


REQUEST FOR COUNCIL ACTION

Date: November 8, 2010
Item No.: 12.f

Department Approval



City Manager Approval



Item Description: Approve Development Agreement Between the City and United Properties Residential LLC for Dedication of Increment from TIF 19 to Phase 1 of Applewood Pointe on Langton Lake Development.

1 **BACKGROUND**

2 On June 10, 2010, United Properties made an application to the City requesting the creation of an
3 economic development TIF district in order for the City to provide financial assistance the Applewood
4 Pointe of Roseville at Langton Lake senior housing cooperative project. In its application for financial
5 assistance, the developer requested that the City reduce park dedication fees for the project by \$1,000 per
6 unit and fill a portion of the identified gap with proceeds from a new TIF district. Together, the financial
7 request totaled \$659,000.

8 City staff did not feel that park dedication fees should be reduced as part of the project. Therefore, since
9 the total request for assistance was \$659,000, staff has incorporated that amount into the TIF development
10 agreement.

11 On September 13, 2010, the City Council created Tax Increment Financing (TIF) District No. 19.
12 Through that approval, the City created the mechanism by which to provide support to the development,
13 but did not obligate itself to provide assistance at that time. To provide assistance, the City and the
14 developer must enter into a development agreement that sets forward the level of and conditions upon the
15 financial assistance.

16 Attachment A of this report is a proposed development agreement between the City and the developer. As
17 proposed, assistance will be provided to the developer on a pay-as-you-go basis to offset TIF-eligible
18 costs associated with Phase 1 of the senior cooperative project. The City will not be providing any up-
19 front funds to the project through the issuance of tax increment revenue bonds; instead, the City will issue
20 the developer a tax increment revenue note. The City will only repay the note to the developer through
21 revenue generated by TIF 19. If the TIF district does not perform as projected in the TIF Plan, the City
22 will not be responsible to fulfill the outstanding balance, thus minimizing the potential financial risk to
23 the City.

24 The general terms of the note include:

- 25 • Principal: Up to \$659,000
- 26 • Interest Rate: 7 percent, annual
- 27 • Term: Up to 9 years
- 28 • Repayment: 80 percent of TIF collected

29 Based on the development schedule and future market value assumption, the developer will only be able
30 to collect the full assistance if all three phases of the development occur, which includes both phases of
31 the senior-cooperative project and the assisted-living project.

32 At the September 13 meeting, council members asked if the City could participate in the “up-side” of this
33 development if the developer’s revenues exceeded those identified in the project pro forma. Cities do this
34 by implementing a “look-back” requirement in the development agreement. A look-back requirement
35 generally sets a level of return on investment that the City is willing to help the developer achieve and
36 then adjusts the amount of increment that the developer receives upon submission of project financials
37 over time. Staff discussed this option with the developer and they were receptive to the inclusion of this
38 type of language; however, upon further review by the City’s financial consultant and development
39 attorney, ultimately it was determined that the complexity this arrangement caused was unwarranted in
40 this case due to the short duration of this district and the limitation set for the amount of increment to be
41 received. Attachment B is a memorandum from Springsted summarizing this reasoning.

42 **POLICY OBJECTIVE**

43 The City’s 2030 Comprehensive Plan advocates for redevelopment that helps to achieve the City’s goals.
44 Goal 1 in the Economic Development and Redevelopment Chapter of this plan states: “Foster economic
45 development and redevelopment in order to achieve Roseville’s vision, create sustainable development,
46 and anticipate long-term economic and social changes.” Further, Policy 1.5 suggests creating public-
47 private partnerships to achieve the City’s goals, when appropriate. Roseville is an aging community and
48 as the population ages the need for additional senior living opportunities will increase. The City’s
49 Housing and Redevelopment Authority completed a multi-family housing market study in 2009, which
50 identified a need for additional senior units in Roseville. With this project, United Properties is working
51 to fill this market need. By providing financial assistance to this project, the City will be forming a
52 public-private financial partnership to bring this project to fruition.

53 **BUDGET IMPLICATIONS**

54 The creation of TIF District No. 19 does not impact the City’s budget. The City, as with all of the other
55 taxing jurisdictions, will continue to generate taxes from the same level of tax capacity as it is today from
56 these properties during life of this TIF district. The additional tax capacity generated by these properties
57 through the development of the senior housing cooperative and assisted-living facility will be captured by
58 the TIF district. After the financial obligation to the developer is fulfilled by the City with revenue
59 generated by the district, the tax capacity captured by the district will be released to the taxing
60 jurisdictions.

61 **STAFF RECOMMENDATION**

62 Staff recommends that City Council approve the proposed development agreement with United Properties
63 Residential LLC to give TIF assistance in the amount of \$659,000.

64 **REQUESTED COUNCIL ACTION**

65 By motion, approve the development agreement between the City of Roseville and United Properties
66 Residential LLC dedicating tax increment from TIF District No. 19 to the Phase 1 development at
67 Applewood Pointe of Roseville at Langton Lake in substantially the form shown in Attachment A of this
68 report, subject to modification approved by the City Manager and the City’s legal counsel.

Prepared by: Jamie Radel, Economic Development Associate

Attachments: A: Draft Development Agreement by and between the City of Roseville and United
Properties Residential LLC

B: Memorandum from Springsted dated October 27, 2010

DEVELOPMENT AGREEMENT

BY AND BETWEEN

CITY OF ROSEVILLE, MINNESOTA

AND

UNITED PROPERTIES RESIDENTIAL LLC

This document drafted by:

BRIGGS AND MORGAN
Professional Association
2200 First National Bank Building
St. Paul, Minnesota 55101

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DEVELOPMENT AGREEMENT

THIS AGREEMENT, made as of the ____ day of _____, 2010, by and between the City of Roseville, Minnesota (the “**City**”), a municipal corporation existing under the laws of the State of Minnesota and United Properties Residential LLC, a Minnesota limited liability company (the “**Developer**”).

WITNESSETH:

WHEREAS, pursuant to Minnesota Statutes, Section 469.124 to 469.134, the City has heretofore established Municipal Development District No. 1 (the “**Development District**”) and has adopted a development program therefor (the “**Development Program**”); and

WHEREAS, pursuant to the provisions of Minnesota Statutes, Section 469.174 through 469.1799, as amended (hereinafter, the “**Tax Increment Act**”), the City has heretofore established, within the Development District, Tax Increment Financing (Economic Development) District No. 19 (the “**Tax Increment District**”) and has adopted a tax increment financing plan therefor (the “**Tax Increment Plan**”) which provides for the use of tax increment financing in connection with certain development within the Development District; and

WHEREAS, in order to achieve the objectives of the Development Program and particularly to make the land in the Development District available for development by private enterprise in conformance with the Development Program, the City has determined to assist the Developer with the financing of certain costs of a Project (as hereinafter defined) to be constructed within the Tax Increment District as more particularly set forth in this Agreement; and

WHEREAS, the City believes that the development and construction of the Project, and fulfillment of this Agreement are vital and are in the best interests of the City, the health, safety, morals and welfare of residents of the City, and in accordance with the public purpose and provisions of the applicable state and local laws and requirements under which the Project has been undertaken and is being assisted; 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. All capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

Agreement means this Agreement, as the same may be from time to time modified, amended or supplemented;

Business Day means any day except a Saturday, Sunday or a legal holiday or a day on which banking institutions in the City are authorized by law or executive order to close;

City means the City of Roseville, Minnesota, its successors and assigns;

Commencement of Construction means the issuance of all building permits and any other permits the City requires for construction of the Project and commencement of physical construction of the Project on the Development Property;

Completed Residential Building means any multi-unit residential building constructed during the Term of this Agreement upon the Development Property **and** for which the City has issued a certificate of occupancy or has otherwise authorized such building for occupancy;

Developer means United Properties Residential LLC, its successors and assigns in the development and construction of the Project; Developer specifically does not include any cooperative association and/or its members or other owners of Completed Residential Building(s) on the Development Property;

Development District means the real property included in the Municipal Development District No. 1 heretofore established;

Development Program means the Development Program approved in connection with the Development District;

Development Property means the real property described in Exhibit A attached to this Agreement;

Event of Default means any of the events described in Section 4.1 hereof;

Legal and Administrative Expenses means the fees and expenses incurred by the City in connection with the adoption and administration of the Tax Increment Financing Plan, the preparation of this Agreement and the issuance of the TIF Note;

Note Payment Date means February 1, 2012, and each February 1 and August 1 of each year thereafter to and including August 1, 2020; provided, that if any such Note Payment Date should not be a Business Day, the Note Payment Date shall be the next succeeding Business Day;

Post Project Phases means the development and construction of any Completed Residential Building on the Development Property subsequent to the Project.

Prime Rate means the rate of interest from time to time publicly announced by U.S. Bank National Association in St. Paul, Minnesota, as its “prime rate” or “reference rate” or any successor rate, which rate shall change as and when that rate or successor rate changes;

Project means the construction of an approximately 48-unit senior cooperative apartment building by the Developer on a portion of the Development Property;

Site Improvements means those site improvements identified on Exhibit C attached hereto to be undertaken on or adjacent to the Development Property;

State means the State of Minnesota;

Tax Increments means 80% of the tax increments derived from the Development Property which have been received by the City in accordance with the provisions of Minnesota Statutes, Section 469.177;

Tax Increment Act means Minnesota Statutes, Sections 469.174 through 469.1799, as amended;

Tax Increment District means Tax Increment Financing (Economic Development) District No. 19 located within the Development District, a description of which is set forth in the Tax Increment Financing Plan, which was qualified as an economic development district under the Tax Increment Act;

Tax Increment Financing Plan means the tax increment financing plan approved for the Tax Increment District by the City Council and any future amendments thereto;

TIF Note means the Tax Increment Revenue Note (Applewood Pointe Senior Cooperative Housing Project) to be executed by the City and delivered to the Developer pursuant to Article III hereof, the form of which is attached hereto as Exhibit B; and

Unavoidable Delays means delays, outside the control of the party claiming its occurrence, which are the direct result of strikes, other labor troubles, unusually severe or prolonged bad weather, acts of God, fire or other casualty to the Project, litigation commenced by third parties which, by injunction or other similar judicial action or by the exercise of reasonable discretion, directly results in delays, or acts of any federal, state or local governmental unit (other than the City) which directly result in delays.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1. Representations and Warranties of the City. The City makes the following representations and warranties:

(1) The City is a municipal corporation and has the power to enter into this Agreement and carry out its obligations hereunder.

(2) The Tax Increment District is an “economic development district” within the meaning of Minnesota Statutes, Section 469.174, Subdivision 12 and was created, adopted and approved in accordance with the terms of the Tax Increment Act.

(3) The development contemplated by this Agreement is in conformance with the development objectives set forth in the Development Program.

(4) To finance certain costs within the Tax Increment District, the City proposes, subject to the further provisions of this Agreement, to apply Tax Increments to reimburse the Developer for the costs of the Development Property and the costs of certain Site Improvements incurred in connection with the Project as further provided in this Agreement.

(5) The City is entering into this Agreement to provide assistance to a housing project; consequently, the business subsidy provisions of Minnesota Statutes, Section 116J.993 to 116J.995 do not apply.

(6) The City makes no representation or warranty, either express or implied, as to the Development Property or its condition or the soil conditions thereon, or that the Development Property shall be suitable for the Developer’s purposes or needs.

Section 2.2. Representations and Warranties of the Developer. The Developer makes the following representations and warranties:

(1) The Developer is a Minnesota limited liability company and has the power and authority to enter into this Agreement and to perform its obligations hereunder and doing so will not violate its articles, operating agreement or the laws of the State.

(2) The Developer will cause the Project to be constructed in accordance with the terms of this Agreement, the Development Program and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations).

(3) The construction of the Project would not be undertaken by the Developer prior to July 1, 2011, and in the opinion of the Developer would not be economically feasible prior to July 1, 2011, without the assistance and benefit to the Developer provided for in this Agreement.

(4) 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 provision of any contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which they are bound, or constitutes a default under any of the foregoing.

(5) The Developer will cooperate fully with the City with respect to any litigation commenced with respect to the Project.

(6) The Developer will cooperate fully with the City in resolution of any traffic, parking, trash removal or public safety problems which may arise in connection with the construction and operation of the Project.

(7) Commencement of Construction shall begin by _____, 2011 and the construction of the Project will be substantially completed by December 31, 2012, subject to Unavoidable Delays, and will create jobs in the State.

(8) The Developer will not seek a reduction in the market value as determined by the Ramsey County Assessor of the Project or any Post Project Phases or other facilities that it constructs on the Development Property, pursuant to the provisions of this Agreement, for so long as the TIF Notes remain outstanding. The City acknowledges that this representation shall not be binding upon subsequent owners of Completed Residential Buildings within the Development Property.

ARTICLE III

UNDERTAKINGS BY DEVELOPER AND CITY

Section 3.1. Land Acquisition, Site Improvements and Legal and Administrative Expenses.

(1) The parties agree that the acquisition of the Development Property and the installation of the Site Improvements are essential to the successful completion of the Project. The costs of the acquisition of those portions of the Development Property necessary for the Project and the Site Improvements shall be paid by the Developer. The City shall reimburse the Developer for up to \$659,000 of the costs of the Development Property and Site Improvements actually incurred and paid by the Developer (the “**Reimbursement Amount**”) as further provided in Section 3.2.

(2) The Developer has deposited with the City the sum of \$5,000 to reimburse the City for its actual out of pocket Legal and Administrative Expenses and any excess will be returned to the Developer. The Legal and Administrative Expenses shall be paid by the City from said Developer’s deposit. If the City determines said deposit to be inadequate, the Developer shall provide additional funds to be escrowed or to pay Legal and Administrative expenses when due.

Section 3.2. Reimbursement: Tax Increment Revenue Note. The City shall pay the Reimbursement Amount through the issuance of the City’s TIF Note in substantially the form attached to this Agreement as Exhibit B, subject to the following conditions:

(1) The TIF Note shall be dated, issued and delivered when the Developer shall have demonstrated in writing to the reasonable satisfaction of the City that the Developer has incurred and paid costs for acquisition of Development Property and all of the Site Improvement costs, as described in and limited by Section 3.1 and shall have submitted paid invoices for the Site Improvements and purchase and settlement statement(s) relating to the purchase of some or all of the Development Property in an amount not less than the Reimbursement Amount.

(2) The unpaid principal amount of the TIF Note shall bear simple, non-compounding interest from the date of issuance of the TIF Note, at 7.00% per annum. Interest shall be computed on the basis of a 360 day year consisting of twelve (12) 30 day months.

(3) The principal amount of the TIF Note and the interest thereon shall be payable solely from the Tax Increments.

(4) On each Note Payment Date and subject to the provisions of the TIF Note, the City shall pay, against the principal and interest outstanding on the TIF Note, the Tax Increments received by the City during the preceding 6 months. All such payments shall be applied first to accrued interest and then to reduce the principal of the TIF Note.

(5) The TIF Note shall be a special and limited obligation of the City and not a general obligation of the City, and only Tax Increments shall be used to pay the principal and

interest on the TIF Note. If, on any Note Payment Date, the Tax Increments for the payment of the accrued and unpaid interest on the TIF Note are insufficient for such purposes, the difference shall be carried forward, without interest accruing thereon, and shall be paid if and to the extent that on a future Note Payment Date there are Tax Increments in excess of the amounts needed to pay the accrued interest then due on the TIF Note.

(6) The City's obligation to make payments on the TIF Note on any Note Payment Date or any date thereafter shall be conditioned upon the requirements that: (A) there shall not at that time be an Event of Default that has occurred and is continuing under this Agreement and (B) this Agreement shall not have been rescinded pursuant to Section 4.2(2).

(7) The TIF Note shall be governed by and payable pursuant to the additional terms thereof, as set forth in Exhibit B. In the event of any conflict between the terms of the TIF Note and the terms of this Section 3.2, the terms of the TIF Note shall govern. The issuance of the TIF Note pursuant and subject to the terms of this Agreement, and the taking by the City of such additional actions as bond counsel for the TIF Note may require in connection therewith, are hereby authorized and approved by the City.

ARTICLE IV

EVENTS OF DEFAULT

Section 4.1. Events of Default Defined. The following shall be “**Events of Default**” under this Agreement and the term “Event of Default” shall mean whenever it is used in this Agreement any one or more of the following events:

(1) Failure by the Developer to timely pay any *ad valorem* real property taxes assessed with respect to those portions of the Development Property owned by Developer.

(2) Failure of the Developer to observe or perform any covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

(3) The holder of any mortgage on those portions of the Development Property owned by Developer or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable mortgage documents; and Developer fails to cure such default and reinstate the mortgage obligations as provided by Minnesota law.

(4) If the Developer shall:

(a) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended or under any similar federal or state law; or

(b) make an assignment for the benefit of its creditors; or

(c) admit in writing its inability to pay its debts generally as they become due;
or

(d) be adjudicated a bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer as bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof; or a receiver, liquidator or trustee of the Developer, or of the Project, or part thereof, shall be appointed in any proceeding brought against the Developer, and shall not be discharged within sixty (60) days after such appointment, or if the Developer, shall consent to or acquiesce in such appointment.

Section 4.2. Remedies on Default. Whenever any Event of Default referred to in Section 4.1 occurs and is continuing, the City, as specified below, may take any one or more of the following actions after the giving of thirty (30) days’ written notice to the Developer, but only if the Event of Default has not been cured within said thirty (30) days:

(1) The City may suspend its performance under this Agreement and the TIF Note until it receives assurances from the Developer, deemed adequate by the City, that the Developer will cure its default and continue its performance under this Agreement.

(2) The City may cancel and rescind the Agreement and the TIF Note.

(3) The City may take any action, including legal or administrative action, in law or equity, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

Section 4.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City 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.

Section 4.4. No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any 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 4.5. Agreement to Pay Attorney's Fees and Expenses. Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the Developer herein contained, the Developer agrees that it shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses so incurred by the City.

Section 4.6. Indemnification of City.

(1) The Developer covenants and agrees that the City, its governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "**Indemnified Parties**") shall not be liable for and agrees to indemnify and hold harmless the Indemnified Parties 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 Project.

(2) Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now and 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 the actions or inactions of the Developer (or if other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the City in this Agreement or to any actions undertaken by the City which are not contemplated by this Agreement but shall, in any event and without regard to any fault on the part of the City, apply to any pecuniary loss or penalty (including interest thereon from the date the loss is incurred or penalty is paid by the City at a rate equal to the Prime Rate)

as a result of the Project causing the Tax Increment District to not qualify or cease to qualify as an “economic development district” under Section 469.174, Subdivision 12 and Section 469.176, Subdivision 4c of the Act, or to violate limitations as to the use of Tax Increments as set forth in Section 469.176, Subdivision 4c.

(3) All covenants, stipulations, promises, agreements and obligations of the City contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any governing body member, officer, agent, servant or employee of the City.

ARTICLE V

ADDITIONAL PROVISIONS

Section 5.1. Restrictions on Use. Until termination of this Agreement, the Developer agrees for itself, its successors and assigns and every successor in interest to the Development Property, or any part thereof, that the Developer and such successors and assigns shall operate, or cause to be operated, the Project as a housing project and shall devote the Development Property to, and in accordance with, the uses specified in this Agreement.

Section 5.2. Conflicts of Interest. No member of the governing body or other official of the City shall have any financial interest, direct or indirect, in this Agreement, the Development Property or the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by the Developer or successor or on any obligations under the terms of this Agreement.

Section 5.3. 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 5.4. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any 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

- (1) in the case of the Developer is addressed to or delivered personally to:

United Properties Residential LLC
3500 American Boulevard West, #200
Bloomington, MN 55431
Attn: Alex Hall and Brian Carey

- (2) in the case of the City is addressed to or delivered personally to the City

at:

City of Roseville, Minnesota
Roseville City Hall
2680 Civic Center Drive
Roseville, MN 55113-1815

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

Section 5.5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 5.6. Law Governing. This Agreement will be governed and construed in accordance with the laws of the State.

Section 5.7. Expiration. This Agreement shall expire on the earlier of (i) February 1, 2020, (ii) the date the TIF Note is paid in full or (iii) the date this Agreement is terminated or rescinded in accordance with its terms.

Section 5.8. Provisions Surviving Rescission or Expiration. Sections 4.5 and 4.6 shall survive any rescission, termination or expiration of this Agreement with respect to or arising out of any event, occurrence or circumstance existing prior to the date thereof.

Section 5.9. Assignability of Agreement. This Agreement may be assigned only with the consent of the City. The TIF Note may only be assigned pursuant to the terms of the TIF Note.

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

CITY OF ROSEVILLE, MINNESOTA

By _____
Its Mayor

By _____
Its City Manager

This is a signature page to the Development Agreement by and between the City of Roseville, Minnesota and United Properties Residential LLC

IN WITNESS WHEREOF, the Developer has caused this Development Agreement to be duly executed in its name, on or as of the date first above written.

UNITED PROPERTIES RESIDENTIAL LLC

By: _____
Its: _____

This is a signature page to the Development Agreement by and between the City of Roseville, Minnesota and United Properties Residential LLC

EXHIBIT A

Description of Development Property

Property located in the City of Roseville, Ramsey County, Minnesota with the following parcel identification numbers:

04.29.23.22.0104

04.29.23.22.0105

Parcel A:

The Westerly 250.00 feet of that part of the Northwest Quarter of the Northwest Quarter of Section 4, Township 29, Range 23 lying Northerly of the Southerly 123.00 feet thereof and lying Southerly of the record plat of White Oak Hills No. 2 according to the plat on file and of record in the Office of the County Recorder, all in Ramsey County, Minnesota;

Together with an easement for ingress and egress over the Northerly 30.00 feet of the Southerly 123.00 feet of the Westerly 150.00 feet of the Westerly 250.00 feet of the Northwest Quarter of the Northwest Quarter of Section 4, Township 29, Range 23 laying Southerly of the record plats of White Oak Hills No. 2, Cave's North Boundary Second Addition, and Cave's North Boundary Addition, all according to plats on file and of record in the Office of the County Recorder, all in Ramsey County, Minnesota.

Ramsey County, Minnesota
Abstract Property

Parcel B:

The Southerly 123.00 feet of the Easterly 217.00 feet of the Westerly 250.00 feet and that part of the Easterly 652.68 feet of the Westerly 902.68 feet of the Northwest Quarter of the Northwest Quarter of Section 4, Township 29, Range 23, lying Southerly of the record plats of White Oak Hills No. 2, Cave's North Boundary Second Addition and Cave's North Boundary Addition, all according to plats on file and of record in the Office of the County Recorder, all in Ramsey County, Minnesota.

Ramsey County, Minnesota
Abstract Property

04.29.23.23.0019

04.29.23.23.0020

The west 250.15 feet of the south 5 acres of the north 8 acres of the Southwest Quarter of the Northwest Quarter of Section 4, Township 29, Range 23, subject to the right-of-way of Cleveland Avenue North, Ramsey County, Minnesota;

And

The west 250.15 feet of the north 3 acres of the Southwest Quarter of Northwest Quarter of Section 4, Township 29, Range 23, subject to the right-of-way of Cleveland Avenue North, Ramsey County, Minnesota.

EXHIBIT B

Form of TIF Note

No. R-1

\$_____

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF RAMSEY
CITY OF ROSEVILLE

TAX INCREMENT REVENUE NOTE
(APPLEWOOD POINTE SENIOR COOPERATIVE HOUSING PROJECT)

The City of Roseville, Minnesota (the “**City**”), hereby acknowledges itself to be indebted and, for value received, hereby promises to pay the amounts hereinafter described (the “**Payment Amounts**”) to United Properties Residential LLC (the “**Developer**”) or its registered assigns (the “**Registered Owner**”), but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided.

The principal amount of this Note shall equal from time to time the principal amount stated above, as reduced to the extent that such principal installments shall have been paid in whole or in part pursuant to the terms hereof; provided that the sum of the principal amount listed above shall in no event exceed \$659,000 as provided in that certain Development Agreement, dated as of _____, 2010, as the same may be amended from time to time (the “**Development Agreement**”), by and between the City and the Developer. The unpaid principal amount hereof shall bear simple, non-compounding interest from the date of this Note at the rate of seven and no hundredths percent (7.00%) per annum. Interest shall be computed on the basis of a 360 day year consisting of twelve (12) 30-day months.

The amounts due under this Note shall be payable on February 1, 2012, and on each February 1 and August 1 thereafter to and including August 1, 2020, or, if the first should not be a Business Day (as defined in the Development Agreement), the next succeeding Business Day (the “**Payment Dates**”). On each Payment Date the City shall pay by check or draft mailed to the person that was the Registered Owner of this Note at the close of the last business day of the City preceding such Payment Date an amount equal to the sum of the Tax Increments (hereinafter defined) received by the City during the six month period preceding such Payment Date. All payments made by the City under this Note shall first be applied to accrued interest and then to principal.

The Payment Amounts due hereon shall be payable solely from 80% of tax increments (the “**Tax Increments**”) from the Development Property (as defined in the Development Agreement) within the City’s Tax Increment Financing (Economic Development) District No. 19 (the “**Tax Increment District**”) within its Development District No. 1 which are paid to the City and which the City is entitled to retain pursuant to the provisions of Minnesota Statutes, Sections 469.174 through 469.1799, as the same may be amended or supplemented from time to time (the “**Tax Increment Act**”). This Note shall terminate and be of no further force and effect

following the last Payment Date defined above, on any date upon which the City shall have terminated the Development Agreement under Section 4.2(2) thereof, on the date the Tax Increment District is terminated, or on the date that all principal and interest payable hereunder shall have been paid in full (in an aggregate principal amount not to exceed \$659,000), whichever occurs earliest.

The City makes no representation or covenant, express or implied, that the Tax Increments will be sufficient to pay, in whole or in part, the amounts which are or may become due and payable hereunder.

The City's payment obligations hereunder shall be further conditioned on the fact that no Event of Default under the Development Agreement shall have occurred and be continuing at the time payment is otherwise due hereunder, but such unpaid amounts shall become payable if said Event of Default shall thereafter have been cured; and, further, if pursuant to the occurrence of an Event of Default under the Development Agreement the City elects to cancel and rescind the Development Agreement, the City shall have no further debt or obligation under this Note whatsoever. Reference is hereby made to all of the provisions of the Development Agreement, including without limitation Section 3.2 thereof, for a fuller statement of the rights and obligations of the City to pay the principal of this Note, and said provisions are hereby incorporated into this Note as though set out in full herein.

This Note is a special, limited revenue obligation and not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications stated or referenced herein. This Note is not a general obligation of the City and neither the full faith and credit nor the taxing powers of the City are pledged to the payment of the principal of this Note and no property or other asset of the City, save and except the above-referenced Tax Increments, is or shall be a source of payment of the City's obligations hereunder.

This Note is issued by the City in aid of financing a project pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including the Tax Increment Act.

This Note may be assigned only with the consent of the City which consent shall not be unreasonably withheld. In order to assign the Note, the assignee shall surrender the same to the City either in exchange for a new fully registered note or for transfer of this Note on the registration records for the Note maintained by the City. Each permitted assignee shall take this Note subject to the foregoing conditions and subject to all provisions stated or referenced herein.

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 have happened, and to be performed precedent to and in the issuance of this Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; and that this Note, together with all other indebtedness of the City outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the City to exceed any constitutional or statutory limitation thereon.

IN WITNESS WHEREOF, City of Roseville, Minnesota, by its City Council, has caused this Note to be executed by the manual signatures of its Mayor and City Manager and has caused this Note to be dated as of _____, 20____.

City Manager

Mayor

CERTIFICATION OF REGISTRATION

It is hereby certified that the foregoing Note was registered in the name of United Properties Residential LLC, and that, at the request of the Registered Owner of this Note, the undersigned has this day registered the Note in the name of such Registered Owner, as indicated in the registration blank below, on the books kept by the undersigned for such purposes.

<u>NAME AND ADDRESS OF REGISTERED OWNER</u>	<u>DATE OF REGISTRATION</u>	<u>SIGNATURE OF CITY CITY MANAGER</u>
United Properties Residential LLC 3500 American Boulevard W. Suite #200 <u>Bloomington, MN 55431</u>	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

EXHIBIT C

Site Improvements

Landscaping, including irrigation
Foundations and Footings
Grading/earthwork
Soil Corrections
Engineering
Survey
Environmental Testing
Soil Borings
Site Preparation
On Site Utilities
Storm Water/Ponding
Outdoor Lighting
Parking, Driveway and Sidewalk Improvements



Springsted Incorporated
380 Jackson Street, Suite 300
Saint Paul, MN 55101-2887

Tel: 651-223-3000
Fax: 651-223-3002
www.springsted.com

MEMORANDUM

TO: Pat Trudgeon, Community Development Director
Chris Miller, Finance Director
Jamie Radel, Economic Development Associate

FROM: Mikaela Huot, Assistant Vice President/Consultant

DATE: October 27, 2010

SUBJECT: Development Agreement between City of Roseville and United Properties, LLC

The City of Roseville established Tax Increment Financing (Economic Development) District No. 19 to provide assistance to the proposed Applewood Pointe Senior Cooperative Housing Project by United Properties (developer). Proposed development in the district includes 94 senior cooperative housing units and 93 assisted living units. The City and developer are in the process of entering into a Development Agreement that will include the terms of tax increment assistance. The City is considering the inclusion of a look-back provision within the Agreement.

Typically a look-back provision is to determine if the level of assistance approved prior to project commencement is appropriate based on actual project activities. If a development is generating a return significantly greater than initially anticipated as a result of increased revenues or decreased costs, the City may want to limit the amount of public assistance granted. This can be done with a reduction in the amount of subsidy, repayment of assistance or payment of excess profit to the City.

There are some challenges associated with a look-back provision such as agreed-upon definitions, i.e. reasonable approach, appropriate revenues and expenditures to be included, reasonable return amounts, and project completion dates. In this particular case, the question was raised regarding the City's ability to share in potential upside to the investment made by United Properties. This more commonly is included when a City shares in the upfront investment risk associated with a development.

In addition to the challenges listed above, the financing terms for this project lessen the need to include a look-back provision within the Agreement. Based on the current project financial assumptions, the developer will not realize the desired return amount with construction of the cooperative housing project. The project includes 2 phases of senior cooperative housing units, 50 and 44 units, respectively. However the only development being considered now is the

first phase, or 50 units. The anticipated return based on the first phase of development is well below the developer's return threshold of 14%. The projected return to the developer should increase with the construction of the remaining 44 senior co-op units, but is still not projected to provide a return near the developer's typical return threshold.

The terms of financial assistance to the developer include tax increment revenues from the 2 phases of the senior cooperative building, 50 and 44 units, respectively, as well as 93 units of assisted living. Both buildings are included within the boundaries of the TIF District. Springsted has not analyzed the projected return with the assisted living project component included due to lack of available information of the project. The working assumption is that the assisted living facility will not develop for several years. Should the project timing accelerate, we recommend the City consider a review of the financial proforma.

The term of the TIF District is eight years after receipt of first year increment, for a total of 9 years. Based on the terms of the agreement, United Properties has the ability to capture the increment from multiple phases of development in the TIF District. However, based on our analysis, the developer will need to construct all the improvements in the district in order to capture sufficient increment necessary to provide the required returns. Given the relatively short term of the district, it would not appear to be practical to include a lookback provision. The only way the developer will achieve the desired return would be to complete the entire project. Consequently, it would be highly unlikely that the Developer be unjustly enriched based on the current scenario.

Thank you for the opportunity to be of assistance to the City of Roseville. Please contact me at 651-223-3036 or mhuot@springsted.com with any questions or comments.