1 TIF District is a housing district located **north of 66th Street near Cedar Avenue**. The HRA has entered into an Agreement with NHH Companies, LLC for the construction of 80 owner-occupied townhomes. Ninety-five percent of the units will be occupied by persons meeting State low- to moderate income requirements. Construction is anticipated to begin in fall 2018 and is anticipated to be completed by December 2020.

- TIF District Adopted: August 21, 2018
- Certification Date: TBD
- First Year of Increment: est. 2021
- Decertification: est. 2046
- Pooling: No

ANTICIPATED Obligations	Funding Source / Repayment Source
\$4,200,000 (est.) Pay-as-you-go Note	Developer / TIF
\$814,000 maximum Interfund Loan for property acquisition (\$630,000 + \$184,000)	Development Fund / TIF and Developer sale proceeds
\$100,000 maximum Interfund Loan for Administrative costs	HRA General Fund / TIF
\$359,000 Interfund Loan for property acquisition (transferred from Cedar TIF District)	Development Fund / TBD. Loan will be paid with TIF if funds are available.

Conclusions

The Notes will not be issued until the developer submits qualified costs.

Conclusion

Based on current estimates and projections, the HRA will be able to meet all of its Pay-As-You-Go Note obligations. It is also projected that the HRA will be able to meet the bond obligation for the Interchange West (Best Buy) district.

It is projected that the HRA will be able to meet its bond obligation for Lyndale Gateway West (Kensington Park) bonds by the time the District is decertified after 2029. However, until the bonds are paid in in 2025, the annual increment will not be sufficient to cover the debt payments. Revenues from another funding source will be needed during those years to pay the debt service.

Current projections show that the HRA will be able to meet all except one of its interfund loan obligations on districts that are currently generating increment. It is projected that there will not be sufficient tax increment to pay the Interfund Loan in the Lyndale Gateway West (Kensington Park) District in its entirety. The HRA is not required to repay itself for the loan and interest.

The ability to pay-off loans on the Cedar Corridor TIF District will be dependent on development and the generation of tax increment.

Decertified Tax Increment Financing Districts

The HRA has decertified six TIF Districts.

District	Type	Decertified
Interstate-Lyndale-Nicollet (ILN)	Redevelopment	12/31/2012
Pre-1999 Richfield Rediscovered	Scattered Site Redevelopment	12/31/2010
Post-1999 Richfield Rediscovered	Scattered Site Redevelopment	12/31/2010
Lyndale-Hub-Nicollet (LHN)	Redevelopment	12/31/2002
Cedar Avenue Business Area (CABA)*	Economic Development	12/31/1996
Penn Avenue and Sixty-Sixth Street (PASSS)**	Redevelopment	1996

**Accounting transactions to close the District were completed by December 31, 2000.*

*** District was established in 1989 and terminated in 1996 due to a lack of feasible redevelopment opportunities.*

Housing and Redevelopment Fund

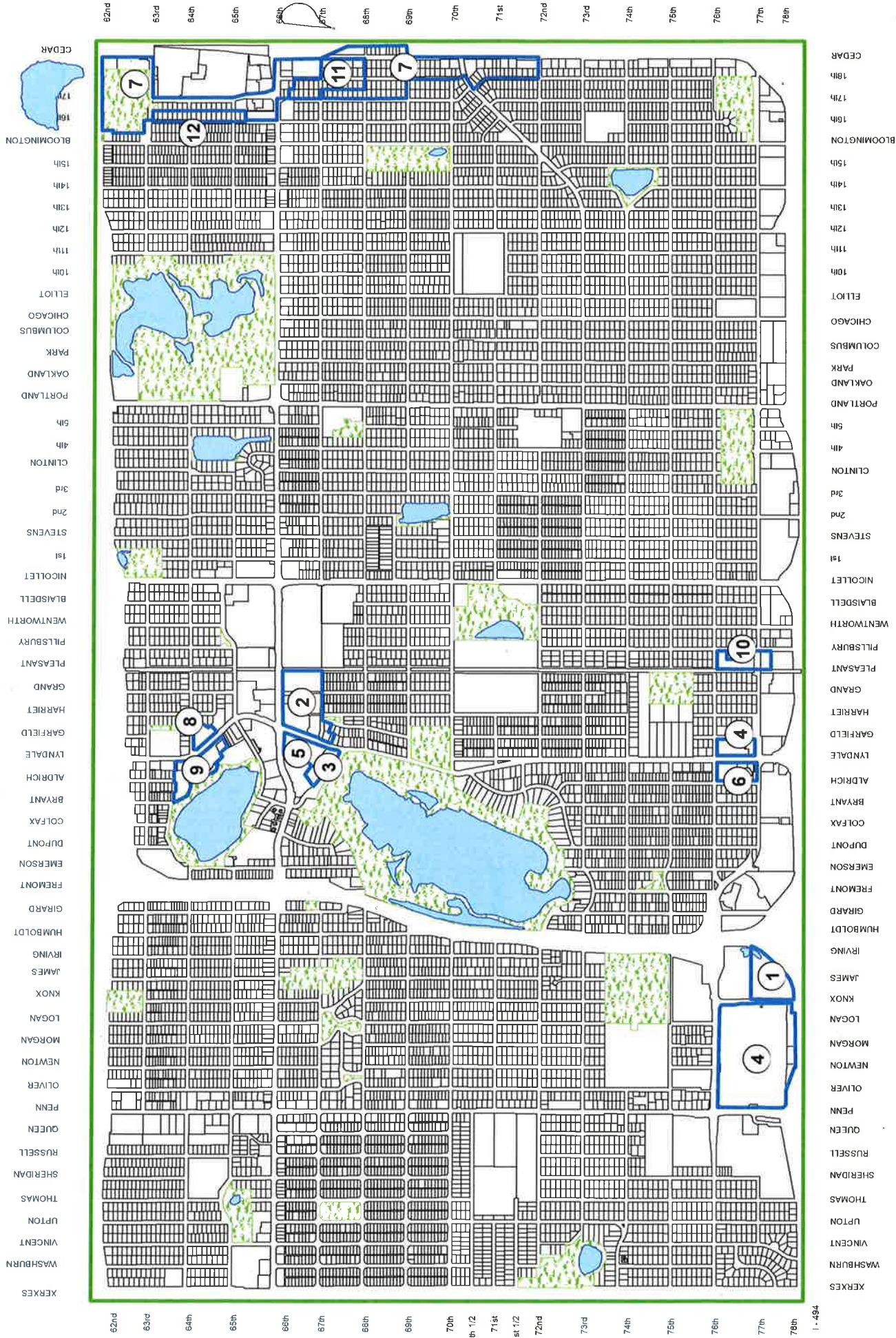
The Housing and Redevelopment Fund (the “Fund”) is a revenue source comprised of tax increment from the Gramercy, Urban Village, Interchange West/Lyndale Gateway, and City Bella TIF Districts. The purpose of the Fund is to fund a variety of housing needs for the community, including but not limited to, new construction of single-family homes and town homes; single-family home renovation and rehabilitation; and apartment rehabilitation.

These funds are tax increment from redevelopment TIF districts, therefore, funds must be spent on eligible, redevelopment tax increment expenses.

Currently, a portion of the tax increment revenue from these Districts is being transferred to the Fund to support the Richfield Rediscovered Loan Program. A breakdown of the cash balances as of December 31, 2017, follows:

Gramercy	\$ 312,098
Interchange West	1,618,528
City Bella	72,135
Urban Village	432,472
Total Housing and Redevelopment Fund:	\$ 2,435,234

RICHFIELD REDEVELOPMENT PROJECT AREA BOUNDARY





Legend

- Richfield Redevelopment Project Area Boundary
- TIF Districts

TIF DISTRICTS:

- 1 - Interchange
- 2 - Urban Village
- 3 - Gramercy
- 4 - Interchange West/Lyndale Gateway
- 5 - City Bella
- 6 - Lyndale Gateway West
- 7 - Cedar Corridor
- 8 - Housing District 2010-1 (Lyndale Plaza)
- 9 - Lyndale Garden
- 10 - 2014-1 (former City Garage/Mortuary)
- 11 - 2017-1 Chamberlain
- 12 - 2018-1 NHH Properties LLC






TIF Overview

September 2018

1

TIF Definition

The ability to capture and use most of the increased local property tax revenues from new development within a defined geographic area.



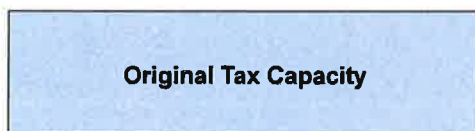
"But For" Test

- Evidence that project meets statutory requirements for need:
 - ✓ Developer "pro forma" or projections
 - ✓ Comparable costs of land
 - ✓ Risk
 - ✓ Future development potential for site
- Verify Developer's costs after completion



Building Blocks of TIF

There is a starting property value in the TIF District when it is created (also called "base value")

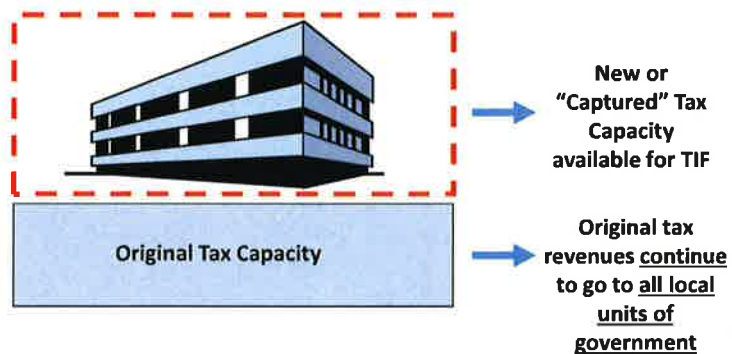


Tax revenues go to all local units of government



Building Blocks of TIF

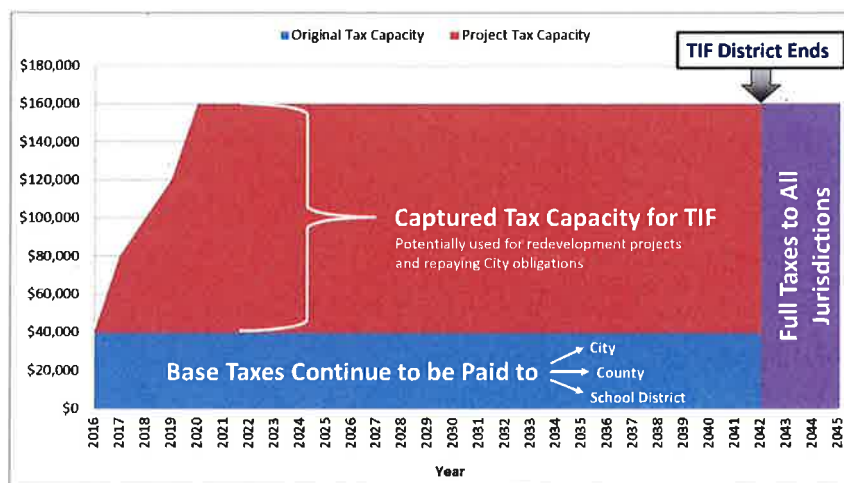
Development Occurs = New Tax Capacity
TIF District can "capture" the increased value from the new development



$$\text{TIF} = \text{Captured Tax Capacity} \times \text{Tax Rate}$$



TIF Term (maximum of 26 years for a Housing TIF District)



Taxes Not Captured in TIF

- **Base Value Taxes**
- **State Property Taxes**
 - ✓ Tax paid by commercial users (cabin owners pay as well)
 - ✓ Does not apply to residential uses
 - ✓ Not included in local tax capacity rate; therefore it is not applied to captured value for TIF districts or abatement
- **Market Value Taxes**
 - ✓ School operating referendums and other school taxes
 - ✓ Based upon market value of property rather than tax capacity of property
 - ✓ Not included in local tax capacity rate; therefore, it is not applied to captured value for TIF districts
 - ✓ Properties in TIF districts continue to pay Market Value taxes and the Market Value taxes are calculated on the increased property value



Eligible TIF Expenses

- **Eligible uses**
 - ✓ Construction of affordable housing
 - ✓ Land acquisition and relocation
 - ✓ Demolition and clearance
 - ✓ Site improvements and parking
 - ✓ Public utilities
 - ✓ Administration
 - ✓ Interest on financing
- **Ineligible uses**
 - ✓ Recreation (parks, trails, ice arenas, etc.)
 - ✓ City buildings





STAFF REPORT NO. 44
HOUSING AND REDEVELOPMENT AUTHORITY
MEETING
9/17/2018

REPORT PREPARED BY: John Stark, Community Development Director

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director
9/10/2018

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich, Executive Director
9/13/2018

ITEM FOR COUNCIL CONSIDERATION:

Consideration of the appointment of a new Executive Director of the Housing and Redevelopment Authority to serve following the retirement of current Executive Director Steve Devich.

EXECUTIVE SUMMARY:

Steve Devich has served, with distinction, as the Housing and Redevelopment Authority (HRA) Executive Director since 2005. Mr. Devich has announced his retirement from this role effective November 30, 2018. While his term is not formally designated, it customarily expires upon the election of officers at the regular January meeting of the HRA each year. In the interim, there will undoubtedly be HRA business to be undertaken, requiring the appointment of a new Executive Director.

Historically, the Executive Director position has been filled by the City Manager of the City of Richfield. That practice, however, is not required by the HRA Bylaws and many HRA's employ someone other than the City Manager of the associated City as their Executive Director.

The Bylaws of the HRA state that the Executive Director shall serve "such term as the Authority affixes." Given the state of transition of the City Manager's office, staff is recommending that the HRA appoint Community Development Director John Stark as Executive Director to serve out the remainder of 2018 (following Steve Devich's retirement) and the entirety of 2019 (until the regular meeting of the HRA in January 2020).

RECOMMENDED ACTION:

By motion: Appoint Community Development Director John Stark as Executive Director of the Richfield Housing and Redevelopment Authority following the retirement of current Executive Director Steve Devich for a term lasting until the regular meeting of the HRA in January 2020.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

- Historically, the Executive Director position has been filled by the City Manager of the City of Richfield. That practice, however, is not required by the HRA Bylaws and many HRA's employ someone other than the City Manager of the associated City as their Executive Director.

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

- The Bylaws of the HRA require it to employ an Executive Director.
- Current Executive Director, Steve Devich, has announced his retirement as of November 30, 2018.
- The HRA Bylaws allow to set the term of the Executive Director's time in office.

C. CRITICAL TIMING ISSUES:

- A new Executive Director should be appointed no later than the November 15, 2018, HRA meeting to ensure that there is no period of time that the HRA will lack someone in this role to conduct the business of the HRA.

D. FINANCIAL IMPACT:

- None

E. LEGAL CONSIDERATION:

- HRA Legal Counsel has been apprised of this recommended action.

ALTERNATIVE RECOMMENDATION(S):

- Appoint a new Executive Director only for the remainder of 2018 until the regular meeting of the HRA in January 2019.

PRINCIPAL PARTIES EXPECTED AT MEETING:

N/A