



**REGULAR HOUSING AND REDEVELOPMENT AUTHORITY MEETING  
VIRTUAL MEETING HELD VIA WEBEX  
SEPTEMBER 29, 2020  
7:00 PM**

Call to Order

Attendance Roll Call

**AGENDA APPROVAL**

1. Approval of the Agenda

**OTHER BUSINESS**

2. Consider a resolution approving a Memorandum of Understanding for a future Amendment to the Contract with CPII Development LLC for the Cedar Point II apartment development project.

Staff Report No. 33

3. 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.**



**STAFF REPORT NO. 33**  
**HOUSING AND REDEVELOPMENT AUTHORITY**  
**MEETING**  
**9/29/2020**

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

EXECUTIVE DIRECTOR REVIEW: John Stark, Executive Director  
9/25/2020

**ITEM FOR COUNCIL CONSIDERATION:**

**Consider a resolution approving a Memorandum of Understanding for a future Amendment to the Contract with CPII Development LLC for the Cedar Point II apartment development project.**

**EXECUTIVE SUMMARY:**

The Housing and Redevelopment Authority (HRA) approved a Contract for Private Development (Contract) with NHH Companies, LLC, now doing business as CPII Development LLC (Developer), on September 17, 2018. The Contract calls for the construction of 218 market-rate apartments on HRA-owned property, located on Richfield Parkway between 63rd and 65th Streets. The overall project consists of two components, the second of which is construction of 64 townhomes on property located to the west of the apartments.

There are two time-sensitive issues to be addressed at this time.

1. The Contract currently provides for a closing date on the HRA-owned property of September 30; the closing is one to two weeks away from being finalized.
2. The Developer has applied to the planning division for an increase in the number of units, which as owner of the property, the HRA needs to authorize.

These items impact other parts of the Contract, including the amount of tax increment being generated. Detailed Contract language is being drafted for consideration at the October HRA meeting, but action on the time-sensitive items needs to be acted upon before that time. In order to keep the development moving forward, staff is recommending that the HRA adopt a Memorandum of Understanding extending the closing date to October 31 and detailing the intentions of both parties for moving forward with a Contract amendment (Amendment) and generally describing the terms.

**Increase in Units:** The Developer is proposing to increase the number of units from 218 to 237. Current rental market demand and the decision to focus amenities in one building freed up space to allow for an increase in total units. The number of studio and one bedroom apartments increases and the number of two bedroom units decreases slightly. By planning standards, the change is considered a minor amendment to the Planned Unit Development. Review of that zoning amendment is currently underway but is waiting on HRA authorization as the property owner.

**Tax Increment:** The added units and the changes in the housing market since 2018 generate additional tax increment. The Developer has requested a portion of that additional increment for the project. In exchange for an increased increment Pay as You Go Note, the Developer will make an additional cash payment of \$780,000 at closing of the construction loan, which the HRA will use to pay the assessment levied against the

property. The schedule of distributing the tax increment will also be changed to provide a contribution to the Housing & Redevelopment Fund (HRF) throughout the life of the District, resulting in an increased contribution of approximately \$180,000. The MOU also provides the opportunity to further increase the HRF contribution in the Amendment if both parties agree that further financial analysis indicates it doesn't negatively impact the Developer's tax increment.

**Memorandum of Understanding (MOU):** In addition to an explanation of the distribution of tax increment, the MOU also details several other items to be addressed in an Amendment, including the construction schedule, minimum market value, and future assignment of the Contract to a new entity, which will include the existing development team plus an equity partner, Schafer Richardson.

### **RECOMMENDED ACTION:**

**By motion: Adopt a resolution approving a Memorandum of Understanding with CPII Development LLC for the Cedar Point II apartment development project.**

### **BASIS OF RECOMMENDATION:**

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

- The HRA approved a Contract with NHH Companies, LLC for the Cedar Point Housing area on September 17, 2018, for the development of 218 market-rate apartments. The Contract provides the following terms:
  - A Tax Increment Financing (TIF) note, distributed "pay as you go," from the HRA of approximately \$3.96 million to the Developer.
  - 10% of the TIF for administrative purposes.
  - Beginning in Year 9, 10% of the increment would be distributed to the Housing & Redevelopment Fund. In years 21-23 of the district, 90% of the increment would be distributed to the Fund for an estimated total present value of \$486,000.
  - Payment of \$1.11 million for the apartment property (its appraised value as of 2018).
- The HRA approved an Assignment and Assumption of the Contract from NHH Companies, LLC on January 15, 2019 to CPII Development LLC.
- The HRA approved an extension to the Contract property closing deadline on September 16, 2019. Additional extensions were granted to the closing deadline due to COVID-19 pandemic-related delays.
- The original unit mix included 50 studio, 86 one bedroom, 74 two bedroom, and eight three bedroom units. The proposed unit mix increases the number of studio units to 73, increases the number of one bedroom units to 88, and decreases the number of two bedroom units to 68.

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

The Cedar Point II housing area has been identified for redevelopment as multi-family housing since 2004 with the adoption of the Cedar Corridor Master Plan.

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

- Construction plans are in process of being drafted and can be finalized once the increase in number of units has been approved. Construction is expected to begin in early 2021.
- The deadline for closing on the apartment property is September 30 and under the Amendment would be extended until October 31, 2021.
- In order to continue construction of the townhomes, the Developer needs to close on the apartment property. Utility work relating to both project components is ready to proceed.
- The apartment project is located in the Cedar Point Redevelopment TIF District. The District was created through special legislation in 2004. The District's 26-year "clock" began that year but was later extended in 2018. Because the "clock" on the District has already begun, delays in the project start date has reduced the available years to generate increment. This loss of time has a greater impact on the housing fund contribution because of the current TIF schedule. The proposed changes to the TIF schedule will lessen that impact.

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

- The increase in unit count increases the project value, which makes the project more financially viable and able to meet tax increment obligations.
- The Developer will provide the HRA with an additional \$780,000 at closing of the construction loan to pay the special assessments levied against the property.
- In exchange for providing cash up front and assuming the risk of the TIF, the HRA will provide the Developer TIF in the amount of \$780,000, plus a "debt coverage" amount of 20% for a total of \$936,000. The additional increment will be divided between the original note (\$345,200) and a second note in the amount of \$590,800.
- The \$1.11 million in acquisition funds will be available to repay debt incurred on the townhome side of the project in the event insufficient increment is generated due to the reduction in number of units.
- An estimated contribution of \$651,938 will be made to the Housing & Redevelopment Fund.

**E. LEGAL CONSIDERATION:**

- The HRA Attorney drafted the Memorandum of Understanding.
- The HRA Attorney will prepare a Contract amendment based on the terms put forth in the Memorandum of Understanding.
- All other Contract terms remain the same.

**ALTERNATIVE RECOMMENDATION(S):**

Decide not to approve the Memorandum of Understanding.

**PRINCIPAL PARTIES EXPECTED AT MEETING:**

Representative of the Developer.

**ATTACHMENTS:**

Description	Type
□ Resolution	Resolution Letter
□ Memorandum of Understanding	Contract/Agreement

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

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

**RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDINGT WITH CPII  
DEVELOPMENT LLC**

WHEREAS, the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the “Authority”) entered into a Contract for Private Development, dated September 17, 2018 (the “Original Agreement”), with NHH Companies, L.L.C. (“NHH”), as assigned by NHH to CPII Development LLC, a Minnesota limited liability company (the “Developer”), pursuant to an Assignment of Contract for Private Development, dated January 15, 2019, and as amended by the First Amendment to Contract for Private Development, dated September 16, 2019 (the “First Amendment,” and together with the Original Agreement, the “Amended Agreement”), between the Authority and the Developer; and

WHEREAS, pursuant to the Amended Agreement, the Developer agreed to acquire property within the Cedar Avenue Tax Increment Financing District (the “TIF District”), a redevelopment district within the Richfield Redevelopment Project, from the Authority (the “Development Property”) and construct a development which will include (i) multifamily housing with approximately 218 units; (ii) a parking ramp with approximately 188 spaces; and (iii) necessary public infrastructure, including streets and utilities (the “Minimum Improvements”); and

WHEREAS, in order to achieve the objectives of the Redevelopment Plan for the Richfield Redevelopment Project and make the Minimum Improvements economically feasible for the Developer to construct, the Authority is prepared to convey the 14 parcels that make up the Development Property to the Developer and reimburse the Developer for a portion of the land acquisition costs and certain site improvement costs related to the Minimum Improvements; and

WHEREAS, the Authority and the Developer intend to amend the Amended Contract but are in the process of negotiating the final terms of such amendments; and

WHEREAS, there has been presented before the Board of Commissioners of the Authority a form of Memorandum of Understanding (the “Memorandum of Understanding”) between the Authority and the Developer, which sets forth the basic modifications to be included in the amendment to the Amended Contract; 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 Memorandum of Understanding is hereby in all respects authorized, approved, and confirmed, and the Chair and the Executive Director are hereby authorized and directed to execute the Memorandum of Understanding for and on behalf of the Authority in substantially the form now on file with the Executive Director but with such modifications as shall be deemed necessary, desirable, or appropriate, the execution thereof to constitute conclusive evidence of their approval of any and all modifications therein.

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

Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota  
this 29<sup>th</sup> day of September, 2020.

ATTEST:

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Mary B. Supple, Chair

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Maria Regan Gonzalez, Secretary

RC125-366 (JAE)  
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## **MEMORANDUM OF UNDERSTANDING**

This MEMORANDUM OF UNDERSTANDING, entered into as of September 29, 2020 (the “Memorandum of Understanding”), is 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 CPII DEVELOPMENT LLC, a Minnesota limited liability company (the “Developer”).

### **RECITALS**

WHEREAS, the Authority has established the Cedar Avenue Tax Increment Financing District (the “TIF District”), a redevelopment district within the Richfield Redevelopment Project (the “Redevelopment District”) in the City of Richfield, Minnesota (the “City”), pursuant to Minnesota Statutes, Sections 469.174 to 469.1794, as amended, and Laws of Minnesota 2005, Chapter 152, Article 2, Section 25, as amended by Laws of Minnesota 2017, 1<sup>st</sup> Special Session, Chapter 1, Article 6, Section 18, in order to facilitate redevelopment of certain property in the Redevelopment Project and promote the development of affordable housing within the City; and

WHEREAS, the Authority entered into a Contract for Private Development, dated September 17, 2018 (the “Original Agreement”), with NHH Companies, L.L.C. (“NHH”), as assigned by NHH to the Developer pursuant to an Assignment of Contract for Private Development, dated January 15, 2019, and as amended by the First Amendment to Contract for Private Development, dated September 16, 2019 (the “First Amendment,” and together with the Original Agreement, the “Amended Agreement”), between the Authority and the Developer; and

WHEREAS, pursuant to the Amended Agreement, the Developer agreed to acquire property within the TIF District from the Authority (the “Development Property”), which is legally described in Exhibit A to the Original Agreement, and construct a development which will include (i) multifamily housing with approximately 218 units; (ii) a parking ramp with approximately 188 spaces; and (iii) necessary public infrastructure, including streets and utilities (the “Minimum Improvements”); and

WHEREAS, in order to achieve the objectives of the Redevelopment Plan for the Redevelopment Project and make the Minimum Improvements economically feasible for the Developer to construct, the Authority is prepared to convey the 14 parcels that make up the Development Property to the Developer and reimburse the Developer for a portion of the land acquisition costs and certain site improvement costs related to the Minimum Improvements; and

WHEREAS, the Authority and the Developer intend to amend the Amended Agreement and are in the process of negotiating the final terms of such amendments but desire to enter into this Memorandum of Understanding to provide the basic outline of such amendments; and

NOW, THEREFORE, in consideration of the mutual obligations hereunder, the parties agree as follows:

1. The closing date set forth in Section 3.2(g) of the Amended Agreement shall be extended to October 31, 2020.
2. The definition of “Minimum Improvements” in the Amended Agreement shall be revised to increase the housing units to be constructed on the Development Property from 218 units to 237 units.

3. On the date of the closing on the construction financing for the Minimum Improvements, the Developer shall pay \$780,000 to the Authority to pay for the special assessments related to the Development Property and the adjacent properties upon which townhomes will be constructed.

4. The Authority agrees to increase the amount of the Developer's Tax Increment Note to be issued pursuant to Section 3.3 of the Amended Agreement in the amount of \$345,200 and issue a separate Tax Increment Note in the amount of \$590,800 to compensate the Developer for the payment of the special assessments and other capital costs of the Developer. The Tax Increment Note in the amount of \$590,800 will not be issued until the Developer pays the Authority \$780,000 for the special assessments related to the Development Property.

5. The definition of Available Tax Increment in the Amended Agreement shall be revised as follows:

"Available Tax Increment" means, on each February 1 and August 1, the Tax Increment attributable to the Development Property and paid to the Authority by the County in the six (6) months preceding each February 1 and August 1 after deducting therefrom 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 promote redevelopment activities and the development of affordable housing.

[This provision will be further negotiated between the Authority and the Developer to provide for the Authority receiving 25% of Tax Increment if such increase does not negatively impact the Developer's receipt of Available Tax Increment and both parties consent to the change.]

6. Section 4.3 of the Amended Agreement shall be revised to provide for the commencement of construction of the Minimum Improvements on or before June 1, 2021 and be substantially complete with the construction of the Minimum Improvements on or before December 31, 2022.

7. The definition of Minimum Market Value in the Amended Agreement shall be revised to \$42,304,500.

8. The Authority shall remove the Mount Calvary parcels from Tax Increment District 2018-1 (the Townhomes TIF District).

9. The Authority and Cedar Point Investments LLC (owner of the townhome property adjacent to the Development Property) will work cooperatively to record the right of purchase and right of first refusal agreement against the portion of the townhome property for which construction has not commenced or planned to commence within the next 6 months.

10. The Authority shall approve the assignment and assumption of all or a portion of the Amended Agreement by Shafer Richardson.

11. The Authority shall agree to provide two Tax Increment Notes under the Amended Agreement, as amended by the terms set forth in this Memorandum of Understanding, in the aggregate principal amount of \$4,896,000.

12. The terms set forth in this Memorandum of Understanding shall be incorporated into a Second Amendment to the Amended Agreement and executed by the Authority and the Developer.

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

IN WITNESS WHEREOF, the Authority has caused this Memorandum of Understanding to be duly executed in its name and behalf and the Developer has caused this Memorandum of Understanding to be duly executed in its name and behalf as of the date 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 INSTRUMENT DRAFTED BY:  
Kennedy & Graven, Chartered (JAE)  
150 South Fifth Street, Suite 700  
Minneapolis, MN 55402-1299

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

**CPII DEVELOPMENT LLC**

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

Section 8 and Section 9 of this Memorandum of Understanding are hereby accepted by Cedar Point Investments LLC.

**CEDAR POINT INVESTMENTS LLC**

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