

**FORECLOSURE PURCHASE INCENTIVE PROGRAM
REHABILITATION LOAN
AGREEMENT**

Between

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

and

at

RICHFIELD, MN 55423

This Instrument Drafted by:

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

AGREEMENT

THIS AGREEMENT, made and entered into as of this _____ day of _____ 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 _____ (Buyer).

WITNESSETH:

WHEREAS, the City of Richfield (City) and the HRA have previously created and established a Redevelopment Project (Project) and Tax Increment Financing District (TIF District) pursuant to the authority granted in Minnesota Statutes, Sections 469.001 through 469.047 and Sections 469.174 through 469.179 (collectively, the Acts); and

WHEREAS, pursuant to the Acts, the City and the HRA have previously adopted a redevelopment plan (Redevelopment Plan) and a tax increment financing plan (TIF Plan) to finance all or a portion of the public development costs of the Project; and

WHEREAS, in order to achieve the objectives of the Redevelopment Plan and TIF Plan as hereinafter defined 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 public development costs in the Project; and

WHEREAS, the HRA has become concerned that within the Project there is an increasing number of homes which have been foreclosed and are standing vacant, and, in many cases are not being adequately secured or maintained; and

WHEREAS, under such circumstances, the properties themselves are subject to deterioration; and the entire neighborhood is subject to the impacts caused by such conditions; and

WHEREAS, the HRA, in recognition of the need to provide decent, safe and sanitary housing in the community has established a deferred loan program which is designed to provide assistance to individuals who are acquiring and doing rehabilitation to foreclosed properties within the Project, and in furtherance of the goals and objectives of the plan for 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 and TIF 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:

- (a) **City.** The City of Richfield, Minnesota.
- (b) **Rehabilitation Plans.** Collectively, the plans, drawings and related documents related to the Improvements, which are listed on Exhibit D.
- (d) **Development.** The Property and the Improvements to be constructed thereon according to the Rehabilitation Plans approved by the HRA.
- (f) **Closing** The date on which Buyer closes on the Purchase of the Property.
- (h) **Improvements.** Each and all of the site improvements to be constructed on the Property by the Buyer, as specified in the Rehabilitation Plans approved by the HRA.
- (i) **Guidelines.** The guidelines adopted by the HRA as such are applicable to the providing of rehabilitation assistance.
- (j) **Mortgage and Holder.** 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 or any part thereof, as security for a loan. The term “holder” in reference to a mortgage includes any insurer or guarantor (other than the Buyer) of any obligation or condition secured by such mortgage or deed of trust.
- (k) **Property.** The real property legally described as:

Located on land having a street address of:

, Richfield, MN 55423

(r) **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. Guidelines
- C. The Note and Mortgage
- D. Rehabilitation Plan

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 will obtain commitments for financing the necessary for acquisition of the Property and 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; and

(e) The plans for the Improvements have been prepared by a qualified draftsman or architect, or other person acceptable to the HRA, as appropriate. If the proposed improvements do not require a plan to be prepared, buyer agrees to submit a detailed list of the proposed improvements to the Property, detailing the project and materials.

(f) Buyer intends to reside at the Property following the Closing and to use the same as Buyer's principal residence; and is not acquiring the Property for the purpose of resale or speculation.

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 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 Buyer has, or will utilize its best efforts to enter into a binding agreement to purchase the Property. Upon determination by the HRA that Buyer has entered into a binding purchase agreement for the purchase of the Property, the HRA will deliver to Buyer the Note described in Section 5.1. If no binding purchase agreement is entered into within 15 days from the date of this Agreement, either the HRA or the Buyer may declare this Agreement null and void, and the parties will thereby be released from any further obligation hereunder.

Section 3.3 Closing. Closing must take place on or before _____ or such other date as may be agreed to by the Buyer and HRA in writing. At Closing, the Buyer will provide the HRA with a mortgage in recordable form (and pay for the cost of recording). The mortgage will be a first lien on the Property and will act as security for repayment of any of the Rehabilitation Loan advanced to the Buyer in the event that construction of the Improvements is not completed on or before the date specified in Section 4.3. The Mortgage will be in substantially the form of the mortgage shown on the attached Exhibit C.

ARTICLE IV.

CONSTRUCTION OF IMPROVEMENTS

Section 4.1. Construction of Improvements. The Buyer shall construct the Improvements on the Property in accordance with the Rehabilitation Plans and shall maintain, preserve and keep the Improvements in good repair and condition.

Section 4.2. Building Plans. No building permit will be issued by the City unless the building plans are in conformity with the Rehabilitation Plans and all local, state and federal regulations. The HRA shall, within 25 days of receipt of Rehabilitation Plans submitted in application for a building permit, review such Rehabilitation Plans to determine whether the

foregoing requirements have been met. If the HRA determines such Rehabilitation 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 Rehabilitation 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 _____. All construction shall be in conformity with the approved Rehabilitation Plans. 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 specific in Section 8.2 of this Agreement.

Section 4.4 Certificate of Completion. Promptly 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 Rehabilitation 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 with respect to the obligation of the Buyer to construct the Improvements.

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 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 on Default under this Agreement.

ARTICLE V.

REHABILITATION LOAN

Section 5.1 Issuance of the Note. As consideration for Buyer's covenant to construct the Improvements, and subject to all of the conditions of this Agreement, the HRA agrees to provide the Buyer with a Rehabilitation Loan in the amount of \$15,000. Upon the Buyer providing the HRA with evidence that Buyer has entered into a purchase agreement for the purchase of the Property, the HRA will deliver to Buyer a promissory note in substantially the form of the attached Exhibit C. Payment of the Rehabilitation Loan will be exclusively subject

to and in accordance with the terms of the Note as such are contained in the Note or described in this Agreement.

Section 5.2 Note Terms. The terms of the Note will include the following:

(a) Assuming the Buyer is in compliance with Buyers obligations, the Note will be payable in three installments. The first installment of \$3,750 will be due and payable at Closing, the second installment of \$3,750 will be due and payable not later than five days following notification and verification of the issuance a building permit for construction of the Improvements, and the final installment of \$7,500 on the date of the issuance of a Certificate of Completion showing full completion of all of the Improvements. In the event the Improvements do not require a building permit, the second installment will be due and payable upon the submission of receipts for the Improvements totaling \$5,000 or more.

(b) The Note will be cancelled if the Closing does not occur by the last date provided in Section 3.3; or if construction of the Improvements are not fully completed by the last date provided in Section 4.3.

(c) The Note will not bear interest.

(d) The Note may be canceled by the HRA in the event that the Buyer is in default of any of its obligations under this Agreement.

(e) The Note may not be assigned or pledged unless the proposed recipient certifies to the HRA that it is aware of and accepts to the conditions of the Note governing payment.

(f) The Note will provide for repayment of the any Rehabilitation Loan payments paid to Buyer under the Note in the event that the Buyer fails to meet the time requirements of Sections 3.3 and 4.3. Such repayment obligation will be secured by a mortgage in substantially the form shown in Exhibit C which will be delivered by Buyer to the HRA at Closing. Unless the HRA agrees otherwise in accordance with Section 6.3, the Mortgage will be a first lien on the Property.

(g) The Note will also provide that if the Buyer continues to observe all of the covenants and requirements and obligations imposed on Buyer under this Agreement, any other agreements between the HRA and Buyer with respect to the Property, and in the Note for a period of five years from the date of Closing, then the Buyer's obligation to repay the Rehabilitation Loan will be forgiven, terminate and be of no further force and effect; and an instrument discharging the Mortgage will thereupon be provided to Buyer for recording at the Buyer's request.

Section 5.3 Payments Under the Note. On the date payments are due under the Note, the HRA will make such payments by delivering the amount due to either the lending institution providing financing for construction of the Improvements, or the title company servicing the construction loan. Such lending institution or title company may then use the delivered funds to make payment to any contractor or materialman for work or materials actually furnished in connection with the Improvements

In the event that no lending institution or title company is available to serve in that capacity, the HRA shall disburse the payments, when due, in any manner which in its reasonable judgment will assure that the funds will be expended for construction of the Improvements.

ARTICLE VI.

FINANCING

Section 6.1 Financing. If additional financing is required for the Improvements, within 30 days of the date of execution of this Agreement by all the parties, the Buyer 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 amount of such financing along with the Rehabilitation Loan is adequate in amount to provide for the construction of the Improvements, the HRA shall notify the Buyer of its approval.

If the HRA rejects the evidence of financing as inadequate, the Buyer shall have 30 days or such additional period of time as the Buyer may reasonably require from the date of such 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, except for the HRA's remedies pursuant to Section 4.5 of this Agreement.

Section 6.2 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 6.3 Subordination. In order to facilitate obtaining financing for the purchase of the Property or the construction of the Improvements by the Buyer, the HRA may agree to modify this Agreement, the Note or the Mortgage in the manner and to the extent the HRA deems reasonable, upon request by the financial institution and the Buyer.

ARTICLE VII.

PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

Section 7.1 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 7.2 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 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 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, the Buyer, 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.

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 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 of 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 Mortgagee.

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 Buyer as provided in Section 9.5 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) cancel or rescind the Note;

(d) foreclose on the Mortgage;

(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 Mortgagee 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 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 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 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 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 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 Buyer as though fully set forth herein.

Section 9.3 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 9.4 Counterparts. This Agreement may be simultaneously executed in any number of counterparts, all of which shall constitute one and the same instrument.

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 Buyer 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

Buyer

DRAFT

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____, by Suzanne M. Sandahl, 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 HENNEPIN)

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, 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 _____, 20_____, by _____.

Notary Public

NOTE: Print Exhibits A, B, C, and D to accompany this agreement. The Exhibits are saved at: R:\CDAdmin\HOUSING\Programs and Services\FPIP\Forms and Guidelines.

DRAFT