



**CONCURRENT CITY COUNCIL AND HOUSING AND REDEVELOPMENT  
AUTHORITY WORKSESSION  
RICHFIELD MUNICIPAL CENTER, BARTHOLOMEW ROOM  
JULY 16, 2018  
6:15 PM**

Call to order

1. Discuss proposed 90-day Tenant Protection Ordinance and Inclusionary Housing Policy

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.**

**CITY OF RICHFIELD, MINNESOTA**  
Office of City Manager

July 12, 2018

Council Memorandum No. 51

HRA Memorandum No. 11

The Honorable Mayor  
and  
Members of the City Council

Housing and Redevelopment  
Authority Commissioners  
City of Richfield

Subject: Proposed 90-Day Tenant Protection Ordinance and Inclusionary Housing Policy

Council Members:

Staff will review the proposed Tenant Protection Ordinance and Inclusionary Housing Policy at the concurrent City Council and Housing and Redevelopment Authority work session at 6:15 p.m. on July 16, 2018.

Notice of the work session and copies of the proposed ordinance and policy have been provided to interested parties, including affordable housing advocates and rental property owners.

Respectfully submitted,



Steven L. Devich  
City Manager

SLD:ju

Attachments

Email: Assistant City Manager  
Department Directors

City of Richfield  
Richfield Housing and Redevelopment Authority  
Richfield Economic Development Authority  
**Inclusionary Affordable Housing Policy**

The City of Richfield, Richfield Housing and Redevelopment Authority, and Richfield Economic Development Authority are committed to building a community that is welcoming and affordable to a diverse population of individuals and families at all stages of their lives. As such, we hereby establish the following policy for the inclusion of affordable housing in development proposals.

Requirements

1. Housing Development Projects that Receive Financial Assistance from HRA, EDA or City:
  - a. At least 20% of housing units must be made affordable to tenant households earning no more than 60% of the Area Median Income or owner households earning no more than 115% of the Area Median Income (in a mixed rental/ownership development a grand total of at least 20% of the units must be affordable) over a period of ten years or the duration of the subsidy (whichever is longer); or,
  - b. 15% of the “net present value” of Tax Increment generated by the project (or 15% of the net present value of other types of assistance) must be pledged to the Richfield Housing and Redevelopment Fund over a period of ten years or the duration of the subsidy (whichever is longer), or;
  - c. A pro-rata combination of the above (i.e. 10% affordable units and a 7.5% contribution) may be considered, and;
  - d. Must agree to provide 90 days’ advance notice to the public body providing funding of any sale of the property, and;
  - e. Must agree to not discriminate against households utilizing Housing Choice Vouchers (Section 8) or other forms of rental assistance.
2. Non-Housing Development Projects that receive Financial Assistance from HRA, EDA or City and which result in the loss of affordable housing:
  - a. Affordable housing units eliminated by the project must be replaced on-site or at another location in Richfield by the developer at similar affordability levels, or;
  - b. 5-15% (depending on the magnitude of the loss of affordable housing) of the “net present value” of the Financial Assistance provided must be pledged to the Richfield Housing and Redevelopment Fund over a period of ten years or the duration of the subsidy (whichever is longer).

Incentives

3. Housing Development Projects which include affordable units (as outlined in 1a-c above) are eligible to receive the following considerations regardless of whether or not they receive Public Financial Assistance:
  - a. Inclusion of 20% of the units as affordable, may result in the following incentives;
    - i. Building Permit Fee Reductions (10% reduction for rehabilitation and/or 5% reduction for new construction);

- ii. 4d Property Tax Reduction;
- iii. Consideration as an offset against code nonadherence (e.g. insufficient setbacks, excessive impervious surface, etc.) in planned unit developments;
- iv. A housing unit density bonus of 5-15% (i.e. a project in an area that allows 18-24 units/acre could add an additional 1-4 units/acre and remain in compliance).

Exceptions

- 4. The City Council or Board of Commissioners of the Housing and Redevelopment Authority or Economic Development Authority may vary the application of this policy as circumstances warrant with the adoption of findings of the reasons for doing so.

Adopted:

This \_\_ day of \_\_\_\_\_ by the Richfield City Council.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Secretary

This \_\_ day of \_\_\_\_\_ by the Richfield Housing and Redevelopment Authority.

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Secretary

This \_\_ day of \_\_\_\_\_ by the Richfield Economic Development Authority.

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Secretary

**BILL NO.**

**AN ORDINANCE ADOPTING A NEW CITY CODE SECTION 409 RELATING TO THE SALE OF AFFORDABLE HOUSING AND NOTICE REQUIREMENTS \_\_\_**

**THE CITY OF RICHFIELD DOES ORDAIN:**

**SECTION 1.** The Richfield City Code is amended by adding a new Section 409 as follows:

**SECTION 409. – SALE OF AFFORDABLE HOUSING AND NOTICE REQUIREMENTS**

**409.00. – Purpose.** It is the purpose of this Section to protect the availability of affordable rental housing for low and moderate income households by providing for notice to the City and tenants when transitions from current affordable housing uses are planned and providing tenant relocation assistance when affordable housing is converted and tenants are required to move without adequate time to find new housing.

**409.01. - Definitions.**

**Subdivision. 1.** The following definitions apply in this Section:

- (a) “Affordable housing building” means an apartment house as defined in 407.03 having three or more dwelling units, where at least 20% of the units rent for an amount that is affordable to households at or below 60 percent of area median income, as median income was most recently determined by the United States Department of Housing and Urban Development for the Minneapolis-St. Paul-Bloomington, Minnesota- Wisconsin Metropolitan Statistical Area, as adjusted for household size and number of bedrooms.
- (b) “Affordable housing unit” means a rental unit in an affordable housing building that rents for an amount that is affordable to households at or below 60 percent of area median income, as median income was most recently determined by the United States Department of Housing and Urban Development for the Minneapolis-St. Paul- Bloomington, Minnesota-Wisconsin Metropolitan Statistical Area, as adjusted for household size and number of bedrooms.
- (c) “Cause” means the tenant or a member of the tenant’s household materially violated a term of the lease or rental agreement, or violated an applicable federal, state, or local law or regulation.
- (d) “Tenant protection period” means the period that commences on the date when a real estate closing transfers ownership of an affordable housing building and expires on the last day of the third calendar month following the month in which the written notice required in subsection 409.03 is sent to an affordable housing unit tenant.

**409.03. – Transfer of Ownership.**

Subdivision 1. Notice. Whenever ownership of an affordable housing building shall transfer, the new owner shall, within thirty (30) days after the date on which a real estate closing

transfers ownership of the affordable housing building, give written notice to each affordable housing unit tenant of the building that the property is under new ownership stating:

- (a) The name, mailing address, and telephone number of the new owner.
- (b) Richfield City Code Section 409 provides for a tenant protection period for affordable housing unit tenants. Under Section 409, affordable housing unit tenants may be entitled to relocation assistance from the new owner if the new owner, without cause, terminates or does not renew the tenant's rental agreement within the tenant protection period. Affordable housing unit tenants may also be entitled to relocation assistance from the new owner if the tenant terminates their rental agreement because the new owner raises the rent or initiates a tenant rescreening process within the tenant protection period.
- (c) Whether there will be any rent increase within the tenant protection period; the amount of the rent increase; and, the date the rent increase will take effect.
- (d) Whether the new owner will require existing affordable housing unit tenants to be re-screened to determine compliance with existing or modified residency screening criteria during the tenant protection period and if so, a copy of the screening criteria.
- (e) Whether the new owner will, without cause, terminate or not renew rental agreements during the tenant protection period and if so, notice to the affected affordable housing unit tenants whose rental agreements will terminate and the date the rental agreements will terminate.
- (f) Whether the new owner intends to increase rent; require existing affordable housing unit tenants to be rescreened to determine compliance with existing or modified residency screening criteria; or, without cause, terminate or not renew affordable housing unit rental agreements on the day immediately following the tenant protection period.

**Subd. 2. Copy of notice to City.** The new owner shall provide a copy of the notice required by this subsection to the city at the same time notice is provided to the tenants.

**Subd. 3. Notice required.** When a new owner of an affordable housing building is, without cause, terminating or not renewing a tenant's rental agreement, raising rent, or rescreening existing tenants during the tenant protection period, it must give the notice required by this subsection.

#### **409.05. - Relocation Assistance.**

**Subdivision 1. Termination/non-renewal of lease.** If during the tenant protection period the new owner of an affordable housing building terminates or refuses to renew any affordable housing unit tenant's rental agreement without cause, then upon terminating or refusing to renew the tenant's lease, the new owner shall pay to the tenant, as relocation assistance, no later than the day upon which the tenant vacates the unit, a payment equal to three months of current rent charged to the tenant.

**Subd. 2. Rent increase.** If during the tenant protection period the new owner of an affordable housing building raises any affordable housing unit tenant's rent, or rescreens an existing affordable housing unit tenant, and the tenant gives written notice to the new owner to terminate the rental agreement, the new owner, shall within 30 days of receiving tenant's written notice of termination of the rental agreement, pay to the tenant as relocation assistance, a payment equal to three months of current rent charged to the tenant.

**409.07. - Penalty.**

**Subdivision 1.** A violation of subsection 409.05 is an administrative offense that may be subject to an administrative citation and civil penalties as provided in City Code Section 325. Notwithstanding any provision of City Code Section 325, the penalty for a violation of subsection 409.05 shall be the sum of the applicable amount of relocation assistance plus \$500.

**Subd. 2.** A violation of subsection 409.03 is an administrative offense that may be subject to an administrative citation and civil penalties as provided in City Code 325..

**Subd. 3.** A violation of this Section as to each dwelling unit shall constitute a separate offense.

**409.09. - Payment by City to Displaced Tenant.** Within thirty (30) days after a person pays the penalty provided for in subsection 409.07, subd. 1 to the city, the city shall pay to the displaced tenant of the affordable housing unit for which the violation occurred an amount equal to the relocation assistance provided for in subsection 409.05, subd. 1.

**SECTION 2.** This Ordinance shall take effect January 1, 2019.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by the City Council of the City of Richfield.

By: \_\_\_\_\_  
Pat Elliott, Mayor

ATTEST:

\_\_\_\_\_  
Elizabeth VanHoose, City Clerk



**REGULAR HOUSING AND REDEVELOPMENT AUTHORITY MEETING  
RICHFIELD MUNICIPAL CENTER, COUNCIL CHAMBERS  
JULY 16, 2018  
7:00 PM**

Call to Order

Approval of the minutes of the regular Housing and Redevelopment Authority meeting of June 18, 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 adoption of a resolution amending the funding source for an interfund loan approved by Housing and Redevelopment Authority Resolution No. 1175 on January 22, 2014, and Resolution No. 1223 on February 16, 2016, for the 2014-1 Tax Increment Financing District (former City Garage site).  
Staff Report No. 20
  - B. Consideration of the adoption of a resolution consenting to the inclusion of certain Housing and Redevelopment Authority property by NHH Properties, dba NHH Companies, LLC with respect to land use approvals and a petition to vacate portions of 64th Street adjacent to Housing and Redevelopment Authority property.  
Staff Report No. 21
3. Consideration of items, if any, removed from Consent Calendar

**PUBLIC HEARINGS**

4. Public hearing and consideration of the adoption of a resolution authorizing the sale of 6310 Irving Avenue S to NeighborWorks Home Partners and the approval of a Contract for Private Development for the construction of a single family home.  
Staff Report No. 22
5. Public hearing and consideration of the adoption of a resolution authorizing the sale of 7324 Girard Avenue to Aaron and Ashley Buchanon and the approval of a Contract for Private Development with Aaron and Ashley Buchanon for the construction of a single family home through the Richfield Rediscovered Program.  
Staff Report No. 23

**OTHER BUSINESS**

6. Consideration of the approval of program guidelines for the First Time Homebuyer Downpayment Assistance

Program.

Staff Report No. 24

7. Consideration of the authorization of funding and approval of loan documents for the acquisition of property located within the Cedar Point II Housing Redevelopment area by NHH Properties dba NHH Companies, LLC.

Staff Report No. 25

### **RESOLUTIONS**

8. Consideration of the adoption of a resolution authorizing an interfund loan in the amount of \$730,000 for advance of certain costs in connection with property located within Tax Increment Financing District 2018-1 (Cedar Point II project).

Staff Report No. 26

9. Consideration of the adoption of a resolution approving an Amended and Restated Contract for Private Development with Lyndale Gardens, LLC for remaining land at the former Lyndale Gardens Center site.

Staff Report No. 27

### **EXECUTIVE DIRECTOR REPORT**

10. Executive Director's Report

### **HRA DISCUSSION ITEMS**

11. HRA Discussion Items

### **CLAIMS AND PAYROLLS**

12. Claims and Payrolls

13. Adjournment

**Auxiliary aids for individuals with disabilities are available upon request. Requests must be made at least 96 hours in advance to the City Clerk at 612-861-9738.**



# HOUSING AND REDEVELOPMENT AUTHORITY MEETING MINUTES

Richfield, Minnesota

## Regular Meeting

### June 18, 2018

<b>CALL TO ORDER</b>
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The meeting was called to order by Chair Supple at 7:00 p.m.

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

*Staff Present:* John Stark, Community Development

<b>APPROVAL OF THE MINUTES OF THE REGULAR HRA MEETING OF MAY 21, 2018</b>
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M/Howard, S/Elliott to approve the minutes of the May 21, 2018, Housing and Redevelopment Authority regular meeting.

Motion carried 5-0.

<b>Item #1</b>	<b>APPROVAL OF THE AGENDA</b>
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M/Howard, S/Elliott to approve the agenda.

Motion carried 5-0.

<b>Item #2</b>	<b>CONSENT CALENDAR</b>
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Community Development Director Stark presented the consent agenda.

- A. Consideration of the adoption of a resolution approving the issuance of, and providing the form, term, covenants and directions for the issuance of its Tax Increment Limited Revenue Note, Series 2016 in an aggregate principal amount not to exceed \$2,400,000, related to TIF District 2014-1 (City Garage site). (S.R. No. 18)

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

Motion carried 5-0.

<b>Item #3</b>	<b>CONSIDERATION OF ITEMS, IF ANY, REMOVED FROM CONSENT CALENDAR</b>
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None.

<b>Item #4</b>	<b>CONSIDERATION OF THE ADOPTION OF A RESOLUTION, RELATED TO THE CHAMBERLAIN APARTMENTS DEVELOPMENT, APPROVING: 1. AMENDED AND RESTATED CONTRACT FOR PRIVATE DEVELOPMENT; 2. MEMORANDUM OF UNDERSTANDING WITH THE METROPOLITAN AIRPORTS COMMISSION; 3. TAX INCREMENT FINANCING COLLATERAL ASSIGNMENT AGREEMENT; AND, 4. RIGHT OF ENTRY AGREEMENT. (S.R. NO. 19)</b>
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Community Development Director Stark presented Staff Report No. 19.

M/Sandahl, S/Howard to adopt a resolution approving: 1. Amended and Restated Contract for Private Development; 2. Memorandum of Understanding with the Metropolitan Airports Commission; 3. Tax Increment Financing Collateral Assignment Agreement; and, 4. Right of Entry Agreement.

Commissioner Sandahl highlighted some positive aspects of the project as contemplated by the development agreement.

Chair Supple commented on the use of TIF money being re-invested in Richfield for use on the underpass.

Bob Cunningham provided the HRA with some project information and thanked the HRA for their continued support.

Motion carried 5-0.

<b>Item #5</b>	<b>HRA DISCUSSION ITEMS</b>
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Chair Supple requested an update on Cedar Point II.

Community Development Director Stark responded that they submitted their land use application on June 18. They have been successful with 8 of 11 homeowners to date and they have two signed purchase agreements and are hopeful for have five more in the next month or so. Their application to MAC for livable communities fund is underway and expected to be submitted this month and they are hopeful to move the 3 HRA homes from the site with in the 30 – 45 days.

Chair Supple requested an update of the Southdale Library Development.

Community Development Director Stark responded that a newspaper article reports a new 55,000 square foot library on the NW quadrant of the site (Edina side) and parking is contemplated on the NE quadrant (Richfield side) of the lot. There is still talk of surface parking or structured parking, but it seems surface parking is what is being contemplated, which would be the worse outcome for Richfield and Community Development Staff is following up with that. Community Development Director Stark also announced that an open house is planned for July 23 from 7:00 p.m. – 9:00 p.m. at the Southdale Library.

Community Director Stark stated that this development means as much to Richfield as it does to Edina.

<b>Item #6</b>	<b>EXECUTIVE DIRECTOR'S REPORT</b>
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Community Development Director Stark shared that City Manager Devich, who is also the HRA Executive Director, has announced his resignation as of November 30, 2018.

<b>Item #7</b>	<b>CLAIMS AND PAYROLL</b>
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M/Elliot, S/Sandahl that the following claims and payroll be approved:

<b>U.S. BANK</b>	<b>6/18/2018</b>
Section 8 Checks: 129796-129876	\$158,570.10
HRA Checks: 33459-33473	\$51,007.43
<b>TOTAL</b>	<b>\$209,577.53</b>

Motion carried 5-0.

<b>ADJOURNMENT</b>
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The meeting was adjourned by unanimous consent at 7:23 p.m.

Date Approved: July 16, 2018

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Mary B. Supple  
HRA Chair

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Kate Aitchison  
Housing Specialist

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Steven L. Devich  
Executive Director



**STAFF REPORT NO. 20**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**7/16/2018**

REPORT PREPARED BY: Myrt Link, Community Development Accountant

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director  
7/11/2018

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich, Executive Director  
7/11/2018

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of the adoption of a resolution amending the funding source for an interfund loan approved by Housing and Redevelopment Authority Resolution No. 1175 on January 22, 2014, and Resolution No. 1223 on February 16, 2016, for the 2014-1 Tax Increment Financing District (former City Garage site).**

**EXECUTIVE SUMMARY:**

The Housing and Redevelopment Authority (HRA) approved an interfund loan for the 2014-1 Tax Increment District (former City Garage site) on January 22, 2014, and February 16, 2016.

The funding source for the interfund loan was identified as the City's Capital Improvement Fund. The amended resolution changes the funding source to the HRA General Fund.

The Office of the State Auditor requires an amendment when the funding source or terms change for an interfund loan.

**RECOMMENDED ACTION:**

**By motion: Adopt a resolution amending the funding source for an interfund loan approved by Housing and Redevelopment Authority Resolution No. 1175 on January 22, 2014, and Resolution No. 1223 on February 16, 2016, for the 2014-1 Tax Increment Financing District (former City Garage site).**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

- Resolution No. 1175 that was authorized by the HRA on January 22, 2014 approved an interfund loan for up to \$300,000 for demolition of substandard buildings, environmental remediation and administrative costs from the City's Capital Improvement Reserve Fund. These costs totaled \$217,009 and were paid back to Capital Improvement Reserve Fund from sale proceeds received from the Developer.
- Resolution No. 1223 that was approved by the HRA on February 16, 2016 increased the dollar amount that was authorized on Resolution No. 1175 to \$544,000. The increased amount was for a land write-down related to the development in the amount of \$244,000. The Developer purchased

the land for cash and an interfund loan was not needed.

- An interfund loan is still needed for miscellaneous qualified costs (ex: staff, legal and financial consultant costs) related to the development until enough increment is generated to cover these costs.

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

- It is the HRA's policy to comply with the Office of the State Auditor's requirements.

**C. CRITICAL TIMING ISSUES:**

- None

**D. FINANCIAL IMPACT:**

- The 2014-1 Tax Increment Financing District will generate enough increment for the interfund loan to be paid back in full.

**E. LEGAL CONSIDERATION:**

- The resolution was drafted by HRA legal counsel.

**ALTERNATIVE RECOMMENDATION(S):**

- Do not approve the proposed change to the funding source for the interfund loan.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

None

**ATTACHMENTS:**

Description	Type
☐ Resolution	Resolution Letter

**RICHFIELD HOUSING AND REDEVELOPMENT AUTHORITY**

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

**RESOLUTION AUTHORIZING AN INTERFUND LOAN FOR ADVANCE OF CERTAIN COSTS IN CONNECTION WITH PROPOSED TAX INCREMENT FINANCING DISTRICT NO. 2014-1.**

BE IT RESOLVED by the Board of Commissioners (the "Board") of the Richfield Housing and Redevelopment Authority (the "Authority") of the City of Richfield, Minnesota, as follows:

WHEREAS, the Authority and the City of Richfield, Minnesota (the "City") established Tax Increment Financing District No. 2014-1 (the "TIF District") within the Richfield Redevelopment Project (the "Project") pursuant to Minnesota Statutes, Sections 469.174 to 469.1794, as amended (the "TIF Act"), and adopted a Tax Increment Financing Plan (the "TIF Plan") for the purpose of financing certain improvements within the Project.

WHEREAS, pursuant to Resolution No. 1175 adopted January 22, 2014, the Authority determined that it would use tax increments from the TIF District to pay for certain costs of demolition of substandard buildings within the proposed TIF District, costs of environmental remediation, and administrative costs (the "Qualified Costs"), which costs may be financed on a temporary basis from City or Authority funds available for such purposes in the amount of up to \$300,000.

WHEREAS, pursuant to Resolution No. 1223 adopted February 16, 2016 (the "Amended Interfund Loan Resolution"), the Authority determined to modify the Interfund Loan Resolution to include reimbursement to the Authority for a land write-down in the amount of up to \$244,000 for Mesaba Capital Development, LLC to assist in financing a development consisting of approximately 60 assisted living units and 28 memory care units (the "Development"), within the TIF District.

WHEREAS, the land write-down for the Development was not completed.

WHEREAS, the Authority has repaid the City for the portion of Interfund Loan advanced from the City's Capital Improvement Reserve Fund in the amount of \$217,009.14 with sale proceeds of the land upon which the Development was built.

WHEREAS, the Authority has determined to modify the Amended Interfund Loan Resolution to change the source of funds from which the Interfund Loan is advanced.

WHEREAS, under Section 469.178, Subd. 7 of the TIF Act, the Authority is authorized to advance or loan money from the Authority's general fund or any other fund from which such advances may be legally authorized, in order to finance the Qualified Costs.

WHEREAS, the Authority intends to reimburse itself for all or a portion of the Qualified Costs from tax increments derived from the TIF District in accordance with the terms of this resolution (which terms are referred to collectively as the "Interfund Loan").

NOW THEREFORE BE IT RESOLVED by the Board as follows:

1. The Authority hereby authorizes the advance of up to \$300,000 from the Authority's General Fund or so much thereof as may be paid as Qualified Costs. The Authority shall reimburse itself

for such advances together with interest at the rate stated below. Interest accrues on the principal amount from the date of each advance. The maximum rate of interest permitted to be charged is limited to the greater of the rates specified under Minnesota Statutes, Section 270C.40 or Section 549.09 as of the date the loan or advance is authorized, unless the written agreement states that the maximum interest rate will fluctuate as the interest rates specified under Minnesota Statutes, Section 270C.40 or Section 549.09 are from time to time adjusted. The interest rate shall be 4.0% and will not fluctuate.

2. Principal and interest ("Payments") on the Interfund Loan shall be paid semi-annually on each August 1 and February 1 (each a "Payment Date"), commencing on the first Payment Date on which the Authority has Available Tax Increment (defined below), or on any other dates determined by the Executive Director of the Authority, through the date of last receipt of tax increment from the TIF District.
3. Payments on this Interfund Loan are payable solely from "Available Tax Increment," which shall mean, on each Payment Date, tax increment available after other obligations have been paid, or as determined by the Executive Director of the Authority, generated in the preceding six (6) months with respect to the property within the TIF District and remitted to the City by Hennepin County, all in accordance with the TIF Act. Payments on this Interfund Loan may be subordinated to any outstanding or future bonds or notes issued by the City or the HRA and secured in whole or in part with Available Tax Increment. The Interfund Loan shall be paid prior to any pay-as-you-go notes or contracts secured in whole or in part with Available Tax Increment, and any other outstanding or future interfund loans secured in whole or in part with Available Tax Increment.
4. The principal sum and all accrued interest payable under this Interfund Loan are pre-payable 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 Interfund Loan.
5. This Interfund Loan is evidence of an internal borrowing by the Authority in accordance with Section 469.178, Subd. 7 of the TIF Act, and is a limited obligation payable solely from Available Tax Increment pledged to the payment hereof under this resolution. This Interfund Loan 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 Interfund Loan 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 Interfund Loan or other costs incident hereto. The Authority shall have no obligation to pay any principal amount of the Interfund Loan or accrued interest thereon, which may remain unpaid after the final Payment Date.
6. The Authority may amend the terms of this Interfund Loan at any time by resolution of the Board, including a determination to forgive the outstanding principal amount and accrued interest to the extent permissible under law.

Approved by the Board of Commissioners of the Richfield Housing and Redevelopment Authority this 16th day of July, 2018.

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Chair

ATTEST:

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Secretary



**STAFF REPORT NO. 21**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**7/16/2018**

REPORT PREPARED BY: Julie Urban, Housing Manager

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director  
7/11/2018

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich, Executive Director  
7/11/2018

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of the adoption of a resolution consenting to the inclusion of certain Housing and Redevelopment Authority property by NHH Properties, dba NHH Companies, LLC with respect to land use approvals and a petition to vacate portions of 64th Street adjacent to Housing and Redevelopment Authority property.**

**EXECUTIVE SUMMARY:**

The Housing and Redevelopment Authority (HRA) approved a pre-development agreement with NHH Companies, LLC (Developer) on March 19, 2018, for the redevelopment of the Cedar Point II Housing area (bound by 63rd Street on the north, 65th Street on the south, 16th Avenue on the west, and Richfield Parkway on the east). The proposed development includes 218 apartment units and up to 80 affordable, for-sale townhomes.

The HRA currently owns the majority of the land in the proposed development area (18 of 29 parcels). In order for the Developer to proceed with land use approvals, the HRA must give its consent for inclusion in the land use planning applications. By giving its consent for inclusion, the HRA is not agreeing to or obligated to sell the property to the developer, nor is it implying approval of the Developer's land use proposal.

64th Street runs through the middle of the development area. This area is no longer needed for a public street and should be incorporated into the development parcel. As owner of three adjacent parcels, the HRA must petition to vacate the street area adjacent to those parcels.

**RECOMMENDED ACTION:**

By motion:

- 1. Adopt a resolution consenting to the inclusion of certain HRA property by NHH Companies, LLC with respect to land use approvals.**
- 2. Approve a petition to vacate portions of 64th Street adjacent to HRA property located within the Cedar Point II housing development area.**

**BASIS OF RECOMMENDATION:**

A. **HISTORICAL CONTEXT**

- In March of 2018, the HRA signed a pre-development agreement with the Developer 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.
- The City purchased properties located along Richfield Parkway in 2013 and deeded the parcels to the HRA for redevelopment. The 64th Street pavement in this half block was removed at that time, but the underlying street easement remains.
- The HRA has purchased properties located on 17th Avenue over the past six years as they have been offered for sale.

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

- The Comprehensive Plan guides these properties for high density multi-family housing.
- The Cedar Corridor Master Plan calls for a diversity of housing options in this area.

**C. CRITICAL TIMING ISSUES:**

- HRA approval is needed for the Developer to proceed with the entitlement process and begin construction in Fall 2018 or Spring 2019.
- The street needs to be vacated and the land included in the preliminary plat, which needs to proceed as part of the entitlement process.

**D. FINANCIAL IMPACT:**

- None

**E. LEGAL CONSIDERATION:**

- As owner of several properties located within the project area, the HRA must consent to the land use application.
- As owner of parcels adjacent to 64th Street, the HRA must be the petitioner to vacate that portion of the street adjacent to these parcels.

**ALTERNATIVE RECOMMENDATION(S):**

- Decide not to consent to inclusion of HRA property in the land use applications and not to petition for a vacation of 64th Street.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

A representative from the development team.

**ATTACHMENTS:**

	Description	Type
□	Resolution	Resolution Letter
□	Map of Right-of-Way to be Vacated	Backup Material

**HRA RESOLUTION NO.**

**RESOLUTION CONSENTING TO THE INCLUSION BY NHH COMPANIES, LLC OF CERTAIN PROPERTY WITH RESPECT TO LAND USE APPROVALS**

**WHEREAS**, the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the "Authority") owns certain real property legally described in the attached Exhibit A (the "Property") in the City of Richfield, Minnesota (the "City") ; and

**WHEREAS**, NHH Companies, LLC, a limited liability company (the "Developer"), has proposed to acquire the Property for redevelopment purposes; and

**WHEREAS**, the Developer has requested that the Authority consent to the inclusion of the Property in the Developer's applications to the City for land use approvals, including but not limited to a planned unit development; 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 Board of Commissioners of the Authority hereby consents to and authorizes the Developer to include the Property in its applications to the City for any and all of its land use approvals with respect to the redevelopment of the Property, including but not limited to a planned unit development.
2. The Chairperson and Executive Director are hereby authorized to execute and deliver any documents or certificates deemed necessary to carry out the intentions of this resolution.

Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota this 16th day of July, 2018.

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Mary B. Supple, Chair

ATTEST:

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Erin Vrieze Daniels, Secretary

**EXHIBIT A**

**AUTHORITY PROPERTY**

<b>Address</b>	<b>PID</b>
6315 16TH AVE S	2602824110034
6333 16TH AVE S	2602824110037
6401 16TH AVE S	2602824140004
6409 16TH AVE S	2602824140005
6314 17TH AVE S	2602824110045
6320 17TH AVE S	2602824110044
6326 17TH AVE S	2602824110043
6332 17TH AVE S	2602824110042
6338 17TH AVE S	2602824110041
6344 17TH AVE S	2602824110040
6400 17TH AVE S	2602824140019
6408 17TH AVE S	2602824140018
6414 17TH AVE S	2602824140017
6420 17TH AVE S	2602824140016
6426 17TH AVE S	2602824140015
6432 17TH AVE S	2602824140014
6438 17TH AVE S	2602824140013
6444 17TH AVE S	2602824140012

# Cedar Point II - 07/2018

## Development Area



0      90      180      360      540      720      Feet

- Cedar Point 2 Parcels: HRA Owned
- Cedar Point 2 Parcels





**STAFF REPORT NO. 22**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**7/16/2018**

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

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director  
7/11/2018

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich, Executive Director  
7/11/2018

**ITEM FOR COUNCIL CONSIDERATION:**

**Public hearing and consideration of the adoption of a resolution authorizing the sale of 6310 Irving Avenue S to NeighborWorks Home Partners and the approval of a Contract for Private Development for the construction of a single family home.**

**EXECUTIVE SUMMARY:**

NeighborWorks Home Partners is proposing to purchase 6310 Irving Avenue S from the Housing and Redevelopment Authority (HRA) for the development of a single family home that will be sold to an income qualified buyer.

The single story home will offer 1,100 square feet of finished living space and include two bedrooms, one bathroom and a two car detached garage, with an estimated sale price of \$250,000. The full basement will be unfinished but include two egress windows and roughed-in plumbing for the future expansion of two bedrooms, a family room and a second bathroom. The proposed home has a traditional design and height that will complement the existing homes in the area. The plan does not utilize the existing unpaved alley and instead includes a driveway in the front of the property that matches the surrounding homes. The existing alley only serves one other house and is slated for eventual removal due to the high costs of maintenance.

Federal Community Development Block Grant (CDBG) funds were used to purchase the property, which requires that it be developed as housing affordable to a household with an income no greater than 80 percent of the Twin Cities Area Median Income (AMI).

NeighborWorks Home Partners and the HRA will enter into a Contract for Private Development (Contract) for the purchase of the property and subsequent construction of the home. The Contract provides for acquisition of the property to NeighborWorks Home Partners for \$1 and for the use of HRA Housing and Redevelopment funds to cover the remaining \$60,000 gap between the cost of development and the anticipated sale proceeds. Housing and Redevelopment funds can be used towards construction costs of units that meet State Statute income requirements.

**RECOMMENDED ACTION:**

**Conduct and close the public hearing and by motion: Adopt a resolution authorizing the sale of 6310 Irving Avenue S to NeighborWorks Home Partners, and approve a Contract for Development with NeighborWorks Home Partners for the development of a single family home, contingent upon final**

## HRA Attorney review.

### **BASIS OF RECOMMENDATION:**

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

- In 2012, the HRA purchased the substandard property at 6310 Irving Ave S using CDBG funds.
- In 2015, the HRA approved a Contract for Private Development with the Greater Metropolitan Housing Corporation for the construction of a new home. Due to a number of factors, the project was never began, and that Contract for Private Development expired. The lot has remained vacant and undeveloped.
- NeighborWorks Home Partners is proposing to construct a single-level home of 1,100 finished square feet, two bedrooms, one bath, and a two-car detached garage.
- NeighborWorks Home Partners has the experience, capability, and financial security to develop the property and has previously constructed and renovated many homes in Saint Paul under various federal and local programs.
- The New Home Program allows homes to be sold to households earning up to 80 percent of AMI (\$68,000 for a family of four).
- In the past ten years, eleven new homes were constructed under the New Home program for affordable purchase.
- Under the New Home Program, the HRA has partnered with nonprofit developers to construct over 50 affordable homes since 1981.
- A neighborhood meeting was held on July 10, 2018.

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

- The New Home Program implements the goal of the Comprehensive Plan to ensure sufficient diversity in the housing stock to provide for a range of household sizes, income levels and needs. The Program carries out the policies that support this goal including:
  - Promote the development of a balanced housing stock that is available to a range of income levels.
  - Promote the development, management and maintenance of affordable housing in the City through assistance programs, alternative funding sources, and the creation of partnerships whose mission is to promote low to moderate income housing.
- The proposed housing is consistent with the Housing Vision Statement that was accepted by the City Council and HRA in June 2013. The Statement calls for a full range and balance of housing types in the community that match the choices of residents at every stage of their lives.

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

- The Contract requires closing on the property to occur by October 31, 2018, and construction to be completed by June 30, 2019.
- If the property cannot be developed meeting the CDBG requirements, the amount spent on acquisition must be returned to Hennepin County.

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

- In 2012, the property was purchased for \$52,000 using Federal CDBG funds.
- CDBG guidelines require that the new home be sold to households earning less than 80 percent of the AMI.
- CDBG guidelines do not require repayment of acquisition costs if the property is developed affordably.
- The property would be sold to Neighborworks Home Partners for \$1.
- The overall cost of development will be \$305,600, while the income generated from the sale of the home will be approximately \$255,000. The estimated gap between the cost to construct and the sale is primarily due to rising construction costs, increased sewer costs, and construction of the driveway. The gap will be financed by the HRA Housing and Redevelopment Fund, and will be utilized for hard costs associated with the construction of the new home.
- The buyer of the home will be required to receive buyer assistance from the City. This will be in the form of a loan that will place a lien on the property for a time period that discourages the buyer from selling the property for a profit.

**E. LEGAL CONSIDERATION:**

- Notice of the public hearing was published in the Sun Current on July 5, 2018.
- Mailed notice was sent as a courtesy to homeowners and occupants living nearby.
- The HRA Attorney prepared the Contract for Private Development.
- Minnesota State Statute allows for use of Housing and Redevelopment funds towards the construction costs of housing units available to households at 100 percent of AMI for a family of two or less, or 115 percent of AMI for families of three or more.

**ALTERNATIVE RECOMMENDATION(S):**

- Do not approve the resolution authorizing sale of the property to Neighborworks Home Partners.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

Beth Hyser, Business Development Director - NeighborWorks Home Partners and Becky Errigo, Housing Development Manager - NeighborWorks Home Partners

**ATTACHMENTS:**

	Description	Type
□	Resolution	Resolution Letter
□	Draft Contract for Development	Contract/Agreement
□	Project Information	Backup Material
□	Photo of 6310 Irving	Backup Material

**HRA RESOLUTION NO.**

**RESOLUTION AUTHORIZING SALE OF REAL PROPERTY LOCATED AT  
6310 IRVING AVENUE TO NEIGHBORWORKS HOME PARTNERS IN  
ACCORDANCE WITH A CONTRACT FOR DEVELOPMENT**

**WHEREAS**, the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (HRA) desires to develop certain real property pursuant to and in furtherance of the New Home Program adopted by the HRA, said real property being described as follows:

Address: 6310 Irving Avenue South

Legal: Lot 4, Block 6, "Ray's Lynnhurst," Hennepin County, Minnesota

**WHEREAS**, the HRA is authorized to sell real property within its area of operation after public hearing; and

**WHEREAS**, a developer, Neighborworks Home Partners, has been identified as the purchaser of the described property and in accordance with a Development Agreement; and

**WHEREAS**, a public hearing has been held after proper public notice.

**NOW, THEREFORE, BE IT RESOLVED**, by the Housing and Redevelopment Authority in and for the City of Richfield:

1. A public hearing has been held 6310 Irving Avenue is authorized to be sold for \$1 to the Neighborworks Home Partners in accordance with a Development Agreement with the HRA.
2. The Chairperson and Executive Director are authorized to execute a Contract for Private Development and other agreements as required to effectuate the sale to Neighborworks Home Partners.

Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota this 16th day of July, 2018.

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Mary B. Supple, Chair

ATTEST:

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Erin Vrieze Daniels, Secretary

**CONTRACT FOR DEVELOPMENT**

**Between**

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

**and**

**NEIGHBORWORKS HOME PARTNERS**

**at**

**6310 IRVING AVENUE SOUTH, RICHFIELD MN. 55423**

**This Instrument Drafted by:**

**The Housing and Redevelopment Authority  
in and for the City of Richfield  
6700 Portland Avenue South  
Richfield, Minnesota 55423  
Telephone: (612) 861-9760**

## CONTRACT FOR DEVELOPMENT

**THIS CONTRACT FOR DEVELOPMENT** (the “Agreement”) is made and entered into as of this \_\_\_ of \_\_\_\_\_, 2018, by and between the Housing and Redevelopment Authority in and for the City of Richfield, a body corporate and politic under the laws of the State of Minnesota, having its principal office at 6700 Portland Avenue, Richfield, Minnesota (HRA), and NeighborWorks Home Partners (NWHP), a non-profit corporation under the laws of Minnesota, having its principal office at 533 Dale Street N, Saint Paul, MN. 55103 (Developer).

### WITNESSETH:

**WHEREAS**, the HRA has purchased the property at 6310 Irving Ave South, Richfield, legally described as Lot 4, Block 6, “Ray’s Lynnhurst,” Hennepin County (the “Property”), for the purpose of providing affordable housing in the City; and

**WHEREAS**, the City of Richfield (the “City”) and the HRA have previously created and established a New Home Program, pursuant to the authority granted in Minnesota Statutes, Sections 469.001 through 469.047; and

**WHEREAS**, the Developer has proposed the Improvements, as hereinafter defined, for the Property which the HRA has determined will promote and carry out the objectives for which the Property was purchased; will assist in carrying out the objectives of the New Home Program; and will be in the vital best interests of the City, and the health, safety and welfare of its residents and in accord with the public purposes and provisions of the applicable state and local laws and requirements.

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations of the HRA and the Developer, each party does hereby represent, covenant and agree with the other as follows:

### ARTICLE I.

#### **DEFINITIONS, EXHIBITS, RULES OF INTERPRETATION**

**Section 1.1. Definitions.** In this Agreement, the following terms have the meaning given below unless the context clearly requires otherwise:

- (a) **City.** The City of Richfield, Minnesota.
- (b) **Construction Plans.** Collectively, the plans, drawings and related documents related to the Improvements, which are listed on Exhibit A.
- (c) **Developer.** NeighborWorks Home Partner (NWHP).
- (d) **Development.** The Property and the Improvements to be constructed thereon according to the Construction Plans approved by the HRA.

- (e) **Event of Default.** Event of Default has the meaning given such term in Section 8.1.
- (f) **Holder.** The term “holder” in reference to a Mortgage includes a lender, any insurer or guarantor (other than the Developer) of any obligation or condition secured by such mortgage or deed of trust.
- (g) **Housing and Redevelopment Authorities Act (HRA Act).** Minnesota Statutes Sections 469.001 through 469.047.
- (h) **HRA.** The Housing and Redevelopment Authority in and for the City of Richfield, Minnesota.
- (i) **Improvements.** Each and all of the structures and site improvements constructed or renovated on the Property by the Developer, as specified in the Construction Plans approved by the HRA.
- (j) **Mortgage.** The term “mortgage” shall include the mortgages referenced in Article VI of this Agreement and any deed of trust or other instrument creating an encumbrance or lien upon the Property of any part thereof, as security for a loan.
- (k) **New Home Program.** HRA program to encourage development of new housing opportunities for low to moderate income buyers.
- (l) **Property.** The real property legal described as:
- Lot 4, Block 6, “Ray’s Lynnhurst,” according to the plat thereof on file or of record in the office of the Register of Deeds in and for Hennepin County, Minnesota
- having a street address of:
- 6310 Irving Avenue South, Richfield
- (m) **Qualified Buyer.** A purchasing family (2 or more person household) whose income does not exceed 80 percent of the metropolitan area median income, is a first time buyer, and is meets the Affordable Homeownership Guidelines set forth in Exhibit E.
- (n) **Unavoidable Delays.** Delays which are the direct result of strikes, labor troubles, fire or other casualty to the Improvements, natural disasters, litigation commenced by third parties which results in delays or acts of any federal, state or local government, except those contemplated by this Agreement, which are beyond the control of the Developer.

**Section 1.2 Exhibits.** The following Exhibits are attached to and by reference made a part of this Agreement:

- A. List of Construction Plan Documents

- B. Form of Quit Claim Deed
- C. Form of Certificate of Completion
- D. Pro Forma for Affordable Housing Project
- E. Affordable Homeownership Guidelines
- F. Qualified Buyer Assistance Promissory Note and Mortgage

**Section 1.3 Rules of Interpretation.**

(a) This Agreement shall be interpreted in accordance with and governed by the laws of the State of Minnesota.

(b) The words “herein” and “hereof” and words of similar import, without reference to any particular section or subdivision refer to this Agreement as a whole rather than any particular section or subdivision hereof.

(c) References herein to any particular section or subdivision hereof are to the section or subdivision of this Agreement as originally executed.

(d) Any titles of the several parts, articles and sections of this Agreement are inserted for convenience and reference only and shall be disregarded in construing or interpreting any of its provisions.

**ARTICLE II.**

**REPRESENTATIONS AND UNDERTAKINGS**

**Section 2.1 By the Developer.** The Developer makes the following representations and warranties as the basis for undertakings on its part herein contained:

(a) The Developer has the legal authority and power to enter into this Agreement, and has duly authorized the execution, delivery and performance of this Agreement; and the individual(s) who execute this Agreement on behalf of the Developer have the power and authority to bind the Developer;

(b) The Developer has the necessary equity capital or will obtain commitments for financing necessary for construction of the Improvements;

(c) The Developer will construct the Improvements in accordance with the terms of this Agreement, the Construction Plans, and all local, state and federal laws and regulations;

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

(e) The plans for the Improvements have been prepared by a qualified draftsman or architect.

**Section 2.2 By the HRA.** The HRA makes the following representations as the basis for the undertaking on its part herein contained:

(a) The HRA is authorized by law to enter into this Agreement, to carry out its obligations hereunder, and the individuals who execute this Agreement on behalf of the HRA have the power and authority to bind the HRA; and

(b) The HRA will, in a timely manner, subject to all notification requirements, review and act upon all submittals and applications of the Developer and will cooperate with the efforts of Developer to secure the granting of any permit, license, or other approval required to allow the construction of the Improvements; provided, however, that nothing contained in this subparagraph 2.2(b) shall be construed to limit in any way the reasonable and legitimate exercise of the HRA's discretion considering any submittal or application.

### **ARTICLE III.**

#### **ACQUISITION OF PROPERTY; CONVEYANCE TO DEVELOPER**

**Section 3.1 Sale of Property to Developer.** The HRA is the fee owner of the Property. The HRA agrees to sell the Property to the Developer and the Developer agrees to purchase the Property from the HRA in an "as is" condition. The HRA agrees to convey the Property to the Developer by Quit Claim Deed in the general form of Exhibit B. The purchase price for the Property will be \$1.00.

**Section 3.2 Title and Examination.** As soon as reasonably possible after execution of this Agreement by both parties,

(a) HRA shall surrender any abstract of title and a copy of any owner's title insurance policy for the property, if in HRA's possession or control, to Developer or to Developer's designated title service provider; and

(b) Developer shall obtain the title evidence determined necessary or desirable by Developer or Developer's lender, including but not limited to title searches, title examinations, abstracting, a title insurance commitment or an attorney's title opinion, at Developer's selection and cost, and provide a copy to the HRA.

The Developer shall have 20 days from the date it receives such title evidence to raise any objections to title it may have. Objections not made within such time will be deemed waived. The HRA shall have 90 days from the date of such objection to affect a cure; provided, however, that the HRA shall have no obligation to cure any objections, and may inform Buyer of such. The Buyer may then elect to close notwithstanding the uncured objections or declare this Agreement null and void, and the parties will thereby be released from any further obligation hereunder.

**Section 3.3 Well Disclosure.** Seller does not know of any wells on the property.

**Section 3.4 Closing.** Closing on the Property will take place on or before October 31, 2018, or such other date as may be agreed to by the parties in writing. At closing, the Developer will provide the HRA with the purchase price of the property. If closing has not occurred by October 31, 2018, either party may terminate this Agreement.

**Section 3.5. Closing Costs.** The Developer will pay: (a) the closing fees charged by its title insurance company or other closing agent, if any, utilized to close the transaction for Developer; and (b) the recording fees for the Contract for Private Development and the deed transferring title to the Developer. The HRA will pay all other fees normally paid by sellers, including: any transfer taxes, and any fees and charges related to the filing of any instrument required to make title marketable. Each party shall pay its own attorney fees.

**Section 3.6. Sewer and Water.** HRA warrants that city water is available at the lot line and city sewer is available at the curb.

**Section 3.7. ISTS Disclosure.** HRA is not aware of any individual sewage treatment system on the property. Developer is responsible for all costs of removing any individual sewage treatment system that may be discovered on the Property.

**Section 3.8. Taxes and Special Assessment.** Real estate taxes and installments of special assessments will be prorated between the HRA and Developer as of the date of closing.

**Section 3.9 Soil Conditions and Hazardous Wastes.** The Developer acknowledges that the HRA makes no representations or warranties as to the conditions of the soils on the Property, its fitness for construction of the Improvements or any other purpose for which the Developer may make use of the Property, or regarding the presence of hazardous wastes, pollution or contamination on the Property. The HRA will allow reasonable access to the Property for the Developer to conduct such tests regarding soil conditions and hazardous wastes as the Developer may desire. Permission to enter the Property to conduct such tests must be given in writing under the terms and conditions established by the HRA.

**Section 3.10 Survey.** The HRA will allow reasonable access to the Property for the Developer to conduct a survey. Permission to enter the Property to conduct such tests must be given in writing under the terms and conditions established by the HRA.

**Section 3.11 Trees.** All healthy trees will be saved and protected by the Developer during construction, to the extent possible, except those that specifically interfere with the construction of the Improvements. Trees requested to be removed must be identified by type on the site plan provided by the Developer.

**Section 3.12 Sale to Qualified Buyer; Covenant on Use.** The Developer agrees to convey the Property and Improvements to a Qualified Buyer within 180 days of issuance of a Certificate of Occupancy or after that time as agreed upon by the parties. Prior to agreeing to sell the Property and Improvements to a prospective buyer, the Developer shall provide the HRA with sufficient evidence

that the potential buyer is a Qualified Buyer. In addition, the Developer must obtain the HRA's prior approval of the terms and conditions of the purchase agreement with the Qualified Buyer, and the agreement terms and conditions must be consistent with this Agreement. This Agreement constitutes a covenant on the part of the Developer, its successors and assigns, to develop the Property and Improvements for owner-occupied, single-family residential purposes as permitted by the City.

**Section 3.13 Additional Affordable Housing Assistance to Developer.** The HRA has agreed to pay up to \$60,000 to reimburse Developer for its gap in funding for the costs of construction of the affordable housing unit sold to Qualified Buyers from funds available in the HRA's Housing and Redevelopment fund. In order to obtain such funds, the Developer must provide the HRA with evidence of its gap in funding relative to the Developer's proforma set forth in Exhibit D.

**Section 3.14 Affordable Housing Assistance to Qualified Buyer.** The HRA has agreed to provide assistance to the Qualified Buyer to pay for closing costs and/or a down payment related to the purchase of the home to be constructed on the Property in an amount up to \$10,000 in the form of a forgivable loan. The forgivable loan does not accrue interest and is forgiven after thirty (30) years if certain conditions are met. The Qualified Buyer will be required to execute a promissory note and a mortgage in favor of the HRA. The HRA acknowledges and understands that the mortgage may be subordinate to the first mortgage loan obtained by the Qualified Buyer. The form of promissory note and mortgage related to the forgivable loan are set forth in Exhibit F.

## ARTICLE IV.

### CONSTRUCTION OF IMPROVEMENTS

**Section 4.1. Construction of Improvements.** The Developer shall construct the Improvements on the Property at the Developer's cost in accordance with the Construction Plans, and shall maintain, preserve and keep the Improvements in good repair and condition until sale of the Property to a Qualified Buyer.

**Section 4.2. Building Plans.** The Developer agrees that the City of Richfield building official may withhold issuance of a building permit for the Improvements unless the Construction Plans are in conformity with this Agreement, and all local, state and federal regulations. The HRA shall, within 25 days of receipt of Construction Plans submitted in application for a building permit, review such Construction Plans to determine whether the foregoing requirements have been met. If the HRA determines such Construction Plans to be deficient, it shall notify the Developer in writing stating the deficiencies and the steps necessary for correction. Issuance of the building permit by the City with the approval of the HRA shall be a conclusive determination that the Construction Plans have been approved and shall satisfy the provisions of this Section 4.2.

**Section 4.3 Schedule of Construction.** Subject to Unavoidable Delays, construction of the Improvements shall be completed prior to June 30, 2019. All construction shall be in conformity with the approved Construction Plans. Periodically during construction the Developer shall make

reports in such detail as may reasonably be requested by the HRA concerning the actual progress of construction. If at any time prior to completion of construction the HRA has cause to believe that the Developer will be unable to complete construction of the Improvements in the time permitted by this Section 4.3, it may notify the Developer and demand assurances from the Developer regarding the Developer's construction schedule. If such assurances are not forthcoming or are deemed by the HRA at its sole discretion to be inadequate, the HRA may declare an Event of Default and may avail itself of any of the remedies specified in Section 8.2 of this Agreement.

**Section 4.4 Certificate of Completion.** After notification by the Developer of completion of construction of the Improvements, the HRA shall inspect the construction to determine whether the Improvements have been completed in accordance with the Construction Plans and the terms of this Agreement, including the date of the completion thereof. In the event that the HRA is satisfied with the construction, the HRA shall furnish the Developer with a Certificate of Completion in the form attached hereto as Exhibit C. Such certification by the HRA shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement with respect to the obligation of the Developer to construct the Improvements.

The certification provided for in this Section 4.4 shall be in recordable form. If the HRA shall refuse or fail to provide certification in accordance with the provisions of this Section 4.4, the HRA shall within 15 days of such notification provide the Developer with a written statement, indicating in adequate detail in what respects the Developer has failed to complete the Improvements in accordance with the provisions of this Agreement necessary, in the opinion of the HRA, for the Developer to take or perform in order to obtain such certification.

**Section 4.5 Failure to Construct.** In the event that construction of the Improvements is not completed as provided in Section 4.3 of this Agreement, an Event of Default shall be deemed to have occurred and the HRA may proceed with its remedies under Section 8.2.

## **ARTICLE V.**

### **INSURANCE**

**Section 5.1 Insurance.** The Developer will provide and maintain or cause to be provided and maintained at all times during the process of constructing the Improvements and, from time to time at the request of the HRA, furnish the HRA with proof of payment of premiums on:

(a) Builder's risk insurance, written on the so-called "Builder's Risk -- Completed Value Basis," in an amount equal to 100% of the insurable value of the Improvements at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy;

(b) Comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner's Contractor's Policy with limits against bodily injury and property damage of not less than \$1,000,000 for each occurrence (to accomplish the above-required limits, an umbrella excess liability policy may be used); and

- (c) Workers' compensation insurance, with statutory coverage.

The policies of insurance required pursuant to clauses (a) and (b) above shall be in form and content satisfactory to the HRA and shall be placed with financially sound and reputable insurers licensed to transact business in Minnesota. The policy of insurance delivered pursuant to clause (a) above shall contain an agreement of the insurer to give not less than thirty (30) days advance notice to the HRA in the event of cancellation of such policy or change affecting the coverage thereunder.

## ARTICLE VI.

### FINANCING

**Section 6.1 Financing.** Within 20 days of the date of execution of this Agreement, the Developer shall submit to the HRA evidence of financing for the Improvements in compliance with the provisions of Section 2.1(b) of this Agreement. If the HRA finds that the financing is adequate in amount to provide for the construction of the Improvements, the HRA shall notify the Developer of its approval.

If the HRA rejects the evidence of financing as inadequate, the Developer shall have 30 days or such additional period of time as the Developer may reasonably require from the date of such notification to submit evidence of financing satisfactory to the HRA. If the Developer fails to submit such evidence or fails to use due diligence in pursuing financing, the HRA may terminate this Agreement and both parties shall be released from any further obligation or liability hereunder, except for the HRA's remedies pursuant to Section 4.5 of this Agreement. Closing shall not take place until the Developer has provided the HRA with acceptable evidence of financing for construction of the Improvements.

**Section 6.2 Limitation Upon Encumbrance of Property.** Prior to the issuance of the Certificate of Completion, neither the Developer nor any successor in interest to the Property or any part thereof shall engage in any financing or any other transaction creating any Mortgage or other encumbrance or lien upon the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property other than the liens or encumbrances attached for the purposes of obtaining funds to the extent necessary for making the Improvements without the prior written approval of the HRA. The HRA shall not approve any Mortgage which does not contain terms which conform to the terms of this Article VI and Section 8.2 of this Agreement.

**Section 6.3 Subordination.** In order to facilitate obtaining financing for the construction of the Improvements by the Developer, the HRA may, in its sole and exclusive discretion, agree to modify this Agreement in the manner and to the extent it deems reasonable, upon request by the financial institution and the Developer.

## ARTICLE VII.

### PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

**Section 7.1 Representation as to Redevelopment.** The Developer represents and agrees that its undertakings pursuant to the Agreement, are for the purpose of development of the Property and not for speculation in land holding. The Developer further recognizes that, in view of the importance of the Development to the general welfare of Richfield and the substantial financing and other public aids that have been made available by the HRA for the purpose of making the Development possible, the qualification and identity of the Developer are of particular concern to the HRA. The Developer further recognizes that it is because of such qualifications and identity that the HRA is entering into this Agreement, and, in so doing, is further willing to rely on the representations and undertakings of the Developer for the faithful performance of all undertakings and covenants agreed by the Developer to be performed.

**Section 7.2 Prohibition Against Transfer of Property and Assignment of Agreement.** For the reasons set out in Section 7.1 of this Agreement, the Developer represents and agrees that prior to the issuance of the Certificate of Completion by the HRA:

(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 Property, or any part thereof, to perform its obligations with respect to the Development under this Agreement, and any other purpose authorized by this Agreement, the Developer, except as so authorized, has not made or created, and that it will not make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or any trust in respect to this Agreement or the Property or any part thereof or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of the HRA; and

(b) The HRA shall be entitled to require, except as otherwise provided in this Agreement, as conditions to any such approval under this Section 7.2 that:

(i) Any proposed transferee shall have the qualifications and financial responsibility, as determined by the HRA, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer or, in the event the transfer is of or relates to part of the Property, such obligations to the extent that they relate to such part,

(ii) any proposed transferee, by instrument in writing satisfactory to the HRA and in form recordable among the land records, shall for itself and its successor and assigns, and specifically for the benefit of the HRA, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to such obligations, restrictions and conditions or, in the event the transfer is of, or relates to part of the Property, such obligations, conditions, and restrictions to the extent that they relate to such part; provided, that the effect that any transferee of, or any other successor in interest whatsoever to, the Property or any part thereof, shall, for whatever reason, not have assumed such obligations or agree to do so, shall not, unless and only to the extent otherwise specifically provided in the Agreement or agreed to in writing by the HRA, relieve or except such transferee or

successor from such obligations, conditions, or restrictions, or deprive or limit the HRA of or with respect to any rights or remedies or controls with respect to the Property of the construction of the Improvements; it being the intent of this Section 7.2, together with other provisions of this Agreement, that to the fullest extent permitted by law and equity and excepting only in the manner and to the extent specifically provided otherwise in the Agreement no transfer of, or change with respect to, ownership in the Property or any part thereof, or any interest therein, however consummated or occurring, whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the HRA, or any rights or remedies or controls provided in or resulting from this Agreement with respect to the Property and the construction of the Improvements that the HRA would have had, had there been no such transfer or change, and

(iii) There shall be submitted to the HRA for review all instruments and other legal documents involved in effecting transfers described herein, and if approved by the HRA, its approval shall be indicated to the Developer in writing.

In the absence of specific written agreement by the HRA to the contrary, no such transfer or approval by the HRA thereof shall be deemed to relieve the Developer from any of its obligations with respect thereto. The sale of the Development to a Qualified Buyer shall not be deemed to be a transfer within the meaning of this Section 7.2.

**Section 7.3 Approvals.** Any approval required to be given by the HRA under this Article VII may be denied only in the event that the HRA reasonably determines that the ability of the Developer to perform its obligations under this Agreement will be materially impaired by the action for which approval is sought.

## **ARTICLE VIII.**

### **EVENTS OF DEFAULT**

**Section 8.1 Events of Default Defined.** The following shall be deemed Events of Default under this Agreement and the term shall mean, whenever it is used in this Agreement, unless the context otherwise provides, any one or more of the following events:

(a) Failure by the Developer to pay when due the payments required to be paid or secured under any provision of this Agreement;

(b) Subject to Section 9.7, failure by the Developer to complete the Improvements by December 28, 2019, absent any Unavoidable Delay;

(c) Failure by the Developer to observe and substantially perform any covenant, condition, obligation or agreement on its part to be observed or performed hereunder, including the time for such performance;

(d) Failure by the Developer to close with a Qualified Buyer within 180 days of completion or after that time as agreed upon by the parties.

(e) If the Developer shall admit in writing its inability to pay its debts generally as they become due, or shall file a petition in bankruptcy, or shall make an assignment for the benefit of its creditors, or shall consent to the appointment of a receiver of itself or of the whole or any substantial part of the Property;

(f) If the Developer, on a petition in bankruptcy filed against it, be adjudicated as bankrupt, or a court of competent jurisdiction shall enter an order or decree appointing, without the consent of the Developer, a receiver of the Developer or of the whole or substantially all of its property, or approve a petition filed against the Developer seeking reorganization or arrangement of the Developer under the federal bankruptcy laws, and such adjudication, order or decree shall not be vacated or set aside or stayed within 60 days from the date of entry thereof; or

(g) If the Development is in default under any Mortgage and has not entered into a work-out agreement with the Holder of the Mortgage.

**Section 8.2 Remedies on Default.** Whenever any Event of Default occurs, the HRA may, in addition to any other remedies or rights given the HRA under this Agreement, take any one or more of the following actions following written notice by the HRA to the Developer as provided in Section 9.4 of this Agreement:

(a) suspend its performance under this Agreement until it receives assurances from the Developer, deemed reasonably adequate by the HRA, that the Developer will cure its default and continue its performance under this Agreement;

(b) cancel or rescind this Agreement;

(c) withhold the Certificate of Completion; or

(d) take whatever action at law or in equity may appear necessary or desirable to the HRA to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement; provided, however, that any exercise by the HRA of its rights or remedies hereunder shall always be subject to and limited by, and shall not defeat, render invalid or limit in any way (a) the lien of any Mortgage authorized by this Agreement and (b) any rights or interest provided in this Agreement for the protection of the Holders of a Mortgage; and provided further that should any Holder succeed by foreclosure of the Mortgage or deed in lieu thereof to the Developer's interest in the Property, it shall, notwithstanding the foregoing, be obligated to perform the following obligations of the Developer only to the extent that the same have not therefore been performed by the Developer: Sections 3.3 through 3.7; Sections 4.1 through 4.5; Sections 5.1. Said Holder, upon foreclosure or taking of a deed in lieu, shall have no obligations pursuant to this Agreement other than as specifically set forth in the foregoing sentence.

**Section 8.3 No Remedy Exclusive.** No remedy herein conferred upon or reserved to the HRA 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 HRA or the Developer to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article VIII.

**Section 8.4 No Additional Waiver Implied by One Waiver.** In the event of the occurrence of any Event of Default by either party, which Event of Default is thereafter waived by the other party, such waiver shall be limited to the particular Event of Default so waived and shall not be deemed to waive any other concurrent, previous or subsequent Event of Default.

## ARTICLE IX.

### ADDITIONAL PROVISIONS

**Section 9.1 Conflict of Interests; Representatives Not Individually Liable.** No HRA officer who is authorized to take part in any manner in making this Agreement in his or her official capacity shall voluntarily have a personal financial interest in this Agreement or benefit financially there from. No member, official, or employee of the HRA shall be personally liable to the Developer, or any successor in interest, for any Event of Default by the HRA or for any amount which may become due to the Developer or successor or on any obligations under the terms of this Agreement.

**Section 9.2 Non-Discrimination.** The provisions of Minnesota Statutes Section 181.59, which relate to civil rights and non-discrimination, and any affirmative action program of the City shall be considered a part of this Agreement and binding on the Developer as though fully set forth herein.

**Section 9.3 Notice of Status and Conformance.** At such time as all of the provisions of this Agreement have been fully performed by the Developer, the HRA, upon not less than ten days prior written notice by the Developer, agrees to execute, acknowledge and deliver, without charge to the Developer or to any person designated by the Developer, a statement in writing in recordable form certifying the extent to which this Agreement has been performed and the obligations hereunder satisfied.

**Section 9.4 Notices and Demands.** Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is sent by mail, postage prepared, return receipt requested or delivered personally:

- (a) As to the HRA:
  - Richfield HRA
  - Executive Director
  - 6700 Portland Avenue South
  - Richfield, MN 55423

(b) As to the Developer:

Beth Hyser / Becky Errigo  
NeighborWorks Home Partner  
533 Dale Street North  
Saint Paul, MN 55103

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 9.4.

**Section 9.5 Provisions Not Merged With Deed.** None of the provisions of this Agreement is intended to or shall be merged by reason of any deed transferring any interest in the Property and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

**Section 9.6. Counterparts.** This Agreement may be simultaneously executed in any number of counterparts, all of which shall constitute one and the same instrument.

**Section 9.7. Extensions.** Any extension to the Closing Date and/or extension of the completion date of the Improvements set forth in Section 4.3 that exceeds 6 months from the date agreed to in Section 3.4 and 4.3, respectively, must be approved by the HRA Board. HRA staff is authorized to extend the Closing Date to a date less than 6 months from the Closing Date agreed to in Section 3.4 and extend the completion date of the Improvements to a date less than 6 months from the completion date set forth in Section 4.3.

**IN WITNESS WHEREOF**, the HRA has caused this Agreement to be duly executed in its name and behalf and its seal to be hereunto duly affixed and the Developer has caused this Agreement to be duly executed as of the day and year first above written.

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

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

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, the Chairperson of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (HRA), a public body corporate and politic under the laws of Minnesota, on behalf of the HRA.

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by \_\_\_\_\_, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, a public body corporate and politic under the laws of Minnesota, on behalf of the public body corporate and politic.

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



## **EXHIBIT A**

### **LIST OF CONSTRUCTION PLAN DOCUMENTS**

- Contract for Development, fully executed
- Concept Plans
- Site Plan

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**EXHIBIT B**

**FORM OF QUIT CLAIM DEED**

STATE DEED TAX DUE HEREON: \$\_\_\_\_\_

Date: \_\_\_\_\_

FOR VALUABLE CONSIDERATION, Housing and Redevelopment Authority in and for the City of Richfield, a public body corporate and politic under the laws of the State of Minnesota, Grantor, hereby conveys and quit claims to Neighborworks Home Partners, a non-profit corporation organized under the laws of the State of Minnesota, Grantee, real property in Hennepin County, Minnesota, described as follows:

Lot 4, Block 6, "Ray's Lynnhurst," according to the map or plat thereof on file or of record in the office of the Hennepin County Recorder.

This deed is subject to the terms and provisions of that certain Contract for Private Development between Grantor and Grantee (the "Contract", dated \_\_\_\_\_, 2018, recorded \_\_\_\_\_, 2018, in the office of the Hennepin County Recorder as Document No. \_\_\_\_\_). Specifically, pursuant to Section 13.12 of the Contract, the Grantee agrees to convey the Property and Improvements to a Qualified Buyer (as that term is defined in the Contract). The Grantee must obtain the Grantor's prior approval of the terms and conditions of the purchase agreement with the Qualified Buyer, and the agreement terms and conditions must be consistent with the terms of the Contract.

(if more space is needed, continue on back)

together with all hereditaments and appurtenances.

A well disclosure certificate accompanies this document.

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

Affix Deed Tax Stamp Here

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

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

STATE OF MINNESOTA

} ss.

COUNTY OF HENNEPIN

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Mary B. Supple, the Chairperson of the Housing and Redevelopment Authority in and for the City of Richfield, a public body corporate and politic under the laws of Minnesota, on behalf of the corporation, Grantor.

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RAK)  
ACKNOWLEDGMENT

\_\_\_\_\_  
SIGNATURE OF PERSON TAKING

STATE OF MINNESOTA

} ss.

COUNTY OF HENNEPIN

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Steven L. Devich, the Executive Director, of Housing and Redevelopment Authority in and for the City of Richfield, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the corporation, Grantor.

ACKNOWLEDGMENT  
NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RAK)

\_\_\_\_\_  
SIGNATURE OF PERSON TAKING

Check here if part or all of the land is Registered (Torrens)

Tax Statements for the real property described in this instrument should be sent to (include name and address of Grantee):

NeighborWorks Home Partners  
533 Dale Street North  
St Paul, MN 55103

This instrument drafted by:  
Kennedy & Graven, Chartered

470 U.S. Bank Plaza  
200 South Sixth Street  
Minneapolis, MN 55402

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**EXHIBIT C**

**FORM OF CERTIFICATE OF COMPLETION**

The undersigned hereby certifies that \_\_\_\_\_, has fully and completely complied with its obligations under Article IV of that document entitled "Contract for Private Development", between the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota and \_\_\_\_\_ dated \_\_\_\_\_, filed \_\_\_\_\_ as Document No. \_\_\_\_\_ with respect to the construction of the approved construction plans at \_\_\_\_\_, legally described as \_\_\_\_\_ and is released and forever discharged from its obligations to construct under such above-referenced Article.

DATED: \_\_\_\_\_

THE HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY RICHFIELD

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

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

STATE OF MINNESOTA )  
 )SS  
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ the Chairperson of the Housing and Redevelopment Authority in and for the City of Richfield, a public body corporate and politic under the laws of the State of Minnesota on behalf of the public body corporate and politic.

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by Steven L. Devich, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, a public body corporate and politic under the laws of Minnesota, on behalf of the public body corporate and politic.

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

This instrument was drafted by:

Richfield Housing and Redevelopment Authority  
6700 Portland Ave S  
Richfield, MN 55423

**EXHIBIT D**

**PRO FORMA FOR AFFORDABLE HOUSING PROJECT**

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## **EXHIBIT E**

### **AFFORDABLE HOMEOWNERSHIP GUIDELINES**

- Must be a US Citizen or be a legal US Resident (have legal immigration status).
- The Borrower's household income must not exceed 80% of the metropolitan area median income.
- The Borrower must have applied and qualify for and received a traditional (prime or A-rated) fixed-rate first mortgage loan.
- Prior to approval of the assistance, income eligibility will be determined by using the definition of income found at 24 CFR Part 5.609. Household income refers to the annual projected income, from all sources and before taxes and withholding of all adults that will live in the housing unit. Gross income includes, but is not limited to salary, commissions, bonuses, earnings from full or part-time employment, interest, dividends, tips, gains on sale of securities, annuities, pension, royalties, veterans administration compensation, net rental income from all sources, alimony, child support, public assistance, sick pay, social security benefits, income from assets, business activity or investments, unemployment, estate or trust income and miscellaneous income. (Note: Only \$480 of the income from full-time adult students is counted.)
- The income from any of the following assets with a value over \$5,000 will be computed as the greater of 1) actual interest income; and 2) imputed income based on the percentage rate established by HUD from time to time (currently six tenths percent (.06%)):
  - Cash in Checking and Savings Accounts;
  - Certificates of Deposit;
  - Retirement accounts such as IRAs, 401Ks and Deferred Compensation the Borrower has access to;
  - Investment accounts, i.e., securities, stocks/bonds and U.S. Savings Bonds;
  - Life Insurance death benefits.
  - Redemption value of Life Insurance Policies; and/or
  - Rent market value of all interests in real estate minus the current loan amount and cost to sell the property.
- The property must be the primary residence of the Borrower.
- The Borrower must occupy the property within 60 days following the closing.
- The Borrower must contribute a minimum of \$1,000 of his/her/their own funds as down payment on the property.
- The Borrower must have a housing ratio (principal, interest, taxes, mortgage insurance, and homeowner's insurance compared to income) of 30% or less after all assistance has been

applied. Borrowers who have a housing ratio in excess of 30% but no greater than 35% must show mitigating factors in order to qualify for a loan (*e.g.* housing is the only debt).

- The Borrower may have a cosigner that does not occupy the property, however, the cosigner must sign an affidavit attesting that they will not reside at the property.
- First time home buyers must complete homeownership counseling through the Home Stretch counseling program sponsored by the Minnesota Home Ownership Center (telephone 651-659-9336 or online at [www.hocmn.org](http://www.hocmn.org)) or a comparable approved counseling program prior to closing of the loan.

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**EXHIBIT F**

**QUALIFIED BUYER ASSISTANCE PROMISSORY NOTE AND MORTGAGE**

**PROMISSORY NOTE**

\$ \_\_\_\_\_

Richfield, Minnesota

\_\_\_\_\_, \_\_\_\_

FOR VALUE RECEIVED, the undersigned \_\_\_\_\_ (the "Borrower", whether one or more), jointly and severally agree(s) to pay to the order of the HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD (the "Holder" or "HRA"), at 6700 Portland Avenue, Richfield, Minnesota 55423, or at such other place as the Holder, or its assigns, may from time to time designate, the principal sum \_\_\_\_\_ Dollars (\$ \_\_\_\_\_). No interest shall accrue on the unpaid principal balance. The principal balance shall be payable in coin or currency which at the time of payment is legal tender for the payment of public or private debts in the United States of America. This Note evidences a loan, which includes all extensions, renewals, modifications and substitutions (the "Loan").

1. **SECURED BY MORTGAGE.** This Note is secured by a mortgage (the "HRA Mortgage") on certain real property situated in Hennepin County, Minnesota (the "Property"). The Property is the collateral for the repayment of the loan evidenced by this Note. All of the terms, conditions, and agreements of the HRA Mortgage are hereby made a part of this instrument to the same extent and with the same force and effect as if fully set forth herein.
2. **MATURITY DATE; PREPAYMENT.**
  - 2.1. All unpaid principal and all other amounts due under this Note shall be due and payable in full on \_\_\_\_\_, 20\_\_, (the "Maturity Date") or upon the occurrence of an Event of Default (as defined below) unless extended in writing by the Holder.
  - 2.2. Borrower has the option to prepay all or any part of this Note at any time, without penalty.
3. **DEFAULT.**
  - 3.1. Borrower shall be in default upon the occurrence of any of the following events, circumstances or conditions ("Events of Default"):
    - A. Failure by any party obligated on this Note or the HRA Mortgage to make payment when due; or
    - B. A default or breach by Borrower or any co-signer, endorser, surety, or guarantor under any of the terms of this Note or the HRA Mortgage; or
    - C. When Borrower no longer uses the Property as Borrower's principal residence, or leases, sells, transfers, pledges, or conveys (voluntarily or by operation

of law) all or any part of Borrower's interest in the Property. However, the following shall not constitute a default under this subsection:

- i. a transfer of a portion of the Property in or under threat of eminent domain proceedings shall not be considered a sale under this paragraph unless it is a total taking in the sense that payment is made for the full value of the Property;
- ii. transfer of the Property by foreclosure or deed-in-lieu of foreclosure or assignment of the HRA Mortgage to the Secretary of Housing and Urban Development;

or

- D. The dissolution or insolvency of, the appointment of a receiver by or on behalf of, the assignment for the benefit of creditors by or on behalf of, the voluntary or involuntary termination of existence by, or the commencement of any proceeding under any present or future federal or state insolvency, bankruptcy, reorganization, composition or debtor relief law by or against any individual Borrower, or any co-signer, endorser, surety or guarantor of this Note or any other obligations Borrower has with the Holder.

3.2 It is agreed that time is of the essence in performance of this Note and on or after the occurrence of an Event of Default, at the Holder's option, all or any part of the amount owing on this Note shall be immediately due and payable without notice or demand. The Holder may exercise all rights and remedies provided by law, equity, this Note and the HRA Mortgage. By choosing any remedy, the Holder does not waive its right to an immediate use of any other remedy if the Event of Default continues or occurs again. No delay or omission on the part of the Holder in exercising any right hereunder shall operate as a waiver of such right or of any other remedy under this Note. A waiver on any one occasion shall not be construed as a bar to or waiver of any such right or remedy on a future occasion.

#### 4. **BORROWER'S AGREEMENTS.**

4.1. Regarding this Note, to the extent not prohibited by law, Borrower and any other signers:

- A. Waive protest, presentment for payment, demand, notice of acceleration, notice of intent to accelerate and notice of dishonor.
- B. Consent to any renewals and extensions for payment on this Note, regardless of the number of such renewals or extensions.
- C. Consent to the Holder's release of any borrower, endorser, guarantor, surety, accommodation maker or any other co-signer.
- D. Consent to the release, substitution or impairment of any Collateral.

- E. Consent that Borrower is authorized to modify the terms of this Note or any instrument securing, guaranteeing or relating to this Note.
  - F. Consent to any and all sales, repurchases and participations of this Note to any person in any amounts and waive notice of such sales, repurchases or participations of this Note.
- 4.2. Borrower promises to pay to the Holder, in addition to the amount due hereon, the reasonable costs and expenses (including attorney fees) incurred in enforcing or foreclosing this Note, the HRA Mortgage, or any of the related documents executed by Borrower therewith, and all such costs and expenses shall be secured by the HRA Mortgage.

5. **GENERAL PROVISIONS**

- A. **TIME IS OF THE ESSENCE.** Time is of the essence in Borrower's performance of all duties and obligations imposed by this Note.
- B. **NO WAIVER BY HOLDER.** The Holder's course of dealing, or forbearance from, or delay in, the exercise of any of the Holder's rights, remedies, privileges or right to insist upon Borrower's strict performance of any provisions contained in this Note, or other loan documents, shall not be construed as a waiver by the Holder, unless any such waiver is in writing and is signed by the Holder.
- C. **AMENDMENT.** The provisions contained in this Note may not be amended, except through a written amendment that is signed by Borrower and the Holder.
- D. **INTEGRATION CLAUSE.** This written Note and all documents executed concurrently herewith, represent the entire understanding between the parties as to the obligations and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.
- E. **FURTHER ASSURANCES.** Borrower agrees, upon the Holder's request and within the time the Holder specifies, to provide any information, and to execute, acknowledge, deliver and record or file such further instruments or documents as the Holder may require to secure this Note or confirm any lien.
- F. **GOVERNING LAW.** This Note shall be governed by the laws of the State of Minnesota, provided that such laws are not otherwise preempted by federal laws and regulations.
- G. **FORUM AND VENUE.** In the event of litigation pertaining to this Note, the forum, venue and place of jurisdiction shall be the State of Minnesota, unless otherwise designated in writing by the Holder or otherwise required by law.

- H. **SUCCESSORS.** This Note shall inure to the benefit of and bind the heirs, personal representatives, successors and assigns of the parties; provided however, that Borrower may not assign, transfer or delegate any of the rights or obligations under this Note.
  - I. **NUMBER AND GENDER.** Whenever used, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.
  - J. **DEFINITIONS.** The terms used in this Note, if not defined herein, shall have their meanings as defined in the other documents executed contemporaneously or in conjunction with this Note.
  - K. **PARAGRAPH HEADINGS.** The headings at the beginning of any paragraph, or any subparagraph, in this Note are for convenience only and shall not be dispositive in interpreting or construing this Note.
  - L. **IF HELD UNENFORCEABLE.** If any provision of this Note shall be held unenforceable or void, then such provision to the extent not otherwise limited by law shall be severable from the remaining provisions and shall in no way affect the enforceability of the remaining provisions nor the validity of this Note.
  - M. **NOTICE.** All notices under this Note must be in writing. Any notice given by the Holder to Borrower will be effective upon personal delivery or 24 hours after mailing by first class United States mail, postage prepaid, addressed to Borrower at the address indicated on page one of this Note. Such address may be changed by written notice to the other party.
6. **RECEIPT OF COPY.** Borrower acknowledges that Borrower has read and received a copy of this Note by its signature below.

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed as of the day and year first above written.

\_\_\_\_\_  
, Borrower

\_\_\_\_\_  
, Borrower

**EXHIBIT A**

**Legal Description of the Property:**

**Property Identification:**

**Mailing Address:**

**Purchased by            on            .**

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**MORTGAGE (NO INTEREST)  
CDBG HOMEBUYER ASSISTANCE PROGRAM**

(THIS MORTGAGE IS EXEMPT FROM THE PAYMENT OF MORTGAGE REGISTRATION TAX UNDER MINN. STAT. § 287.04(F) IN THAT THE MORTGAGE RELATES TO A LOAN MADE UNDER A LOW AND MODERATE INCOME HOUSING PROGRAM BY A LOCAL GOVERNMENT AGENCY.)

THIS MORTGAGE is made this \_\_\_\_\_ day of \_\_\_\_\_ between the Mortgagor, \_\_\_\_\_ a \_\_\_\_\_ (“Borrower”), and the Mortgagee, HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD (“HRA”), a public body corporate and politic under the laws of the State of Minnesota, whose address is 6700 Portland Avenue, Richfield, Minnesota 55423 (“City”).

WHEREAS, Borrower is indebted to HRA in the principal sum of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_), which indebtedness is evidenced by Borrower's promissory note dated \_\_\_\_\_ (“Note”), a copy of which is attached as Exhibit A, with the balance of indebtedness, if not sooner paid pursuant to the terms of the attached Note, due and payable on \_\_\_\_\_ (the “Maturity Date”). All of the terms, conditions, and agreements of the Promissory Note are hereby made a part of this instrument to the same extent and with the same force and effect as if fully set forth herein.

TO SECURE to HRA the repayment of the indebtedness evidenced by the Note and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby grant and convey to HRA, forever, with power of sale, the real property located in the County of Hennepin, State of Minnesota, legally described on the attached Exhibit B, which has the address \_\_\_\_\_, Richfield, Minnesota (the “Property Address”);

TOGETHER with all the buildings, improvements, fixtures and equipment now or hereafter attached to the property including, but not limited to, all heating, air conditioning, ventilation, plumbing, cooling, electrical and lighting fixtures and equipment, all landscaping, all exterior and interior improvements, all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights, profits, water, water rights, and water stock, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Mortgage, and all of the foregoing, together with said property are herein collectively referred to as the “Property”.

Borrower covenants that Borrower is lawfully seized of the Property and has the right to grant and convey the same; that the Property is free from all encumbrances, except for a first mortgage in favor of \_\_\_\_\_, its successors and assigns; and that the Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to declarations, easements or restrictions of record, if any. Borrower represents that all statements made in any certificate or other statement given by Borrower to obtain the loan secured by this Mortgage are true and correct.

For and in consideration of the terms herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Borrower and HRA covenant and agree as follows:

1. **Payment of Principal.** Borrower shall promptly pay when due the principal and interest of the indebtedness evidenced by the Note.
2. **Charges; Liens.** Borrower shall pay all taxes and assessments now due or that may hereafter become liens against the Property before penalty attaches thereto.
3. **Hazard Insurance.** Borrower shall keep all buildings, improvements and fixtures now or later located on or a part of the Property insured against loss by fire, hazards within the term "extended coverage," vandalism, malicious mischief, and other hazards as the HRA may require and in at least the amount of the replacement cost at all times while any amount remains unpaid under this Mortgage and any prior liens.

Each insurance policy shall contain a loss payable clause in favor of the HRA affording all rights and privileges customarily provided under the so-called standard mortgage clause. In the event of damage to the Property by fire or other casualty, Borrower shall promptly give notice of such damage to HRA and the insurance company. The insurance shall be issued by an insurance company or companies licensed to do business in the State of Minnesota and acceptable to HRA. The insurance policies shall provide for not less than 30 days written notice to HRA before cancellation, non-renewal, termination, or change in coverage, and Borrower shall deliver to HRA a duplicate original or certificate of such insurance policies.

Unless HRA and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration of the property damaged, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, the insurance proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to HRA within 30 days from the date notice is mailed by HRA to Borrower that the insurance carrier offers to settle a claim for insurance benefits, HRA is authorized to collect and apply the insurance proceeds at HRA's option either to restoration or repair of the Property or to the sums secured by this Mortgage. However, this mortgage is subordinate to the first mortgage.

4. **Preservation and Maintenance of Property.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property. If this Mortgage encumbers a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration of covenants creating or governing the condominium or planned unit development, the bylaws and regulations of the condominium or planned unit development, and constituent documents. If a condominium or planned unit development rider is executed by Borrower and recorded together with this Mortgage, the covenants and agreements of such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Mortgage as if the rider were a part hereof.

5. **Protection of HRA Security.** If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects HRA's interest in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then HRA at HRA's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect HRA's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs.

Any amounts disbursed by HRA pursuant to this paragraph, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and HRA agree to other terms of payment, such amounts shall be payable upon notice from HRA to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the highest rate permissible under applicable law. Nothing contained in this paragraph shall require HRA to incur any expense or take any action hereunder.

6. **Inspection.** HRA may make or cause to be made reasonable entries upon and inspections of the Property, provided that HRA shall give Borrower notice prior to any such inspection specifying reasonable cause therefore related to HRA's interest in the Property.

7. **Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to HRA. However, this mortgage is subordinate to the rights of the first mortgage.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, unless Borrower and HRA otherwise agree in writing, the condemnation proceeds shall be applied to the sums secured by this Mortgage in proportion to the ratio that the secured sums bear to the fair market value of the Property immediately before the taking.

8. **Accelerations; Remedies.** Unless the Maturity Date has occurred, upon Borrower's breach of any covenant, representation or agreement of Borrower in this Mortgage or the Note, including the covenants to pay when due any sums secured by this Mortgage, Borrower confers upon the HRA the option of declaring the unpaid balance of the Note, together with all sums advanced hereunder, and the interest accrued thereon, if any, immediately due and payable without notice, and hereby authorizes and empowers HRA to foreclose this Mortgage by judicial proceedings or to sell the Property at public auction and convey the same to the purchaser in fee simple in accordance with the statute, and out of the monies arising from such sale to retain all sums secured hereby, with interest and all legal costs and charges of such foreclosure and the maximum attorney's fee permitted by law, which costs, charges and fees Borrower agrees to pay.

HRA agrees that, if it intends to foreclose, HRA will give Borrower written notice of any default under the terms and conditions of the Note or this Mortgage, by sending the notice to Borrower as provided in paragraph 16 hereof. The notice of default shall contain the following provisions:

- A. the nature of the default by Borrower;
- B. the action required to cure the default;
- C. a date, not less than 30 days from the date the notice is mailed to Borrower, by which such default must be cured;
- D. that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage and sale of the Property;
- E. that Borrower has the right to reinstate this Mortgage after acceleration; and
- F. that Borrower has the right to bring a court action to assert the nonexistence of a default or any other defense of Borrower to acceleration and sale.

9. **Assignment of Rents; Appointment of Receiver.** As additional security hereunder, Borrower hereby assigns to HRA the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 8 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 8 hereof or abandonment of the Property, and at any time prior to the expiration of any period of redemption following sale of the Property, HRA shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents and income from the Property collected by the receiver shall be applied first to the costs of management of the Property and collection of rents, including, but not limited to the receiver's fees, premiums on the receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

10. **Satisfaction/Release.** Upon payment of all sums secured by this Mortgage, HRA shall provide Borrower with a satisfaction/release of Mortgage without charge to Borrower. Borrower shall pay all recording costs.

11. **Subject to First Mortgage.** This Mortgage is subject and subordinate to a first mortgage of even date herewith given by \_\_\_\_\_ to \_\_\_\_\_.

12. **Borrower Not Released.** Extension of the time for payment of the sums secured by this Mortgage granted by HRA shall not operate to release, in any manner, the liability of original Borrower and Borrower's successors in interest.

13. **Forbearance Not a Waiver.** Any forbearance by HRA in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by HRA shall not be a waiver of HRA's right to accelerate the indebtedness secured by this Mortgage.

14. **Remedies Cumulative.** All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

15. **Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of HRA and Borrower. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

16. **Notice.** Except for any notice required under applicable law to be given in another manner, notices shall be given by mailing the notice by certified mail, return receipt requested, to: (a) Borrower at the Property Address or such other address as Borrower may designate by notice to HRA; and (b) HRA at the address stated herein or such other address as HRA may designate by notice to Borrower. Notice is deemed to have been given upon mailing.

17. **Governing Law; Severability.** This Mortgage is governed by Minnesota law. In the event that any provision or clause of this Mortgage or the Note conflicts with Minnesota law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provisions, and to this extent the provisions of the Mortgage and the Note are declared to be severable.

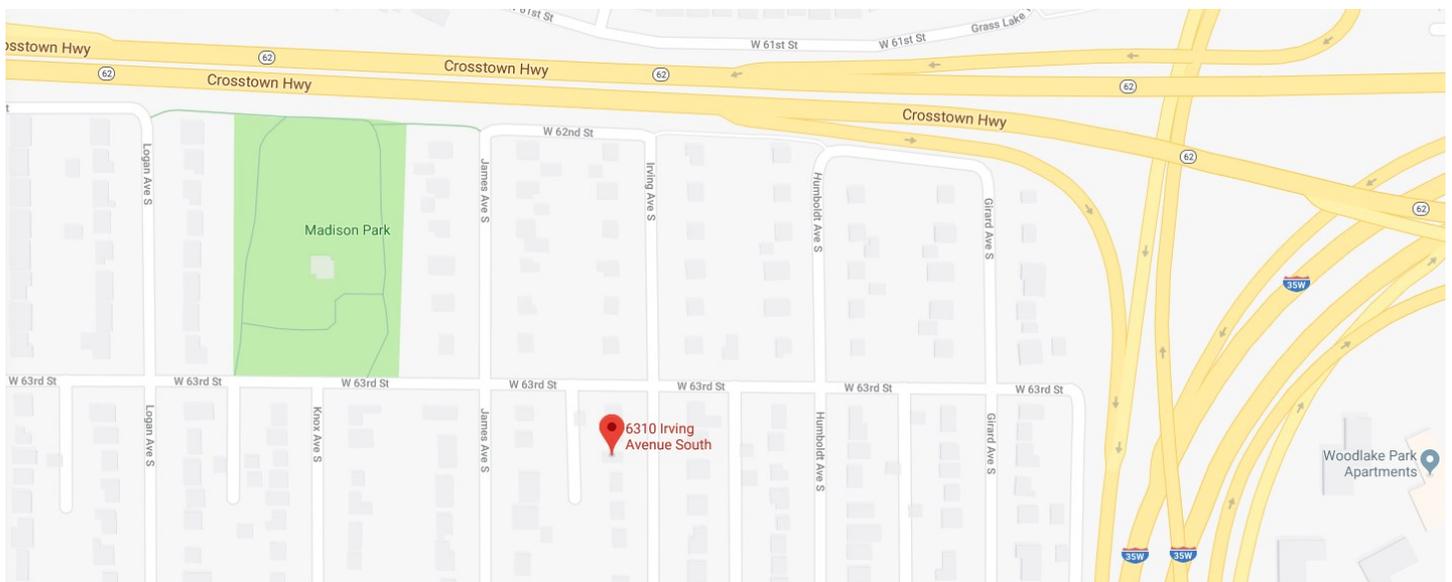
19. **Death of Borrower.** If Borrower dies and leaves the property to his or her heirs, HRA may permit the heirs to live at the property without having to repay the Loan. HRA may do this if HRA believes the heirs do not have money to repay the Loan and if heirs continue to occupy the property as their principal place of residence. HRA may make the heirs sign a new Agreement.

20. **Borrower's Compliance with Federal Regulations.** Borrower agrees to comply with all U.S. Department of Housing and Urban Development regulations that govern the HRA's CDBG Homebuyer Assistance Program, including but not limited to Community Development Block Grant regulations and Lead Based Paint Regulations.



6310 Irving Avenue South, Richfield, MN 55423

Lot size: 40' x 127' (no alley access)



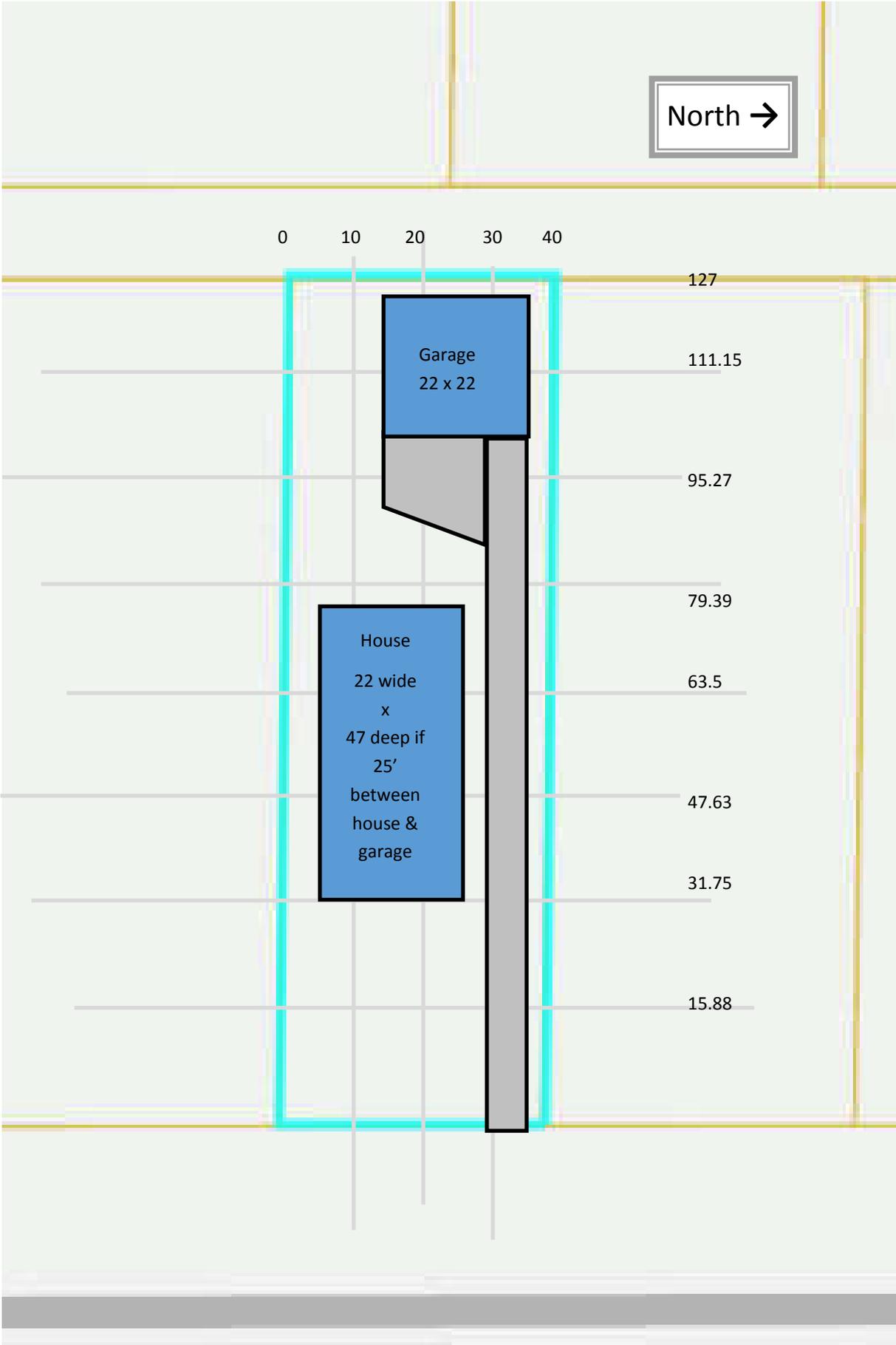
6310 Irving Avenue South, Richfield, MN 55423

Lot size: 40' x 127' (no alley access)



6310 Irving Avenue South, Richfield, MN 55423

Lot size: 40' x 127' (no alley access)





One level home with 1,100 finished square feet, Full basement & 2 car detached garage  
House foot print: 26' wide X 40' deep (Front porch add 12' wide x 8' deep)

Built on a St. Paul lot: 40' x 124'

First floor= 2 bedrooms, full bath, living room, dining room, kitchen, back entry

Basement= 2 egress windows (for future expansion of 2 bedrooms & a family room)

Full basement w/ 2 egress windows for future expansion of 2 bedrooms & family room.

Plus finished full, basement bathroom







**STAFF REPORT NO. 23**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**7/16/2018**

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

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director  
7/11/2018

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich, Executive Director  
7/11/2018

**ITEM FOR COUNCIL CONSIDERATION:**

**Public hearing and consideration of the adoption of a resolution authorizing the sale of 7324 Girard Avenue to Aaron and Ashley Buchanon and the approval of a Contract for Private Development with Aaron and Ashley Buchanon for the construction of a single family home through the Richfield Rediscovered Program.**

**EXECUTIVE SUMMARY:**

Aaron and Ashley Buchanon (Buyers) are current Richfield residents who are applying to purchase the lot at 7324 Girard Avenue from the Housing and Redevelopment Authority (HRA) for the construction of a single family home. The Buyers are working with Beyond Contracting, Inc. to construct the home. The new home will be a two-story home with five bedrooms, four baths, a finished basement and a two-car attached garage. The new home will be approximately 3,000 finished square feet with a minimum end value of \$375,000.

**RECOMMENDED ACTION:**

**Conduct and close the public hearing and by motion:**

- 1. Adopt a resolution authorizing the sale of 7324 Girard Avenue to Aaron and Ashley Buchanon; and**
- 2. Authorize execution of a Contract for Private Development between the Housing and Redevelopment Authority and Aaron and Ashley Buchanon for the redevelopment of 7324 Girard Avenue, contingent upon final Housing and Redevelopment Authority attorney review.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

- The HRA purchased 7324 Girard Avenue in 2018 for \$120,000.
- The existing substandard home was abated in 2018.
- The lot and existing home have been listed for \$60,000.

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

- The proposed project meets the policy objectives of the Richfield Rediscovered Program:
  - Removes substandard, functionally obsolete housing and eliminates its blighting influence;
  - Provides new, higher valued housing; and
  - Alleviates shortage of housing choice for families.

- The project also meets the Housing Design and Site Development Criteria, as defined in the Richfield Rediscovered Guidelines:
  - The height and mass of the house is made compatible with other homes in the neighborhood through the varied roof lines and the presence of a roof eave at the first level.
  - The dominance of the garage door is minimized by the use of windows and panels, the front porch, living area above the garage, and a front setback greater than the neighboring houses.
  - The plan provides a balanced and pleasing distribution of wall, door and window areas from all views.

**C. CRITICAL TIMING ISSUES:**

- The Contract for Private Development (Contract) requires the Buyer to close on the property by October 31, 2018, and to complete construction by June 30, 2019. All Richfield Rediscovered contracts include a provision authorizing staff to grant an extension to these deadlines for a period up to six months.

**D. FINANCIAL IMPACT:**

- The HRA acquired the 50-foot wide property and structure in 2018 for \$120,000.
- The appraised value of the vacant lot is \$65,000.
- A discount to the lot sale price is applied to account for the demolition of the existing home.
- Under the terms of the Contract, \$60,000 will be due at closing.
- Under the terms of the Contract for the property, the contracted minimum market value of the new home will be \$375,000.
- Under the terms of the Contract, the Buyer will also be required to submit a \$10,000 cash escrow.

**E. LEGAL CONSIDERATION:**

- Notice of the public hearing was published in the Sun Current on July 5, 2018.
- Mailed notification is not required on this item; however, a courtesy notice was mailed to residents within 350 feet of the property.
- The HRA Attorney prepared the Contract for Private Development.

**ALTERNATIVE RECOMMENDATION(S):**

- Do not approve the sale of the property and the Contract for Private Development.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

Aaron and Ashley Buchanon, homebuyers Ryan Ferrell, Builder, Beyond Contracting

**ATTACHMENTS:**

Description	Type
▢ Resolution	Resolution Letter
▢ Development Agreement	Contract/Agreement
▢ Site plan and house plan	Backup Material

**HRA RESOLUTION NO.**

**RESOLUTION AUTHORIZING THE SALE OF REAL PROPERTY LOCATED AT  
7324 GIRARD AVENUE TO AARON AND ASHLEY BUCHANON**

**WHEREAS**, the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (HRA) desires to develop certain real property pursuant to and in furtherance of the Richfield Rediscovered Program adopted by the HRA, said real property being described as:

Address: 7324 Girard Avenue

Legal: Lot 7, Block 6, "Irwin Shores" Hennepin County, Minnesota.

**WHEREAS**, the HRA is authorized to sell real property within its area of operation after a public hearing; and

**WHEREAS**, the purchaser of the described property has been identified as Endres Custom Homes, and

**WHEREAS**, a Contract for Private Development has been prepared, and the sale price of 7324 Girard Avenue is \$60,000 with performance security in the amount of \$10,000; and

**WHEREAS**, a public hearing has been held after proper public notice.

**NOW, THEREFORE, BE IT RESOLVED** by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota:

1. A public hearing has been held and 7324 Girard Avenue is authorized to be sold for \$60,000 to Aaron and Ashley Buchanon; and
2. The Chairperson and Executive Director are authorized to execute a Contract for Private Development and other agreements as required to effectuate the sale to the Builder.

Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota this 16th day of July, 2018.

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Mary B. Supple, Chair

**ATTEST:**

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Erin Vrieze Daniels, Secretary

**CONTRACT FOR PRIVATE DEVELOPMENT**

**Between**

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

**and**

**Aaron Buchanon and Ashley Buchanon**

**for property located at**

**7324 Girard Avenue, Richfield MN 55423**

**This Instrument Drafted by:**

**The Housing and Redevelopment Authority  
in and for the City of Richfield  
6700 Portland Avenue South  
Richfield, Minnesota 55423  
Telephone: (612) 861-9760**

## CONTRACT FOR PRIVATE DEVELOPMENT

**THIS AGREEMENT**, made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the Housing and Redevelopment Authority in and for the City of Richfield, a public body corporate and politic under the laws of the State of Minnesota, having its principal office at 6700 Portland Avenue, Richfield, Minnesota (HRA) and Aaron Bachannon and Ashley Buchanon (Buyer).

### WITNESSETH:

**WHEREAS**, the City of Richfield (City) and the HRA have previously created and established a Redevelopment Project (Project) pursuant to the authority granted in Minnesota Statutes, Sections 469.001 through 469.047 (collectively, the Act); and

**WHEREAS**, pursuant to the Act, the City and the HRA have previously adopted a redevelopment plan for the Project (Redevelopment Plan); and

**WHEREAS**, in order to achieve the objectives of the Redevelopment Plan and particularly to make specified land in the Project available for development by private enterprise for and in accordance with the Redevelopment Plan, the HRA has determined to provide substantial aid and assistance to finance development costs in the Project; and

**WHEREAS**, the Buyer has proposed a development as hereinafter defined within the Project which the HRA has determined will promote and carry out the objectives for which the Project has been undertaken, will assist in carrying out the obligations of the Redevelopment Plan, will be in the vital best interests of the City and the health, safety and welfare of its residents and is in accord with the public purposes and provisions of the applicable state and local laws and requirements under which development in the Project has been undertaken and is being assisted.

**NOW, THEREFORE**, in consideration of the mutual covenants and obligation of the HRA and the Buyer, each party does hereby represent, covenant and agree with the other as follows:

### ARTICLE I DEFINITIONS, EXHIBITS, RULES OF INTERPRETATION

**Section 1.1. Definitions.** In this Agreement, the following terms have the meaning given below unless the context clearly requires otherwise:

**Building Plans.** Detailed plans for the Improvements to be constructed on the Property, as required by the local building official for issuance of a building permit.

**City.** The City of Richfield, Minnesota.

**Construction Plans.** The construction plans approved by the HRA pursuant to Section 4.1 of this Agreement. The Construction Plans include a schedule for construction of the Improvements, preliminary plans and schematics of the Improvements to be constructed, and a landscaping plan.

**Development.** The Property and the Improvements to be constructed thereon according to the Construction Plans approved by the HRA.

**Event of Default.** Event of Default has the meaning given such term in Section 8.1.

**Guidelines.** The Richfield Rediscovered Program Guidelines Lot Sale Program, revised April 23, 2013 and attached as Exhibit B to this Agreement.

**Improvements.** Each and all of the structures and site improvements constructed on the Property by the Buyer, as specified in the Construction Plans to be approved by the HRA.

**Minimum Market Value.** \$375,000, which is the minimum market value for the land and Improvements as confirmed by the Hennepin County Assessor.

**Mortgage.** A mortgage obtained by the Buyer from a third party lender in accordance with Section 7.2 of this Agreement.

**Property.** The real property legally described as:

**Lot 7, Block 6, Irwin Shores, Hennepin County, Minnesota**

Located on land having a street address of:

**7324 Girard Avenue, Richfield Minnesota 55423**

**Unavoidable Delays.** Delays which are the direct result of strikes, labor troubles, fire or other casualty to the Improvements, litigation commenced by third parties which results in delays or acts of any federal, state or local government, except those contemplated by this Agreement, which are beyond the control of the Buyer

**Section 1.2. Exhibits.** The following Exhibits are attached to and by reference made a part of this Agreement:

- A. Form of Certificate of Completion
- B. Program Guidelines – Lot Sale Program
- C. Form of Quit Claim Deed
- D. Well Disclosure

**Section 1.3. Rules of Interpretation.**

(a) This Agreement shall be interpreted in accordance with and governed by the laws of the State of Minnesota.

(b) The words “herein” and “hereof” and words of similar import, without reference to any particular section or subdivision refer to this Agreement as a whole rather than any particular section or subdivision hereof.

(c) References herein to any particular section or subdivision hereof are to the section or subdivision of this Agreement as originally executed.

(d) Any titles of the several parts, articles and sections of this Agreement are inserted for convenience and reference only and shall be disregarded in construing or interpreting any of its provisions.

**ARTICLE II  
REPRESENTATIONS AND UNDERTAKINGS**

**Section 2.1. By the Buyer.** The Buyer makes the following representations and undertakings:

(a) The Buyer has the legal authority and power to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement;

(b) The Buyer has the necessary equity capital or has obtained commitments for financing necessary for construction of the Improvements;

(c) The Buyer will construct the Improvements in accordance with the terms of this Agreement and all local, state and federal laws and regulations;

(d) The Buyer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, the requirements of all local, state and federal laws and regulations which must be obtained or met before the Improvements may be constructed;

(e) The plans for the Improvements have been prepared by a qualified draftsman or architect; and

(f) The Buyer has read and understands the Guidelines and agrees to be bound by them.

**Section 2.2. By the HRA.** The HRA makes the following representations as the basis for the undertaking on its part herein contained:

(a) The HRA is authorized by law to enter into this Agreement and to carry out its obligations hereunder; and

(b) The HRA will, in a timely manner, subject to all notification requirements, review and act upon all submittals and applications of the Buyer and will cooperate with the efforts of the Buyer to secure the granting of any permit, license, or other approval required to allow the construction of the Improvements.

### **ARTICLE III ACQUISITION OF PROPERTY; CONVEYANCE TO BUYER**

**Section 3.1. Purchase of Property by Buyer.** The HRA agrees to sell the Property to Buyer and the Buyer agrees to purchase the Property from the HRA in an “as-is” condition. The HRA agrees to convey the Property to the Buyer by Quit Claim Deed in the general form of Exhibit C. The HRA’s deed to the Builder will contain the right of reverter required in Section 8.3. The purchase price for the Property, payable on the Closing Date (as defined in Section 3.7), will be \$60,000 (“Purchase Price”).

**Section 3.2. Title and Examination.** As soon as reasonably possible after execution of this Contract for Private Development by both parties,

(a) HRA shall surrender any abstract of title and a copy of any owner’s title insurance policy for the property, if in HRA’s possession or control, to Buyer or to Buyer’s designated title service provider; and

(b) Buyer shall obtain the title evidence determined necessary or desirable by Buyer or Buyer’s lender, including but not limited to title searches, title examinations, abstracting, a title insurance commitment or an attorney’s title opinion, at Buyer’s selection and cost, and provide a copy to the HRA.

The Buyer shall have 20 days from the date it receives such title evidence to raise any objections to title it may have. Objections not made within such time will be deemed waived. The HRA shall have 90 days from the date of such objection to effect a cure; provided, however, that the HRA shall have no obligation to cure any objections, and may inform Buyer of such. The Buyer may then elect to close notwithstanding the uncured objections or declare this Agreement null and void, and the parties will thereby be released from any further obligation hereunder.

**Section 3.3. Taxes and Special Assessments.** Real estate taxes and installments of special assessments will be prorated between the HRA and Buyer as of the Closing Date.

**Section 3.4. Soil Conditions and Hazardous Wastes.** The Buyer acknowledges that the HRA makes no representations or warranties as to the conditions of the soils on the Property, its fitness for the construction of improvements or any other purpose for which the Buyer may use the Property, or regarding the presence of hazardous wastes on the Property. The HRA will allow reasonable access to the Property for the Buyer to conduct such tests regarding soils

conditions and hazardous wastes as the Buyer may desire. Permission to enter the Property to conduct such tests must be given in writing under reasonable terms and conditions established by the HRA.

**Section 3.5. Site Clearance.** The HRA will be responsible for remediation of all hazardous materials from all buildings as required to prepare the Property for development. All other site preparation and clearance is the responsibility of Buyer. Buyer will comply with all of the provisions of the Guidelines relating to tree protection, preservation and replacement.

**Section 3.6. Other Preconditions to Closing.** Closing may not take place until the HRA is satisfied that the Project is in all respects in full compliance with the provisions of the Guidelines contained in Exhibit B.

**Section 3.7. Closing.** Closing must take place on or before October 31, 2018, (“Closing Date”) or such other date as may be agreed to by the Buyer and HRA in writing. On the Closing Date, the Buyer will provide the HRA with a Letter of Credit [or a cash deposit for the escrow account established] pursuant to Section 5.1, in addition to the Purchase Price.

**Section 3.8. Closing Costs.** The Buyer will pay: (a) all closing fees charged by its title insurance company or other closing agent, if any, utilized to close the transaction for Buyer; (b) title services chosen by Buyer pursuant to Section 3.2 above, including the premium for title insurance policy, if any, and (c) the recording fees for the Contract for Private Development and the deed transferring title to the Buyer. HRA will pay (a) any transfer taxes, and (b) fees and charges related to the filing of any instrument required to make title marketable. Each party shall pay its own attorney fees.

**Section 3.9. Sewer and Water.** HRA warrants that city water is available at the lot line and city sewer is available at the curb.

**Section 3.10. ISTS Disclosure.** HRA is **not** aware of any individual sewage treatment system on the property. Buyer is responsible for all costs of removing any individual sewage treatment system that may be discovered on the Property.

**Section 3.11. Well Disclosure.** HRA’s knowledge of wells on the Property is disclosed in Exhibit D.

**Section 3.12. Methamphetamine Disclosure.** To the best of HRA’s knowledge, methamphetamine production has not occurred on the property.

## **ARTICLE IV DEMOLITION**

**Section 4.1. Demolition.** The Buyer shall demolish the structures on the Property pursuant to the requirements of this Article IV.

**Section 4.2. Local Permit Requirements and Related Submittals.**

(a) The Buyer shall obtain all permits required for demolition 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).

(b) No less than two (2) days prior to commencing demolition, the Buyer shall provide to the City and the HRA a description of proposed dust and noise control measures for the Property.

(c) Upon completion of the demolition, the Buyer shall provide to the City and the HRA: (i) copies of any permits required by government agencies other than the City, such as transport or disposal permits; (b) 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; and (c) copies of all landfill records indicating receipt and acceptance of hazardous wastes by a landfill licensed to accept hazardous wastes.

**Section 4.3. Conditions on the Property During Demolition.**

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

(b) The Buyer shall ensure that the buildings are vacated and use of the property is discontinued prior to commencing demolition.

(c) The Buyer shall provide all labor, materials, equipment, employee training, compliance with all regulations, permits, notifications, licenses and agreement necessary to perform the demolition.

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

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

(f) 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.

(g) The use of explosives and on site burning during demolition are prohibited.

(h) The Buyer shall provide water, electricity, communications and toilet facilities on site as necessary to complete the work.

(i) The Buyer 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 demolition but also emergency vehicles.

(j) The Buyer shall keep fire hydrants and water control valves free from obstruction and accessible for use.

(k) The Buyer shall take all necessary safeguards to prevent damage or injury to neighboring property.

(l) Prior to closing or rerouting existing traffic lanes or sidewalks in any public street easement or right-of-way adjacent to streets, the Buyer shall obtain written permission from the City's 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 Buyer.

(m) The Buyer may conduct demolition 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.

(n) The Buyer shall not crush any materials on-site.

(o) The Buyer 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.

#### **Section 4.4. Demolition.**

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

(b) The Buyer 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.

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

(d) The Buyer 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.

(e) After the Building has been removed from the Property, the Buyer 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.

(f) Immediately upon the removal of the Building from its foundation, the Buyer 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;

(g) The Buyer shall locate demolition equipment throughout the building and remove materials so as to not impose excessive loads to supporting walls, floor or framing.

(h) The Buyer 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.

(i) The Buyer shall break up any concrete slabs-on-grade and remove from the Property.

(j) The Buyer shall demolish footings, foundation walls, tunnels and other below-grade structures and remove from the Property.

(k) After removing all foundation walls and the basement floor slab, as provided above, the Buyer 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.

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

(m) The Buyer may not cut or remove a tree from the Property without prior permission from the HRA. If any trees are cut or destroyed by the Buyer without prior approval, Contract will pay to the HRA damages of \$200 per tree. Any such damages shall be deducted from the Buyer'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.

- (n) The Buyer shall provide a certificate of well abandonment if required.

**Section 4.5. Debris and Disposal.**

- (a) The Buyer shall maintain the Property free of extraneous debris.
- (b) The Buyer shall prohibit overloading of trucks to prevent spillage on access and haul routes.
- (c) The Buyer shall maintain a sweeping and clean-up program to prevent deposition, release and disbursement of soils and debris onto paved surfaces.
- (d) The Buyer shall move from the Property all debris, rubbish and other materials resulting from demolition operations.
- (e) The Buyer shall transport materials from the Property and legally dispose of them off-site in accordance with governing regulations.

**ARTICLE V  
CONSTRUCTION OF IMPROVEMENTS**

**Section 5.1. Construction of Improvements.** The Buyer shall construct the Improvements on the Property in accordance with the Guidelines and the Construction Plans, shall cause the Improvements to meet or exceed the Minimum Market Value specified in Section 1.1, and shall maintain, preserve and keep the Improvements in good repair and condition. The Buyer shall provide his or her proposed construction plans to the HRA for review; if the proposed construction plans are in conformity with this Agreement and the Guidelines, the HRA will approve the Construction Plans.

**Section 5.2. Construction Plans.** No building permit will be issued by the City unless the Building Plans are in conformity with the Guidelines, the Construction Plans, the Buyer's Minimum Market Value, other requirements contained in this Agreement, and all local, state and federal regulations. The Buyer shall provide the HRA with a set of Building Plans to be used in connection with any application for a building permit. The HRA shall, within 25 days of receipt of the Building Plans review the same to determine whether the foregoing requirements have been met. If the HRA determines such Building Plans to be deficient, it shall notify the Buyer in writing stating the deficiencies and the steps necessary for correction. Issuance of the building permit by the City shall be a conclusive determination that the Building Plans have been approved and shall satisfy the provisions of this Section 4.2.

**Section 5.3. Schedule of Construction.** Subject to Unavoidable Delays, construction of the Improvements shall be completed prior to June 30, 2019 (“Construction Completion Date”). All construction shall be in conformity with the approved Construction Plans and the Guidelines. Periodically during construction the Buyer shall make reports in such detail as may reasonably be requested by the HRA concerning the actual progress of construction. If at any time prior to completion of construction the HRA has cause to believe that the Buyer will be unable to complete construction of the Improvements in the time permitted by this Section 4.3, it may notify the Buyer and demand assurances from the Buyer regarding the Buyer’s construction schedule. If such assurances are not forthcoming or are deemed by the HRA at its sole discretion to be inadequate, the HRA may declare an Event of Default and may avail itself of any of the remedies specified in Section 8.2 of this Agreement.

**Section 5.4. Certificate of Completion.** After notification by the Buyer of completion of construction of the Improvements, the HRA shall inspect the construction to determine whether the Improvements have been completed in accordance with the Construction Plans and the terms of this Agreement, including the date of the completion thereof. In the event that the HRA is satisfied with the construction, the HRA shall furnish the Buyer with a Certificate of Completion in the form attached hereto as Exhibit A. Such certification by the HRA shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement. Issuance of the Certificate of Completion shall also serve as a satisfaction of any obligation of Buyer secured by the escrow account established under Section 5.1, and the cash in the escrow account will be released to the Buyer. At the time a Certificate of Completion is issued, the HRA will also provide Buyer with a \$5,000 cash rebate if Buyer has obtained certification from an approved green construction certification organization. Green Community Concepts certification through LEED for Homes, Minnesota GreenStar, Minnesota Green Communities or Minnesota Green Path.

If the HRA shall refuse or fail to provide certification in accordance with the provisions of this Section 4.4, the HRA shall within 15 days of such notification provide the Buyer with a written statement, indicating in adequate detail in what respects the Buyer has failed to complete the Improvements in accordance with the provisions of this Agreement necessary, in the opinion of the HRA, for the Buyer to take or perform in order to obtain such certification.

**Section 5.5. Failure to Construct.** In the event that construction of the Improvements is not completed as provided in Section 4.3 of this Agreement, an Event of Default shall be deemed to have occurred, and the HRA may proceed with its remedies under Section 8.2.

## **ARTICLE VI REDEVELOPMENT ASSISTANCE**

**Section 6.1. Establishment of Cash Escrow.** Buyer acknowledges that although it is purchasing the Property at its fair market value as raw land, the HRA has incurred significant costs in acquiring and preparing the Property for development by Buyer. On the Closing Date, Buyer will deliver to the HRA \$10,000 to be placed in a non-interest bearing escrow account

pursuant to the Escrow Agreement, dated as of the date hereof, between Buyer and HRA. The obligation to pay the \$10,000 to the HRA will be forgiven, and the cash in the escrow account will be returned to Buyer if: (i) the Buyer receives a Certificate of Completion; and (ii) the Buyer is not otherwise in default of any of its obligations hereunder. If such have not occurred, an Event of Default shall be deemed to have occurred and the HRA may exercise its remedies under Section 8.2. In certain circumstances, after construction is complete, the Builder or Buyer may be required to deposit another cash escrow with the planning department of the City for incomplete improvements. In these cases, following the HRA's release of the cash escrow, the cash escrow will be transferred to the City's planning department for such purpose. The terms of the escrow will be set forth in an Escrow Agreement between the HRA and the Builder or Buyer.

## **ARTICLE VII FINANCING**

**Section 7.1. Financing.** HRA acknowledges that Buyer has submitted evidence of financing for the Improvements in compliance with the provisions of Section 2.1(b) of this Agreement. Buyer must notify HRA immediately of any changes to or withdrawal of the approved financing. HRA shall have 10 days to approve or disapprove changes in financing. If the HRA rejects a change in the approved financing or if the approved financing is withdrawn, the Buyer shall have 30 days or such additional period of time as the Buyer may reasonably require from the date of the HRA's notification to submit evidence of financing satisfactory to the HRA. If the Buyer fails to submit such evidence or fails to use due diligence in pursuing financing, the HRA may terminate this Agreement and both parties shall be released from any further obligation or liability hereunder. Closing shall not take place until Buyer has provided HRA with acceptable evidence of financing for construction of the Improvements.

**Section 7.2. Copy of Notice of Default to Lender.** Whenever the HRA shall deliver any notice or demand to the Buyer with respect to any Event of Default by the Buyer in its obligations or covenants under this Agreement, the HRA shall at the same time forward a copy of such notice or demand to each holder of any Mortgage authorized by the Agreement at the last address of such holder shown in the records of the HRA.

**Section 7.3. Subordination.** In order to facilitate obtaining financing for the construction of the Improvements by the Buyer, the HRA may, in its sole and exclusive discretion, agree to modify this Agreement in the manner and to the extent the HRA deems reasonable, upon request by the financial institution and the Buyer.

**ARTICLE VIII  
PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER**

**Section 8.1. Representation as to Redevelopment.** The Buyer represents and agrees that its undertakings pursuant to the Agreement, are for the purpose of development of the Property and not for speculation in land holding. The Buyer further recognizes that, in view of the importance of the Development to the general welfare of Richfield and the substantial financing and other public aids that have been made available by the HRA for the purpose of making the Development possible, the qualification and identity of the Buyer are of particular concern to the HRA. The Buyer further recognizes that it is because of such qualifications and identity that the HRA is entering into this Agreement, and, in so doing, is further willing to rely on the representations and undertakings of the Buyer for the faithful performance of all undertakings and covenants agreed by the Buyer to be performed.

**Section 8.2. Prohibition Against Transfer of Property and Assignment of Agreement.** For the reasons set out in Section 7.1 of this Agreement, the Buyer represents and agrees as follows:

(a) Except as specifically allowed by this section, Buyer has not made or created, and, prior to the issuance of the Certificate of Completion, Buyer will not make or create, or suffer to be made or created, any total or partial sale, assignment, conveyance, or any trust in respect to this Agreement or the Property or any part thereof or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of the HRA.

(b) This provision does not prohibit conveyances that are only by way of security for, and only for the purpose of obtaining financing necessary to enable the Buyer or any successor in interest to the Property, or any part thereof, to perform its obligations with respect to the Development under this Agreement, and any other purpose authorized by this Agreement. Any Mortgage obtained by the Buyer must be disclosed to the HRA, and must be subordinate to this Agreement. The Buyer must provide the HRA with an address for the holder of the Mortgage for purposes of providing notices as may be required by this Agreement.

**ARTICLE IX  
EVENTS OF DEFAULT**

**Section 9.1. Events of Default Defined.** The following shall be deemed Events of Default under this Agreement and the term shall mean, whenever it is used in this Agreement, unless the context otherwise provides, any one or more of the following events:

(a) Failure by the Buyer to pay when due the payments required to be paid or secured under any provision of this Agreement;

(b) Failure by the Buyer to observe and substantially perform any covenant, condition, obligation or agreement on its part to be observed or performed hereunder, including the time for such performance;

(c) If the Buyer shall admit in writing its inability to pay its debts generally as they become due, or shall file a petition in bankruptcy, or shall make an assignment for the benefit of its creditors, or shall consent to the appointment of a receiver of itself or of the whole or any substantial part of the Property;

(d) If the Buyer, on a petition in bankruptcy filed against it, be adjudicated as bankrupt, or a court of competent jurisdiction shall enter an order or decree appointing, without the consent of the Buyer, a receiver of the Buyer or of the whole or substantially all of its property, or approve a petition filed against the Buyer seeking reorganization or arrangement of the Buyer under the federal bankruptcy laws, and such adjudication, order or decree shall not be vacated or set aside or stayed within 60 days from the date of entry thereof; or

(e) If the Development is in default under any Mortgage and has not entered into a work-out agreement with the holder of the Mortgage.

**Section 9.2. Remedies on Default.** Whenever any Event of Default occurs, the HRA may, in addition to any other remedies or rights given the HRA under this Agreement, take any one or more of the following actions following written notice by the HRA to the Buyer as provided in Section 9.3 of this Agreement:

(a) Suspend its performance under this Agreement until it receives assurances from the Buyer, deemed reasonably adequate by the HRA, that the Buyer will cure its default and continue its performance under this Agreement;

(b) Cancel or rescind this Agreement;

(c) Exercise its right under Section 8.3;

(d) Withdraw all funds in the escrow account established in Section 5.1;

(e) Withhold the Certificate of Completion; or

(f) Take whatever action at law or in equity may appear necessary or desirable to the HRA to enforce performance and observance of any obligation, agreement, or covenant of the Buyer under this Agreement; provided, however, that any exercise by the HRA of its rights or remedies hereunder shall always be subject to and limited by, and shall not defeat, render invalid or limit in any way (a) the lien of any Mortgage authorized by this Agreement and (b) any rights or interest provided in this Agreement for the protection of the holders of a Mortgage; and provided further that should any holder of a Mortgage succeed by foreclosure of the Mortgage or deed in lieu thereof to the Buyer's interest in the Property, it shall, notwithstanding the foregoing,

be obligated to perform the obligations of the Buyer under this Agreement to the extent that the same have not therefore been performed by the Buyer.

**Section 9.3. Revesting Interest in HRA Upon Happening of Event of Default Subsequent to Conveyance of Property to Buyer.** In the event that subsequent to the closing or the sale of the Property to the Buyer and prior to the issuance of the Certificate of Completion:

(a) The Buyer fails to begin construction of the Improvements in conformity with this Agreement, and such failure is not due to Unavoidable Delays;

(b) The Buyer, after commencement of the construction of the Improvements, defaults in or violates obligations with respect to the construction of the Improvements, including the nature and the date for the completion thereof, or abandons or substantially suspends construction work, and such act or actions is not due to Unavoidable Delays;

(c) The Buyer or successor in interest fails to pay real estate taxes or assessments on the Property or any part thereof when due, or places thereon any encumbrance or lien unauthorized by this Agreement, or suffers any levy or attachment to be made, or any supplier's or mechanic's lien, or any other unauthorized encumbrance or lien to attach;

(d) There is, in violation of Article VII of this Agreement, any transfer of the Property or any part thereof; or

(e) The Buyer fails to comply with any of its covenants under this Agreement,

then the HRA shall have the right upon 30 days' written notice to Buyer and the Buyer's failure to cure within such 30 days period, to re-enter and take possession of the Property and to terminate and revest in the HRA the interest of the Buyer in the Property; provided, however, that such revestiture of title shall be subject to the lien of any prior encumbrance permitted under this Agreement

**Section 9.4. No Remedy Exclusive.** No remedy herein conferred upon or reserved to the HRA 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 HRA or the Buyer to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article VIII.

**Section 9.5. No Additional Waiver Implied by One Waiver.** In the event of the occurrence of any Event of Default by either party, which Event of Default is thereafter waived by the other party, such waiver shall be limited to the particular Event of Default so waived and shall not be deemed to waive any other concurrent, previous or subsequent Event of Default.

**ARTICLE X  
ADDITIONAL PROVISIONS**

**Section 10.1. Conflict of Interests; Representatives Not Individually Liable.** No HRA officer who is authorized to take part in any manner in making this Agreement in his or her official capacity shall voluntarily have a personal financial interest in this Agreement or benefit financially there from. No member, official, or employee of the HRA shall be personally liable to the Buyer, or any successor in interest, for any Event of Default by the HRA or for any amount which may become due to the Buyer or successor or on any obligations under the terms of this Agreement.

**Section 10.2. Non-Discrimination.** The provisions of Minnesota Statutes Section 181.59, which relate to civil rights and non-discrimination, and any affirmative action program of the City shall be considered a part of this Agreement and binding on the Buyer as though fully set forth herein.

**Section 10.3. Notices and Demands.** Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is sent by mail, postage prepared, return receipt requested or delivered personally:

(a) As to the HRA:

Richfield HRA  
Executive Director  
6700 Portland Avenue South  
Richfield, MN 55423

(b) As to the Buyer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 9.3.

**Section 10.4. Counterparts.** This Agreement may be simultaneously executed in any number of counterparts, all of which shall constitute one and the same instrument.

**Section 10.5. Extensions.** Any extension to the Closing Date and/or extension to Construction Completion Date that exceeds 6 months from the date agreed to in Section 3.7 and 4.3, respectively, must be approved by the HRA Board. HRA staff is authorized to extend the Closing Date to a date less than 6 months from the Closing Date agreed to in Section 3.7 and extend the

Construction Completion Date to a date less than 6 months from the Construction Completion Date agreed to in Section 4.3.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed as of the day and year first above written.

[signature pages follow]

**Signature Page for HRA**

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

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

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the Chairperson of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the authority.

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of Minnesota, on behalf of the authority.

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





**EXHIBIT B**  
**PROGRAM GUIDELINES – LOT SALE PROGRAM**

**RICHFIELD REDISCOVERED**  
**PROGRAM GUIDELINES**  
**LOT SALE PROGRAM**

**REVISED: April 23, 2013**

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This document has been developed as a guidance tool for program administration. It should not be interpreted as constituting any contractual agreement or liability by the City or Housing and Redevelopment Authority (HRA). The HRA may modify or divert from the guidelines where it deems appropriate.

## I. Program Objectives

1. To remove substandard, functionally obsolete housing on scattered sites throughout the City and replace with new, higher-valued housing.
2. To eliminate the blighting influence of substandard housing, thus improving residential neighborhoods.
3. To alleviate the shortage of housing choices for families.
4. To facilitate the construction of larger three- to four-bedroom, owner-occupied homes designed for families.
5. To facilitate the construction of multi-unit, owner-occupied homes designed to expand family opportunities or to serve elderly residents.

These objectives will be achieved through the sale of lots by the Housing and Redevelopment Authority to Builder/Buyer teams for the development of newly constructed homes.

## II. Definitions

*Applicant:* An individual who submits an application for a Richfield Rediscovered lot. The Applicant may be a Builder or the end Buyer. If the Applicant is a Builder, an end Buyer should be identified. If the Applicant is the Buyer, the Applicant must submit a signed contract between the Builder and the Buyer to build a home on the lot identified in the application.

*Buyer:* An individual(s) who will build, own and occupy a new housing unit in Richfield.

The Buyer will occupy the property and not offer it for rent. The Buyer may not also function as the Builder on a Richfield Rediscovered project. The Buyer and Builder must be unrelated separate legal entities. A speculative project by a Buyer may be considered if all other program requirements can be met. However, neither the Buyer, the Buyer's Builder or Builder's subcontractors, or the Builder's realty agents may occupy or purchase the property.

Buyers, unless licensed in the trade specified, may not put any sweat equity into the construction of the foundation, wall/roof framing, shingling, exterior work, electrical/plumbing/HVAC systems or interior carpentry.

*Builder:* the Builder who has signed a contract with the Buyer to build a home on the lot identified in the application.

*Contract for Private Development:* A contract between the HRA and the Builder or Buyer that establishes the conditions under which the lot will be sold and the proposed house will be developed.

*Green Community Concepts Plan:* A written plan indicating how the proposed development will incorporate green building features and concepts. Priority will be given to projects that incorporate green building features.

*HRA:* Housing and Redevelopment Authority in and for the City of Richfield.

*Lot List:* A listing of available lots for sale. Information regarding the lot location, size and sale price is provided.

## III. Program Basics

1. HRA publishes a list of available vacant lots for purchase including sale price and development criteria.
2. Builder/Buyer team proposes a plan for a lot consistent with development criteria and program requirements and makes an offer to purchase.
3. HRA approves lot sale.
4. Lot is sold to Builder or Buyer.
5. Builder constructs new home.
6. Projects must be completed within one year of HRA approval of the project.

## IV. Application Requirements

The following must be submitted for application to the program:

1. \$525 application fee  
An application fee must be paid at the time of application. This fee is non-refundable and is not part of the lot price.
2. Application Form
3. Blueprints  
The layout of all levels, including basement and unfinished space, must be provided.
4. Elevations  
Elevations of all four sides of the house, including view of garage shall be provided. Colored renderings may also be required.
5. Site plan  
The site plan shall indicate the location of the new house, walkways and garage.
6. Landscaping plan  
A landscaping plan must indicate the location and type of trees, shrubbery, flowers and landscaping materials (e.g. rocks, mulch) and any existing trees to be preserved.
7. Detail of construction materials to be used on the project.
8. Green Community Concepts Plan  
The plan should indicate what Green Community Concepts will be incorporated into the project.
9. Construction timeline  
Construction must be completed with one year of the purchase of the property.
10. Signed contract with Builder
11. Purchase agreement  
If the Builder plans to purchase the lot, the application must include a valid purchase agreement between the Buyer and the Builder for the lot to be developed.
12. Financial capability statement  
A statement from a financial institution indicating willingness to provide sufficient construction capital to complete the project must be provided.
13. Builder References
  - a. Five previous customers
  - b. Three major suppliers, one being the construction supplier
  - c. Building inspectors from two cities where the Builder has constructed new housing within the past three years
14. Proof of Builder's Comprehensive General Liability with Property Damage Protection.
15. Proof of sufficient worker's compensation insurance coverage by the Builder.
16. Written warranty program  
To be provided to the Buyer, which guarantees at a minimum, warranted repairs as required by Minnesota State Statute.

## **V. Additional Program Requirements**

1. The Applicant is expected to meet with an architectural/design consultant prior to submitting an application. A two-hour consultation is available through the HRA at a cost of \$25 to the applicant. See the City's website ([www.cityofrichfield.org](http://www.cityofrichfield.org)) for more information. This requirement may be waived if the applicant is using an architect for the project.
2. The site will be sold to the Builder or Buyer at the fair market value as appears on the Lot List. The HRA will not accept offers for less than the established sale price.
3. A Contract for Private Development is signed by the HRA and the Builder or the Buyer. The Contract is a standard form which includes conditions for acquisition and development of the property. The Contract will also establish a minimum required end-value for the property based on construction estimates provided by the applicant. The Builder or Buyer will be expected to agree to the terms of the Contract before the application can be scheduled on the HRA agenda.
4. All lots will have a required minimum end value that will be established in the Contract for Private Redevelopment.
5. The lot can be sold to either the Builder or the Buyer. If the lot is sold to the Builder, the Builder will pay cash for the lot at closing and submit a Letter of Credit or cash escrow for \$10,000. The Letter of Credit must be from a financial institution incorporated in the Twin Cities metropolitan area. The cash escrow will be held in a non-interest bearing account. The Letter of Credit or cash escrow will be released once the construction and landscape work are completed and a final Certificate of Occupancy is issued.
6. If the lot is sold to the Builder and the Builder fails to complete construction as approved by the HRA, the Letter of Credit or cash escrow may be drawn upon by the HRA. In addition, the Contract for Private Development will contain a reverter provision, which will enable the HRA to reclaim ownership of the property in the event of a default in the Contract. In the event that the Builder fails to complete construction, the HRA may exercise its rights under the reverter provision, as well as draw upon the Letter of Credit or cash escrow.
7. If the lot is sold to the Buyer, the Buyer will pay cash for the lot at closing and a \$10,000 mortgage in favor of the HRA will be filed on the property. The mortgage will be in first position. The HRA may consider subordinating its interest in appropriate cases.
8. If the lot is sold to the Buyer and the Buyer fails to complete construction as approved by the HRA, the HRA may exercise its rights provided in the mortgage.

## **VI. House Design and Site Development Requirements**

The development of all sites shall meet the development criteria listed below, as reviewed and approved by the HRA. To maximize the development of a given lot, the HRA reserves the right to explore all development options without obligating the HRA to support any specific proposal, idea or solicitation.

Housing design is a critical element of the program. Siding materials, exterior façade presentation, roof, window, siding and building line variability, finished landscape, interior space function and use are all important issues of design to the HRA. The design requirements were created to ensure that the homes built on the HRA-sold lots blend in with the surrounding neighborhood and respond to the specific concerns of the HRA.

All new houses built under the Richfield Rediscovered Program must meet the requirements of the City's Zoning Code and additional criteria, as listed in this document.

### **A. New House Standards**

1. New dwelling must be owner-occupied.
2. Three finished bedrooms are required.
3. Two finished bathrooms are required.
4. Two-car garage is required.
5. A full basement is required, unless the selected design results in a split-level or a garden-level type of basement. In the case of an “accessible” house, a basement may be omitted if it would otherwise prohibit accessible design elements.

## ***B. Site Standards***

1. After construction, the site must be fully landscaped, including plantings around the foundation. The entire grounds shall be landscaped and be aesthetically pleasing in all seasons. Land forms and plant materials shall be used to define the site and blend neatly with adjoining properties. Specific lot line blending requirements may be required, as appropriate, for specific sites.

At a minimum, the applicant must meet the “Landscaping and Screening Requirements” in the City’s Zoning Code under Section 544.03, Subd. 4, General landscaping requirements and Subd. 5, Residential sites. The code is available on the City’s website: <http://www.ci.richfield.mn.us>

To the greatest extent possible, existing trees should be preserved. Any trees removed must be replaced (they do not have to be the same species or in the same location) and should be labeled on the required landscape plan.

2. Utility meters shall be screened from street view and locations must be specified on plans.
3. Site drainage should be accommodated on the site so that water is directed away from the new home and the neighboring properties. Neighboring properties must not be disturbed by the creation of drainage swales. Specific storm water management requirements may be required, as appropriate, including the addition of gutters or on-site management for specific sites. Construction and the finished structure must not have a detrimental impact on storm water drainage patterns in the neighborhood.
4. All air conditioning units must be located in the rear yard of the house, or as approved by the HRA.

## ***C. Construction Requirements***

1. Existing trees identified on the landscape plan as being preserved, must be protected during construction. A tree wrap with board reinforcements shall be used on trees directly adjacent to active grading and construction areas. Damaged or destroyed trees must be replaced.
2. The construction site, neighboring properties and adjacent public streets shall be kept free of construction debris at all times.
3. No construction workers, construction equipment or construction material shall encroach upon neighboring properties.
4. The property shall have a new sanitary service line installed to the City sanitary sewer main consisting of schedule 40 PVC or equivalent. If there is an existing 6" sewer stub at the property line, it must be lined with 4" schedule 40 PVC or equivalent to the City’s sanitary main, and it must include a "donut" at the end with cement.

The line must be televised after installation to ensure the following:

1. There are no obstructions in the line.
2. The PVC liner is not protruding into the City’s sanitary sewer main line.

## **D. General Standards**

1. The value of the new home must meet or exceed the minimum value specified in the Contract for Private Redevelopment.
2. All homes in the Richfield Rediscovered Program must be stick-built or high-quality modular, new construction.
3. Exterior materials (siding, soffit, doors and windows) should be low-maintenance and durable. Brick, aluminum, vinyl and fiber cement siding are preferred. Natural cedar lap is acceptable if properly stained or painted. Hardboard panels or hardboard lap siding are prohibited. Roof valleys must have metal valleys and not be woven.
4. Unit height and mass of the new house shall be compatible with the scale of the surrounding homes in the neighborhood.
5. Plans must present a balanced and pleasing distribution of wall, door and window areas from all views.
6. The dominance of the garage door must be minimized through placement, architectural detail, door design and utilization and design of windows. Garages, where the garage door faces the street, shall not be located closer to the front lot line than the foremost facade of the principal building facing the front property line. Garage sidewalls that face the street should appear to contain habitable space. This can be accomplished by incorporating windows and other design elements into the garage wall that are in character with the remainder of the dwelling. For lots that have alley access, the garage should be oriented to access the alley.
7. All building plans must have been prepared in consultation with an architect or qualified draftsman. All requirements by the Building Inspections Division must be met.
8. All Richfield Rediscovered houses must meet or exceed Minnesota Energy Code requirements.
9. All new homes shall be built to provide high quality sound insulation. Recommendations for sound insulation measures may be provided on a site-by-site basis. All construction must conform to current sound attenuation building standards for properties located within the 1996 65+ and/or 2007 63-64 DNL contours. In cases where sound attenuation standards are required and an increase in costs can be documented, the HRA may consider a reduction in the price of the lot in an amount equal to 75 percent of the cost of sound attenuation measures up to a maximum of \$7,500.
9. If a variance is required to construct the proposed development, the HRA may, at its sole discretion, choose to reject the application.
10. If the HRA accepts an application that needs a variance(s), sale of the property will be contingent upon the applicant obtaining the necessary variance(s). The Applicant is responsible for applying for the variance(s) at its own expense. The HRA, as owner of the property, will, however, cooperate with the application.

## **E. Green Community Concepts**

Priority will be given to projects incorporating the green community concepts listed below. Any concepts the applicant would like considered during the application process should be explained in a written plan submitted with the application. A \$5,000 rebate will be provided to the Applicant for projects that obtain certification through LEED for Homes, Minnesota GreenStar or Minnesota Green Communities.

1. *Protect and conserve water and soil.* To reduce water consumption, consider the use of water-conserving appliances, fixtures, and landscaping. Steps should be taken to minimize the loss of soil and sediment during construction and occupancy to reduce storm-water sediment and air pollution.

2. *Minimize energy consumption.* Reduce energy consumption by taking advantage of natural heating, cooling and day lighting, and by using energy-efficient appliances, equipment and lighting.
3. *Enhance indoor environmental quality.* Use non-toxic materials, ventilation and exhaust systems, and moisture control products and systems.
4. *Use environmentally-preferable materials and resources.* Use locally-produced, salvaged and/or manufactured materials, products with recycled content or from renewable sources, recyclable or reusable materials, and low-VOC-emitting materials.
5. *Reduce waste.* Reduce and manage wastes generated during the construction process and operation of buildings. If demolition occurs, sort and recycle leftover materials and debris.

## **VII. City Review Procedure**

1. Applicant reviews proposed project with HRA staff before plans are finalized.
2. Applicant submits application, plans, and application fee at least 45 days prior to the HRA meeting.
3. An application is considered to be received when delivered personally to HRA staff in a pre-arranged meeting. Following this meeting and upon receipt of the application fee, the lot will be considered reserved and no additional applications will be accepted for the proposed lot while the application is under review.
4. If an application is determined to be incomplete, the applicant will have 30 days to submit a complete application. If a complete application is not received within 30 days, the application will be rejected and the lot will be made available for new applications.
5. HRA staff review application to ensure conformance with House Design and Site Development Requirements.
6. HRA staff may reject or accept an application at its sole discretion.
7. The Builder or Buyer executes a Contract for Private Redevelopment.
8. An application is determined to be complete and the Contract executed at least three weeks prior to the HRA meeting.
9. HRA staff publishes a legal notice of the public hearing and prepares a report and recommendation for the HRA.
10. HRA reviews application, conducts a public hearing, and takes action at the HRA meeting.
11. If approved, the Contract for Private Redevelopment is executed by the HRA.

## **VIII. Lot Sale to Builder or Buyer**

1. Upon approval of the application by the HRA, a closing will be scheduled between the HRA and the Builder or Buyer.
2. The HRA will prepare all statements, affidavits, documents, and general release forms required for closing.
3. The Builder applies for a building permit prior to closing. The Builder is responsible for acquiring the necessary building permits with the City of Richfield Building Inspections Division. If changes to the plans are required by the Inspections Division, the applicant must notify HRA staff.

4. The Applicant provides evidence to HRA staff that all requirements to proceed with construction, as determined in the Contract for Private Redevelopment, have been met.
5. The HRA conveys the property to the Builder or Buyer by Quit Claim Deed. The site will be sold to the Builder or Buyer at the fair market value as appears on the Lot List.
6. At closing with the Builder, the Builder provides a Letter of Credit or cash escrow for \$10,000 to the HRA.
7. At closing with the Buyer, the Buyer signs a mortgage and promissory note for \$10,000 in favor of the HRA.
8. Upon completion of the project, the Letter of Credit or cash escrow is released to the Builder or the Buyer's mortgage is released. A Certificate of Completion is executed by the HRA, releasing the obligations of the Contract for Private Redevelopment.

## **IX. Program Marketing**

Richfield Rediscovered program marketing is entirely at the discretion of the HRA. It may include the following:

1. *Buyer Solicitation.* The HRA may market the program to potential Buyers through promotional articles, direct mail, the Internet, or other methods as deemed appropriate. Buyers may be any financially capable individual or household, including first-time buyers, move-up buyers or empty-nesters.
2. *Public Promotion.*
  - a. The HRA will periodically provide information about the program through articles in city publications, on the City's web site, on the Community Cable channel, or via press releases to promote community awareness.
  - b. A public open house may be held to provide an opportunity for residents and other interested parties to collectively view the finished homes. The Parade of Homes Fall Showcase and Spring Preview may also accomplish this.

A program information package will be mailed to all interested participants. The information packet may include the following:

1. Lot List
2. Richfield Rediscovered Lot Sale Procedural Guidelines
3. Application Form
4. Sample Contract for Private Redevelopment

## **X. Data Privacy**

All information secured through the program is subject to the Data Privacy Act.

**EXHIBIT C**

**QUIT CLAIM DEED**

**Deed Tax Due:** \$ \_\_\_\_\_

**ECRV** \_\_\_\_\_

Date: \_\_\_\_\_

FOR VALUABLE CONSIDERATION, Housing and Redevelopment Authority in and for the City of Richfield, a public body corporate and politic under the laws of the State of Minnesota, Grantor, hereby conveys and quit claims to \_\_\_\_\_, a \_\_\_\_\_ under the laws of the State of \_\_\_\_\_, Grantee, real property in Hennepin County, Minnesota, described as follows:

, according to the map or plat thereof on file or of record in the office of the Hennepin County Recorder.

This deed is subject to that certain Contract for Private Development between Grantor and Grantee, dated \_\_\_\_\_, 20\_\_ (the "Contract"), recorded in the office of the Hennepin County **Recorder/Registrar of Titles**. The Contract provides that the Grantee's rights and interest in the real property described above are subject to the Grantor's right to re-enter and revest in Grantor title to the Property under conditions specified therein, including but not limited to termination of the Grantor's right to re-enter and revest upon issuance of a Certificate of Completion as defined in the Contract.

together with all hereditaments and appurtenances.

- The Seller certifies that the Seller does not know of any wells on the described real property.
- A well disclosure certificate accompanies this document or has been electronically filed. (If electronically filed, insert WDC number: \_\_\_\_\_).
- I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

Housing and Redevelopment Authority in and for the City of Richfield

By \_\_\_\_\_

Its Chairperson

By \_\_\_\_\_

Its Executive Director

STATE OF MINNESOTA

} ss.

COUNTY OF HENNEPIN

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_, the Chairperson of the Housing and Redevelopment Authority in and for the City of Richfield, a public body corporate and politic under the laws of Minnesota, on behalf of the corporation, Grantor.

*NOTARY STAMP*

\_\_\_\_\_  
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

STATE OF MINNESOTA

} ss.

COUNTY OF HENNEPIN

The foregoing was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, the Executive Director, of Housing and Redevelopment Authority in and for the City of Richfield, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the corporation, Grantor.

*NOTARY STAMP*

\_\_\_\_\_  
SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT

This instrument was drafted by:

Tax Statements should be sent to:

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

## **EXHIBIT D**

### **WELL DISCLOSURE**

- The Seller certifies that the seller does not know of any wells on the described real property.
- A well disclosure certificate accompanies this document [form attached] or has been electronically filed. (If electronically filed, insert WDC number: \_\_\_\_\_).
- The status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.



Minnesota Department of Health  
Well Management Section  
P.O. Box 64975  
St. Paul, Minnesota 55164-0975  
651-201-4587 or 800-383-9808  
[www.health.state.mn.us/divs/eh/wells](http://www.health.state.mn.us/divs/eh/wells)

## Well Disclosure Requirements

### Well Disclosure Statement

Prior to signing an agreement to sell or transfer real property, the seller must **always** disclose in writing (well disclosure statement) the location and status (well status defined below) of all wells on the property to the buyer, along with the legal description and county of the property, and a sketch map showing the location of each well or indicate there are no wells on the property.

### Well Disclosure Certificate

**A Well Disclosure Certificate is required to be filed when there are wells on the property.**

- At the time of closing, the well disclosure statement information, along with the property buyer's name and mailing address, must be provided on a Well Disclosure Certificate (WDC) form. When recording a deed or other instrument of conveyance requiring a Certificate of Real Estate Value (CRV), a completed WDC must be filed with the county recorder, including a \$50 fee payable to the county recorder.
- If there is a previously filed WDC and the number of wells and/or the well status has changed, a new WDC must be filed. You may search for previously filed WDCs at: [Well Disclosure Look-up](https://www.health.state.mn.us/divs/eh/wells/apps/disclosures/disclaimer.cfm) (<https://www.health.state.mn.us/divs/eh/wells/apps/disclosures/disclaimer.cfm>).
- If the number and status of wells on the property remain unchanged since the previously filed WDC, a statement must be placed on the deed or other instrument of conveyance that reads *"I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate."* This statement must be certified by the buyer or seller and no WDC is required.

**If there are no wells on the property, a Well Disclosure Certificate is not required to be filed.** However, the Seller must certify a statement on the deed or other instrument of conveyance that reads *"The Seller certifies that the Seller does not know of any wells on the described real property."*

### Instructions for Completing the Well Disclosure Certificate

A \$50 fee must be included when submitting this form to the county recorder's office. The fee is to be paid by the buyer or person filing the deed. Please make the check payable to the County Recorder. A copy of this WDC should be provided to the property buyer at the time of closing.

#### Property, Buyer, and Seller Information

- A. Property Location Legal Description** – Provide the county name; "unplatted" a metes and bounds description (quartile [one quarter section is required] or government lot, section, township, and range number); and/or "platted" (lot number and/or block number, and addition name); property street address (if applicable), and city (this is the physical location of the property not the mailing address); property ID number or parcel number (optional). Attach a complete legal description of the property.
- B. Property Buyer Mailing Address After Closing** – Provide the buyer's full name (or company name if buyer is a company), full address, and phone number (including area code). Be sure to include a complete mailing address. If the property is jointly owned, provide the name and complete mailing address of the contact person.

**Seller's Name** – Please provide the name of the seller in space provided (please print).

**C. Certification by Seller** – The seller (or designated representative) should sign this certificate before it is submitted to the county recorder’s office. If the seller is unable to sign the document, the buyer (or designated representative) may sign the certificate before it is submitted to the county recorder’s office.

**D. Certification by Buyer** – If the seller is unable to sign the document, the buyer (or designated representative) may sign the certificate before it is submitted to the county recorder’s office. Where deeds are given in fulfillment of a **Contract for Deed** the WDC **must** be signed by the **buyer** or the person authorized to act on behalf of the buyer.

**Signature Required** – There must be at least one signature on the certificate.

### Well Information

**E. Well Location Legal Description** – For **each well being disclosed** the following physical location information is required:

- county name, quartile (one quarter section is required), section, township, and range number; **and/or**
- county name, government lot, section, township, and range number; **and/or**
- county name, lot number and/or block number, and addition name

**Well Status Information** – Indicate the status of each well. **Check only one box.**

**In Use** – A well is “in use” if the well is operated on a daily, regular, or seasonal basis. A well “in use” includes a well that operates for the purpose of irrigation, fire protection, or emergency pumping.

**Not In Use** – A well is “not in use” if the well does not meet the definition of “in use” above and has not been sealed by a licensed well contractor.

- If the well is “not in use,” is there a Minnesota Department of Health (MDH) variance for this well? Please provide the variance tracking number (TN), if known.
- If the well is “not in use,” is there an MDH maintenance permit for this well? Please provide the permit number, if known.

**Sealed** – A well is “sealed” if a licensed well contractor has completely filled a well by pumping grout material throughout the entire well after removal of any obstructions from the well. A Well and Boring Sealing Record must be on file with MDH. Contact MDH to verify if a sealing record is on file. A well is “capped” if it has a metal or plastic cap or cover which is threaded, bolted, or welded onto the top of the well to prevent entry into the well.

**A “capped” well is not a “sealed” well.**

### Important Well Status Information:

- MDH will follow-up with the property buyer regarding any wells disclosed as “not in use.” If a well is “not in use,” the property owner must either return the well to “in use,” have the well “sealed” by a licensed well contractor, or obtain an annual maintenance permit from MDH for \$175.
- Maintenance permits are not transferable. If a well is “in use,” a maintenance permit is not required.
- If the well has been “sealed” by someone other than a licensed well contractor or a licensed well sealing contractor, check the well status as “not in use.”

**Additional Well Information** – Provide the following information, if known: Minnesota Unique Well Number or Sealing Record Number, date of well construction or sealing, and name of licensed well contractor.

### Sketch Map

Complete the sketch map as instructed on the WDC. The location of each well must be indicated. If the location of a well is not known, have the well located by a person qualified to locate wells, such as a licensed well contractor.

### Additional Information

If you have questions, please contact MDH Well Management Section at 651-201-4587 or 800-383-9808.

To request this document in another format, call 651-201-4600.

MDH Well Management Section, [Well Disclosure/Property Transfer](http://www.health.state.mn.us/divs/eh/wells/disclosures) ([www.health.state.mn.us/divs/eh/wells/disclosures](http://www.health.state.mn.us/divs/eh/wells/disclosures)).

COUNTY USE ONLY	<h2 style="margin: 0;">Well Disclosure Certificate</h2> <p style="margin: 5px 0 0 0;"><i>Please Type Or Print All Information</i></p> <p style="margin: 0 0 0 0;">Person filing deed must include a \$50 fee payable to the county recorder.</p> <p style="margin: 0 0 0 0;"><b>Minnesota Department Of Health</b>          Well Management Section, P.O. Box 64975, St. Paul, Minnesota 55164-0975          651-201-4587 or 800-383-9808</p>	MDH USE ONLY
-----------------	---	--------------

<b>A. Property Location Legal Description</b>				
Attach a legal description of the property.				
County	Section No.	Township No.	Range No.	Quarter (or Government Lot)
Lot No(s).	Block No.	Addition Name		Outlot
Property Street Address				
City/Township		ZIP Code	Property ID No./Parcel No. (optional)	

<b>B. Property Buyer Mailing Address After Closing</b>			
First Name	Middle Initial	Last Name	
Company Name (if applicable)			
Mailing Address			
Mailing Address			
City	State/Province	ZIP Code	Telephone No. (including area code)

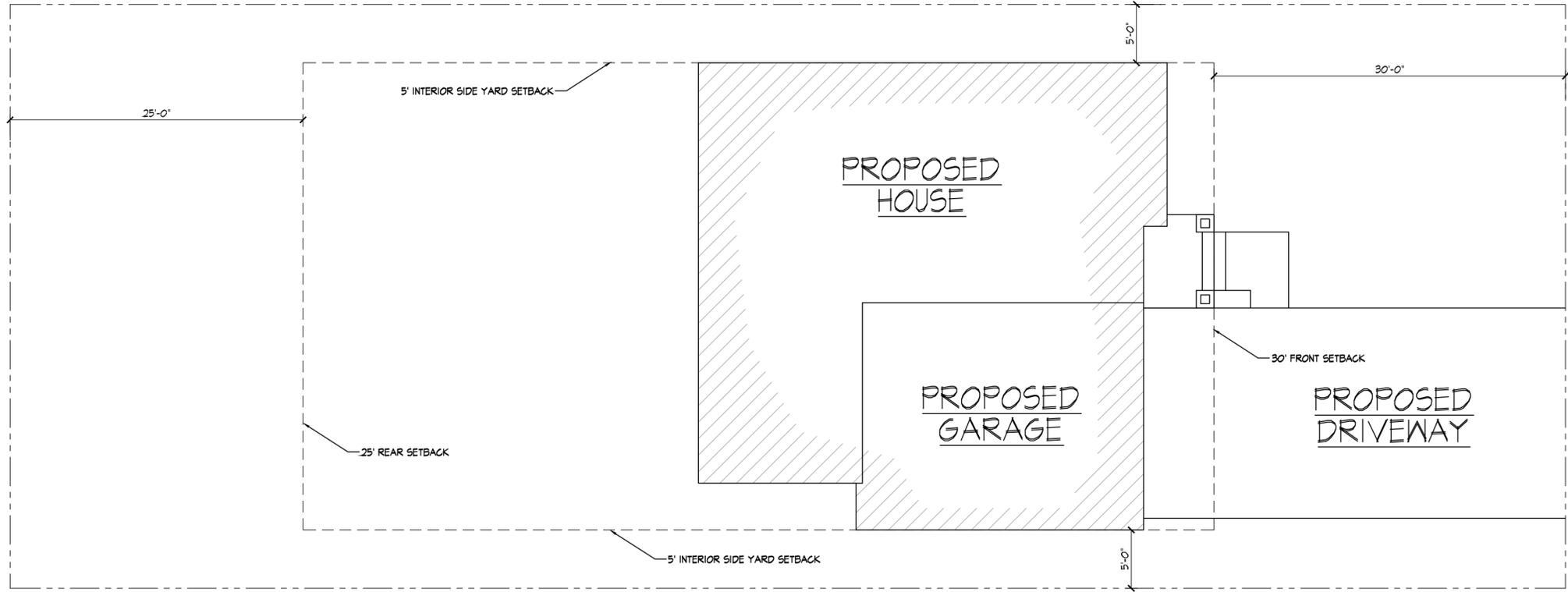
Provide Name of Seller (please print): \_\_\_\_\_

<b>C. Certification by Seller</b>	
I certify that the information provided on this certificate is accurate and complete to the best of my knowledge.	
Signature of Seller or Designated Representative of Seller _____	Date _____

<b>D. Certification by Buyer</b>	
For fulfillment of a contract for deed, the buyer or person authorized to act on behalf of the buyer, must sign a Well Disclosure Certificate if there is a well on the property.	
In the absence of a seller's signature, the buyer, or person authorized to act on behalf of the buyer may sign this Well Disclosure Certificate. No signature is required by the buyer if the seller has signed above.	
Based on disclosure information provided to me by the seller or other available information, I certify that the information on this certificate is accurate and complete to the best of my knowledge.	
Signature of Buyer or Designated Representative of Buyer _____	Date _____

**Important Note:** Minnesota Department of Health (MDH) will follow-up with the property buyer regarding any wells disclosed as not in use. If a well is not in use, the property owner must either return the well to use, have the well sealed by a licensed well contractor, or obtain an annual maintenance permit from MDH for \$175. A copy of this Well Disclosure Certificate should be provided to the property buyer at the time of closing.






**PROPOSED SITE PLAN**  
 SCALE: 1/8" = 1'-0"

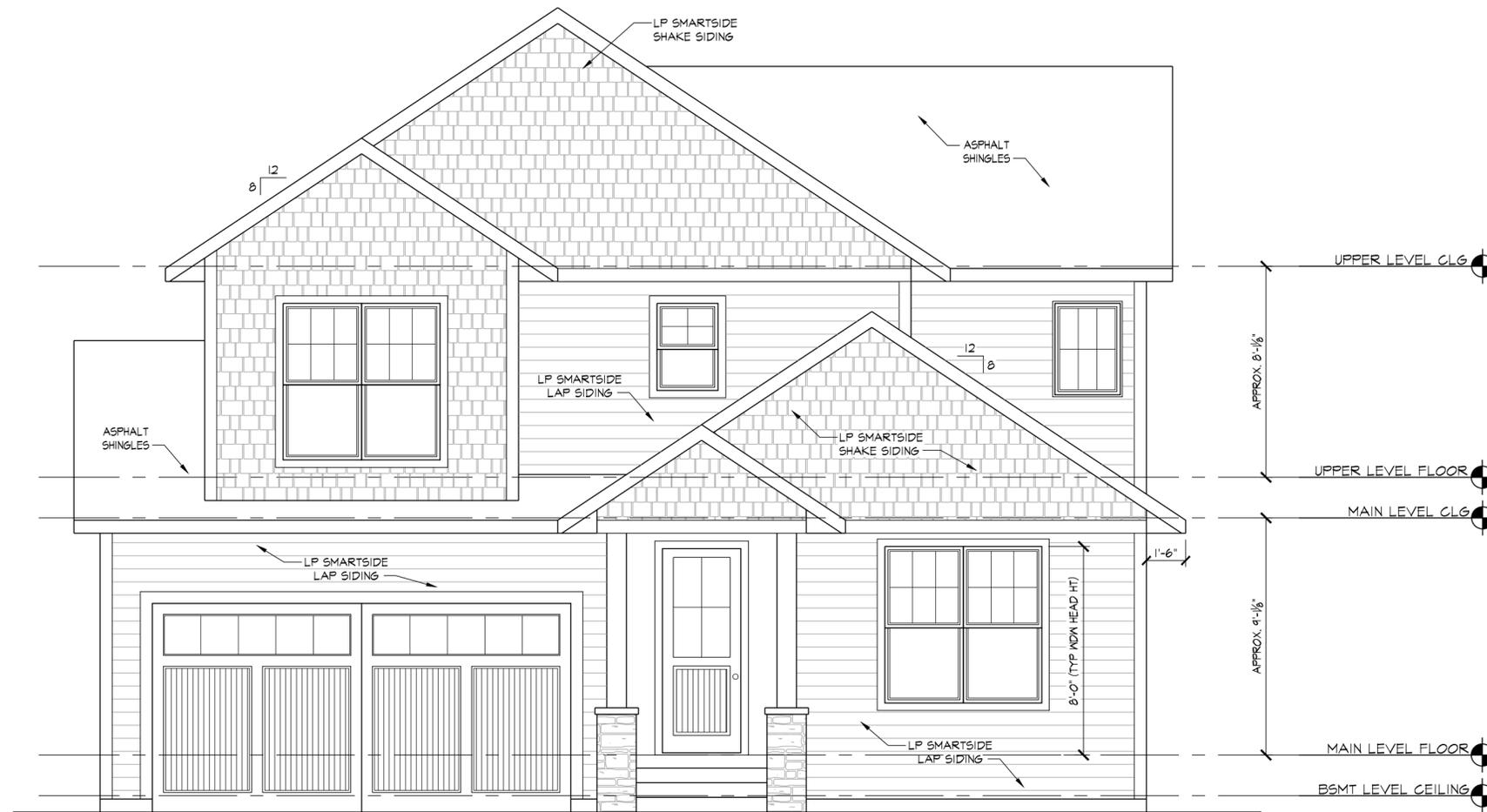

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 E-MAIL: mikel@behrdratfinganddesign.com

CUSTOM DESIGN FOR...  
**ASHLEY BUCHANAN**  
 1924 GIRARD AVE  
 RICHFIELD, MN

**BEYOND CONTRACTING**

DRAWN BY: PETER K.  
 DATE: 6/28/2018  
 PROJECT NO.: 18-01BC  
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SHEET NO.  
  
 SITE PLAN

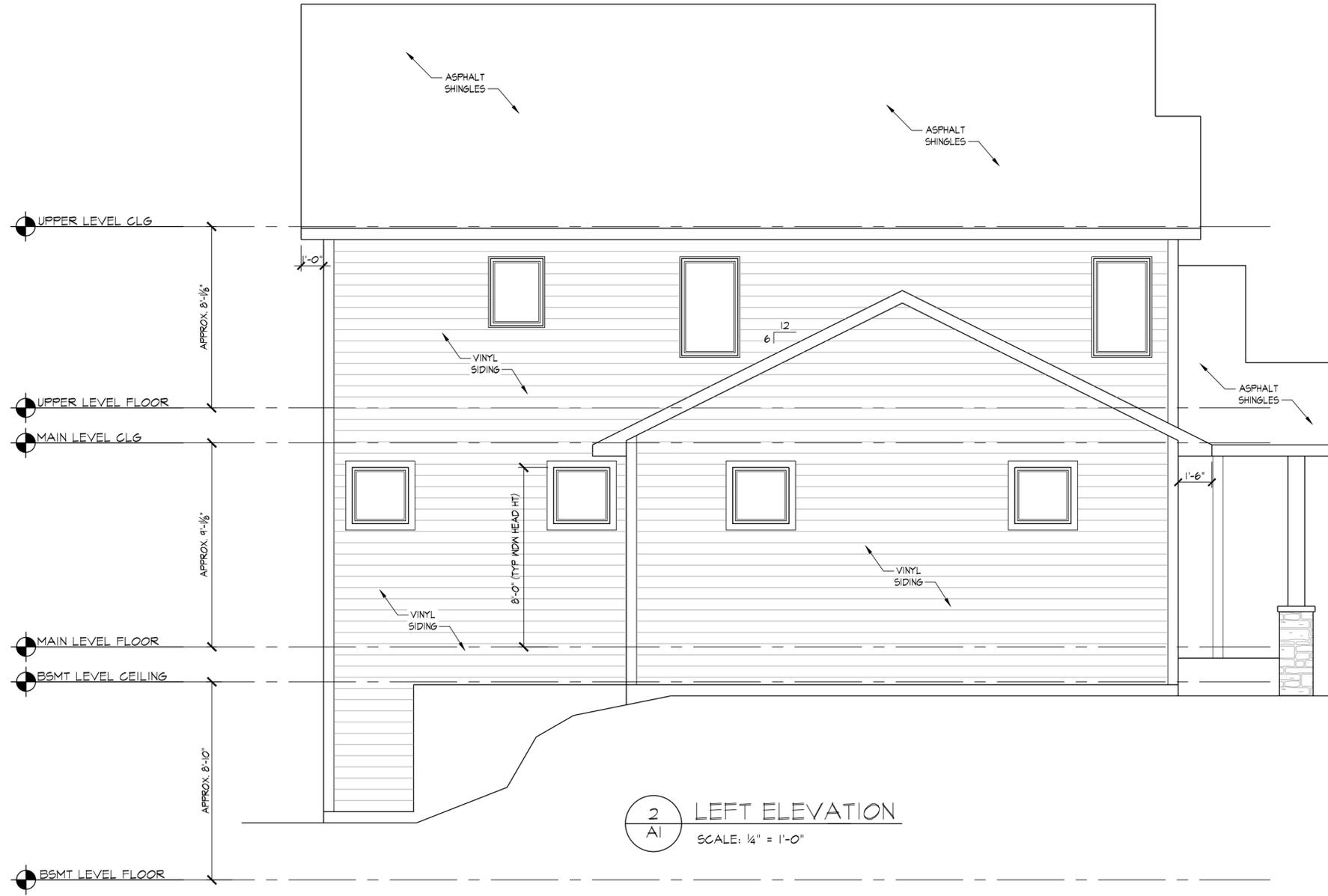


1 FRONT ELEVATION  
 A1  
 SCALE: 1/4" = 1'-0"

ISSUE DATE:

DRAWN BY: PETER K.  
 DATE: 6/28/2018  
 PROJECT NO.: 18-018C

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2  
A1

LEFT ELEVATION  
SCALE: 1/4" = 1'-0"

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CUSTOM DESIGN FOR...  
**ASHLEY BUCHANAN**  
1924 GIRARD AVE  
RICHFIELD, MN

**BEYOND CONTRACTING**

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SHEET NO.  
**A2**  
EXTERIOR ELEVATIONS



1  
A2 REAR ELEVATION  
SCALE: 1/4" = 1'-0"

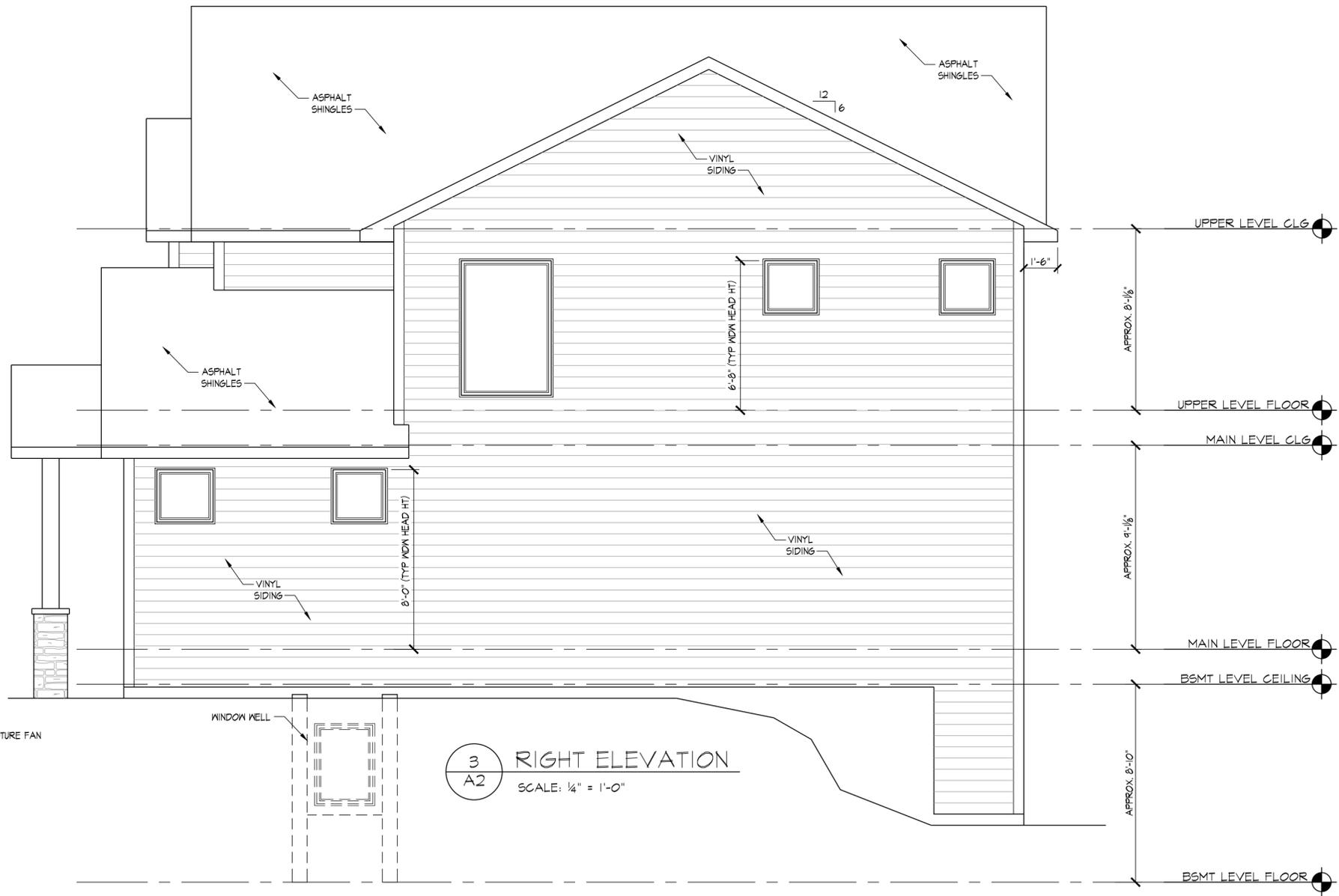
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CUSTOM DESIGN FOR...  
**ASHLEY BUCHANAN**  
 1924 GIRARD AVE  
 RICHFIELD, MN

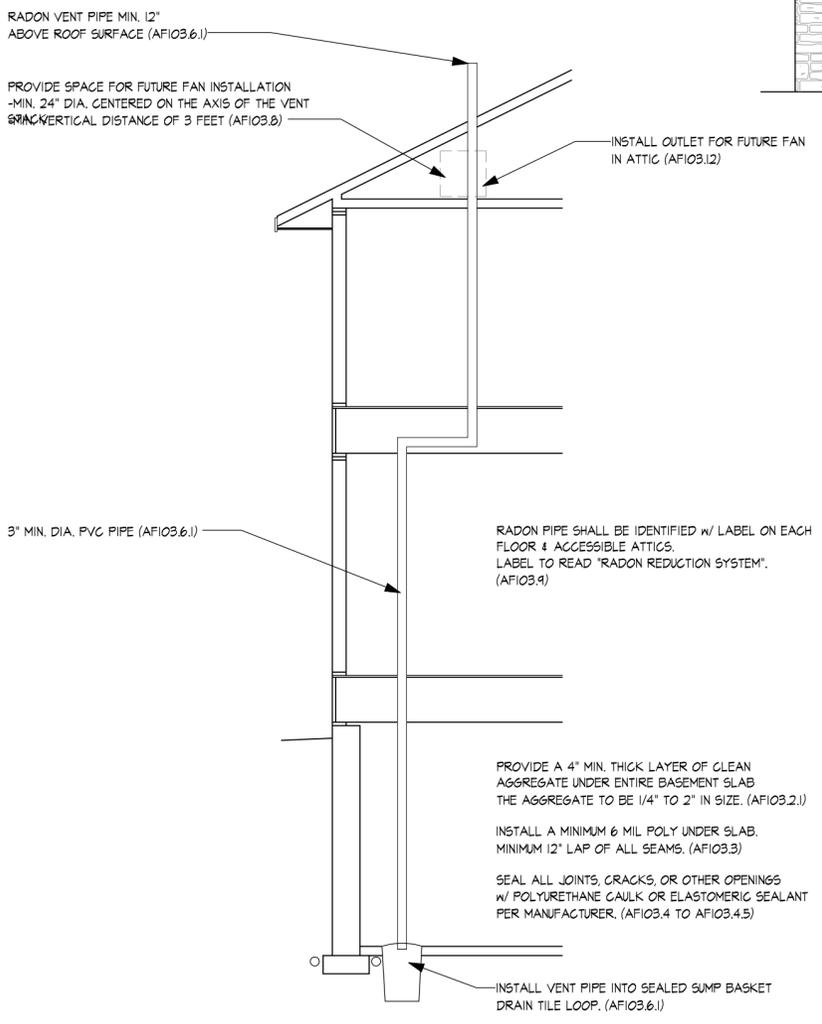
**BEYOND CONTRACTING**

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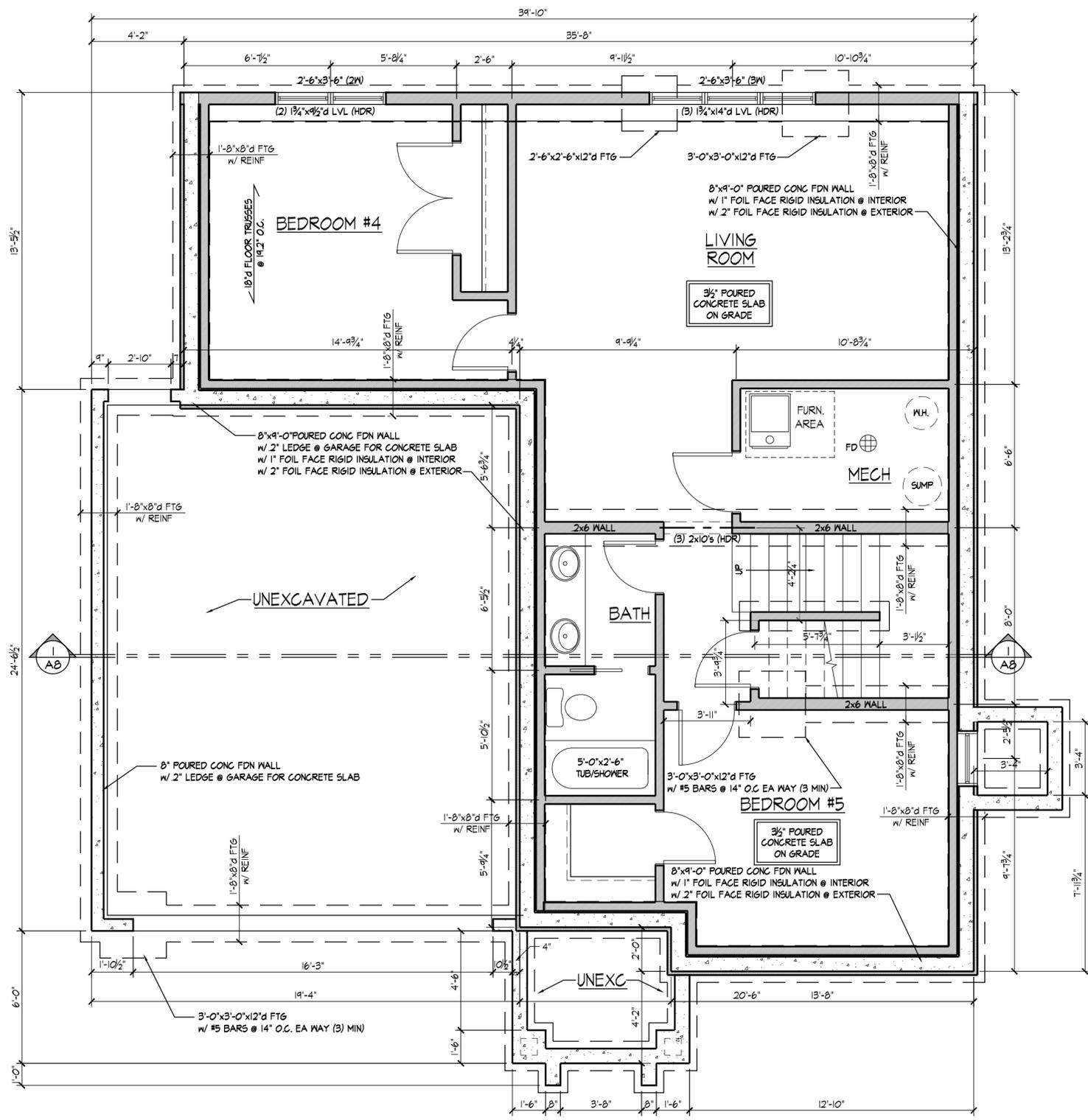
SHEET NO.  
**A3**  
 EXTERIOR ELEVATIONS



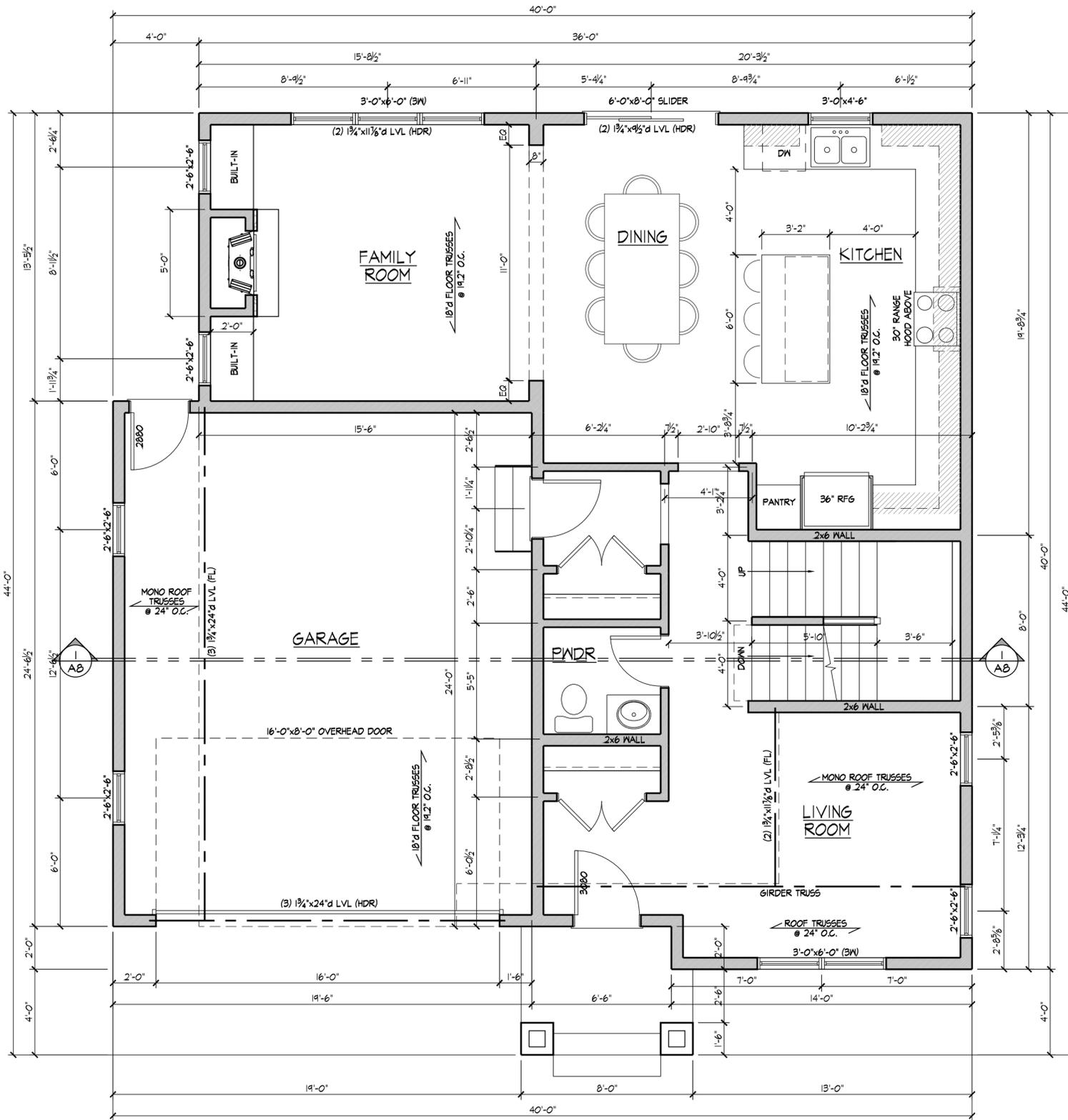
**3**  
**A2** RIGHT ELEVATION  
 SCALE: 1/4" = 1'-0"



**2**  
**A4** SUB SLAB DEPRESSURIZATION  
 SCALE: 1/4" = 1'-0"



1  
A5 BSMT/FDN FLOOR PLAN  
SCALE: 1/4" = 1'-0"



**1** MAIN FLOOR PLAN  
**A6** SCALE: 1/4" = 1'-0"

BSMT FINISHED SQUARE FEET = 142 SQ FT  
 MAIN FLOOR SQUARE FEET = 1,024 SQ FT  
 UPPER FLOOR SQUARE FT = 1,240 SQ FT  
 TOTAL FINISHED SQUARE FEET = 3,014 SQ FT

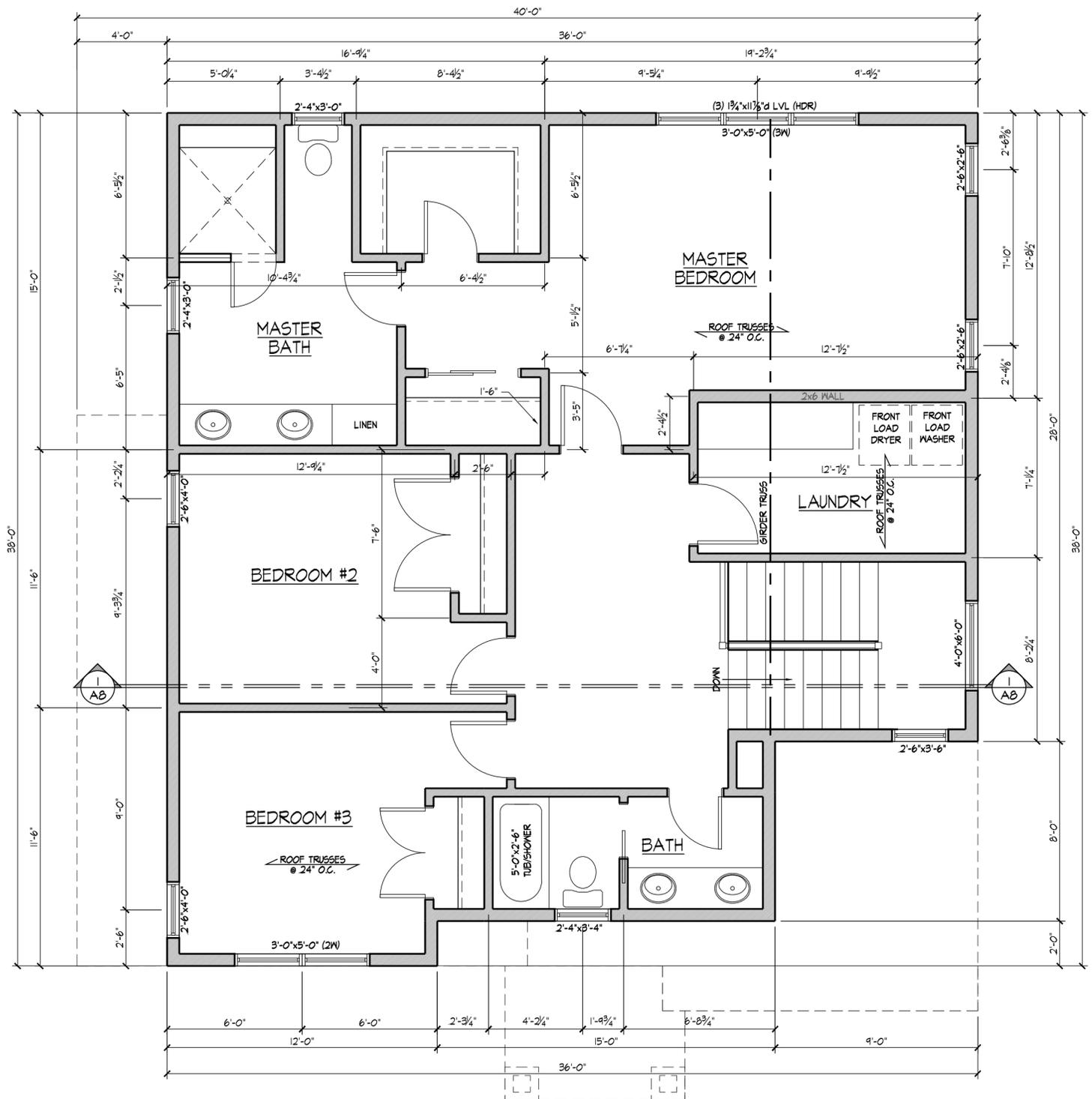
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 1924 GIRARD AVE  
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SHEET NO.  
**A4**  
 MAIN FLOOR



1 UPPER FLOOR PLAN  
A7 SCALE: 1/4" = 1'-0"

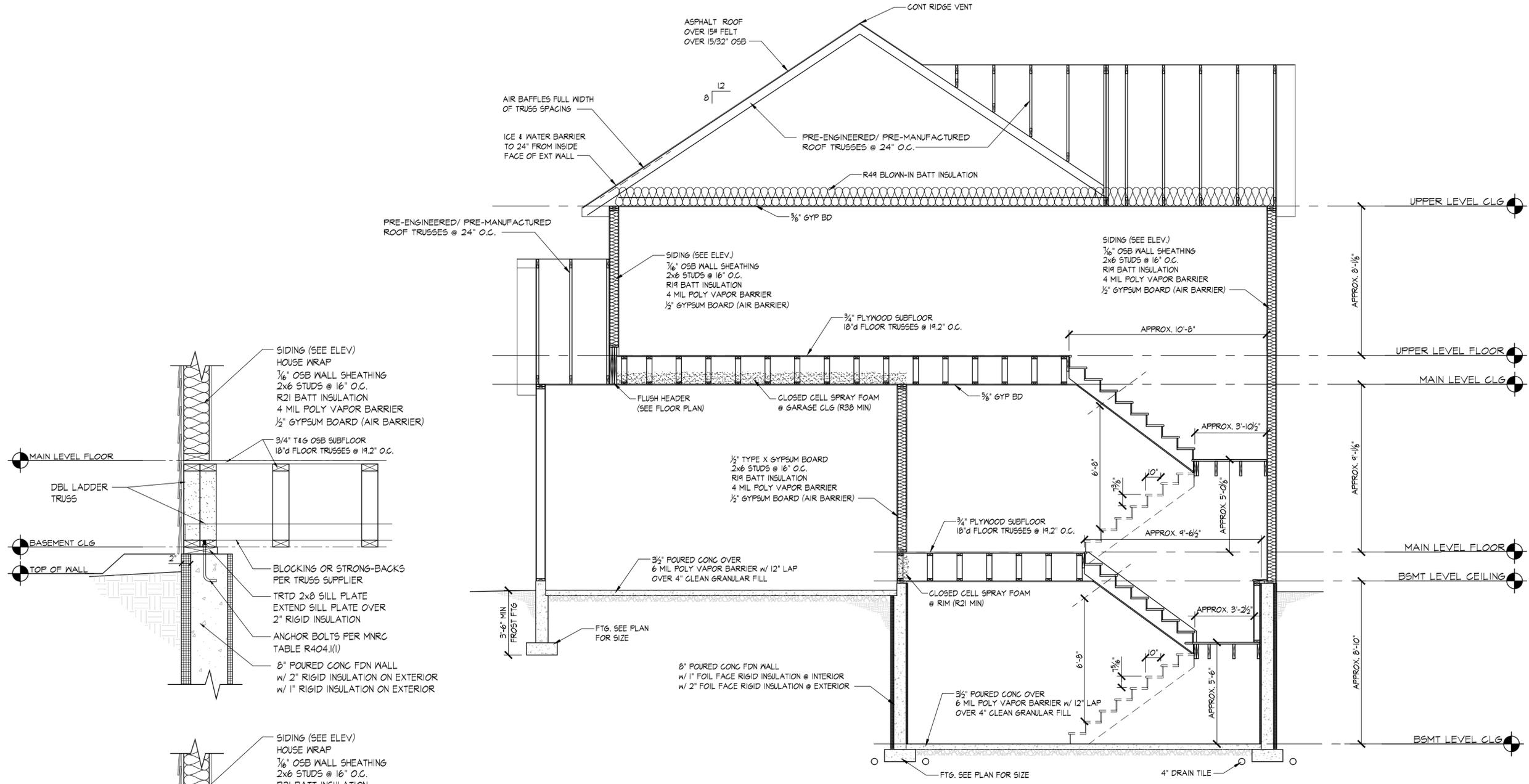
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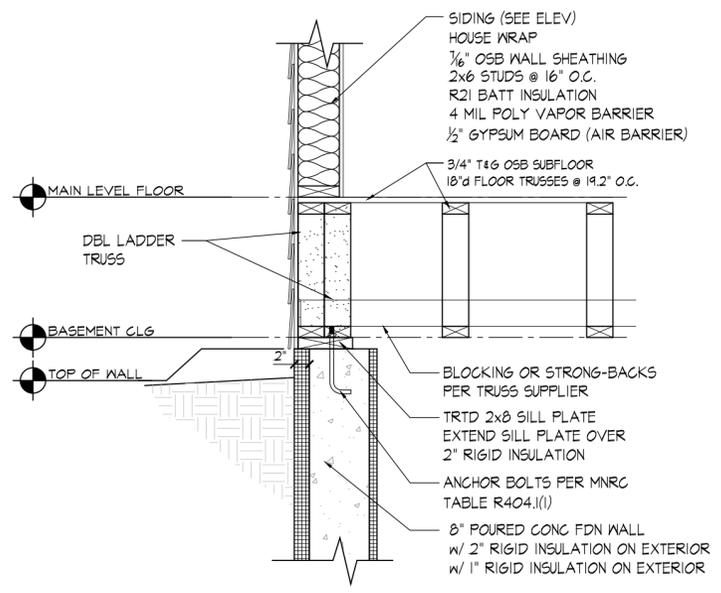
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ISSUE DATE: \_\_\_\_\_  
DRAWN BY: PETER K.  
DATE: 6/28/2018  
PROJECT NO.: 18-01BC  
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SHEET NO.  
**A7**  
UPPER FLOOR



**1 BUILDING SECTION**  
 SCALE: 1/4" = 1'-0"



**2 FOUNDATION/RIM DETAIL**  
 SCALE: 3/4" = 1'-0"



**STAFF REPORT NO. 24**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**7/16/2018**

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

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director  
7/11/2018

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich, Executive Director  
7/11/2018

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of the approval of program guidelines for the First Time Homebuyer Downpayment Assistance Program.**

**EXECUTIVE SUMMARY:**

In response to recent discussions about maintaining affordable homeownership opportunities in Richfield, \$50,000 of Community Development Block Grant (CDBG) funding has been allocated to the Housing and Redevelopment Authority (HRA) for a First Time Homebuyer Downpayment Assistance program administered by HRA staff. This is a pilot program aimed at low and moderate income Richfield renters who want to buy homes in Richfield. It will provide no interest, deferred loans of up to \$10,000 to use towards down payment and closing costs. The loans will be forgiven on a pro-rated basis over a 10 year period. Income limits and other eligibility requirements will apply.

HRA staff has met with several community stakeholders and partners during the development of the program, including representatives from Minnesota Housing, to determine how to market the program in a way that it will reach underserved populations in Richfield and to ensure that applicants are financially ready for homeownership. One requirement of the program is that applicants must complete a first time homebuyer education course. HRA staff has identified local organizations offering these courses and financial readiness counseling, to which applicants can be referred.

**RECOMMENDED ACTION:**

**By motion: Approve program guidelines for the First Time Homebuyer Downpayment Assistance Program, contingent upon final Housing and Redevelopment Authority Attorney review.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

- Due to the widening financial gaps in affordable new construction, HRA staff is shifting its focus and resources for affordable homeownership to the acquisition/rehabilitation of Richfield homes and to a downpayment assistance program for qualifying first time homebuyers.
- In 2017 and again in 2018, the Star Tribune listed Richfield as the hottest housing market in the Twin Cities. This measure was based on price, time on the market, seller discounts and the number of short-sales/foreclosures in the community. These factors have led to a low inventory of

houses for sale and rising home prices, making it difficult for low and moderate income households to afford a home in Richfield.

- Over the years, various HRA programs have been available that assisted first time homebuyers with rehabilitation of their new homes or assisted low income buyers to purchase homes. Richfield has never previously administered a first time homebuyer downpayment assistance program.
- The demand for downpayment assistance is great, as homebuyers struggle to meet rising home prices without taxing their monthly spending.
- Staff began discussions about this potential program in 2017 and has since met with various stakeholders and partners to discuss program guidelines and administration.

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

- It is the HRA's policy to provide homeownership opportunities to households of a variety of income levels.
- In 2013, the Richfield HRA adopted a Housing Visioning Statement that states: *"Richfield is a sustainable community that is known for its strong, vibrant and eclectic, amenity-rich neighborhoods supported by a full range and balance of housing types that match the choices of its diverse residents at every stage of their lives."*
  - The Housing Visioning Task Force explained that the phrase "match the choices of its diverse residents at every stage of their lives" to mean: *"that the City has what residents want, not just what they have to adapt to. The Task Force supports a broad definition of diversity. These varied housing offerings mean that residents can stay in the community their whole lives and find housing that meets their needs and their preferences."*
- All CDBG funded activities must meet one of three national objectives: benefiting low and moderate income persons, preventing or eliminating slums and/or blight, or meet an urgent need. In addition, activities must be consistent with priorities identified in the County's Consolidated Plan. Those priorities include a variety of housing activities such as housing rehabilitation, preserving and creating homeownership opportunities, public services to maintain or increase self-sufficiency, and neighborhood revitalization activities.

**C. CRITICAL TIMING ISSUES:**

- Upon approval of the program guidelines, the program will be marketed to renters living in Richfield and realtors serving Richfield.
- The 2018 Federal Fiscal Year (FFY) began on July 1, 2018. Funds must be spent by June 30, 2019.

**D. FINANCIAL IMPACT:**

- For FFY 2018, \$50,000 has been budgeted for the First-Time Homebuyer Downpayment Assistance Program.
- The funding source for the program is federally-funded CDBG, which Richfield receives as part of the Consolidated Pool through Hennepin County. The Richfield City Council approved the CDBG allocation on February 13, 2018. Funds can be spent beginning on July 1, 2018.
- Funds will be distributed in the form of a no-interest loan to buyers that will be forgiven on a pro-rated basis over 10 years.
- Maximum individual loan amount is \$10,000.
- If the full amount of funding is not expended within the required time period, it can be moved to the Richfield Deferred Loan Program, which provides rehabilitation loans for low and moderate-income households in Richfield.

**E. LEGAL CONSIDERATION:**

- The HRA Attorney has reviewed the program guidelines.

**ALTERNATIVE RECOMMENDATION(S):**

- Approve the Downpayment Assistance Program with changes.
- Do not approve the Downpayment Assistance Program guidelines.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

N/A

**ATTACHMENTS:**

Description	Type
▢ Guidelines	Backup Material

**City of Richfield  
First Time Homebuyer Program**

**Part I: GENERAL PROGRAM DESCRIPTION**

**Program Overview**

The Richfield Housing and Redevelopment Authority (HRA) offers a financial assistance program for homeownership funded by the City of Richfield's Community Development Block Grant (CDBG) program. The First Time Homebuyers Program provides financial assistance for low and moderate income households to become homeowners.

Administration of the First Time Homebuyers Program and the functions and responsibilities of the HRA staff shall be in compliance with the U.S. Department of Housing and Urban Development (HUD) CDBG regulations as well as all Federal, State and local nondiscrimination laws and with the rules and regulations governing Fair Housing and Equal Opportunity in housing and employment.

No family or individual shall be denied the equal opportunity to apply for or receive assistance under the First Time Homebuyer's Program on the basis of race, color, gender, religion, creed, national origin, age, familial or marital status, handicap or disability, sexual orientation or reliance on public assistance.

The HRA office is accessible to persons with disabilities. Accessibility for the hearing impaired is provided by the Minnesota Relay Service and the City of Richfield.

**Program Goals**

The First Time Homebuyer's Program has the following two goals:

- a. Assist low and moderate income families who rent in Richfield to purchase homes within the City of Richfield by providing assistance with down payment, closing costs and mortgage principle reduction.
- b. Promote responsible home ownership

**Program Administration**

The Program will be administered through the HRA. Interested applicants should contact HRA staff by calling 612-861-9778.

**Data Privacy**

The HRA is subject to Minnesota Statutes Chapter 13 (the "Minnesota Government Data Practices Act"). Under the Minnesota Government Data Practices Act, the names and addresses of applicants for or recipients of assistance under this program and the amount of assistance received under this program are public data. All other financial information submitted to the HRA for purposes of the loan application is considered private data.

**Purpose of the Program Guidelines**

The purpose of these guidelines is to establish policies for carrying out the First Time Homebuyer Program in a manner consistent with HUD requirements and local goals and objectives contained in the City of Richfield's Consolidated Plan and Annual Action Plans. The HRA is responsible for complying with

all changes in HUD regulations pertaining to the CDBG program. If such changes conflict with these guidelines, HUD regulations will have precedence. Application regulations include:

- 24 CFR Part 5: General Program Requirements
- 24 CFR Part 8: Nondiscrimination
- 24 CFR Part 570: Community Development Block Grant
- 24 CFR Part 35: Lead Based Paint Regulations

## **PART II: PROGRAM POLICIES**

### **Financial Assistance**

The Financial Assistance may be used to:

- Pay up to 50% of the amount the homebuyer is required to provide toward the down payment under the particular mortgage program they are utilizing, not to exceed \$5,000. The homebuyer must contribute the remaining 50% using their own funds. Homebuyer's minimum investment is \$1,000.
- Pay up to 100% of the homebuyer's eligible closing costs not to exceed \$5,000. Borrowers are not permitted to use program funds for interest rate buy downs unless documentation is provided from the lender that shows the buy down is necessary to secure their primary mortgage. Eligible closing costs do not include optional insurances (i.e. optional owner's insurance policy, etc.).
- Reduce the mortgage principal up to 10% of the purchase price to a maximum of \$20,000. The applicant(s) housing Debt to Income Ratio (DTI) must be at least 25%, but cannot exceed 35% of their gross monthly qualifying income. The housing DTI is calculated using the current year's projected income. Under certain circumstances, the HRA Executive Director may allow the DTI to exceed 35%.

The financial assistance will be provided at a minimum amount of \$3,000.00 and a maximum amount of \$10,000.00. In certain situations, the HRA Executive Director may allow assistance in excess of the maximum at their discretion. The HRA Staff will make a determination on the amount of assistance an applicant qualifies for. That determination will be based upon a review of the applicant's verified income and assets, estimated closing costs, purchase agreement, and lender's recommendations for financial assistance in compliance with uses described above. Lenders must provide a pre-approval letter indicating the maximum amount of financing the borrower would qualify for from the first mortgage lender.

The HRA will verify an applicant's income and assets through third party written verifications as provided by either the lender or by the HRA. The HRA Staff may re-verify income and asset information provided by the lender. The HRA will calculate the applicant's gross annual income using paystubs and recent tax returns or third party verification as defined in Appendix A to ensure the applicant(s) qualifies as a low or moderate income household as required by CDBG regulations and to determine the maximum amount of assistance.

Financial assistance will be provided at the time of closing on the property with the following conditions:

- Selected applicants must meet the requirements of the program and be eligible for the financial assistance throughout the entire application process.
- The housing unit to be purchased and the purchase price must be accepted by the HRA as meeting the intent and requirements of the program.
- The financial assistance provided by the program is in the form of a no-interest loan that is forgiven 10 years from the initial purchase date. If the house is sold, transferred or no longer the primary place of residence within that 10 year period, the loan will be repaid on a pro-rated basis.
- The homebuyers must enter into a second mortgage and execute a Repayment Agreement with the HRA providing for repayment of the indebtedness 10 years from the initial purchase date or when the house is sold, transferred or no longer the primary place of residence, whichever occurs first.

### **Responsibilities of the First Time Homebuyer**

The responsibilities of the prospective homebuyers are to:

- Obtain mortgage pre-qualification from a Minnesota Housing approved lender
- Submit a pre-application and mortgage pre-qualification to the HRA
- Complete, sign and return the full application packet, authorization for release of information form, and other certification and verification forms within the time frame specified.
- Register and attend the Home Stretch or Framework – Homebuyers workshop such as those offered by Community Action Partnership of Hennepin County (CAP-HC), Neighborhood Development Alliance (NeDA) or PRG Inc. More information about homebuyer education can be found online at: <http://www.hocmn.org/buyingahome/homebuyer-education/>. Classes must have been completed within 12 months prior to closing. The applicant will be provided with a certificate of attendance. A copy of this certificate should be forwarded to the lender and the HRA. Applicants may be required to attend an individual counseling session with a housing counselor at one of the agencies listed above. If the financial counselor recommends that the applicant is not ready to purchase a home, the HRA may not provide assistance until the applicant has satisfied staff concerns.
- Select a real estate agent, if one is desired.
- Select a dwelling in Richfield for purchase that is owner-occupied or vacant and is an eligible dwelling under the program.
- Provide information throughout the process as required by the lender or the HRA staff.
- Execute a purchase agreement.
- Execute the lender's mortgage and related documents.
- Execute the HRA's Mortgage, Loan Agreement and Promissory Note.

- Close on the property within the time frame specified.
- Execute other required forms within the time frame specified or required.
- Take occupancy of the dwelling within 30 days after closing, homestead the property, and continue to occupy the dwelling as a Principal Place of Residence.
- Make principal, interest, property tax and insurance payments as required.
- Reimburse the HRA in accordance with the HRA's Mortgage, Loan Agreement, and Promissory Note should the First Time Homebuyer trigger repayment through sale, moving, transfer of ownership or foreclosure within 10 years or default on any other terms of these documents.

### **Responsibilities of the Lender**

The lender must:

- Verify the prospective homebuyer's income and assets to determine that they meet the requirements of the program and submit a copy of the verification to the HRA. These copies must be submitted to the HRA as part of a completed application.
- Compute the Mortgage, Down Payment, Mortgage payments and Closing Costs of Acceptable Loans approved by the Program to determine the most cost-effective and appropriate form of financing for the First Time Homebuyer to use.
- Provide a title search and review the documents.
- Provide the HRA with a pre-approval letter stating the maximum mortgage amount the applicant is approved for.
- Provide the HRA other verification materials as requested by the HRA.
- Process a mortgage consistent with the Program.
- Meet all deadlines in a timely fashion, especially those that relate to the Closing. All documents must be completed at least 10 days prior to the Closing and be delivered to the HRA at least seven days before the Closing.
- Appraise property to determine the loan-to-value ratio.

### **Responsibilities of the HRA**

The responsibilities of the HRA for the Program are to:

- Establish Program requirements and administer the Program.
- Send applicants the application form, the authorization for release of information form and other certification and verification forms.
- Review the Application and other material for eligibility.

- Establish the initial eligibility of participants via the information provided in the pre-application process. Full approval will be determined upon completion and submission of a full application and supporting documents.
- Notify applicants when ineligible.
- Direct prospective buyers to register for the homebuyer workshops and provide information and forms related to the Program.
- Provide liaison services involving the prospective buyer, lender and any real estate agent that might be involved in the transaction.
- Review appraisal, purchase agreement, eligibility and mortgage for consistency with the Program requirements.
- Prepare and execute the HRA Mortgage, Loan Agreement, and Promissory Note.
- Provide financial assistance according to Program guidelines to the applicant at the time of Closing.
- Service the HRA Mortgage, Loan Agreement, and Promissory Note.
- Modify or terminate the Program as may be appropriate or required.

### **Pre-Application Process**

At the time of application, applicants must provide the HRA with the following information and meet the eligibility requirements:

- Names and ages of all household members
- Address and telephone numbers
- Total gross annual income from all sources (i.e. employment, social security income, child support, etc.)
- Lease start and end dates
- Letter from lender indicating the amount of a home loan for which applicant is pre-qualified
- Authorization for release of information

The information listed above will provide the HRA sufficient information to determine if the applicant is eligible for the Program. Applicants will be notified if they are eligible or ineligible based on the information provided in the pre-application.

It is the responsibility of each applicant to ensure that the information is correct and that the HRA receives his or her application. Only pre-applications with original signatures will be accepted.

### **Supporting Documentation**

Eligible applicants will be required to submit the following supporting documentation:

- Authorized Purchase Agreement on a home in Richfield
- Three months of pay stubs for all household members earning income.
- Two years of tax returns stubs for all household members earning income.
- Three months of bank statements, financial statements and all other document(s) that verify gross assets.
- Copy of current lease.
- Last three previous addresses.
- Proof of completion of an approved homebuyer workshop.

### **Summary of the Application Process**

If the applicant qualifies to apply for the Program, the application should proceed with the application process, which includes:

- The applicant selects a participating lender and applies for mortgage pre-approval.
- The applicant completes and submits to the HRA: (i) a First Time Homebuyer application; (ii) authorization form for release of information to the HRA ; and (iii) a mortgage pre-approval letter from the lender.
- The applicant is notified by the HRA whether or not they are eligible for the Program based on the information provided.
- The applicant registers for and attends the homebuyer workshop series.
- The applicant searches for a home in Richfield.
- The applicant enters into a Purchase Agreement and contacts the lender.
- The lender authorizes appraisal of home.
- The lender confirms applicant's mortgage eligibility and approves purchase.
- The applicant contacts the HRA with supporting documentation.
- The HRA conducts an initial lead-based paint hazard inspection of the property, if the dwelling was built prior to 1978. If evidence of lead-based paint is found on the property, a formal Lead Assessment will be ordered with a licensed Lead Risk Assessor.
- The HRA reviews appraisal, Purchase Agreement, Loan Estimate, and eligibility verification for consistency with program goals and requirements.
- The HRA issues an approval letter or denial letter to applicant.

- The HRA prepares the closing documents required by the City's First Time Homebuyer Program Guidelines.

### **Eligibility Requirements**

To be eligible to participate in the Program, the applicant must meet the following requirements at the time of application and throughout the process up until Closing.

- Must be a current renter in Richfield with verifiable lease and proof of rent paid, showing at least 6 months tenancy in Richfield.
- Must have no prior home ownership in the past 3 years (unless displaced due to divorce).
- Must be a U.S. citizen or have legal immigration status.
- Must be a First Time Homebuyer, as defined in Appendix A.
- Must not have a Gross annual Income that exceeds the maximum income limits which are revised annually to reflect the current year's CDBG maximum income limits.
- Must not have Gross Assets exceeding \$25,000.00.
- Borrowers are required to invest at least \$1,000.00 of their own monies towards the purchase price of the home. Funds from public program(s) cannot be used as part of the Homebuyers portion of the down payment.
- Must meet the requirements of a Lender and qualify for a first mortgage.
- Must fulfill the Program obligations in a timely manner and must remain eligible to participate based on the program requirements and those of the lender through the time of Closing.
- Must not have a previous loan through the HRA that ended in foreclosure or any other loan that ended in foreclosure within the previous five years.
- Must not buy dwelling with a contract for deed.
- Must meet the requirements as specified elsewhere in these First Time Homebuyer Program Guidelines.

### **Denial of Eligibility**

The HRA will review and verify all applications for eligibility. Those applicants not meeting the eligibility requirements will be sent a written notice explaining the reason(s) for denial of program participation.

Appeals regarding interpretation of eligibility requirements may be made in writing to the HRA Executive Director, and then to the Director of Community Development and then to the City Manager, and then to the HRA Board. Appeals that clearly do not meet eligibility requirements will not be considered.

### **Eligible Dwellings**

To be eligible the property must meet the following requirements:

- Be located within the City of Richfield.
- Be a single-family dwelling, a townhouse unit, or a condominium unit.
- Be a conforming use as defined by the Richfield Zoning Ordinance.
- Be free of lead-based paint hazards at the time of Closing.

The HRA may require an inspection of the dwelling for compliance with the Richfield Housing Code. The HRA will require an inspection of all dwellings built prior to 1978 for compliance with HUD's lead-based paint hazard regulations.

### **Applicant Outreach**

The HRA will publicize and disseminate information to make known the availability of homeownership assistance on a regular basis through a variety of media and other suitable means. The availability of assistance will be communicated to other services providers, realtors, and lenders in the community and advise them of the guidelines so that they can make proper referrals for the Program. Realtors and lenders will be encouraged to provide additional services to eligible clients to ensure their successful utilization of the program.

### **Applicant Pool**

The applicant pool for the Program shall consist of all those who have completed and returned to the HRA a pre-application form, written verification from their lender of pre-approval, and who have acknowledged that they will meet the eligibility requirements.

Funds will be available to the applicant pool on a first come, first serve basis. Eligible applicants will be approved for funding when they or their lender notify the HRA of the applicant's approved purchase agreement and the full application packet is completed and returned. If funding is limited and more than one applicant is at the purchasing stage, the HRA will provide funding to the applicant who qualifies for the most preference points.

Preference points have been established to meet the goals of the HRA. Each preference category is worth one (1) point. The maximum points any one household could receive are five (5) points. Households with the highest point totals will be selected first. In the event of a tie, a drawing or lottery will be held to rank the applicants within each of the preference categories.

- Applicant with dependents under age 18
- Applicant has lived in Richfield longer than 6 months prior to Closing
- Head or co-head of household has primary, longer-term employment in Richfield
- Applicant currently participates in Richfield's Kids @ Home Program
- Applicant has never owned a home (versus having owned a home over three years ago)

Approval from the applicant pool is tentative and conditional. Families selected for participation must fulfill the Program obligations in a timely manner and must remain eligible to participate based on the Program requirements and those of the lender through the time of Closing.

### **Lender Outreach**

The HRA will solicit lender participation as needed. The HRA will review requests from lenders to be approved as a participating lender of the First Time Homebuyer Program. The lenders must be FHA and Minnesota Housing approved and exhibit a willingness to provide mortgage products to low and moderate income households.

## **PART III: PROGRAM RULES**

### **Lenders**

All lenders must be approved by Minnesota Housing. Find a lender here: <http://www.mnhousing.gov/>. Lenders and their representatives must also be willing to participate in the Richfield First Time Homebuyer Program. Applicants should ask the lender if they have received the City's First Time Homebuyer Program Guidelines and if they are familiar with the process. It is the applicant's responsibility to make arrangements for obtaining pre-qualification or pre-indication of approval and for making an application for a mortgage. **A letter from the lender indicating the amount of the mortgage for which the applicant pre-qualifies must be provided with each pre-application.** The same lender must be used when the applicant goes for pre-approval of a mortgage prior to the purchase of a home, so it is recommended that the applicant selects the lender carefully.

### **Lead Based Paint Hazard Requirements**

All applicants purchasing a dwelling built prior to 1978 will be provided with a lead based paint brochure and must sign a certification of receipt of the brochure.

As a condition of funding, the applicant will be required to purchase a home free of Lead Based Paint (LBP) hazards. If the dwelling was built prior to 1978 a visual assessment for deteriorated paint will be done by City staff. Applicants will be informed that the inspection is only to determine the presence of deteriorated paint and they may also want to obtain a complete Home Inspection from a certified Home Inspector.

If deteriorated paint is found, the HRA will contract with a certified Risk Assessor to perform the necessary tests to determine if there is a lead hazard risk. A copy of a clean Lead Risk Assessment report must be submitted to the HRA before the home is approved for assistance. If the applicant refuses, the property will not be eligible for assistance. The applicant will need to find another house that is or will be made LBP risk free in order to qualify for assistance.

If LBP risks are found, stabilization of the defective paint, cleanup and clearance will be required before funds are approved for assistance. The presence of LBP risks should be treated like any other defect found during an inspection and may be negotiated between buyer and seller. Clearance will be required before the home can be safely occupied and will assure that there are no remaining lead hazards.

### **Repayment of Assistance**

Repayment of the down payment assistance loan shall occur upon the earliest of:

- Sale or transfer
- The property ceases for any reason to be the homebuyer’s principal place of residence.
- Default on the mortgage with the HRA or any superior mortgage on the property.

Repayment of the loan shall be pro-rated, with the principal amount due reduced by 10% for each year of the homeowner’s tenancy in their Richfield home, as established by the loan date on the filed mortgage with the HRA.

AGE OF LOAN	AMOUNT OF PRINCIPAL LOAN AMOUNT DUE
<b>0 - 1 year</b>	100 % of principal loan amount due
<b>1 - 2 year</b>	90% of principal loan amount due
<b>2 - 3 years</b>	80% of principal loan amount due
<b>3 - 4 years</b>	70% of principal loan amount due
<b>4 - 5 years</b>	60% of principal loan amount due
<b>5 - 6 years</b>	50% of principal loan amount due
<b>6 - 7 years</b>	40% of principal loan amount due
<b>7 - 8 years</b>	30% of principal loan amount due
<b>8 - 9 years</b>	20% of principal loan amount due
<b>9 - 10 years</b>	10% of principal loan amount due
<b>10+ years</b>	0% due, Loan Fully forgiven

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

**Subordination of Mortgages**

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

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

1. A typed letter dated and signed by the mortgagor, stating the reason for the requested subordination and the use of any equity being removed as part of the loan transaction.
2. A copy of the current appraisal (dated within six months of application) or other evidence of market value of the property that is acceptable to the HRA.
3. A copy of current title work (must indicate all debt against the property).

4. Explanation of remaining debts or liens with supporting documentation (i.e. most recent mortgage bill).
5. Estimated closing costs/settlement statement, where applicable.
6. A copy of the mortgagor's loan application.
7. Additional documentation may be required.

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

1. Closing costs are reasonable. Generally this shall mean that the sum of all discount points, origination fees, and lender ancillary fees generally shall not exceed 3% of the new first mortgage amount.
2. If the HRA believes that the payment terms of the refinance are within the financial means of the borrower.
3. The total debt secured by the property, including the HRA lien and all superior mortgages, does not exceed 80% of the documented market value of the property.
4. Any equity being removed beyond the cost of the loan transaction will be used to improve the property. A typed letter, dated and signed by the applicant, must be submitted stating the use of any equity being removed.
5. The overall value of superior debt must not be increased by more than 50%.
6. If no more than one subordination request has been approved by the HRA in the past five years.
7. Property taxes, if not escrowed by the superior mortgage holder, must be current.

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

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

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

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

In cases where a subordination request does not meet the Policy, the Executive Director may grant an administrative appeal under the following circumstances:

- Loan-to-value (LTV) ratio is greater than 80%, but no greater than 85%; or
- Equity being removed for anything other than property improvements does not exceed \$5000; or
- The amount of financing superior to the HRA lien does not increase more than the cost of settlement charges related to the refinancing; or
- The overall superior debt increases more than 50% but the value of superior debt is unusually low and/or sufficient equity protection exists

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

### **Targeted Funding**

At various times, the HRA may target Program funding for purchases in specific developments. Applicants purchasing in those developments would receive Program funding prior to all other applications.

### **Total Amount of Assistance**

The total amount of assistance received through the Richfield HRA for the First Time Homebuyer Program cannot exceed \$10,000.

### **Modification and Termination of Program**

The HRA may modify or terminate the Program as it deems appropriate or as required by HUD. Once the HRA has provided financial assistance and the mortgage executed, financial assistance shall not be rescinded except as provide for in the executed HRA Mortgage, Loan Agreement, and Promissory Note.

## **APPENDIX A**

### **DEFINITIONS**

**Acceptable Loans** – Conventional, Fannie Mae, FHA, VA and ARM's that at a minimum are at a fixed rate for the first seven years.

**Applicant** – an individual or household submitting an application for a loan.

**Application** – The form used to request assistance for the City's First Time Homebuyer funds.

**ARM or Adjustable Rate Mortgage** – a mortgage that offers an initial rate that is fixed for a certain number of years of repayment; the rate then adjusts every year thereafter for the remaining life of the loan.

**CAPHC or Community Action Partnership of Hennepin County** – an agency working in all of Hennepin County to assist low income people with services to individuals through outreach, energy assistance programs, homeownership services and financial counseling.

**CDBG or Community Development Block Grant Program** – an annual entitlement program provided to the City of Richfield through the U. S. Department of Housing and Urban Development (HUD).

**City** – The City of Richfield.

**Clearance** – A lead based paint Certification that all lead issues have been remediated.

**Closing** – The consummation of the real estate transaction. The Closing includes the delivery of a deed, financial adjustments the signing of notes, mortgages, and the disbursement of funds necessary to complete the sale and loan transaction.

**Closing Costs** – Those costs required by the lender to be paid by the buyer for various fees, credit report costs, insurance, etc., at the time of Closing on a property.

**Consolidated and Annual Action Plans** – HUD requires the City of Richfield to submit a 5 year Consolidated Plan and an Annual Action Plan to guide housing, homelessness and Community Development activities.

**Conventional Mortgage** – A type of residential mortgage loan, usually from a bank or savings and loan association, with a fixed rate and term. It is repayable in fixed monthly payments over a period usually 30 – 40 years or less, secured by real property, and not insured by the Federal Housing Administration or guaranteed by the Veterans Administration.

**Down Payment** – A type of payment made by a homebuyer indicating intention to purchase real estate offered for sale and obtain financing from a bank or mortgage company.

**DTI or Debt to Income Rate** – the percentage of income that goes toward housing costs including mortgage principal and interest, mortgage insurance premium, hazard insurance premium, property taxes, and homeowners association dues (when applicable).

**Fannie Mae or Federal National Mortgage Association** – A privately owned and operated corporation that buys mortgages from such lenders as banks and savings and loans, packages and resells them on the open market.

**FHA or Federal Housing Administration** – A Federal agency that administers many loan programs, loan Guarantee programs, and Loan Insurance programs designed to make more housing available.

**First Time Homebuyer** – A household who has not owned a dwelling of any kind within the preceding three years from the date of application or who has been displaced due to a divorce situation.

**Gross Annual Income** – The Gross annual Income of a Household for the purposes of this program is defined for purposes of reporting under Internal Revenue Service Form 1040 for individual Federal annual income tax purposes as per 24 CFR 570.3.

**Gross Assets** – The current market value of the following minus existing indebtedness: *(Typically, it does not include 401K funds, pensions or other deferred compensation funds.)*

1. Cash on hand
2. Cash in checking accounts
3. Cash in savings accounts, including accounts held in trust.
4. Investment securities (government bonds, municipal bonds)
5. Stocks
6. Certificate of deposits and annuities

**Guidelines** – The set of standards, criteria, and specifications to be used in administering the Program.

**Household** – All persons residing in one housing unit; which may include one or more families, a single person, a married couple, or two or more unrelated persons.

**Housing Counselor** – A person who provides direct customer services primarily to groups, individuals, households seeking information and assistance with housing issues.

**HRA** – The Housing and Redevelopment Authority in and for the City of Richfield, which administers the City's First Time Homebuyer Program.

**HUD or U. S. Department of Housing and Urban Development** – The principal federal agency responsible for implementing certain federal housing and community development programs.

**Income** - The amount of money or its equivalent received during a period of time in exchange for labor or services, from the sale of goods or property, or as profit from financial investments.

**Lead Risk Assessment** – A report that describes the health risk assessment, management process, estimates of the costs of recovery, and summaries of possible defensive measures required per HUD regulation CFR Part 35: Lead Based Paint Regulations.

**Lender** – Individual or firm that extends money to a borrower with the expectation of being repaid, usually with interest.

**Loan Estimate** – Document disclosing the approximate closing costs a mortgage applicant will pay at or before the mortgage settlement date.

**Low Income Household**– A household whose annual income does not exceed the low income limit as established by HUD with adjustments for smaller and larger families.

**Minnesota Housing** – The Minnesota Housing Finance Agency; a Minnesota State agency that administers a variety of first time homebuyer loan programs.

**Moderate Income Household** – A household whose annual income does not exceed 80 percent of the median income for the area, as determine by HUD with adjustments for smaller and larger families.

**Mortgage** – The conveyance of an interest in real property given as security for the payment of a loan.

**Principal Place of Residence** – To occupy the home as the primary residence on a permanent basis.

**Program** – The City’s First Time Homebuyer Program.

**Promissory Note** – A written instrument containing a promise by the signer to pay and agreed amount.

**Purchase Agreement** – An agreement between buyer and seller of real property, setting forth the price, and terms of the sale. Also known as a sales contract.

**Reducing the Mortgage Principal Amount** – A method of benefitting the buyer through the use of a portion or all of the HRA provided financial assistance to lower the mortgage principle amount. In effect, this assistance acts as a larger down payment and helps to reduce the monthly mortgage payments. The available amount of assistance is up to 10% of the purchase price to a maximum of \$10,000. Borrowers are expected to contribute at least 25% of their gross qualifying income toward their monthly payment before Richfield financial assistance can be used for reduction of the mortgage principal.

**Satisfaction of Mortgage** – A document releasing a mortgage lien, indicating the borrower has paid the debt in full.

**Second Mortgage** – A loan on a property that already has an existing mortgage (the first mortgage). The second mortgage is subordinate to the first.

**VA Loan** – Department of Veterans Affairs, providing below-market financing with no down payment to veterans of the U.S. Armed Services.



**STAFF REPORT NO. 25**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**7/16/2018**

REPORT PREPARED BY: Julie Urban, Housing Manager

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director  
7/11/2018

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich, Executive Director  
7/11/2018

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of the authorization of funding and approval of loan documents for the acquisition of property located within the Cedar Point II Housing Redevelopment area by NHH Properties dba NHH Companies, LLC.**

**EXECUTIVE SUMMARY:**

NHH Companies, LLC (Developer) proposes to construct 218 market-rate apartments and up to 80 for-sale, affordable townhomes in the Cedar Point II redevelopment area (bounded by 63rd Street to the north, 65th Street to the south, 16th Avenue to the west and Richfield Parkway to the east).

Eleven single-family residential properties remain to be purchased in the townhome portion of the development area. Of these eleven properties, the Developer has four under contract, has made offers on three, is in the process of scheduling meetings with two owners, and has received no response from two owners.

The Developer is asking the Housing and Redevelopment Authority (HRA) to provide up to \$630,000 toward the purchase of three of the properties currently under contract. In return, the HRA would receive mortgages against the properties. As the development proceeds, the HRA would be paid back for this assistance through tax increment generated by the project. In the event the project does not proceed, the Developer would deed the three properties to the HRA.

**RECOMMENDED ACTION:**

**By motion: Authorize Housing and Redevelopment Authority staff to provide up to \$630,000 to acquire residential properties located with the Cedar Point II redevelopment area and approve loan documents for the purpose of securing the funds provided, subject to final approval by the Housing and Redevelopment Authority Attorney.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

- On March 19, 2018, HRA approved a Preliminary Development Agreement with the Developer to redevelop the Cedar Point II Housing area.
- As part of the Richfield Parkway construction, the City purchased fourteen properties in the eastern half of the project area and deeded those properties to the HRA for future redevelopment.

The HRA has purchased four of the residential properties located along 16th Avenue. Eleven residential properties remain to be purchased.

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

- The City's Comprehensive Plan guides the area for high-density, multi-family housing. The Cedar Corridor Master plan calls for a diversity of housing options in the area.
- The Cedar Point II housing area has been identified for redevelopment since 2004.

**C. CRITICAL TIMING ISSUES:**

- The Developer has signed purchase agreements with four property owners. Closing on the first property is scheduled for August 1 and two more properties in early September. Approval of the funding by the HRA would enable the closings to proceed as scheduled.
- Utilizing HRA funds first allows the Developer to delay borrowing private funds, thereby reducing overall costs and risks to the development.
- Staff anticipates bringing Development Agreements and action on tax increment financing plans to the HRA in August.

**D. FINANCIAL IMPACT:**

- Up to \$630,000 would be made available to the Developer to acquire property within the Development Area.
- Funds are available in the Development Account for the acquisitions.
- The HRA would be reimbursed for the acquisition costs over time with tax increment generated from the proposed Housing Tax Increment Financing (TIF) District.
- If the development were to not proceed, the Developer would either be required to repay the HRA or provide the HRA with title to the properties through the terms of the loan agreements that will be recorded against the properties.

**E. LEGAL CONSIDERATION:**

- The HRA Attorney has prepared the form of the loan agreement, promissory note, and mortgage that will be recorded against the property titles.
- An interfund loan is required to allow for future transfers of tax increment relating to this action. Consideration of that interfund loan is also on the July 16, 2018, HRA agenda.

**ALTERNATIVE RECOMMENDATION(S):**

- Decide not to provide funds for property acquisition.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

A representative from the Development team.

**ATTACHMENTS:**

Description	Type
<input type="checkbox"/> Resolution	Resolution Letter
<input type="checkbox"/> Loan Agreement	Backup Material
<input type="checkbox"/> Mortgage	Backup Material
<input type="checkbox"/> Promissory Note	Backup Material

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

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

**RESOLUTION APPROVING A LOAN TO NHH COMPANIES L.L.C. AND THE EXECUTION  
AND DELIVERY OF DOCUMENTS IN CONNECTION THEREWITH**

WHEREAS, NHH Companies L.L.C., a Minnesota limited liability company (the “Borrower”), proposes to acquire three parcels of real property (the “Property”) located in the City of Richfield, Minnesota (the “City”); and

WHEREAS, the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the “Authority”) has proposed to make a loan to the Borrower in the principal amount of \$630,000 (the “Loan”) in order to assist the Borrower in acquiring the Property for the purpose of constructing housing in the City, including up to 80 affordable owner-occupied townhomes, pursuant to the terms of a Loan Agreement (the “Loan Agreement”) between the Authority and the Borrower; and

WHEREAS, in exchange for the Loan, the Borrower will execute and deliver to the Authority a Promissory Note (the “Note”) and a Mortgage (the “Mortgage”) to secure its repayment obligations to the Authority; and

WHEREAS, there has been presented before this Board forms of the Loan Agreement, the Note, and the Mortgage; 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 Loan is hereby approved and shall be a deferred loan, the repayment of which shall be as provided by the terms of the Loan Agreement.

2. The Loan 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 Loan 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.

3. The Authority hereby approves the forms of the Note and the Mortgage in substantially the forms on file.

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

Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota  
this 16<sup>th</sup> day of July, 2018.

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Mary Supple, Chair

ATTEST:

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Erin Vrieze Daniels, Secretary

**LOAN AGREEMENT**

This Loan Agreement (the "Agreement") is made this \_\_\_\_ 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, its successors and assigns (the "Borrower").

RECITALS

A. In consideration for the loan contemplated by this Agreement, the Borrower is executing and delivering to the Authority a promissory note of even date herewith (the "Note") and a mortgage of even date herewith (the "Mortgage") on the Property, as described below.

B. The Authority agrees to loan to the Borrower the maximum amount of \$630,000 to finance all or a portion of the costs associated with the acquisition of three lots of real property legally described in EXHIBIT A attached hereto (the "Property") and located in the City of Richfield, Minnesota (the "City").

C. The Authority has provided the Loan (as defined herein) to the Borrower to assist the Borrower in financing up to 80 affordable owner-occupied townhomes; and site improvements and public infrastructure (collectively, the "Project").

D. In exchange for the Loan, the Borrower has agreed to complete the Project.

ACCORDINGLY, to induce the Authority to make the Loan to the Borrower, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Loan Amount. Subject to and upon the terms and conditions of this Agreement, the Authority agrees to loan to the Borrower the sum of Six Hundred Thirty Thousand Dollars (\$630,000), or so much thereof as is disbursed to the Borrower in accordance with this Agreement (the "Loan"). The Loan shall be evidenced by the Note. Proceeds of the Loan shall be disbursed in accordance with Section 6 hereof.

2. Allocation of Loan Amount. The principal amount of the Loan shall be divided between each of the three parcels (the "Parcels" or the "Parcel," as applicable) purchased:

Parcel 1	\$ _____
Parcel 2	\$ _____
Parcel 3	\$ _____

The principal amount of Parcel 1 and Parcel 2 reflects the purchase price of the Parcel as set forth in the Borrower's purchase agreement (and any relocation costs as described in Section 13 and identified at or before closing on the Parcel). The principal amount of Parcel 3 is a portion of the purchase price of Parcel 3 as set forth in the Borrower's purchase agreement (and any relocation costs as described in Section 13 and identified at or before closing on the Parcel). The Borrower's purchase price for Parcel 3 as set forth in the Borrower's purchase agreement is \$ \_\_\_\_\_.

3. Commencement of Construction. Upon commencement of construction of the Project on each of Parcels 1, 2, and 3, the principal amount of the Loan related to the respective Parcel shall be forgiven and the Authority shall provide a satisfaction of the Mortgage for the respective Parcel. Commencement of

construction of the Project shall mean commencement of construction of a building on the Parcel. Once principal allocable to a Parcel is forgiven, the Authority will reimburse itself for the Loan from tax increment derived from the tax increment district the Parcel is located in or other tax increment available for such purposes.

4. Failure to Commence Construction of Project; Conveyance of Property to the Authority. If commencement of construction of the Project does not commence on each Parcel by December 31, 2019, the Borrower shall convey all Parcels for which construction has not commenced to the Authority, and in exchange, the Authority will forgive the Loan amount associated with that Parcel as set forth in Section 2. With respect to Parcel 3, upon conveyance of Parcel 3 from the Borrower to the Authority, the Authority shall also pay the Borrower the difference between the Borrower's purchase price for Parcel 3 as set forth in the Borrower's purchase agreement and the amount of the Loan allocated to Parcel 3 as set forth in Section 2.

5. Failure to Convey Property to the Authority; Repayment of Loan. If commencement of construction of the Project does not commence on each Parcel by December 31, 2019, and the Borrower fails to convey all Parcels for which construction has not commenced to the Authority, the Loan shall be immediately due and payable with interest at a rate of four percent (4%) per annum accruing from and after the date of the default under this Agreement. The Loan must be paid in full within thirty (30) days of a default by the Maker with respect to the Loan Agreement.

6. Disbursement of Loan Proceeds.

(a) The Loan proceeds shall be paid to the Borrower on the first date the Borrower buys a Parcel, or such other date as the parties hereto agree (the "Loan Closing Date").

(b) The following events shall be conditions precedent to the payment of the Loan proceeds to the Borrower on the Loan Closing Date:

(i) the Borrower having executed and delivered or caused the execution and delivery to the Authority, prior to the Loan Closing Date and without expense to the Authority, executed copies of this Agreement, the Mortgage, and the Note; and

(ii) the Borrower having provided evidence satisfactory to the Authority that the Borrower has established a separate accounting system for the exclusive purpose of recording the receipt and expenditure of the Loan proceeds.

7. Representations and Warranties. The Borrower represents and warrants to the Authority that:

(a) The Borrower is a Minnesota limited liability company.

(b) The execution and delivery of this Agreement, the Mortgage, and the Note and the performance by the Borrower of its obligations hereunder do not and will not violate or conflict with any provision of law and do not and will not violate or conflict with, or cause any default or event of default to occur under, any agreement binding upon the Borrower.

(c) This Agreement has in fact been duly executed and delivered by the Borrower and constitutes its lawful and binding obligation, legally enforceable against it.

(d) The Borrower warrants that it shall keep and maintain books, records, and other documents relating directly to the receipt and disbursements of Loan proceeds and that any duly authorized representative of the Authority shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all such books, records, and other documents of the Borrower pertaining to the Loan until the completion of all closeout procedures and the final settlement and conclusion of all issues arising out of this Loan.

(e) The Borrower warrants that it has fully complied with all applicable state and federal laws pertaining to its business and will continue to comply throughout the terms of this Agreement. If at any time Borrower receives notice of noncompliance from any governmental entity, the Borrower agrees to take any necessary action to comply with the state or federal law in question.

(f) The Borrower warrants that it will use the proceeds of the Loan made by the Authority solely for the costs of acquiring the Property.

(g) The Borrower warrants that it will not create, permit to be created, or allow to exist any liens, charges, or encumbrances prior to the obligation created by this Agreement, except as otherwise authorized in writing by the Authority.

8. Event of Default by the Borrower. The following shall be Events of Default under this Agreement:

(a) the Borrower fails to convey the Property to the Authority pursuant to Section 4 or fails to pay any principal or interest on the Loan when due;

(b) any representation or warranty made by the Borrower herein or in any document, instrument, or certificate given in connection with this Agreement, the Mortgage, or the Note is false when made;

(c) the Borrower fails to pay its debts as they become due, makes an assignment for the benefit of its creditors, admits in writing its inability to pay its debts as they become due, files a petition under any chapter of the Federal Bankruptcy Code or any similar law, state or federal, now or hereafter existing, becomes "insolvent" as that term is generally defined under the Federal Bankruptcy Code, files an answer admitting insolvency or inability to pay its debts as they become due in any involuntary bankruptcy case commenced against it, or fails to obtain a dismissal of such case within sixty (60) days after its commencement or convert the case from one chapter of the Federal Bankruptcy Code to another chapter, or be the subject of an order for relief in such bankruptcy case, or be adjudged as bankrupt or insolvent, or has a custodian, trustee, or receiver appointed for, or has any court take jurisdiction of its property, or any part thereof, in any proceeding for the purpose of reorganization, arrangement, dissolution, or liquidation, and such custodian, trustee, or receiver is not discharged, or such jurisdiction is not relinquished, vacated, or stayed within sixty (60) days of the appointment;

(d) a garnishment summons or writ of attachment is issued against or served upon the Authority for the attachment of any property of the Borrower in the Authority's possession or any indebtedness owing to the Borrower, unless appropriate papers are filed by the Borrower contesting the same within thirty (30) days after the date of such service or such shorter period of time as may be reasonable in the circumstances;

(e) any breach or failure of the Borrower to perform any other term or condition of this Agreement not specifically described as an Event of Default in this Agreement and such breach or failure continues for a period of thirty (30) days after the Authority has given written notice to the Borrower specifying such default or breach, unless the Authority agrees in writing to an extension of such time prior to

its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Authority will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Borrower within the applicable period and is being diligently pursued until the Default is corrected, but no such extension shall be given for an Event of Default that can be cured by the payment of money (i.e., payment of taxes, insurance premiums, or other amounts required to be paid hereunder); and

(f) any breach by the Borrower of any other agreement between the Borrower and the Authority or the City.

9. Not a Business Subsidy. The parties agree and understand that the purpose of the Authority's financial assistance to the Borrower is to facilitate development of housing, and is not a "business subsidy" within the meaning of Minnesota Statutes, Sections 116J.993 to 116J.995.

10. The Authority's Remedies upon the Borrower's Default. Upon an Event of Default by the Borrower and after provision by the Authority of written notice, the Authority shall have the right to exercise any or all of the following remedies (and any other rights and remedies available to it):

(a) declare the principal amount of the Loan and any accrued interest thereon to be immediately due and payable upon providing written notice to the Borrower;

(b) suspend its performance under this Agreement;

(c) take any action provided for at law to enforce compliance by the Borrower with the terms of this Agreement and the Note; and

(d) exercise its rights under the Mortgage.

In addition to any other amounts due on the Loan, and without waiving any other right of the Authority under any this Agreement or any other instrument securing the Loan applicable documents, the Borrower shall pay to the Authority a late fee of \$20 for any payment not received in full by the Authority within thirty (30) calendar days of the date on which it is due. Furthermore, interest will continue to accrue on any amount due until the date on which it is paid to the Authority, and all such interest will be due and payable at the same time as the amount on which it has accrued.

11. The Authority's Costs of Enforcement of Agreement. If an Event of Default has occurred as provided herein, then upon demand by the Authority, the Borrower shall pay or reimburse the Authority for all expenses, including all attorneys' fees and expenses incurred by the Authority in connection with the enforcement of this Agreement and the Note, or in connection with the protection or enforcement of the interests and collateral security of the Authority in any litigation or bankruptcy or insolvency proceeding or in any action or proceeding relating in any way to the transactions contemplated by this Agreement.

12. Indemnification.

(a) The Borrower shall and does hereby agree to protect, defend, indemnify, and hold the Authority, and its officers, agents, and employees, harmless of and from any and all liability, loss, or damage that it may incur under or by reason of this Agreement, and of and from any and all claims and demands whatsoever that may be asserted against the Authority by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants, or agreements contained herein.

(b) Should the Authority, or its officers, agents, or employees, incur any such liability or be required to defend against any claims or demands pursuant to Section 8, or should a judgment be entered against the Authority, the amount thereof, including costs, expenses, and attorneys fees, shall bear interest thereon at the rate then in effect on the Note, shall be secured hereby, shall be added to the Loan, and the Borrower shall reimburse the Authority for the same immediately upon demand, and upon the failure of the Borrower to do so, the Authority may declare the Loan immediately due and payable.

(c) This indemnification and hold harmless provision shall survive the execution, delivery, and performance of this Agreement and the creation and payment of any indebtedness to the Authority. The Borrower waives notice of the acceptance of this Agreement by the Authority.

(d) Nothing in this Agreement shall constitute a waiver of or limitation on any immunity from or limitation on liability to which the Borrower is entitled under law.

13. Relocation Benefits. For each parcel of the Property acquired by the Borrower, the Borrower is obligated to deliver to the Authority either (i) a certification describing in detail the relocation services, payments, and benefits to be provided to the owner of such parcel; or (ii) a written relocation waiver agreement in a form approved by the Authority and which includes the Authority as an express third-party beneficiary, specifically describing the type and amounts of relocation assistance services, payments, and benefits for which eligible, separately listing those services being waived. Notwithstanding anything to the contrary in this Section, the waiver option under clause (ii) may not be used for tenants of any parcel (unless the tenant is also an owner of the parcel); instead, the Borrower must comply with the provisions of clause (i).

14. Miscellaneous.

(a) Waiver. The performance or observance of any promise or condition set forth in this Agreement may be waived, amended, or modified only by a writing signed by the Borrower and the Authority. No delay in the exercise of any power, right, or remedy operates as a waiver thereof, nor shall any single or partial exercise of any other power, right, or remedy.

(b) Assignment. This Agreement shall be binding upon the Borrower and its successors and assigns and shall inure to the benefit of the Authority and its successors and assigns. All rights and powers specifically conferred upon the Authority may be transferred or delegated by the Authority to any of its successors and assigns. The Borrower's rights and obligations under this Agreement may be assigned only when such assignment is approved in writing by the Authority.

(c) Governing Law. This Agreement is made and shall be governed in all respects by the laws of the State of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

(d) Severability. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications that can be given effect, and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby.

(e) Notice. All notices required hereunder shall be given by depositing in the U.S. mail, postage prepaid, first class mail, return receipt requested, to the following addresses (or such other addresses as either party may notify the other):

To the Authority:                   Housing and Redevelopment Authority in and for the

City of Richfield, Minnesota  
6700 Portland Avenue South  
Richfield, MN 55423  
Attn: Community Development Director

To the Borrower: NHH Companies L.L.C.  
[ADDRESS]  
Attn: \_\_\_\_\_

(f) Termination. If the Loan is not disbursed pursuant to this Agreement by December 31, 2018, this Agreement shall terminate and neither party shall have any further obligation to the other, except that if the Loan is not disbursed because the Borrower has failed to use its best efforts to comply with the conditions set forth in Section 3 of this Agreement then the Borrower shall pay to the Authority all reasonable attorneys' fees, costs, and expenses incurred by the Authority in connection with this Agreement, the Mortgage, and the Note.

(g) Entire Agreement. This Agreement, together with the Exhibit hereto, which is incorporated by reference, constitutes the complete and exclusive statement of all mutual understandings between the parties with respect to this Agreement, superseding all prior or contemporaneous proposals, communications, and understandings, whether oral or written, concerning the Loan.

(h) Headings. The headings appearing at the beginning of the several sections contained in this Agreement have been inserted for identification and reference purposes only and shall not be used in the construction and interpretation of this Agreement.

(i) Recording of Documents. The Mortgage shall be recorded with the county on which the Property is located and all costs of such recording shall be paid by the Borrower.

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

IN WITNESS WHEREOF, this Loan Agreement has been duly executed and delivered by the proper officers of the Authority thereunto duly authorized on the day and year first written above.

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

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

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

This Loan Agreement has been duly executed and delivered by the Borrower on the day and year first written above.

**NHH COMPANIES L.L.C.**

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

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

**Parcel 1**

**Parcel 2**

**Parcel 3**

## MORTGAGE

THIS MORTGAGE (the "Mortgage") is given on \_\_\_\_\_, 2018, by NHH Companies L.L.C., a Minnesota limited liability company, its successors and assigns (the "Borrower"), for the benefit 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"). The Borrower owes the Authority the principal sum of \$630,000, which debt is evidenced by a Loan Agreement between the Borrower and the Authority of even date herewith (the "Loan Agreement") and a Promissory Note from the Borrower of even date herewith (the "Note"). This Mortgage secures to the Authority: (a) the repayment of the debt evidenced by the Loan Agreement and the Note, and all renewals, extensions, and modifications of the Loan Agreement and the Note; (b) the payment of all other sums, advanced to protect the security of this Mortgage; (c) the performance of the Borrower's covenants and agreements under the Loan Agreement, this Mortgage, and the Note; and (d) is subject to the terms and conditions of the Loan Agreement. For this purpose, the Borrower does hereby mortgage, grant, and convey to the Authority, with power of sale, the property located in Hennepin County, Minnesota, and fully described in the attached Exhibit A, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Mortgage. All of the foregoing is referred to in this Mortgage as the "Property."

THE OWNER COVENANTS that the Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant, and convey the Property and that the Property is unencumbered. The Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

The Borrower and the Authority agree as follows:

1. PAYMENT OF PRINCIPAL AND INTEREST; LATE CHARGES. The Borrower shall promptly pay when due the principal and interest on the debt evidenced by the Loan Agreement and the Note and any late charges due under the Loan Agreement and the Note.

2. CHARGES; LIENS. The Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which may attain priority over this Mortgage, and leasehold payments or ground rents, if any. The Borrower shall pay these obligations on time directly to the person owed payment.

The Borrower shall promptly discharge any lien which has priority over this Mortgage unless the Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner reasonably acceptable to the Authority; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Authority's opinion operate to prevent the

enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to the Authority subordinating the lien to this Mortgage. If the Authority determines that any part of the Property is subject to a lien which may attain priority over this Mortgage, the Authority may give the Borrower a notice identifying the lien. The Borrower shall satisfy the lien or take one or more of the actions set forth above within thirty (30) days of the giving of notice.

3. HAZARD OR PROPERTY INSURANCE. The Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire and any other hazards for which the Authority requires insurance for full replacement value of the improvements. This insurance shall be maintained in the amounts and for the periods that the Authority reasonably requires. The insurance carrier providing the insurance shall be chosen by the Borrower subject to the Authority's approval, which shall not be unreasonably withheld or delayed. If the Borrower fails to maintain coverage described above, the Authority may, at the Authority's option, obtain coverage to protect the Authority's rights in the Property in accordance with paragraph 5.

All insurance policies and renewals shall be reasonably acceptable to the Authority and shall include a standard mortgage clause. If the Authority requires, the Borrower shall promptly give to the Authority all receipts of paid premiums and renewal notices. In the event of loss, the Borrower shall give prompt notice to the insurance carrier and the Authority. The Authority may make proof of loss if not made promptly by the Borrower.

If under paragraph 15 the Property is acquired by the Authority, the Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to the Authority to the extent of the sums secured by this Mortgage immediately prior to the acquisition.

4. PROTECTION OF THE PROPERTY. The Borrower shall not destroy or damage the Property or commit waste on the Property. The Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in the Authority's good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Mortgage or the Authority's security interest. The Borrower may cure such a default and reinstate, as provided in paragraph 13, by causing the action or proceeding to be dismissed with a ruling that, in the Authority's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Mortgage or the Authority's security interest. The Borrower shall also be in default if the Borrower gave materially false or inaccurate information or statements to the Authority in connection with the loan evidenced by the Note.

5. PROTECTION OF THE AUTHORITY'S RIGHTS IN THE PROPERTY. If the Borrower or the Borrower fails to perform the covenants and agreements contained in this Mortgage, or there is a legal proceeding that may significantly affect the Authority's rights in the Property (such as a proceeding in bankruptcy, condemnation or forfeiture), the Authority may do and pay for whatever is necessary to protect the value of the Property and the Authority's rights in the Property. The Authority's actions may include paying any sums secured by a lien which has priority over this Mortgage, appearing in court, paying reasonable attorneys fees and entering on the Property to make repairs. Although the Authority may take action under this paragraph 5, the Authority is not required to do so.

Any amounts disbursed by Authority under this paragraph 5 shall become additional debt of Borrower secured by this Mortgage. Unless the Borrower and the Authority agree to other terms of payment, these amounts shall bear interest from the date of disbursement at a rate equal to the interest rate on the Note and shall be payable, with interest, upon notice from the Authority to Borrower requesting payment.

6. INSPECTION. The Authority or its agent may make reasonable entries upon and inspections of the Property.

7. CONDEMNATION. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to the Authority.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Mortgage, whether or not then due, with any excess paid to the Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is equal to or greater than the amount of the sums secured by this Mortgage immediately before the taking, unless the Borrower and the Authority otherwise agree in writing, if any, the sums secured by this Mortgage shall be reduced by the amount of the proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the taking, divided by (b) the fair market value of the Property immediately before the taking. Any balance shall be paid to the Borrower. In the event of a partial taking of the Property in which the fair market value of the Property immediately before the taking is less than the amount of the sums secured immediately before the taking, unless the Borrower and the Authority otherwise agree in writing or unless applicable law otherwise provides, the proceeds shall be applied to the sums secured by this Mortgage whether or not the sums are then due.

The Authority acknowledges this Mortgage is subordinate to the liens specifically referred to in paragraph 17 hereof.

8. FORBEARANCE BY THE AUTHORITY NOT A WAIVER. Any forbearance by the Authority in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

9. SUCCESSORS AND ASSIGNS BOUND. The covenants and agreements of this Mortgage shall bind and benefit the successors and assigns of the Authority and the Borrower.

10. LOAN CHARGES. If the loan secured by this Mortgage is or becomes subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to the Borrower. The Authority may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to the Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment under the Note.

11. NOTICES. All notices required hereunder shall be given by depositing in the U.S. mail, postage prepaid, first class mail, return receipt requested, to the following addresses (or such other addresses as either party may notify the other):

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

To the Borrower: NHH Companies L.L.C.  
[ADDRESS]  
Attn: \_\_\_\_\_

Any notice provided for in this Mortgage shall be deemed to have been given to the Borrower or the Authority when given as provided in this paragraph.

12. GOVERNING LAW; SEVERABILITY. This Mortgage shall be governed by the law of the State of Minnesota. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision. To this end, the provisions of this Mortgage and the Note are declared to be severable.

13. BORROWER'S RIGHT TO REINSTATE. If the Borrower meets certain conditions, the Borrower shall have the right to have enforcement of this Mortgage discontinued at any time prior to the earlier of: (a) five days before sale of the Property pursuant to any power of sale contained in this Mortgage; or (b) entry of a judgment enforcing this Mortgage. Those conditions are that the Borrower: (a) pays the Authority all sums which then would be due under this Mortgage and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Mortgage, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as the Authority may reasonably require to assure that the lien of this Mortgage, the Authority's rights in the Property and the Borrower's obligation to pay the sums secured by this Mortgage shall continue unchanged. Upon reinstatement by the Borrower, this Mortgage and the obligations secured hereby shall remain fully effective as if no acceleration had occurred.

14. HAZARDOUS SUBSTANCES. The Borrower shall not cause or permit the presence, use, disposal, storage, or release of any hazardous substances on or in the Property, except those solvents, oils, cleaning materials, and other substances as are used in the ordinary course of the Borrower's business. The Borrower shall not do, and will use its best efforts not to allow anyone else to do, anything affecting the Property that is in violation of any environmental law.

The Borrower shall promptly give the Authority written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any hazardous substance or environmental law of which the Borrower has actual knowledge. If the Borrower learns, or is notified by any governmental or regulatory Authority, that any removal or other remediation of any hazardous substance affecting the Property is necessary, the Borrower shall promptly take all necessary remedial actions in accordance with that environmental law.

As used in this paragraph 14, "hazardous substances" are those substances defined as toxic or hazardous substances by environmental law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph 14, "environmental law" means federal or state laws that relate to environmental protection.

15. ACCELERATION; REMEDIES. The Authority shall give notice to the Borrower prior to acceleration following the Borrower's breach of any covenant or agreement in this Mortgage. The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to the Borrower by which the default must be cured, provided, however, if the Borrower is diligently pursuing a cure, the Borrower shall have such additional time as is reasonably necessary to complete the cure; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Mortgage and sale of the

Property. The notice shall further inform the Borrower of the right to reinstate after acceleration and sale. If the default is not cured on or before the date specified in the notice, the Authority at its option may require immediate payment in full of any sums secured by this Mortgage without further demand and may invoke the power of sale and any other remedies permitted by law. The Authority shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 15, including, but not limited to, reasonable attorneys' fees.

If the Authority invokes the power of sale, the Authority shall cause a copy of a notice of sale to be served upon any person in possession of the Property. The Authority shall publish a notice of sale, and the Property shall be sold at public auction in the manner prescribed by law. The Authority or its designee may purchase the Property at any sale. The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys fees; (b) to all sums secured by this Mortgage; and (c) any excess to the person or persons legally entitled to it.

16. RELEASE OF MORTGAGE. Upon payment of all sums secured by this Mortgage, the Authority shall discharge this Mortgage without charge to the Borrower. The Borrower shall pay any recordation costs.

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



**EXHIBIT A  
TO MORTGAGE  
LEGAL DESCRIPTION**

[Insert legal description]

## PROMISSORY NOTE

\$630,000

4.0%

\_\_\_\_\_, 2018

NHH COMPANIES L.L.C., a Minnesota limited liability company, its successors and assigns (the “Maker” or the “Borrower”), for value received, hereby promises to pay 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 or its assigns (the “Authority,” and any assigns are collectively referred to herein as the “Holder”), at its designated principal office or such other place as the Holder may designate in writing, the principal sum of Six Hundred Thirty Thousand Dollars (\$630,000) or so much thereof as may be advanced under this Promissory Note (the “Note”), with interest as hereinafter provided, in any coin or currency that at the time or times of payment is legal tender for the payment of private debts in the United States of America. The principal of and interest on this Note is payable in installments due as follows:

1. The funds loaned by the Holder to the Maker (the “Loan”) pursuant to the terms of the Loan Agreement of even date herewith (the “Loan Agreement”), between the Authority and the Maker, shall not bear interest unless a default occurs under Sections 5 or 8 of the Loan Agreement .

2. The Loan shall be forgiven by the Authority upon satisfaction by the Maker of the terms of the Loan Agreement.

3. If all or a portion of the Loan is not forgiven, the portion of the Loan that must be repaid shall bear interest at a rate of four percent (4.0%) per annum and interest shall commence to accrue as of the first day of the first month following a default by the Maker with respect to the Loan Agreement. The Loan must be paid in full within thirty (30) days of a default by the Maker with respect to the Loan Agreement.

4. The Maker shall have the right to prepay the principal of this Note, in whole or in part, on any date a principal and interest payment is due and payable.

5. This Note is given pursuant to the Loan Agreement. If the Loan Agreement is found to be invalid for whatever reason, such invalidity shall constitute an Event of Default hereunder.

All of the agreements, conditions, covenants, provisions, and stipulations contained in the Loan Agreement, the Mortgage of even date herewith (the “Mortgage”) from the Borrower to the Authority, or any other instrument securing this Note are hereby made a part of this Note to the same extent and with the same force and effect as if they were fully set forth herein. It is agreed that time is of the essence of this Note. If an Event of Default occurs under the Loan Agreement or any other instrument securing this Note, then the Holder of this Note may at its right and option, without notice, declare immediately due and payable the principal balance of this Note and interest accrued thereon, together with reasonable attorneys’ fees and expenses incurred by the Holder of this Note in collecting or enforcing payment hereof, whether by lawsuit or otherwise, and all other sums due hereunder or any instrument securing this Note. The Maker of this Note agrees that the Holder of this Note may, without notice to and without affecting the liability of the Maker, accept additional or substitute security for this Note, or release any security or any party liable for this Note or extend or renew this Note.

6. The remedies of the Holder of this Note as provided herein, and in the Loan Agreement or any other instrument securing this Note shall be cumulative and concurrent and may be pursued singly, successively, or together, and, at the sole discretion of the Holder of this Note, may be exercised as often as occasion therefor shall occur; and the failure to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

The Holder of this Note shall not be deemed, by any act of omission or commission, to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by the Holder and then only to the extent specifically set forth in the writing. A waiver with reference to one event shall not be construed as continuing or as a bar to or waiver of any right or remedy as to a subsequent event. This Note may not be amended, modified, or changed except only by an instrument in writing signed by the party against whom enforcement of any such amendment, modifications, or change is sought.

7. If any term of this Note, or the application thereof to any person or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Note, or the application of such term to persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each term of this Note shall be valid and enforceable to the fullest extent permitted by law.

8. It is intended that this Note is made with reference to and shall be construed as a Minnesota contract and is governed by the laws thereof. Any disputes, controversies, or claims arising out of this Note shall be heard in the state or federal courts of Minnesota, and all parties to this Note waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

9. The performance or observance of any promise or condition set forth in this Note may be waived, amended, or modified only by a writing signed by the Maker and the Holder. No delay in the exercise of any power, right, or remedy operates as a waiver thereof, nor shall any single or partial exercise of any other power, right, or remedy.

10. IT IS HEREBY CERTIFIED AND RECITED that all conditions, acts, and things required to exist, happen, and be performed precedent to or in the issuance of this Note do exist, have happened, and have been performed in regular and due form as required by law.

IN WITNESS WHEREOF, the Maker has caused this Note to be duly executed as of the date and year first written above.

**NHH COMPANIES L.L.C.**

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



**STAFF REPORT NO. 26**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**7/16/2018**

REPORT PREPARED BY: Myrt Link, Community Development Accountant

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director  
7/11/2018

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich, Executive Director  
7/11/2018

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of the adoption of a resolution authorizing an interfund loan in the amount of \$730,000 for advance of certain costs in connection with property located within Tax Increment Financing District 2018-1 (Cedar Point II project).**

**EXECUTIVE SUMMARY:**

The Housing and Redevelopment Authority (HRA) is considering action related to the establishment of Tax Increment Financing TIF District 2018-1 (District). NHH Companies, LLC (Developer) is proposing to construct approximately 80 affordable owner-occupied townhomes within the District.

An interfund loan in an amount up to \$630,000 from the HRA Development fund will provide the Developer with a loan to acquire property within the proposed TIF District. If the Developer commences with construction of the project, the HRA will forgive all or a portion of the loan and will reimburse itself with tax increment derived from the District.

In addition, an interfund loan in an amount of up to \$100,000 from the HRA General Fund is needed to pay for administrative costs. Once the District starts generating increment, the loan will be paid back.

**RECOMMENDED ACTION:**

**By motion: Adopt a resolution authorizing an interfund loan in the amount of \$730,000 for advance of certain costs in connection with property located within Tax Increment Financing District 2018-1 (Cedar Point II project).**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

- On March 19, 2018, the Housing and Redevelopment Authority approved a Preliminary Development Agreement with NHH Companies, LLC to redevelop the Cedar Point II Housing area.

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

- Under Minnesota Statutes, Section 469.178, Sub. 7, the HRA is authorized to advance or loan money from the General Fund or any other fund from which such advances may be legally

authorized, in order to finance the qualified costs.

**C. CRITICAL TIMING ISSUES:**

- The interfund loan must be approved before funds are expended in order to be reimbursed with tax increment generated by the project.

**D. FINANCIAL IMPACT:**

- The interfund loans will be paid back with tax increment generated by the project.

**E. LEGAL CONSIDERATION:**

- The resolution was prepared by HRA legal counsel.

**ALTERNATIVE RECOMMENDATION(S):**

- Do not approve the interfund loan.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

None

**ATTACHMENTS:**

Description	Type
□ Resolution	Resolution Letter

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

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

**RESOLUTION AUTHORIZING INTERFUND LOAN FOR ADVANCE OF CERTAIN COSTS  
IN CONNECTION WITH PROPERTY LOCATED WITHIN TAX INCREMENT FINANCING  
DISTRICT NO. 2018-1 (A HOUSING DISTRICT) (CEDAR POINT II PROJECT)**

BE IT RESOLVED By the Board of Commissioners of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the "Authority") as follows:

Section 1.     Background.

1.01. Pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended (the "TIF Act"), the City of Richfield, Minnesota (the "City") and the Authority intend to establish Tax Increment Financing District No. 2018-1 (a housing district) (Cedar Point II Project) (the "TIF District") within the Richfield Redevelopment Project Area (the "Redevelopment Project"), which is administered by the Authority.

1.02. Under Section 469.178, subdivision 7 of the TIF Act, the Authority is authorized to advance or loan money from any fund from which such advances may be legally made (each such advance being referred to as an "interfund loan") in order to finance expenditures that are eligible to be paid with tax increments under the TIF Act.

1.03. The Authority has determined to advance funds in a maximum amount of \$630,000 to NHH Companies L.L.C., a Minnesota limited liability company (the "Developer"), in the form of a forgivable loan to acquire various properties within the TIF District for the purpose of constructing affordable housing (the "Land Loan"). It is the intent of the Authority and the Developer to enter into a contract for private development pursuant to which the Developer will construct and develop approximately 80 affordable owner-occupied townhomes (the "Project") within the TIF District. If the Developer commences construction of the Project, the Authority will forgive all or a portion of the Land Loan and will instead reimburse itself with tax increment derived from the TIF District.

1.04. In order to fund the Land Loan, the Authority has determined to use funds available in its Development Fund in the amount of \$630,000 on a temporary basis through an interfund loan in accordance with the terms hereof.

1.05. In addition to the Land Loan, the Authority has determined to use funds available in its General Fund in the amount of \$100,000 on a temporary basis to pay for administrative costs of the TIF District through an interfund loan in accordance with the terms hereof.

1.06. The Land Loan in the amount of \$630,000 and temporary loan for administrative costs in the amount of up to \$100,000 are referred to herein as the "Interfund Loan." Any reimbursement for the Interfund Loan is not subordinate to payments due and owing to the Developer under the tax increment pay as you go note to be issued to the Developer.

1.07. The Authority intends to use tax increment revenues derived from the TIF District to repay all or a portion of the Interfund Loan.

Section 2. Terms of Interfund Loan.

2.01. The Interfund Loan shall be made from the two Authority funds described above, or any other fund designated by the Authority, to the Authority's TIF Fund for the TIF District.

2.02. The Interfund Loan is repayable solely from and to the extent that Available Tax Increment is available. "Available Tax Increment" means, on each Payment Date (as defined herein), all of the tax increment generated in the preceding six (6) months with respect to the property within the TIF District and remitted to the Authority by Hennepin County, Minnesota, all in accordance with the TIF Act. Payments on the Interfund Loan are on parity with any other outstanding or future interfund loans secured in whole or in part with Available Tax Increment.

2.03. Provided that there is Available Tax Increment to repay the Interfund Loan, principal and interest (the "Payments") on the Interfund Loan shall be paid semiannually on February 1 and August 1 (each a "Payment Date"), commencing on the first Payment Date after the advance of the Interfund Loan. Payments shall continue until the earlier of (a) the date the principal and accrued interest of the Interfund Loan is paid in full, or (b) the date of last receipt of tax increment from the TIF District. Payments on the Interfund Loan will be made in the amount and only to the extent of Available Tax Increment. Payments shall be applied first to accrued interest, and then to unpaid principal. Interest accruing from the date of each expenditure to the first Payment Date will be compounded semiannually on February 1 and August 1 of each year and added to principal, unless otherwise specified by the Interfund Loan form.

2.04. The Interfund Loan shall bear interest at the Authority's then current internal rate of return on the principal amount advanced, accruing from the date of each initial expenditure; provided, however that the interest rate shall not exceed the greater of the interest rates specified under Minnesota Statutes, Section 270C.40 or Section 549.09 as of the date the advance is authorized. The maximum interest rate in effect for calendar year 2018 is 4.0%.

2.05. The principal sum and all accrued interest payable under this resolution is prepayable in whole or in part at any time by the Authority without premium or penalty.

2.06. This resolution is evidence of an internal borrowing by the Authority in accordance with Section 469.178, subdivision 7 of the TIF Act, and is a limited obligation payable from Available Tax Increment pledged to the payment hereof under this resolution or any other sources of funds the Authority may use to pay the Payments. The Interfund Loan shall not be deemed to constitute a general obligation of the State of Minnesota or any political subdivision thereof, including, without limitation, the Authority and the City.

2.07. The Authority may from time to time amend the terms of this resolution to the extent permitted by law, including without limitation amendment to the payment schedule and the interest rate; provided that the interest rate may not be increased above the maximum specified in Section 469.178, subdivision 7 of the TIF Act.

Section 3. Interfund Loans Authorized.

3.01. The Interfund Loan with the terms set forth in Section 2 hereof is hereby approved.

3.02. Authority staff and officials are hereby authorized and directed to execute any documents and take any other actions necessary to carry out the intent of this resolution.

Section 4. Effective Date. This resolution is effective upon approval.

Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota this 16<sup>th</sup> day of July, 2018.

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Mary Supple, Chair

ATTEST:

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Erin Vrieze Daniels, Secretary



**STAFF REPORT NO. 27**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**7/16/2018**

REPORT PREPARED BY: Melissa Poehlman, Assistant CD Director

DEPARTMENT DIRECTOR REVIEW: John Stark, Community Development Director  
7/11/2018

OTHER DEPARTMENT REVIEW: N/A

CITY MANAGER REVIEW: Steven L. Devich, Executive Director

**ITEM FOR COUNCIL CONSIDERATION:**

**Consideration of the adoption of a resolution approving an Amended and Restated Contract for Private Development with Lyndale Gardens, LLC for remaining land at the former Lyndale Gardens Center site.**

**EXECUTIVE SUMMARY:**

The Richfield Housing and Redevelopment Authority (HRA) approved a Contract for Private Development (Contract) with Lyndale Gardens, LLC (Developer) on October 17, 2011. This Contract detailed plans for redevelopment of the nine acre site which would include rehabilitation of the former garden center building (later amended to allow demolition and new construction) and construction of a multi-story mixed-use building and multi-family housing. The Contract further detailed the HRA's commitment to provide public assistance through Tax Increment Financing (TIF) to aid in the acquisition and redevelopment of the property.

Since 2011, Lakewinds Cooperative Grocery Store has been built on on the southern half of the property and the Developer has continued to pursue options for construction of multi-family residential housing and retail on the northern half of the site. On June 26th, the City Council approved revised plans that include four multi-family buildings comprised of 30 for-sale condominiums, 8 rental townhomes, and 66 apartments, and a retail building of approximately 6,000 square feet. HRA staff has worked with the HRA's legal counsel (Julie Eddington of Kennedy & Graven) and financial consultant (Rebecca Kurtz of Ehlers and Associates), as well as the Developer's legal counsel to modify the existing Contract to reflect this revised proposal. Changes contemplated include:

- Minimum improvements include 30 for-sale condominiums, 8 rental townhomes, 66 apartments, and 6,000 square feet of retail.
- Addition of a Secondary Developer to construct and manage rental properties.
- Seven rental units will be reserved for tenants with an income that does not exceed 60% of the Area Median Income (AMI).
- In accordance with newly-adopted HRA policies, the Secondary Developer must accept tenants who are recipients of Section 8 housing vouchers and the Secondary Developer must provide the HRA with at least 90 days' notice of sale of the project.
- As before, the Developer has identified a need for public assistance.
- The public assistance that is identified in this Contract includes two tax TIF notes (Master Developer and Secondary Developer) from the HRA of approximately \$2.74 million and \$1.49 million, respectively.
- 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 terms of the Contract require construction of the condominiums to begin by December 31, 2019 and be completed within 24 months. The apartment and rental townhomes must be under construction by December 31, 2019 and completed within 18 months.

**RECOMMENDED ACTION:**

**By motion: Adopt a resolution approving an Amended and Restated Contract for Private Development with Lyndale Gardens, LLC for the former Lyndale Garden Center site.**

**BASIS OF RECOMMENDATION:**

**A. HISTORICAL CONTEXT**

- On October 17, 2011, the Richfield HRA approved a Contract with the Developer for the former Lyndale Garden Center area.

**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 construction this fall.

**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 HRA will withhold an additional 10% of the available Tax Increment to used to reimburse the HRA's Housing Fund.
- The terms of the proposed Contract 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, the Developer, and the Developer's legal counsel.
- 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 Amended and Restated Contract for Private Development with additional provisions or modifications.
- Do not approve the Amended and Restated Contract for Private Development.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

Julie Eddington, HRA Legal Counsel Representative(s) of Lyndale Gardens, 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 AMENDED AND RESTATED CONTRACT FOR PRIVATE  
DEVELOPMENT WITH LYNDALE GARDENS, LLC AND AUTHORIZING THE ISSUANCE OF  
THE AUTHORITY'S TAX INCREMENT LIMITED REVENUE NOTES**

WHEREAS, on November 21, 2011, the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the "Authority") and Lyndale Gardens, LLC, a Minnesota limited liability company (the "Master Developer") entered into a Contract for Private Development, relating to the development of certain land located within the Richfield Redevelopment Project (the "Project") and in the City of Richfield, Minnesota (the "City"); and

WHEREAS, the Authority has established the Lyndale Gardens Tax Increment Financing District (the "TIF District") within the Project pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended, in order to facilitate redevelopment of certain property in the Project; and

WHEREAS, there has been presented before this Board of Commissioners of the Authority an Amended and Restated Contract for Private Development (the "Development Contract") proposed to be entered into between the Authority and the Master Developer, pursuant to which the Master Developer will construct, or cause to be constructed, 30 for-sale condominiums, 8 rental townhomes, a 66-unit multifamily apartment building, including 7 affordable residential units, and approximately 6,000 square feet of retail (the "Project") upon certain property located within the Project (the "Development Property"), and the Authority will reimburse the Master Developer (and any secondary developer chosen by the Master Developer (the "Secondary Developer")) for a portion of certain site improvements and site preparation costs related thereto with tax increment generated from the Development Property; and

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

WHEREAS, pursuant to the Development Contract, the Authority has proposed to issue a Tax Increment Limited Revenue Note to the Master Developer (the "Master Developer TIF Note") and a Tax Increment Limited Revenue Note to the Secondary Developer (the "Secondary Developer TIF Note," and together with the Master Developer TIF Note, the "TIF Notes"), which may be issued in the maximum aggregate principal amount of \$4,233,477 to reimburse the Master Developer and the Secondary Developer for a portion of certain site improvements and site preparation costs related to the Project (the "Public Redevelopment Costs").

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 Contract. The Development Contract is hereby in all respects authorized, approved, and confirmed, and the Chair and the Executive Director are hereby authorized and directed to execute the Development Contract 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.

Section 2. The TIF Notes.

2.01. The Authority hereby approves and authorizes the Chair and Executive Director to execute the TIF Notes. The Authority hereby delegates to the Executive Director the determination of the date on which the TIF Notes are to be delivered, in accordance with Sections 3.3 and 3.4 of the Development Contract. The Master Developer TIF Note shall be sold to the Master Developer with such terms provided in the Development Contract. The Secondary Developer TIF Note shall be sold to the Secondary Developer with such terms provided in the Development Contract. The Authority shall receive in exchange for the sale of the TIF Notes the agreement of the Master Developer to pay or cause to be paid the Public Redevelopment Costs.

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

2.03. The TIF Notes shall each be issued as a single typewritten note numbered R-1 and R-2. The TIF Notes shall be issuable only in fully registered form. Principal of the TIF Notes shall be payable by check or draft issued by the registrar described herein. Principal of the TIF Notes shall be payable by mail to the owner of record thereof as of the close of business on the fifteenth day of the month preceding the Payment Date (as defined in the Development Contract), whether or not such day is a business day.

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

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

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

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

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

(e) The Authority and the Registrar may treat the person in whose name each TIF Note is at any time registered in the bond register as the absolute owner of such TIF Note, whether the TIF Notes shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal of such TIF Note and for all other purposes, and all such payments so made to any such registered owner or upon the owner's order shall be valid and effectual to satisfy and discharge the liability of the Authority upon such TIF Note to the extent of the sum or sums so paid.

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

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

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

### Section 3. Security Provisions of the TIF Notes.

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

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

Section 4. Miscellaneous.

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

4.02. The officers of the Authority are hereby authorized and directed to prepare and furnish to the Redeveloper certified copies of all proceedings and records of the Authority, and such other affidavits, certificates, and information as may be required to show the facts relating to the legality and marketability of the TIF Notes as the same appear from the books and records under their custody and control or as otherwise known to them, and all such certified copies, certificates, and affidavits, including any heretofore furnished, shall be deemed representations of the Authority as to the facts recited therein.

4.03. This resolution shall be effective upon full execution of the Development Contract.

Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota this 16<sup>th</sup> day of July, 2018.

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Mary Supple, Chair

ATTEST:

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Erin Vrieze Daniels, Secretary

**Fifth Draft  
July 12, 2018**

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**AMENDED AND RESTATED CONTRACT**

**FOR**

**PRIVATE DEVELOPMENT**

**between**

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

**and**

**LYNDALE GARDENS, LLC**

Dated: \_\_\_\_\_, 2018

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THIS INSTRUMENT 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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**AMENDED AND RESTATED CONTRACT FOR PRIVATE DEVELOPMENT**

THIS AMENDED AND RESTATED 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 LYNDALE GARDENS, LLC, a Minnesota limited liability company (the “Master Developer”), amends and restates the Contract for Private Development, dated November 21, 2011 (the “Original Agreement”), between the Authority and the Master Developer. The Authority and the Master Developer are referred to herein as the “Parties.”

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 housing within the City; and

WHEREAS, the Authority has established the Lyndale Gardens Tax Increment Financing District (the “TIF District”) within the Richfield Project pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended, in order to facilitate redevelopment of certain property in the Redevelopment Project; and

WHEREAS, the Master Developer owns certain property (the “Development Property”) within the TIF District and proposes to construct or cause to be constructed 30 for-sale condominiums, 8 rental townhomes, a 66-unit multifamily apartment building (including 7 affordable residential units), and approximately 6,000 square feet of retail (the “Project”); and

WHEREAS, in order to achieve the objectives of the Redevelopment Plan for the Redevelopment Project and make the Project economically feasible, the Authority is prepared to reimburse the Master Developer for a portion of certain site improvements and site preparation costs related to the Project; 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; and

WHEREAS, it is the intention of the parties that this Agreement replace the Original Agreement; and

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, a public body corporate and politic under the laws of the State.

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

“Available Tax Increment” means, on each Payment Date, the Tax Increment attributable to the Master Developer Property and the Secondary Developer Property and paid to the Authority by the County in the six (6) months preceding the Payment Date after first deducting ten percent (10%) of the Tax Increment to be used to reimburse the Authority for administrative expenses and further deducting ten percent (10%) of the Tax Increment to be used for pooling.

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

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

“City” means the City of Richfield, Minnesota.

“Condominiums” means the 30 for-sale condominiums to be constructed by the Master Developer on the Master Developer Property as part of the Master Developer Improvements.

“Construction Plans” means the plans, specifications, drawings and related documents on the construction work to be performed by the Master Developer on the Development Property, including the Master Developer 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.

“Development Property” means the Master Developer Property and the Secondary Developer Property described in EXHIBIT A attached hereto.

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

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

“Master Developer” means Lyndale Gardens, LLC, a Minnesota limited liability company, or its permitted successors and assigns.

“Master Developer Improvements” means the construction of the Condominiums and the Retail on the Master Developer Property.

“Master Developer Property” means the Master Developer Property described in EXHIBIT A attached hereto.

“Master Developer TIF Note” means a Tax Increment Limited Revenue Note, substantially in the form attached hereto as EXHIBIT B to be delivered by the Authority to the Master Developer pursuant to Section 3.3 hereof and payable from Available Tax Increment received from the TIF District.

“Material Change” means a major amendment to the planned unit development that adversely affects generation of tax increment.

“Maturity Date” means the date that both the Master Developer TIF Note and the Secondary Developer TIF Note have been paid in full or terminated.

“Minimum Market Value” means the minimum market value for the Master Developer Improvements, as set forth in Section 4.2(a)(vi) hereof.

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

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

“Project” means the development of the Master Developer Improvements and the Secondary Developer Improvements on the Development Property.

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

“Public Redevelopment Costs” means costs incurred by the Master Developer and the Secondary Developer and related to the development of the Master Developer Improvements and/or the Secondary Developer Improvements and eligible to be reimbursed with Tax Increment, including but not limited to the costs of land acquisition, site improvement, soil remediation, demolition, infrastructure, structured and surface parking, and any other costs eligible to be reimbursed with tax increment.

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

“Redevelopment Project” means the Richfield Redevelopment Project.

“Retail” means approximately 6,000 square feet of retail to be constructed by the Master Developer on the Master Developer Property as part of the Master Developer Improvements.

“Secondary Developer” means a developer or developers selected by the Master Developer to construct the Secondary Developer Improvements.

“Secondary Developer Declaration of Restrictive Covenants” means the Declaration of Restrictive Covenants in substantially the form attached hereto as EXHIBIT F to be executed and delivered by the Secondary Developer for the benefit of the Authority and recorded against the Secondary Developer Property.

“Secondary Developer Improvements” means the 8 rental townhome units and a 66-unit multifamily apartment building, including 7 affordable residential units, to be constructed by the Secondary Developer on the Secondary Developer Property.

“Secondary Developer Property” means the portion of the Development Property on which the Secondary Developer Improvements will be constructed as legally described in EXHIBIT A.

“Secondary Developer TIF Note” means the Tax Increment Limited Revenue Note, substantially in the form attached hereto as EXHIBIT C to be delivered by the Authority to the Secondary Developer and pursuant to Section 3.4 hereof and payable from Available Tax Increment received from the TIF District.

“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 through 469.1794, as amended.

“Tax Increment District” or “TIF District” means the Lyndale Gardens Tax Increment Financing District, a redevelopment district.

“Tax Increment Plan” or “TIF Plan” means the Tax Increment Financing Plan for the TIF District, as approved by the City Council on July 25, 2011, 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.

“Unavoidable Delays” means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of strikes, other labor troubles, prolonged or unusual adverse weather or acts of God, fire or other casualty to the Master Developer Improvements or the Secondary Developer Improvements, as applicable, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the Authority in exercising its rights under this Agreement) which directly result in delays.

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## ARTICLE II

### **Representations and Warranties**

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

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

(b) The Authority proposes to assist in financing certain site improvement and preparation costs necessary to facilitate the construction of the Project in accordance with the terms of this Agreement to further the objectives of the Redevelopment Plan.

(c) The activities of the Authority undertaken pursuant to this Agreement are necessary 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 Section 469.009 of the HRA Act.

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

(a) The Master 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) The Master Developer will construct, operate and maintain, or will cause to be constructed, operated and maintained, the Master Developer 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 Master Developer has received no notice or communication from any local, State or federal official that the activities of the Master Developer, the Secondary 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 Master 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 Master Developer will obtain or cause the Secondary Developer 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 Condominiums, the Secondary Developer Improvements, and the Retail 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 Master 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 Master Developer and the Secondary Developer hereunder would not occur but for the tax increment financing assistance being provided by the Authority hereunder.

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

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

## ARTICLE III

### Tax Increment Financing Assistance

Section 3.1. Status of Development Property. As of the date of this Agreement, the Master Developer owns the Development Property. The Authority has no obligation to acquire the Development Property. The Master Developer intends to enter into an agreement with the Secondary Developer to convey the Secondary Developer Property to the Secondary Developer for the purpose of constructing the Secondary Developer Improvements. Article IX provides the Authority's requirements for the agreement between the Master Developer and the Secondary Developer.

#### Section 3.2. Environmental Conditions.

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

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

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

(a) To reimburse the Master Developer for certain Public Redevelopment Costs the Master Developer incurs related to the Condominiums, the Secondary Developer Improvements, and the Retail, the Authority shall issue and deliver and the Master Developer shall purchase the Master Developer TIF Note in the principal amount of \$\_\_\_\_\_ in substantially the form set forth in EXHIBIT B attached hereto. The Authority and the Master Developer agree that the consideration from the Master Developer for the purchase of the Master Developer TIF Note shall consist of the Master Developer's payment of the Public Redevelopment Costs in at least the principal amount of the Master Developer TIF Note.

Upon approval by the Board and subject to the conditions hereof, the Authority shall deliver the Master Developer TIF Note upon receipt of the following:

- (i) evidence reasonably satisfactory to the Authority that the Master Developer has paid Public Redevelopment Costs in at least the principal amount of the Master Developer TIF Note;
- (ii) evidence that the Master Developer has obtained and closed on financing for the construction of the Condominiums;
- (iii) delivery by the Master Developer of an investment letter in substantially the form attached hereto as EXHIBIT D;

(iv) all planning approvals necessary for the construction of the Condominiums have been obtained by the master Developer; and

(v) evidence that the Master Developer has obtained a building permit beyond a foundation building permit.

(b) The principal of and interest on the Master Developer TIF Note shall be payable each Payment Date solely from Available Tax Increment.

(c) For the purposes of calculating the Available Tax Increment, the Master Developer acknowledges the following:

(i) the base value of the Lakewinds Property (as described in Exhibit A) is \$249,000;

(ii) the base value of the Retail Property (as described in Exhibit A) is \$566,840;

(iii) the base value of the Secondary Developer Property (as described in Exhibit A) is \$882,432; and

(iv) the base value of all other property (excluding the Lakewinds Property, the Retail Property, and the Secondary Developer Property) within the TIF District is \$3,313,000.

(d) The Master 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 Master Developer TIF Note will be sufficient to pay the principal of and interest on the Master Developer TIF Note. Any estimates of Tax Increment prepared by the Authority or its municipal advisors in connection with the TIF District or this Agreement are for the benefit of the Authority, and are not intended as representations on which the Master Developer may rely.

(e) The Authority acknowledges that the Master Developer may assign the Master Developer TIF Note to a lender that provides part of the financing for the construction of the Condominiums or the Retail. Pursuant to the terms of the Master Developer TIF Note, the Master Developer TIF Note may be assigned if the assignee executes an investment letter in the form set forth in EXHIBIT D.

#### Section 3.4. Issuance of Pay-As-You-Go Secondary Developer TIF Note.

(a) The Authority shall issue and deliver to the Secondary Developer the Secondary Developer TIF Note in the principal amount of \$\_\_\_\_\_ in the form of the Secondary Developer TIF Note set forth in EXHIBIT C attached hereto. The Authority and the Master Developer agree that the consideration for delivery of the Secondary Developer TIF Note shall consist of the Master Developer's and/or Secondary Developer's payment of the Public Redevelopment Costs in at least the principal amount of the Secondary Developer TIF Note.

Upon approval by the Board and subject to the conditions hereof, the Authority shall deliver the Secondary Developer TIF Note upon receipt of the following:

(i) evidence reasonably satisfactory to the Authority that the Master Developer and/or the Secondary Developer has paid Public Redevelopment Costs in at least the principal amount of the Secondary Developer TIF Note;

(ii) evidence that the Secondary Developer has obtained and closed on financing for the construction of the Secondary Developer Improvements;

(iii) evidence that the Secondary Developer has acquired the Secondary Developer Property;

(iv) delivery by the Secondary Developer of an investment letter in substantially the form attached hereto as EXHIBIT D;

(v) all planning approvals necessary for the construction of the Secondary Developer Improvements have been obtained by the Secondary Developer;

(vi) the Secondary Developer has obtained a building permit beyond a foundation building permit;

(vii) the Secondary Developer has executed and delivered to the Authority the Secondary Developer Declaration of Restrictive Covenants set forth in EXHIBIT F attached hereto; and

(viii) the Secondary Developer has executed and delivered to the Authority a consent and acknowledgment letter in substantially the form attached hereto as EXHIBIT G.

(b) The principal of and interest on the Secondary Developer TIF Note shall be payable each Payment Date: (i) while the Master Developer TIF Note remains outstanding, solely from Available Tax Increment derived from the Secondary Developer Property, the first \$140,000 of which shall be allocated to the Secondary Developer TIF Note each year; and (ii) after the Master Developer TIF Note is no longer outstanding, solely from Available Tax Increment. The principal and interest payment on the Secondary Developer TIF Note shall be no more than \$140,000 in each calendar year while the Master Developer TIF Note remains outstanding. If the Secondary Developer petitions the taxes on the Secondary Developer Improvements and/or the Secondary Developer Property, the principal and interest payment on the Secondary Developer TIF Note shall be no more than \$70,000 in each calendar year. Upon resolution of the tax petition, the Authority shall pay principal of and interest on the Secondary Developer TIF Note with the withheld Available Tax Increment, if available, as described in Section 9.5 hereof.

(c) The Authority acknowledges that the Secondary Developer may assign the Secondary Developer TIF Note to a lender that provides part of the financing for the construction of the Secondary Developer Improvements. Pursuant to the terms of the Secondary Developer TIF Note, the Secondary Developer TIF Note may be assigned if the assignee executes an investment letter in the form set forth in EXHIBIT D.

(d) Subject to Unavoidable Delays, if the Secondary Developer fails to complete construction of the Secondary Developer Improvements within four (4) years of commencement of construction, the Authority may terminate the Secondary Developer TIF Note following written notice to the Master Developer, with opportunity to cure, as set forth in Section 11.2(c).

(e) Subject to Unavoidable Delays, if the conditions to the issuance of the Secondary Developer TIF Note have not been met and the Secondary Developer TIF Note has not been issued within seven (7) years of the date of this Agreement, the Authority shall have no duty to issue the Secondary Developer TIF Note.

Section 3.5. Payment of Administrative Costs. The Master 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 Master Developer. At the Master Developer’s request, but no more often than monthly, the Authority will provide the Master 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 Master Developer shall replenish the deposit to the full \$15,000 within thirty (30) days after receipt of written notice thereof from the Authority. If at any time the Authority determines that the deposit is insufficient to pay Administrative Costs, the Master Developer is obligated to pay such shortfall within fifteen (15) days after receipt of a written notice from the Authority containing evidence of the unpaid costs. If Administrative Costs incurred, and reasonably anticipated to be incurred are less than the deposit by the Master Developer, the Authority shall return to the Master Developer any funds not anticipated to be needed.

Section 3.6. Records. The Authority and its representatives shall have the right at all reasonable times after reasonable notice to inspect, examine and copy all books and records of Master Developer relating to the Condominiums and the Retail and the costs for which the Master Developer has been reimbursed with Available Tax Increment.

Section 3.7. Purpose of Assistance. The parties agree and understand that the purpose of the Authority’s financial assistance to the Master 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, as amended.

Section 3.8. Public Art. The Master Developer shall incorporate or cause to be incorporated a total of three pieces of public art within the Master Developer Property and/ or the Secondary Developer Property that are visible to the general public and are mutually agreeable to both the Master Developer and the Authority. Examples of public art agreeable to the Authority include a sculpture, a water fountain, or a mural.

Section 3.9. Five-Year Rule. Pursuant to Minn. Stat. Section 469.1763, subd. 3, all costs related to the Public Redevelopment Costs to be reimbursed with the TIF Notes must be expended on or before March 29, 2020.

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## ARTICLE IV

### Construction of Master Developer Improvements

Section 4.1. Construction of Improvements. The Master Developer agrees that it will construct the Master Developer Improvements on the Master Developer Property substantially in accordance with the Construction Plans as approved pursuant to Section 4.2 hereof, and at all times that such Master Developer Improvements are under the control of the Master Developer, will operate and maintain, preserve and keep the Master Developer 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 Master Developer Improvements. With respect to the Condominiums, following the turnover of control of the condominium association pursuant to Minn. Stat. 515B.3-103, the condominium association will be controlled by a board and will be required, pursuant to Minnesota Statutes, section 515B.3-107, to maintain, repair and replace any common elements in accordance with the terms of Minnesota Statutes Chapter 515B. The Authority shall have no obligation to operate or maintain the Master Developer Improvements.

#### Section 4.2. Construction Plans.

(a) Before commencement of construction of each portion of the Master Developer Improvements, the Master Developer shall submit the Construction Plans to the Authority. The Authority Representative will approve the Construction Plans in writing if: (i) the Construction Plans conform to the terms and conditions of this Agreement; (ii) the Construction Plans conform to the goals and objectives of the Redevelopment Plan; (iii) the Construction Plans conform to all applicable federal, State and local laws, ordinances, rules and regulations; (iv) the Construction Plans are adequate to provide for construction of the Master Developer Improvements; (v) the Construction Plans do not provide for expenditures in excess of the funds available to the Master Developer from all sources (including Master Developer's equity) for construction of the Master Developer Improvements; (vi) the Construction Plans provide for the construction of Master Developer Improvements having an estimated market value of at least \$16,402,000 (the "Minimum Market Value"); and (vii) no uncured Event of Default has occurred. Approval may be based upon a review by the City's Building Official of the Construction Plans. No approval by the Authority Representative shall relieve the Master Developer of the obligation to comply with the terms of this Agreement or of the Redevelopment Plan, applicable federal, State and local laws, ordinances, rules and regulations, or to construct the Master Developer 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 Master 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 thirty (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 Master Developer shall submit new or corrected Construction Plans within thirty (30) days after written notification to the Master 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 Master Developer Improvements constructed in accordance with said plans) comply to the Authority's satisfaction with the provisions of this Agreement relating thereto.

(b) If the Master Developer desires to make any Material Change in the Construction Plans after their approval by the Authority, the Master 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 Master 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 Master Developer, setting forth in detail the reasons therefor. Such rejection shall be made within thirty (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 Master Developer will commence the construction of the Master Developer Improvements as follows:

(a) With respect to the Condominiums, the Master Developer will commence the construction of the Condominiums by December 31, 2019, and substantially complete construction of the Condominiums within twenty-four (24) months of commencement of construction.

(b) With respect to the Retail, the Master Developer to commence the construction of the Retail within five (5) years of the date of this Agreement unless both Parties agree otherwise.

(c) Construction is considered to be commenced upon the beginning of physical improvements beyond grading. All work with respect to the Master Developer Improvements to be constructed or provided by the Master Developer on the Master Developer Property shall be in substantial conformity with the Construction Plans as submitted by the Master Developer and approved by the Authority.

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

Section 4.4. Certificate of Completion.

(a) Promptly after completion of each portion of the Master Developer Improvements in accordance with those provisions of the Agreement relating solely to the obligations of the Master Developer to construct, or to cause to be constructed, the Master Developer Improvements (including the dates for beginning and completion thereof), the Authority Representative will furnish the Master Developer with a Certificate of Completion shown as EXHIBIT E. If the Condominiums and the Retail are completed on different dates, a separate Certificate of Completion shall be provided for the Condominiums and the Retail.

(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 thirty (30) days after written request by the Master Developer, provide the Master Developer with a written statement, indicating in adequate detail in what respects the Master Developer has failed to complete the Master Developer 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 Master Developer to take or perform in order to obtain such certification.

(c) Regardless of whether one or more Certificates of Completion are issued by the Authority, the construction of the Master Developer Improvements shall be deemed to be complete upon issuance of a certificate of occupancy by the City.

## ARTICLE V

### Insurance

#### Section 5.1. Insurance.

(a) The Master Developer will provide and maintain, or will cause to be provided and maintained, at all times during the process of constructing the Master Developer 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 Master Developer Improvements at the date of completion, and with coverage available in non-reporting form on the so-called "all risk" form of policy. The interest of the Authority shall be protected in accordance with a clause in form and content satisfactory to the Authority;

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

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

(b) Upon completion of construction of the Master Developer Improvements and prior to the Maturity Date, the Master 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 Master Developer 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 Master Developer, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure; provided that the Master 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 Master Developer which are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Master 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 Master Developer and the Authority at least ten (10) days before the cancellation or modification becomes effective. In lieu of separate policies, the Master Developer may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Master Developer shall deposit with the Authority a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Master Developer Improvements.

(d) The Master Developer agrees to notify the Authority immediately in the case of damage exceeding \$100,000 in amount to, or destruction of, the Master Developer Improvements or any portion thereof resulting from fire or other casualty. In such event the Master Developer will forthwith repair, reconstruct and restore, or will cause to be repaired, reconstructed and restored, the Master Developer 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 Master Developer will apply the Net Proceeds of any insurance relating to such damage received by the Master Developer to the payment or reimbursement of the costs thereof.

The Master Developer shall complete the repair, reconstruction and restoration, or shall cause to be completed the repair, reconstruction and restoration, of the Master Developer Improvements, whether or not the Net Proceeds of insurance received by the Master 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 Master Developer.

(e) Notwithstanding anything to the contrary contained in this Agreement, in the event of damage to the Master Developer Improvements in excess of \$100,000 and the Master Developer fails to complete any repair, reconstruction or restoration of the Master Developer Improvements within eighteen (18) months from the date of damage, the Authority may, at its option, terminate the Master Developer TIF Note as provided in Section 10.3(b) hereof. If the Authority terminates the Master Developer TIF Note, such termination shall constitute the Authority's sole remedy under this Agreement as a result of the Master Developer's failure to repair, reconstruct or restore the Master Developer Improvements. Thereafter, the Authority shall have no further obligations to make any payments under the Master Developer TIF Note.

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

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

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## ARTICLE VI

### Tax Increment; Taxes

Section 6.1. Right to Collect Delinquent Taxes. The Master Developer acknowledges that the Authority is providing substantial aid and assistance in furtherance of the redevelopment through issuance of the Master Developer TIF Note and the Secondary Developer TIF Note. The Master Developer understands that the Tax Increments pledged to payment of the Master Developer TIF Note is derived from real estate taxes on the Development Property, which taxes must be promptly and timely paid. To that end, the Master 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 Master Developer Improvements. The Master Developer acknowledges that this obligation creates a contractual right on behalf of the Authority to sue the Master Developer or its successors and assigns to collect delinquent real estate taxes and any penalty or interest thereon with respect to the Master Developer Property 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 Master Developer agrees that after the date of certification of the Tax Increment District and prior to completion of the Master Developer Improvements, it will not cause a reduction in the real property taxes paid in respect of the Master Developer Property through: (A) willful destruction of the Master Developer Property or any part thereof (except for the demolition of structures required for construction of the Master Developer Improvements); or (B) willful refusal to reconstruct damaged or destroyed property pursuant to Section 5.1 hereof.

The Master Developer also agrees that it will not, prior to the Maturity Date: (i) seek exemption from property tax for the Master Developer Property; (ii) convey or transfer or allow conveyance or transfer of the Master Developer 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 County assessor's estimated market value to below the Minimum Market Value described in Section 4.2(a)(vi) hereof.

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

Upon receiving such notice, or otherwise learning of the Master Developer's intentions, the Authority may suspend or reduce payments due under the Master Developer TIF Note except for the portion of such payments from Available Tax Increment, based on 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 any retroactive reduction in market value of the Master Developer Property. If the Master Developer fails to notify the Authority of the tax petition, the Authority shall have the right to withhold all payments of principal and interest on the Master Developer TIF Note until the Master Developer's challenge is resolved. Upon resolution of the Master Developer's tax petition, any Available Tax Increment deferred and withheld under this Section shall be paid, without interest thereon, to the extent payable under the assessor's final determination of market value.

During the period that the payments are subject to suspension, the Authority may make partial payments on the Master Developer 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 the Master Developer TIF Note pursuant to this Section shall not be considered a default under Section 10.1 hereof.

Section 6.3. Qualifications. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that upon transfer of the Master Developer Property to another person or entity, the Master Developer will remain obligated under Sections 6.1 and 6.2 hereof, unless the Master Developer is released from such obligations in accordance with the terms and conditions of Section 8.2(b) or 8.3 hereof. For purposes of clarity, nothing in this Article 6 is intended to prevent any individual owner of a Condominium unit from protesting the real property taxes assessed against such unit or to seek a reduction of the County assessor's estimated market value of such individual unit following the transfer of title to such unit.

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## ARTICLE VII

### Financing

#### Section 7.1. Mortgage Financing.

(a) Before commencement of construction of the Master Developer Improvements, the Master Developer shall submit to the Authority evidence of one (1) or more commitments for financing which, together with committed equity for such construction, is sufficient for payment of the Master Developer 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 Master Developer in writing of its approval. Such approval shall not be unreasonably withheld and either approval or rejection shall be given within thirty (30) days from the date when the Authority is provided the evidence of financing. A failure by the Authority to respond to such evidence of financing shall be deemed to constitute an approval hereunder. If the Authority rejects the evidence of financing as inadequate, it shall do so in writing specifying the basis for the rejection. In any event the Master Developer shall submit adequate evidence of financing within thirty (30) days after such rejection.

Section 7.2. Authority's Option to Cure Default in Mortgage. In the event that any portion of the Master Developer's funds is provided through mortgage financing, and there occurs a default under any Mortgage authorized pursuant to this Article VII, the Master Developer shall cause the Authority to receive copies of any notice of default received by the Master 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 Master Developer within such cure periods as are available to the Master Developer under the Mortgage documents.

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

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

## ARTICLE VIII

### **Prohibitions Against Assignment and Transfer; Indemnification**

Section 8.1. Representation as to Development. The Master 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 Master Developer's Transfer of Property and Assignment of Agreement. The Master Developer represents and agrees that prior to issuance of the Certificate of Completion for the Master Developer Improvements:

(a) Except as specifically provided in this Agreement, the Master 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 Master Developer Property or any part thereof or any interest therein, or any contract or agreement to do any of the same (collectively, a "Transfer"), without the prior written approval of the Authority unless the Master Developer remains liable and bound by this Agreement in which event the Authority's approval is not required. The term "Transfer" does not include (i) encumbrances made or granted by way of security for, and only for, the purpose of obtaining construction, interim or permanent financing necessary to enable the Master Developer or any successor in interest to the Master Developer Property or to construct the Master Developer Improvements or component thereof; (ii) any lease, license, easement or similar arrangement entered into in the ordinary course of business related to operation of the Master Developer Improvements; (iii) a sale to an owner of a Condominium unit. Any such Transfer shall be subject to the provisions of this Agreement.

(b) In the event the Master Developer, upon Transfer of the Master Developer 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 Master 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 Master Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Master Developer is subject; provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Master Developer 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 Master Developer Property or any part thereof or the construction of the Master Developer 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 Master Developer 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 Master Developer 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 Master Developer or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Master Developer 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 Master Developer 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 Master Developer shall be released from its obligation under this Agreement.

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

### Section 8.3. Release and Indemnification Covenants.

(a) The Master 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 Master Developer 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 Master 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 Master Developer 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 Master 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 Master Developer or its officers, agents, servants or employees or any other person who may be about the Master Developer Property or Master Developer 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

### Secondary Developer Improvements

Section 9.1. Development of Secondary Developer Improvements. If the Master Developer chooses to choose a Secondary Developer to develop the Secondary Developer Property, the Master Developer shall enter into an agreement with a Secondary Developer to convey the Secondary Developer Property to such Secondary Developer and to cause such Secondary Developer to construct the Secondary Developer Improvements. In the event that the Secondary Developer fails to close on the acquisition of the Secondary Developer Property, the Master Developer shall have the right, in its sole discretion, to assume all rights and obligations of the Secondary Developer as set forth herein, or to enter into an agreement to convey the Secondary Developer Property to a subsequent party who shall then become the Secondary Developer.

Section 9.2. Construction and Operation of Secondary Developer Improvements. If the Master Developer chooses to choose a Secondary Developer to develop the Secondary Developer Property, the Master Developer shall enter into an agreement with the Secondary Developer that requires the Secondary Developer to construct the Secondary Developer Improvements within the parameters of the planning approvals provided by the City and to operate and maintain, preserve and keep the Secondary Developer Improvements with the appurtenances and every part and parcel thereof, in good repair and condition. Any such agreement will also require the Secondary Developer to construct, operate and maintain, or will cause to be constructed, operated and maintained, the Secondary Developer Improvements in accordance with all local, State and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations). The Master Developer will cause the Secondary Developer to commence construction of the Secondary Developer Improvements, subject to Unavoidable Delays, by December 31, 2019, and substantially complete the construction of the Secondary Developer Improvements within eighteen (18) months of December 31, 2019.

Section 9.3. Insurance for Secondary Developer Improvements. The Master Developer shall cause the Secondary Developer to provide and maintain the types of insurance and in the amounts set forth in Section 5.1(a) and (b). Furthermore, notwithstanding anything to the contrary contained in this Agreement, in the event of damage to the Secondary Developer Improvements in excess of \$100,000 and the Secondary Developer fails to complete any repair, reconstruction or restoration of the Secondary Developer Improvements within eighteen (18) months from the date of damage, the Authority may, at its option, terminate the Secondary Developer TIF Note as provided in Section 11.3(b) hereof. If the Authority terminates the Secondary Developer TIF Note, such termination shall constitute the Authority's sole remedy under this Agreement as a result of the Secondary Developer's failure to repair, reconstruct or restore the Secondary Developer Improvements. Thereafter, the Authority shall have no further obligations to make any payments under the Secondary Developer TIF Note.

Section 9.4. Secondary Developer TIF Note. The Master Developer shall arrange for the Secondary Developer to provide written acknowledgement to the Authority that it confirms and agrees that the Available Tax Increment shall be calculated using a base value of the Secondary Developer Property of \$882,432. The Secondary Developer shall also confirm and agree with the procedure for issuing the Secondary Developer TIF Note described in Section 3.4 hereof.

Section 9.5. Tax Petitions Related to Secondary Developer Property. The Master Developer shall enter into an agreement with the Secondary Developer that requires the Secondary Developer to provide written notice to the Authority at any time it seeks through petition or other means to have the assessor's estimated market value for the Secondary Developer Property reduced below \$10,990,000 (the "Secondary Developer Property Minimum Market Value"). Upon receiving such notice, or otherwise learning of the

Secondary Developer's intentions, the Authority may suspend or reduce payments due under the Secondary Developer TIF Note except for the portion of such payments from Available Tax Increment based on the Secondary Developer Property Minimum Market Value, or the assessor's estimated market value for the year in which the Secondary Developer Improvements have been completed, if less than Secondary Developer Property 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 any retroactive reduction in market value of the Secondary Developer Property. If the Secondary Developer fails to notify the Authority of the tax petition, the Authority shall have the right to withhold all payments of principal and interest on the Secondary Developer TIF Note until the Secondary Developer's challenge is resolved. Upon resolution of the Secondary Developer's tax petition, any Available Tax Increment deferred and withheld under this Section shall be paid, without interest thereon, to the extent payable under the assessor's final determination of market value.

During the period that the payments are subject to suspension, the Authority may make partial payments on the Secondary Developer 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 the Secondary Developer TIF Note pursuant to this Section shall not be considered a default under Section 11.1 hereof.

Section 9.6. Secondary Developer Declaration of Restrictive Covenants. The Master Developer shall cause the Secondary Developer to execute the Secondary Developer Declaration of Restrictive Covenants in favor of the Authority in substantially the form attached hereto as EXHIBIT F. Pursuant to the Secondary Developer Declaration of Restrictive Covenants, at all times from initial occupancy of the Secondary Developer Improvements constructed within the TIF District through the earliest of (a) the date that the Secondary TIF Note is paid in full, (b) the termination of the Secondary Developer TIF Note, or (c) the expiration of the TIF District, at least 7 of the rental units within the Secondary Developer Improvements shall be reserved for occupancy by individuals whose income is sixty percent (60%) or less of the area's median gross income. The Secondary Developer Declaration of Restrictive Covenants shall be recorded against the Secondary Developer Property. If the Secondary Developer fails to provide 7 affordable units as required by the Declaration, the Available Tax Increment derived from the Secondary Developer Property and used to make payments on the Secondary Developer TIF Note will be decreased by 5% for each year during which such default remains uncured.

Section 9.7. Affordable Housing Reporting. At least annually, no later than January 31 of each year commencing on the April 1 first following the completion of the Secondary Developer Improvements, the Master Developer shall cause the Secondary Developer to provide a report to the Authority evidencing that the Secondary Developer complied with the income affordability covenants set forth in Section 9.6 hereof during the previous calendar year. The income affordability reporting shall be on the form entitled "Tenant Income Certification" from the Minnesota Housing Finance Agency (MHFA HTC Form 14), or if unavailable, any similar form. The Authority may require the Secondary Developer to provide additional information reasonably necessary to assess the accuracy of such certification. Unless earlier excused by the Authority, the Master Developer shall cause the Secondary Developer to send affordable housing reports to the Authority until the TIF District is decertified. If the Secondary Developer fails to provide the annual reporting required under this Section, the Authority may withhold payments of Available Tax Increment under the Secondary Developer TIF Note until such time as such failure is cured.

Section 9.8. Consent of Secondary Developer. The Master Developer shall cause the Secondary Developer to execute and deliver to the Authority an acknowledgement and consent letter in substantially the

form attached hereto as EXHIBIT G, pursuant to which the Secondary Developer will acknowledge its obligations with respect to certain requirements provided herein.

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

## ARTICLE X

### **Events of Default – Master Developer**

Section 10.1. Events of Default. The following will be “Events of Default” under this Agreement and the term “Event of Default” means, whenever it is used in this Agreement, any one or more of the following events, after the non-defaulting party provides thirty (30) days’ written notice to the defaulting party of the event, but only if the event has not been cured within said thirty (30) days or, if the event is by its nature incurable within thirty (30) days, the defaulting party does not, within the thirty (30) day period, provide assurances reasonably satisfactory to the party providing notice of default that the event will be cured and will be cured as soon as reasonably possible:

(a) Failure by the Master 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.

(b) The Master 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 Master Developer Property or the Master Developer 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.

Notwithstanding the foregoing, it is expressly agreed that the failure of the Master Developer to commence the construction of the Retail as set forth in Section 4.3(b) shall not be deemed an Event of Default but shall cause the Master Developer and City to work, in good faith, to establish an updated schedule for the development of the Retail based on then-current market conditions.

Section 10.2. Remedies on Default. Whenever any Event of Default referred to in Section 10.1 hereof occurs, the non-defaulting party may exercise its rights under this Section 10.2 after providing thirty (30) days’ written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said thirty (30) days or, if the Event of Default is by its nature incurable within thirty (30) days, the defaulting party does not provide assurances reasonably satisfactory to the non-defaulting party that the Event of Default will be cured and will be cured as soon as reasonably possible:

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

(b) Cancel and rescind or terminate the portion of this Agreement related to the Master Developer Improvements, subject to the provisions of Section 10.3 hereof.

(c) Upon a default by the Master Developer, the Authority may suspend payments under the Master Developer TIF Note or terminate the Master Developer TIF Note, subject to the provisions of Section 10.3 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 10.3. Termination or Suspension of Master Developer TIF Note. After the Authority has issued its Certificate of Completion for the Master Developer Improvements, the Authority may exercise its rights under Section 10.2 only for the following Events of Default:

(a) the Master Developer fails to pay real estate taxes or assessments on the Master Developer Property then under the Master Developer's control 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 thirty (30) days after written demand by the Authority to do so; or

(b) the Master Developer fails to comply with Master Developer's obligation to operate and maintain, preserve and keep the Master Developer Improvements then under the Master Developer's control or cause such improvements to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition, pursuant to Sections 4.1 and 5.1 hereof; provided that, upon Master Developer's failure to comply with Master Developer's obligations under Section 4.1 or 5.1 hereof, if uncured after thirty (30) days' written notice to the Master Developer of such failure, the Authority may only suspend payments under the Master Developer TIF Note until such time as Master Developer complies with said obligations. If the Master Developer fails to comply with said obligations for a period of eighteen (18) months, the Authority may terminate the Master Developer TIF Note.

Section 10.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority or the Master 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 10.2 and 10.3 hereof.

Section 10.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 10.6. 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 Master Developer under this Agreement, and the Authority prevails in the action, the Master Developer agrees that it will, within ten (10) days of written demand by the Authority, pay to the Authority the reasonable fees of the attorneys and the other expenses so incurred by the Authority.

## ARTICLE XI

### Events of Default – Secondary Developer

Section 11.1. Secondary Developer Events of Default. The following will be “Secondary Developer Events of Default” under this Agreement and the term “Secondary Developer Event of Default” means, whenever it is used in this Agreement, any one or more of the following events, after the Authority provides thirty (30) days’ written notice to the Secondary Developer of the event, but only if the event has not been cured within said thirty (30) days or, if the event is by its nature incurable within thirty (30) days, the Secondary Developer does not, within the thirty (30) day period, provide assurances reasonably satisfactory to the party providing notice of default that the event will be cured and will be cured as soon as reasonably possible:

(a) Failure by the Secondary Developer to observe or perform any the actions required to be performed by the Secondary Developer under Article IX of this Agreement.

(b) The Secondary 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 Secondary Developer Property or the Secondary Developer 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 11.2. Remedies on Default. Whenever any Secondary Developer Event of Default referred to in Section 11.1 hereof occurs, the Authority may exercise its rights under this Section 11.2 after providing sixty (60) days’ written notice to the Secondary Developer of the Secondary Developer Event of Default, but only if the Secondary Developer Event of Default has not been cured within said thirty (30) days or, if the Secondary Developer Event of Default is by its nature incurable within thirty (30) days, the Secondary Developer does not provide assurances reasonably satisfactory to the Authority that the Secondary Developer 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 Secondary Developer will cure the Secondary Developer Event of Default and continue performing the actions required to be performed by the Secondary Developer under Article IX of this Agreement.

(b) Upon a Secondary Developer Event of Default, the Authority may suspend payments under the Secondary Developer TIF Note or terminate the Secondary Developer TIF Note, subject to the provisions of Section 11.3 hereof.

(c) Subject to Unavoidable Delays, if the Secondary Developer fails to complete construction of the Secondary Developer Improvements within four (4) years of commencement of construction of the Secondary Developer Improvements, the Authority shall provide written notice to the Master Developer who

shall be given sixty (60) days to provide reasonable evidence that the Secondary Developer Improvements will be completed within ninety (90) days and, upon the failure of the Master Developer to provide such evidence, the Authority may suspend payments under the Secondary Developer TIF Note or terminate the Secondary Developer TIF Note.

Section 11.3. Termination or Suspension of Secondary Developer TIF Note. After the Secondary Developer has completed the Secondary Development Improvements (as evidenced by one or more certificates of occupancy), the Authority may exercise its rights under Section 11.2 only for the following Secondary Developer Events of Default:

(a) the Secondary Developer fails to pay real estate taxes or assessments on the Secondary Developer Property then under the Secondary Developer's control 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 thirty (30) days after written demand by the Authority to do so; or

(b) the Secondary Developer fails to comply with Secondary Developer's obligation under Section 9.3 hereof; provided that, upon Secondary Developer's failure to comply with Secondary Developer's obligation under Section 9.3 hereof, if uncured after thirty (30) days' written notice to the Master Developer of such failure, the Authority may only suspend payments under the Secondary Developer TIF Note until such time as Secondary Developer complies with said obligations. Upon compliance, all suspended payments shall be paid to the holder of the Secondary Developer TIF Note. If the Secondary Developer fails to comply with said obligations for a period of eighteen (18) months after such written notice, the Authority may terminate the Secondary Developer TIF Note.

(c) as described in Section 9.6 hereof, if the Secondary Developer fails to provide 7 affordable units as required by the Declaration, the Available Tax Increment derived from the Secondary Developer Property and used to make payments on the Secondary Developer TIF Note will be decreased by 5% for each year in which such default remains uncured.

Section 11.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority 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; provided that, after the Secondary Developer has completed the Secondary Developer Improvements, the Authority is only permitted to exercise remedies set forth in Section 11.3 hereof. 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 11.2 and 11.3 hereof.

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

## ARTICLE XII

### Additional Provisions

Section 12.1. Conflict of Interests; Authority Representatives Not Individually Liable. The Authority and the Master 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 Master 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 Master Developer or successor or on any obligations under the terms of the Agreement.

Section 12.2. Equal Employment Opportunity. The Master Developer, for itself and its successors and assigns, agrees that during the construction of the Master Developer 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 12.3. Restrictions on Use. The Master Developer agrees that, prior to the Maturity Date, the Master Developer, and such successors and assigns, shall use the Master Developer Property solely for the development of multifamily 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 Master Developer Property or any improvements erected or to be erected thereon, or any part thereof.

Section 12.4. 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 12.5. 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 Master Developer, is addressed to or delivered personally to the Master Developer at 2213 W. 54<sup>th</sup> Street, Minneapolis, MN 55419, Attn: Colleen Carey; with a copy to Winthrop & Weinstine, P.A., 225 South Sixth Street, Suite 3500, Minneapolis, MN 55402, Attn: Tammera R. Diehm;

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

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

Section 12.6. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 12.7. Recording. The Authority may record a memorandum of this Agreement and any amendments thereto with the County Recorder or Registrar of Titles of the County, as the case may be. The Master Developer shall pay all costs for recording.

Section 12.8. Amendment. This Agreement may be amended only by written agreement approved by the Authority and the Master Developer.

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

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

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

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

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

**LYNDALE GARDENS, LLC**

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

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN     )

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

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

**EXHIBIT A**  
**DEVELOPMENT PROPERTY**

**Secondary Developer Property**

PID 28-028-24-11-0090 (portion for Apartments)

PID 28-028-24-11-0089 (portion for Apartments)

**Master Developer Property**

Lakewinds Property

PID 27-028-24-23-0114 (Lakewinds)

PID 27-028-24-23-0115 (Lakewinds Parking)

Retail Property

PID 28-028-24-11-0090 (portion for Retail)

Condominiums Property

PID 28-028-24-11-0089 (portion for Condominiums)

[INSERT PLATTED PROPERTY DESCRIPTIONS PRIOR TO RECORDING]

**EXHIBIT B**

**FORM OF MASTER DEVELOPER TIF NOTE**

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

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

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

Rate \_\_\_\_\_ Date of Original Issue \_\_\_\_\_  
5.0% \_\_\_\_\_

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 Lyndale Gardens, LLC, or registered assigns (the "Holder"), the principal sum of \$ \_\_\_\_\_ and to pay interest thereon at the annual rate set forth above, as and to the extent set forth herein.

1. Payments. Principal and interest the (the "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 Holder or such other address as the Holder may designate upon thirty (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. Payments on this Note are payable on each Payment Date in the amount of and solely payable from "Available Tax Increment," which means, on each Payment Date, the Tax Increment attributable to the Master Developer Property and the Secondary Developer Property and paid to the Authority by the County in the six (6) months preceding the Payment Date after first deducting ten percent (10%) of the Tax Increment to be used to reimburse the Authority for administrative expenses and further deducting ten percent (10%) of the Tax Increment to be used for pooling, and lastly deducting any and all payments due and owing under the Secondary Developer TIF Note, all as the terms are defined in the Amended and Restated Contract for Private Development, dated \_\_\_\_\_, 2018 (the "Agreement"), between the Authority and the Holder. 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 the 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 Master Developer as defined in Section 10.1 of the Agreement, but only if the Event of Default has not been cured in accordance with Section 10.2 of the Agreement.

6. Nature of Obligation. This Note is issued to aid in financing certain public development costs and administrative costs of a 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 municipal advisors in connection with the TIF District or the Agreement are for the benefit of the Authority, and are not intended as representations on which the Master Developer may rely.

THE AUTHORITY MAKES NO REPRESENTATION OR WARRANTY THAT THE AVAILABLE TAX INCREMENT WILL BE SUFFICIENT TO PAY THE PRINCIPAL OF AND INTEREST ON THIS NOTE.

8. Registration. This Note is issuable only as a fully registered note without coupons.

9. Transfer. As provided in the Resolution, and subject to certain limitations set forth therein, this Note is transferable upon the books of the Authority kept for that purpose at the principal office of the City Clerk of the City of Richfield. Upon surrender for transfer of this Note, including any assignment or exchange thereof, duly endorsed by the registered Holder thereof or accompanied by a written instrument of transfer, in form reasonably satisfactory to the Registrar, duly executed by the registered Holder thereof or by an attorney duly authorized by the registered Holder in writing, and the payment by the Holder of any tax,

fee, or governmental charge required to be paid by or to the Authority with respect to such transfer or exchange, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, a new Note of the same aggregate principal amount, bearing interest at the same rate and maturing on the same dates.

Notwithstanding the foregoing, this Note shall not be transferred to any person other than an affiliate, or other related entity, of the Holder unless the Authority has been provided with an investment letter in a form substantially similar to the investment letter in EXHIBIT D 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 Holder may assign this Note to a lender that provides all or part of the financing for the acquisition of the Development Property or the construction of the Master Developer 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 D, or other form reasonably acceptable to the Executive Director of the Authority. The Authority also agrees that future assignments of this 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 D 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 holder 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

Lyndale Gardens, LLC  
Federal ID # \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**EXHIBIT C**

**FORM OF SECONDARY DEVELOPER TIF NOTE**

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

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

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

Rate Date  
of Original Issue  
5.0% \_\_\_\_\_

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 [SECONDARY DEVELOPER], or registered assigns (the “Holder”), the principal sum of \$\_\_\_\_\_ and to pay interest thereon at the annual rate set forth above, as and to the extent set forth herein.

1. Payments. Principal and interest the (the “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 Holder or such other address as the Holder may designate upon thirty (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. Payments on this Note are payable on each Payment Date (i) while the Master Developer TIF Note remains outstanding, solely from Available Tax Increment derived from the Secondary Developer Property, the first \$140,000 of which shall be allocated to this Note each year; and (ii) after the Master Developer Note is no longer outstanding, solely from Available Tax Increment. “Available Tax Increment” means the Tax Increment attributable to the Master Developer Property and the Secondary Developer Property and paid to the Authority by the County in the six (6) months preceding the Payment Date after first deducting ten percent (10%) of the Tax Increment to be used to reimburse the Authority for administrative expenses and further deducting ten percent (10%) of the Tax Increment to be used for pooling. All capitalized terms used in this paragraph 3 are defined in the Amended and Restated Contract for Private Development, dated \_\_\_\_\_, 2018 (the “Agreement”), between the Authority and

Lyndale Gardens, LLC. The principal and interest payment on this Note shall be no more than \$140,000 in each calendar year while the Master Developer Note remains outstanding. If the Secondary Developer petitions the taxes on the Secondary Developer Improvements and/or the Secondary Developer Property, the principal and interest payment on this Note shall be no more than \$70,000 in each calendar year until the tax petition is resolved. Upon resolution of the Secondary Developer's tax petition, any Available Tax Increment deferred and withheld shall be paid, without interest thereon, to the extent payable under the assessor's final determination of market value, as more fully described in paragraph 8 below.

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 the 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 Secondary Developer as defined in Section 11.1 of the Agreement, but only if the Event of Default has not been cured in accordance with Section 11.2 of the Agreement.

6. Nature of Obligation. This Note is issued to aid in financing certain public development costs and administrative costs of a 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 municipal advisors in connection with the TIF District or the Agreement are for the benefit of the Authority, and are not intended as representations on which the Secondary Developer or Holder 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. Tax Petition. The Secondary Developer shall provide written notice to the Authority at any time it seeks through petition or other means to have the assessor's estimated market value for the Secondary Developer Property reduced below \$\_\_\_\_\_ (the "Secondary Developer Property Minimum Market

Value”). Upon receiving such notice, or otherwise learning of the Secondary Developer’s intentions, the Authority may suspend or reduce payments due under this Note except for the portion of such payments from Available Tax Increment, based on the Secondary Developer Property Minimum Market Value, or the assessor’s estimated market value for the year in which the Secondary Developer Improvements have been completed, if less than Secondary Developer Property 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 any retroactive reduction in market value of the Secondary Developer Property. If the Secondary Developer fails to notify the Authority of the tax petition, the Authority shall have the right to withhold all payments of principal and interest on this Note until the Secondary Developer’s challenge is resolved. Upon resolution of the Secondary Developer’s tax petition, any Available Tax Increment with respect to the Secondary Developer Property deferred and withheld under this paragraph shall be paid, without interest thereon, to the extent payable under the assessor’s final determination of market value.

During the period that the payments are subject to suspension, the Authority may make partial payments on this 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.

9. Registration. This Note is issuable only as a fully registered note without coupons.

10. Transfer. As provided in the Resolution, and subject to certain limitations set forth therein, this Note is transferable upon the books of the Authority kept for that purpose at the principal office of the City Clerk of the City of Richfield. Upon surrender for transfer of this Note, including any assignment or exchange thereof, duly endorsed by the registered Holder thereof or accompanied by a written instrument of transfer, in form reasonably satisfactory to the Registrar, duly executed by the registered Holder thereof or by an attorney duly authorized by the registered Holder in writing, and the payment by the Holder of any tax, fee, or governmental charge required to be paid by or to the Authority with respect to such transfer or exchange, the Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, a new Note of the same aggregate principal amount, bearing interest at the same rate and maturing on the same dates.

Notwithstanding the foregoing, this Note shall not be transferred to any person other than an affiliate, or other related entity, of the Holder unless the Authority has been provided with an investment letter in a form substantially similar to the investment letter in EXHIBIT D 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 Holder may assign this Note to a lender that provides all or part of the financing for the acquisition of the Secondary Developer Property or the construction of the Secondary Developer 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 D, or other form reasonably acceptable to the Executive Director of the Authority. The Authority also agrees that future assignments of this 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 D 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 holder 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

\_\_\_\_\_ Federal ID # \_\_\_\_\_

## EXHIBIT D

### 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 Holder 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 Note is delivered to the Holder as of this date pursuant to the Resolution and the Contract for Private Development, dated \_\_\_\_\_, 2018 (the “Contract”), between the Authority and [the Holder] [Lyndale Gardens, LLC].

2. We understand that the Note is payable as to principal and interest solely from Available Tax Increment (as defined in the Note).

3. We further understand that any estimates of Tax Increment prepared by the Authority or its municipal advisors in connection with the TIF District, the Contract or the Note are for the benefit of the Authority, and are not intended as representations on which the Holder 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 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 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 Note and the security therefor, and other material factors affecting the security and payment of the 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 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 Note.

7. We have been informed that the 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 Note for state or federal income tax purposes.

9. We represent to you that we are purchasing the Note for our own accounts and not for resale or other distribution thereof, except to the extent otherwise provided in the 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 Holder's federal tax identification number is: \_\_\_\_\_.

12. We acknowledge receipt of the Note as of the date hereof.

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

**[HOLDER]**

By \_\_\_\_\_

Its \_\_\_\_\_

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

**EXHIBIT E**

**CERTIFICATE OF COMPLETION**

**(To be completed for each portion of the Master Developer Improvements)**

The undersigned hereby certifies that Lyndale Gardens, LLC, a Minnesota limited liability company (the "Master 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 Master Developer, a memorandum of which was recorded with the [County Recorder] [Registrar of Titles] of Hennepin County, Minnesota on \_\_\_\_\_, 20\_\_\_\_, as Document No. \_\_\_\_\_, with respect to construction of the \_\_\_\_\_ portion of the Master Developer Improvements in accordance with Article IV of the Agreement, and that the Master Developer is released and forever discharged from its obligations with respect to construction of the \_\_\_\_\_ portion of the Master Developer 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

## EXHIBIT F

### SECONDARY DEVELOPER DECLARATION OF RESTRICTIVE COVENANTS

#### DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS is made this \_\_\_\_\_ (the “Declaration”), by [SECONDARY DEVELOPER], a \_\_\_\_\_ (the “Secondary Developer”), for the benefit of the HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”).

#### RECITALS

WHEREAS, the Secondary Developer has proposed to construct 8 rental townhome units and a 66-unit multifamily apartment building, including 7 affordable residential units (the “Project”), on certain property located at \_\_\_\_\_ in the City of Richfield, Minnesota (the “City”) and legally described in EXHIBIT A attached hereto (the “Secondary Developer Property”); and

WHEREAS, the Authority and Lyndale Gardens, LLC, a Minnesota limited liability company (the “Master Developer”), have entered into that certain Amended and Restated Contract for Private Development, dated \_\_\_\_\_, 2018 (the “Development Agreement”), pursuant to which the Master Developer will require the Secondary Developer to construct the Project, and the Authority will provide tax increment assistance to the Secondary Developer in the form of a tax increment note in the amount of \$ \_\_\_\_\_ (the “Secondary Developer TIF Note”) in order to make the Project more economically feasible and to improve and retain affordable housing in the City; and

WHEREAS, in consideration for the Secondary Developer TIF Note, the Secondary Developer will agree to cause compliance with certain affordability covenants for the Project; and

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

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

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

1. Term of Restrictions.

(a) Occupancy Restrictions. The term of the Occupancy Restrictions set forth in Section 3 of this Declaration will commence on the date the Project obtains a certificate of occupancy from the City of Richfield. The period from commencement to termination is the “Qualified Project Period.”

(b) Termination of Declaration. This Declaration will terminate upon the earliest of (a) the date that the Secondary Developer TIF Note is paid in full, (b) the termination of the Secondary Developer TIF Note, or (c) the expiration of the TIF District.

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

2. Project Restrictions.

(a) the Secondary Developer represents, warrants, and covenants that:

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

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

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

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

3. Occupancy Restrictions.

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

(i) Qualifying Tenants. From the commencement of the Qualified Project Period, seven (7) of the rental units on the Secondary Developer Property (the "Rental Housing Units") will be occupied (or treated as occupied as provided herein) or held vacant and available for occupancy by Qualifying Tenants. Qualifying Tenants means those persons and families who are determined at the time of initial occupancy after the date hereof by the Secondary Developer to have combined income that does not exceed sixty percent (60%) of the Minneapolis-St. Paul metropolitan statistical area (the "Metro Area") median income for the applicable calendar year adjusted for family size. The determination of whether an individual or family is of low or moderate income will be made at the time a new tenant commences occupancy of a unit through a review of the self-reported income by the potential tenant on their rental application. In order to avoid displacement, existing tenants as of the date of the acquisition will be grandfathered in and will not be required to be income certified, even if the composition of the household changes.

(ii) Certification of Tenant Eligibility. As a condition to initial occupancy, each person who is intended to be a Qualifying Tenant will be required at the commencement of the initial lease of the Rental Housing Unit to sign and deliver to the Secondary Developer a Certification of Tenant Eligibility substantially in the form attached as EXHIBIT B hereto, or in any other form as may be approved by the Authority (the "Eligibility Certification"), in which the prospective Qualifying Tenant certifies as to qualifying as low or moderate income. In addition, the person will be required to provide whatever other information, documents, or certifications are reasonably deemed necessary by the Authority to substantiate the Eligibility Certification so long as the Authority notifies the

Secondary Developer in writing of such requirements prior to the applicable lease signing. Eligibility Certifications will be maintained on file by the Secondary Developer with respect to each Qualifying Tenant who resides in a Project unit or resided therein during the immediately preceding calendar year.

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

(iv) Annual Report. The Secondary Developer covenants and agrees that during the term of this Declaration, it will prepare and submit to the Authority on or before April 1 of each year, a certificate substantially in the form of EXHIBIT C hereto, executed by the Secondary Developer, (a) identifying the tenancies and the dates of occupancy (or vacancy) for all Qualifying Tenants in the Project, including the dwelling units of the Project which were occupied by Qualifying Tenants (or held vacant and available for occupancy by Qualifying Tenants) at all times during the year preceding the date of the certificate; (b) describing all transfers or other changes in ownership of the Project or any interest therein; and (c) stating, that to the best knowledge of the person executing the certificate after due inquiry, the Secondary Developer was not otherwise in default under this Declaration during the year.

(v) Notice of Non-Compliance. The Secondary Developer will immediately notify the Authority if at any time during the term of this Declaration the dwelling units in the Project are not occupied or available for occupancy as required by the terms of this Declaration.

(b) Section 8 Housing. The Secondary Developer shall accept tenants who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq., or its successor. During the term of this Declaration, the Secondary Developer shall not adopt any policies specifically excluding rental to tenants holding Section 8 certificate/voucher holders.

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

5. Enforcement.

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

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



and all subsequent owners of the Project or any interest therein, and the benefits will inure to the Authority and its successors and assigns for the term of this Declaration as provided in Section 1(b) hereof.

12. Notice of Sale. In consideration for the Secondary TIF Note, the Secondary Developer agrees to provide the Authority with at least ninety (90) days' notice of any sale of the Project.

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

IN WITNESS WHEREOF, the Secondary Developer has caused this Declaration of Restrictive Covenants to be signed by its respective duly authorized representatives, as of the day and year first written above.

**[SECONDARY DEVELOPER]**

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by \_\_\_\_\_, the \_\_\_\_\_ of [SECONDARY DEVELOPER], a \_\_\_\_\_, on behalf of the Secondary Developer.

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

This instrument drafted by:

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

This Declaration is acknowledged and consented to by:

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

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

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

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_, 2018, by Mary B. Supple, the Chair of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Authority.

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

STATE OF MINNESOTA     )  
  ) SS.  
COUNTY OF HENNEPIN    )

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

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

EXHIBIT A TO DECLARATION OF RESTRICTIVE COVENANTS  
LEGAL DESCRIPTION

EXHIBIT B TO DECLARATION OF RESTRICTIVE COVENANTS  
CERTIFICATION OF TENANT ELIGIBILITY  
(INCOME COMPUTATION AND CERTIFICATION)



**PART V. DETERMINATION OF INCOME ELIGIBILITY**

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES: From item (L) on page 1	<input type="text"/>	Household Meets Income Restriction at:  <input type="radio"/> 60% <input type="radio"/> 50% <input type="radio"/> 40% <input type="radio"/> 30% <input type="radio"/> <input type="text"/>	Current Income Limit x 140%:  <input type="text"/> Household Income exceeds 140% at recertification:  <input type="radio"/> Yes <input type="radio"/> No
Current Maximum Income Limit per Family Size: Household Income at Move-in:	<input type="text"/>	Household Size at Move-in:	<input type="text"/>

**PART VI. RENT**

Tenant Paid Rent	<input type="text"/>	Rent Assistance:	<input type="text"/>	RA Type	<input type="text"/>	
Utility Allowance	<input type="text"/>	Other non-optional charges:	<input type="text"/>			
GROSS RENT FOR UNIT: (Tenant paid rent plus Utility Allowance & other non-optional charges)	<input type="text"/>	Unit Meets Rent Restriction at:  <input type="radio"/> 60% <input type="radio"/> 50% <input type="radio"/> 40% <input type="radio"/> 30% <input type="radio"/> <input type="text"/>	Maximum Rent Limit for this unit:			<input type="text"/>

**PART VII. STUDENT STATUS**

ARE ALL OCCUPANTS FULL TIME STUDENTS? If yes, choose a student explanation*(also attach documentation) <input type="radio"/> Yes <input type="radio"/> No	* Student Explanation  <input type="radio"/> TANF assistance <input type="radio"/> Previously in Foster Care <input type="radio"/> Job Training Program <input type="radio"/> Single parent/dependent child <input type="radio"/> Married/joint return
---	--

**PART VIII. PROGRAM TYPE**

Mark the program(s) listed below (a. through e.) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification.

<input type="checkbox"/> HOME  Income Status  <input type="radio"/> <=50% AMGI <input type="radio"/> <=60% AMGI <input type="radio"/> <=80% AMGI <input type="radio"/> OI**	<input type="checkbox"/> Tax Exempt  Income Status  <input type="radio"/> Eligible <input type="radio"/> 50% AMGI <input type="radio"/> OI**	<input type="checkbox"/> AHDP  Income Status  <input type="radio"/> VLI <input type="radio"/> LI <input type="radio"/> OI**	<input type="checkbox"/> Other (specify below)  <input type="text"/> (Name of Program) Income Status <input type="checkbox"/> <input type="text"/> <input type="checkbox"/> <input type="text"/> <input type="checkbox"/> OI**
--	--	---	---

\*\* Upon recertification, household was determined over-income (OI) according to eligibility requirements of the program(s) marked above.

**SIGNATURE OF OWNER/REPRESENTATIVE**

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

\_\_\_\_\_  
SIGNATURE OF OWNER/REPRESENTATIVE

\_\_\_\_\_  
DATE

EXHIBIT C TO DECLARATION OF RESTRICTIVE COVENANTS  
CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

Certificate of  
Continuing Program Compliance

Date: \_\_\_\_\_

The following information with respect to the Project located at \_\_\_\_\_, Richfield, Minnesota (the "Project"), is being provided by [SECONDARY DEVELOPER] (the "Owner") to the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the "Authority"), pursuant to that certain Declaration of Restrictive Covenants dated \_\_\_\_\_, 2018 (the "Declaration"), with respect to the Project:

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

\_\_\_\_\_ BR Units:

\_\_\_\_\_ BR Units:

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

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

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

Unit Number	Name of Tenant	Number of Persons Residing in the Unit	Number of Bedrooms	Total Adjusted Gross Income	Date of Initial Occupancy	Rent
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24						
25						
26						
27						
28						
29						
30						

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

(E) In renting the residential units in the Project, the Owner has not given preference to any particular group or class of persons (except for persons who qualify as Qualifying Tenants); and none of the units listed in (C) above have been rented for occupancy entirely by students, no one of which is entitled to file a joint return for federal income tax purposes. All of the residential units in

the Project have been rented pursuant to a written lease, and the term of each lease is at least twelve (12) months. Leases may become month to month leases after the first term of the lease.

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

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

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

IN WITNESS WHEREOF, I have hereunto affixed my signature, on behalf of the Owner, on \_\_\_\_\_, 20\_\_.

**[SECONDARY DEVELOPER]**

By \_\_\_\_\_

Its \_\_\_\_\_

## EXHIBIT G

### CONSENT LETTER FROM SECONDARY DEVELOPER

To the Housing and Redevelopment Authority in and for the City of Richfield (the “Authority”)  
Attention: Executive Director

The undersigned, on behalf of \_\_\_\_\_ (the “Secondary Developer”) pursuant to the Amended and Restated Contract for Private Development, dated \_\_\_\_\_, 2018 (the “Development Agreement”), between the Housing and Redevelopment in and for the City of Richfield, Minnesota (the “Authority”) and Lyndale Gardens, LLC, a Minnesota limited liability company (the “Master Developer”), hereby represents, warrants, and acknowledges the following on behalf of the Secondary Developer:

1. The Secondary Developer acknowledges that it has read and understands the Development Agreement. Any capitalized terms used herein that are otherwise not defined shall have the meanings assigned such terms in the Development Agreement.

2. The Master Developer and the Secondary Developer have entered into an agreement with respect to the construction and development of the Secondary Developer Improvements in satisfaction of Sections 9.2, 9.3, 9.5, 9.6, and 9.7 of the Development Agreement.

3. Subject to Unavoidable Delays, if the Secondary Developer fails to complete construction of the Secondary Developer Improvements within four (4) years of commencement of construction, the Authority may terminate the Secondary Developer TIF Note following written notice to the Master Developer, with opportunity to cure, as set forth in Section 11.2(c) of the Development Agreement.

4. The base value of the Secondary Developer Property (as described in Exhibit A of the Development Agreement) is \$\_\_\_\_\_.

5. The Secondary Developer confirms and agrees with the procedure for issuing the Secondary Developer TIF Note described in Section 3.4 of the Development Agreement.

6. The Secondary Developer acknowledges and understands Article XI of the Development Agreement, which describes Secondary Developer Events of Defaults and the actions the Authority may take if a Secondary Developer Event of Default occurs.

7. The Secondary 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 Secondary Developer TIF Note will be sufficient to pay the principal of and interest on the Secondary Developer TIF Note. Any estimates of Tax Increment prepared by the Authority or its municipal advisors in connection with the TIF District or the Development Agreement are for the benefit of the Authority, and are not intended as representations on which the Master Developer or the Secondary Developer may rely.

8. The Secondary Developer may assign the Secondary Developer TIF Note to a lender that provides part of the financing for, or refinancing of, the construction of the Secondary Developer Improvements. Pursuant to the terms of the Secondary Developer TIF Note, the Secondary Developer TIF Note may be assigned if the assignee executes an investment letter in the form set forth in Exhibit D attached to the Development Agreement.

9. In satisfaction of Sections 9.6 and 9.7 of the Development Agreement, the Secondary Developer shall maintain the 7 affordable rental units within the Secondary Developer Improvements for the period required.

**[SECONDARY DEVELOPER]**

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

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