Agenda

Minnetonka Economic Development Authority

Monday, June 1, 2015

Following the Regular Meeting

Council Chambers

1. Call to Order

2. Roll Call: Wagner-Allendorf-Acomb-Wiersum-Bergstedt-Ellingson-Schneider

3. Approval of Agenda

4. Approval of Minutes: May 18, 2015

5. Business Items:

   A. Assignment and subordination of the development contract and tax increment financing documents for the At Home apartment project

   Recommendation: Adopt the resolution (4 Votes)

6. Adjourn
Minutes  
Minnetonka Economic Development Authority  
Monday, May 18, 2015

1. **Call to Order**  
   Schneider called the meeting to order at 10:12 p.m.

2. **Roll Call**  
   Council Members Bob Ellingson, Dick Allendorf, Patty Acomb, Brad Wiersum, Tim Bergstedt, Tony Wagner and Terry Schneider were present.

3. **Approval of Agenda**  
   Wagner moved, Wiersum seconded a motion to accept the agenda, as presented. All voted “yes.” Motion carried.

4. **Approval of Minutes: April 20, 2015**  
   Wagner moved, Acomb seconded a motion to approve the April 20, 2015 minutes. All voted “yes.” Motion carried.

5. **Business Items:**  
   A. **Music Barn Apartments TIF Pooling Request**  
      Community Development Director Julie Wischnack gave the staff report.

      Schneider said the development activity in the 394 area benefits the entire community. Wagner agreed and he commended the developer for the project.

      Wagner moved, Allendorf seconded a motion to adopt resolution 2015-04 approving the Contract for Private Development, but that prior to execution of the contract, a review of sources and uses and the total gap will be completed by the EDAC and city’s financial advisor.

      All voted “yes.” Motion carried.

6. **Adjournment**  
   Bergstedt moved, Acomb seconded a motion to adjourn the meeting at 10:15 p.m. All voted “yes.” Motion carried.
Respectfully submitted,

David E. Maeda
City Clerk
EDA Agenda Item #5A  
Meeting of June 1, 2015

**Brief Description**  
Assignment and Subordination of the Development Contract and Tax Increment Financing documents for the At Home apartment project

**Recommendation**  
Adopt the resolution

**Background and Request**

On April 20, the EDA adopted a resolution approving a Contract for Private Development for the At Home apartment project on Rowland Road with Rowland Investments, LLC. As part of the approvals, the city agreed to issue a TIF note, as well as Multifamily Housing Revenue Bonds through a loan agreement. These agreements were in exchange for 20 percent of the units being made affordable to those at 50 percent of median income or less.

The developer has now requested an Assignment and Subordination of the loan agreement with TCF Investments Management, Inc. (pages A1-A13). The agreement continues to make the developer liable for all payments on the TIF note and bonds and the city will continue to have no obligations as previously stated. The city's legal counsel at Kennedy & Graven has reviewed the request and agreement. This type of request is not unusual and was also approved as part of the Tonka on the Creek development.

**Recommendation**

Staff recommends the EDA adopt the resolution approving an Assignment and Subordination Agreement (Pages A14-A17).

Submitted through:
  Geralyn Barone, City Manager
  Julie Wischnack, AICP, Community Development Director

Originated by:
  Elise Durbin, AICP, Community Development Supervisor
ASSIGNMENT AND SUBORDINATION OF DEVELOPMENT CONTRACT AND TAX INCREMENT FINANCING DOCUMENTS

THIS ASSIGNMENT AND SUBORDINATION OF DEVELOPMENT CONTRACT AND TAX INCREMENT FINANCING DOCUMENTS (the “Agreement”) is made and entered into to be effective as of the 1st day of June, 2015, by and among the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), ROWLAND INVESTMENTS, LLC, a Minnesota limited liability company (the “Borrower”), and TCF INVESTMENTS MANAGEMENT, INC., a Minnesota corporation (the “Lender”).

WITNESSETH:

WHEREAS, the Borrower is the owner of certain real property located at 5709 Rowland Road, Minnetonka, Minnesota, legally described on Exhibit A attached hereto (the “Land”); and

WHEREAS, the Borrower and the Authority entered into that certain Contract for Private Development dated as of April 20, 2015, filed of record in the office of the Hennepin County Recorder on ____________, 2015, as Document No. _______________ (together with any amendment thereto approved by Lender, the “Development Contract”); and

WHEREAS, the Authority is the owner and holder of certain rights under the Development Contract, including, without limitation, certain covenants made by the Borrower pursuant to that certain Declaration of Restrictive Covenants dated ______________, 2015, filed of record in the office of the Hennepin County Recorder on _____________, 2015, as Document No. _______________ (the “Declaration”); and

WHEREAS, pursuant to the Development Contract, the Authority is to execute that certain Tax Increment Revenue Note Series 2015, No. R-1 in the principal amount of $2,500,000 (the “TIF Note”); and

WHEREAS, the City of Minnetonka, a municipal corporation and political subdivision of the State of Minnesota (the “City”), has agreed to lend to the Borrower the proceeds of its Multifamily Housing Revenue Bonds (Rowland Apartments Project), Series 2015, in the original
aggregate principal amount of $16,100,000 (the “Bonds”), pursuant to a Loan Agreement dated as of the date hereof (together with any amendment thereto, the “Loan Agreement”), between the Borrower and the City, to finance the development of the Land and the construction thereon by the Borrower of a four-story, approximately 106-unit multifamily rental housing development to be located on the Land (the “Improvements”) (the Land and the Improvements are hereinafter at times collectively referred to as the “Project”); and

WHEREAS, the City has assigned and transferred to the Lender all its right, title and interest in and to the Loan Agreement pursuant to that certain Assignment of Loan Agreement, dated as of the date hereof, between the City and the Lender (together with any amendment, the “Assignment of Loan Agreement”); and

WHEREAS, the Lender has agreed to purchase the Bonds subject to the terms and conditions set forth in that certain Bond Purchase Agreement dated as of the date hereof, among the Borrower, the Lender, and TCF National Bank, a national banking association, as servicer (together with any amendment thereto, the “Bond Purchase Agreement”), and will loan the proceeds of the Bonds to Borrower (the “Loan”). Unless the context otherwise indicates, capitalized terms used but not otherwise defined herein shall have the meanings given such terms in the Bond Purchase Agreement; and

WHEREAS, to secure its obligations under the Loan Agreement and the Bonds, Borrower has executed and delivered to the City a Combination Mortgage, Security Agreement and Fixture Financing Statement of even date herewith (together with all modifications, extensions, renewals and replacements, the “Mortgage”) and an Assignment of Leases and Rents of even date herewith (the “Assignment of Rents”), each covering the Project; and

WHEREAS, the City has assigned and transferred to the Lender all its right, title and interest in and to the Mortgage and the Assignment of Rents pursuant to that certain Assignment of Combination Mortgage, Security Agreement and Fixture Financing Statement and of Assignment of Leases and Rents of even date herewith, from the City to the Lender (the “Assignment of Mortgage”); and

WHEREAS, the Mortgage was filed of record in the office of the Hennepin County Recorder on __________, 2015, as Document No. __________, and the Assignment of Rents was filed of record in the office of the Hennepin County Recorder on __________, 2015, as Document No. __________, and the Assignment of Mortgage was filed of record in the office of the Hennepin County Recorder on __________, 2015, as Document No. __________ ; and

WHEREAS, the Bonds, the Loan Agreement, the Assignment of Loan Agreement, the Bond Purchase Agreement, the Mortgage, the Assignment of Rents, the Assignment of Mortgage and all other documents and instruments now or hereafter evidencing or securing the Loan and all other obligations of Borrower to Lender with respect to the Project, as the same may be amended, modified or supplemented, are collectively referred to herein as the “Loan Documents”; and
WHEREAS, the Lender has required, as a condition to the purchase of the Bonds, that (a) the Borrower assign all of its rights under the Development Contract to the Lender to secure the obligations of the Borrower to the Lender under the Loan Documents, (b) the rights of the Authority under the Development Contract be subordinated to the Mortgage and the Assignment of Rents, and (b) the Authority agrees to certain other matters, all as more fully contained herein.

NOW THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Assignment. The Borrower hereby assigns to the Lender and grants to the Lender a security interest in all of its present and future right, title and interest under the Development Contract and the TIF Note, including without limitation the right to receive payments under the TIF Note and all replacements, substitutions, repairs and proceeds thereof, to secure the Borrower’s obligations under the Loan Documents. Notwithstanding this assignment, the Borrower will remain liable for payment and performance of all of its obligations under the Development Contract. Notwithstanding anything herein to the contrary, in no event shall Lender have any obligation to perform any of Borrower’s obligations under the Development Contract unless and until Lender expressly assumes the obligations of Borrower thereunder in accordance with Paragraph 6 of this Agreement.

2. TIF Note. To perfect the Lender’s security interest in the TIF Note, upon receipt of the TIF Note, the Borrower shall deliver the original TIF Note to the Lender and shall execute and deliver to the Lender an Allonge Endorsement in the form attached hereto as Exhibit B, each of which is to be held by the Lender pursuant to the terms of this Agreement. The Allonge Endorsement shall not be dated unless and until the Lender exercises its rights hereunder following an Event of Default.

3. Representations and Warranties of the Borrower. The Borrower hereby represents and warrants that (a) the Borrower has the full right and title to assign the Development Contract and the TIF Note to the Lender, (b) there have been no prior assignments of the Development Contract or the TIF Note, (c) the Development Contract, the TIF Note and the Declaration are valid and enforceable agreements in full force and effect and have not been amended, modified, altered, cancelled or surrendered, (d) neither the Authority nor the Borrower is in default thereunder and all covenants, conditions, agreements and payments have been performed as required therein, except those not to be performed until after the date hereof, and (e) as of the date hereof, no payments have been made on the TIF Note. The Borrower agrees not to sell, assign, pledge, mortgage or otherwise transfer or encumber its interest in the Development Contract or the TIF Note as long as this Agreement is in effect. The Borrower hereby irrevocably constitutes and appoints the Lender as its attorney-in-fact to demand, receive and enforce the Borrower’s rights with respect to the Development Contract and/or the TIF Note for and on behalf of and in the name of the Borrower, or, at the option of the Lender, in the name of the Lender, with the same force and effect as the Borrower could do if this Agreement had not been made.

4. Present Assignment; Authorization to the Authority. This Agreement shall constitute a perfected, absolute and present assignment, provided that the Lender shall have no
right under this Agreement to enforce the provisions of the Development Contract or the TIF Note or exercise any of its rights or remedies under this Agreement until an Event of Default (as that term is defined in any of the Loan Documents) shall occur and be continuing. All payments due under the TIF Note shall be paid to the Borrower; provided, however, upon the occurrence of an Event of Default, the Lender may, in addition to any other rights or remedies available to it hereunder or under the other Loan Documents, provide notice to the Authority that such payments are to be made directly to the Lender. The Authority is hereby irrevocably authorized and directed, upon receipt of such notice from the Lender, to make payments under the TIF Note directly to the Lender and to recognize the claims of the Lender or its assigns without investigating the reason for any action taken or the validity of or the amount of indebtedness owing to the Lender or its assigns or the existence of any Event of Default, and the Borrower hereby irrevocably directs and authorizes the Authority to pay exclusively to the Lender or its assigns from and after the occurrence of an Event of Default, all sums due under the TIF Note. To the extent such sums are paid to the Lender or its assigns, the Borrower agrees that the Authority shall have no further liability to the Borrower for the same. The sole receipt by the Lender or its assigns of any sum paid by the Authority shall be in discharge and release of that portion of any amount owed by the Authority.

5. Security Agreement; Financing Statement. This Agreement constitutes a Security Agreement under the Uniform Commercial Code as adopted in Minnesota (the “Code”) and shall be governed by the Code. Borrower acknowledges that, in connection with the execution of this Agreement, Lender is filing a Uniform Commercial Code financing statement in the office of the Secretary of State of Minnesota showing Borrower as debtor and Lender as secured party to create and perfect the security interest created by this Agreement.

6. Event of Default; Remedies. Subject to the provisions set forth in this Paragraph 6, upon the occurrence of an Event of Default, the Lender may, without affecting any of its rights or remedies against the Borrower under any other instrument, document or agreement, exercise its rights under this Agreement as the Borrower’s attorney-in-fact in any manner permitted by law and, in addition, the Lender shall have the right to exercise and enforce any and all rights and remedies available after a default to a secured party under the Uniform Commercial Code as adopted in the State of Minnesota. If notice to the Borrower of any intended disposition of collateral or of any intended action is required by law in any particular instance, such notice shall be deemed commercially reasonable if given at least ten (10) calendar days prior to the intended disposition or other action. Furthermore, upon the occurrence and during the continuance of an Event of Default, Lender shall have the right (but not the obligation), upon written notice to the Authority, to (i) terminate the Development Contract and thereafter, the Development Contract shall be of no further force or effect, or (ii) assume all obligations of Borrower under the Development Contract. Nothing herein contained shall be deemed to affect or impair any rights which Lender may have under the Loan Documents.

7. Representations and Warranties of the Authority. The Authority hereby consents and agrees to the terms and conditions of this Agreement. The Authority further represents and warrants to the Lender that (a) the Development Contract, the TIF Note and the Declaration are valid agreements enforceable in accordance with their terms, are in full force and effect and have not been amended, modified, altered, cancelled or surrendered, (b) the Authority is not in default thereunder and that all covenants, conditions, agreements and payments have been performed as
required therein, except those not to be performed until after the date hereof, and (c) except for this Agreement, the Authority has not received any notice of a sale, transfer, assignment, hypothecation, encumbrance or pledge of the Development Contract or the TIF Note. To the actual knowledge of the Authority, the Borrower is not in default under the Development Contract or the Declaration.

8. **Approval of Construction Plans.** The Authority hereby acknowledges and agrees that pursuant to Section 4.2 of the Development Contract, the Authority has approved the Construction Plans (as that term is defined in the Development Contract) in connection with the construction of the Project.

9. **Subordination.** The Authority hereby agrees that the rights and remedies of the Authority under the Development Contract and the Declaration hereby are and shall remain at all times completely and unconditionally subject and subordinate to the liens, rights and security interest created by the Mortgage, the Assignment of Rents and the other Loan Documents and to any and all amendments, modifications, extensions, replacements or renewals of the Mortgage, the Assignment of Rents and the other Loan Documents; provided, however, that nothing herein shall be construed as subordinating the requirement contained in the Development Contract and the Declaration that the Project be used in accordance with the requirements of the Development Contract. Notwithstanding anything herein to the contrary, the Authority shall continue to have the ability to terminate or suspend payments on the TIF Note if an Event of Default occurs as provided in Sections 9.2 and 9.3 of the Development Contract.

10. **Approval of Financing.** Pursuant to Section 7.1 of the Development Contract, the Authority hereby approves the financing of the Project as contemplated by the Loan Documents.

11. **Notice to the Authority.** The Lender agrees to provide the Authority with all default notices sent to the Borrower pursuant to the Bond Purchase Agreement and will provide the Authority an opportunity to cure any such default stated therein, provided such default is susceptible of cure under the Bond Purchase Agreement, upon the same terms as are applicable to the Borrower, but the Lender shall not be bound by the other requirements in Section 7.2 of the Development Contract regarding notice and cure rights.

12. **No Assumption.** The Authority acknowledges that the Lender is not a party to the Development Contract, and by executing this Agreement does not become a party to the Development Contract, and specifically does not assume and shall not be bound by any obligations of the Borrower to the Authority under the Development Contract and that the Lender shall incur no obligations whatsoever to the Authority except as expressly provided herein. This Agreement is given only as collateral security, and the Lender shall not be obligated to perform or discharge any obligation or liability of the Borrower under the Development Contract or the TIF Note. No payment, action or inaction of the Lender under or in connection with the Development Contract or the TIF Note shall in any manner release the Borrower from its obligations under the Loan Documents.

13. **Notice from the Authority; Lender Right to Cure and Perform.** So long as the Development Contract remains in effect, the Authority agrees to give to the Lender copies of notices of any default or event of default given to the Borrower under the Development Contract
and the Declaration. Prior to any termination of any of said agreements, Lender shall have an opportunity to cure such default within a reasonable time. Furthermore, regardless of whether a default or event of default has occurred under any of said agreements, the Authority agrees to accept from Lender any performance tendered under the Development Contract and/or the Declaration by Lender as if the same were tendered by Borrower; provided however that it is understood and agreed (a) that by tendering performance under any of said agreements, Lender does not assume any of the obligations or duties of Borrower under or with respect to such agreement unless Lender expressly assumes the such agreement in writing as provided in Paragraph 6 above, and (b) Lender shall not be obligated to cure any defaults of Borrower under any of the said agreements.

14. **Amendments.** The Authority and the Borrower agree that no change, modification, amendment or termination shall be made to the terms of the Development Contract, the TIF Note and/or the Declaration without the prior written consent of the Lender.

15. **Waiver.** This Agreement can be waived, modified, amended, terminated or discharged only explicitly in writing signed by the parties hereto. A waiver by the Lender shall be effective only in a specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Lender’s rights or remedies hereunder. All rights and remedies of the Lender shall be cumulative and may be exercised singularly or concurrently at the Lender’s option, and any and exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other.

16. **Headings.** The descriptive headings for the several sections of this Amendment are inserted for convenience only and not to confine or limit any of the terms or provisions hereof.

17. **Addresses for Notice.** Any notice from, request, demand or communication hereunder shall be deemed fully given if delivered or served by depositing the same with the United States Postal Service, postage prepaid, certified or registered, addressed to the parties as set forth below:

If to the Authority: Economic Development Authority in and for the City of Minnetonka
Attn: Executive Director
14600 Minnetonka Blvd
Minnetonka, MN 55345-1502

If to the Borrower: Rowland Investments, LLC
c/o At Home Apartments, L.L.C.
616 Lincoln Avenue
St. Paul, MN 55102
Attention: Alan J. Spaulding
with a copy to:

At Home Apartments, L.L.C.
616 Lincoln Avenue
St. Paul, MN  55102
Attention:  Leanna M. Stefaniak, Esq.

and to:

Winthrop & Weinstine, P.A.
225 South Sixth Street, Suite 3500
Minneapolis, MN  55402
Attention:  Todd B. Urness, Esq.

If to the Lender:  TCF Investments Management, Inc.
c/o TCF National Bank
11100 Wayzata Boulevard, Suite 600
Minnetonka, MN  55305
Attention:  Commercial Real Estate Lending Group

with a copy to:

Fabyanske, Westra, Hart & Thomson, P.A.
333 South Seventh Street, Suite 2600
Minneapolis, MN 55402
Attention: Katie A. Welsch, Esq.

18. Transfer of Title to the Lender. Subject to the provisions of Paragraphs 6 and 9 hereof, the Authority agrees that in the event the Lender or Lender’s, nominee, assignee, or any entity wholly-owned or controlled by Lender (the “Lender Party”) acquires title to the Project pursuant to a foreclosure sale, or a deed in lieu thereof, the Lender Party shall not be bound by the terms and conditions of the Development Contract. Further, the Authority agrees that in the event a Lender Party acquires title to the Project pursuant to a foreclosure sale or a deed in lieu thereof, then such Lender Party (provided Lender or such Lender Party has elected to assume the Development Contract pursuant to Paragraph 6 hereof) shall be entitled to all rights conferred upon the Borrower under the Development Contract.

19. Successors. This Agreement and each and every covenant, agreement and other provision hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, including any person who acquires title to the Project through the Lender of a foreclosure of the Mortgage.

20. Severability. The enforceability or invalidity of any provision hereof shall not render any other provision or provisions herein contained unenforceable or invalid.

21. Governing Law. This Agreement is made in and shall be construed in accordance with the laws of the State of Minnesota.
22. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ECONOMIC DEVELOPMENT
AUTHORITY IN AND FOR THE CITY
OF MINNETONKA, MINNESOTA

By:_________________________________
Print:_______________________________
Its: President

By:_________________________________
Print:_______________________________
Its: Executive Director

STATE OF MINNESOTA  )
) COUNTY OF HENNEPIN  )

The foregoing instrument was acknowledged before me this _____ day of June, 2015, by ______________________ and ______________________, the President and the Executive Director, respectively, of the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, for and on behalf of the Authority.

____________________________________
Notary Public

At Home
June 1, 2015 EDA
ROWLAND INVESTMENTS, LLC,
a Minnesota limited liability company

By: Alan J. Spaulding, its Chief Manager

STATE OF MINNESOTA  )
COUNTY OF HENNEPIN  ) ss.

The foregoing instrument was acknowledged before me this ____ day of June, 2015, by Alan J. Spaulding, the Chief Manager of Rowland Investments, LLC, a Minnesota limited liability company, for and on behalf of the limited liability company.

______________________________
Notary Public

[SIGNATURE PAGE TO ASSIGNMENT AND SUBORDINATION OF DEVELOPMENT CONTRACT AND TAX INCREMENT FINANCING DOCUMENTS]
TCF INVESTMENTS MANAGEMENT, INC.,
a Minnesota corporation

By: ________________________________
Name: ________________________________
Title: ________________________________

STATE OF MINNESOTA   )
    ) ss.
COUNTY OF HENNEPIN   )

The foregoing instrument was acknowledged before me this ____ day of June, 2015, by
________________________________, the __________________ of TCF Investments Management, Inc.,
a Minnesota corporation, for and on behalf of the corporation.

________________________________
Notary Public

THIS INSTRUMENT DRAFTED BY:
Fabyanske, Westra, Hart & Thomson, P.A. (KAW)
333 South Seventh Street, Suite 2600
Minneapolis, MN 55402
EXHIBIT A

Legal Description

PARCEL 1:

All that part of the West Half of the Southwest Quarter of the Northwest Quarter of Section 35, Township 117, Range 22 lying south of the Chicago, Milwaukee and St. Paul Railway right-of-way and lying northerly of Rowland Road as established in Document No. 3806560, according to the United States Government Survey thereof and situate in Hennepin County, Minnesota.

PARCEL 2:

That part of the Chicago, Milwaukee and Pacific Railroad right of way in the West Half of the Southwest Quarter of the Northwest Quarter of Section 35, Township 117, Range 22, Hennepin County, Minnesota, which lies southeasterly of a line parallel with and distant 75.00 feet southeasterly from the centerline of said railroad right of way and which lies northeasterly of the northeasterly right of way of Rowland Road, on file and of record in the Office of the Hennepin County Recorder.

Abstract Property
EXHIBIT B

ALONGE ENDORSEMENT TO
UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF HENNEPIN
ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE
CITY OF MINNETONKA

TAX INCREMENT REVENUE NOTE
SERIES 2015

FOR VALUE RECEIVED, Rowland Investments, LLC, a Minnesota limited liability company, endorses, assigns and transfers with recourse to TCF INVESTMENTS MANAGEMENT, INC., a Minnesota corporation, all right, title and interest in and to the following described TIF Note:

Economic Development Authority in and for the City of Minnetonka, Minnesota Tax Increment Revenue Note, Series 2015, in the original principal amount of $2,500,000, executed by the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, as maker, to Rowland Investments, LLC, a Minnesota limited liability company, as holder.

Dated this ___ day of ______________, 2015.

THIS ALLONGE IS TO BE AFFIXED
TO THE NOTE DESCRIBED ABOVE

ROWLAND INVESTMENTS, LLC,
a Minnesota limited liability company

By: ______________________________________

Alan J. Spaulding, its Chief Manager

STATE OF MINNESOTA   )
) ss.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ___ day of June, 2015, by Alan J. Spaulding, the Chief Manager of Rowland Investments, LLC, a Minnesota limited liability company, for and on behalf of the limited liability company.

_______________________________________
Notary Public
EDA Resolution No. 2015-xx

Resolution Approving an Assignment and Subordination Agreement Between the Economic Development Authority in and for the City of Minnetonka, Rowland Investments, LLC, And TCF Investments Management, Inc.

BE IT RESOLVED by the Board of Commissioners (the “Board”) of the Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”) as follows:

Section 1. Background.

1.01. The Authority and Rowland Investments, LLC, a Minnesota limited liability company (the “Borrower”), have entered into that certain Contract for Private Development, dated April 20, 2015 (the “Contract”), regarding the development of certain real property located in the City (the “Property”) by the Borrower for the purpose of constructing an approximately 106-unit apartment complex, with 20% of the units made affordable to families at or below 50% of the area median income (the “Project”).

1.02. In accordance with the terms of the Contract, the Authority has agreed to issue its Tax Increment Revenue Note, Series 2015 (the “TIF Note”), in the original aggregate principal amount of $2,500,000, to provide economic assistance to the Borrower for the construction of the Project.

1.03. In order to make the construction and development of the Project feasible, the City of Minnetonka, Minnesota (the “City”) has agreed to issue its Multifamily Housing Revenue Bonds (Rowland Apartments Project), Series 2015 (the “Bonds”), in the approximate aggregate principal amount of $16,100,000.

1.04. The City will loan the proceeds of the Bonds to the Borrower pursuant to a Loan Agreement (the “Loan Agreement”) between the City and the Borrower. The City will assign and transfer to TCF Investments Management, Inc., a Minnesota corporation (the “Lender”), its right, title, and interest in and to the Loan Agreement, except for certain reserved rights referred to in the Loan Agreement. The Lender has agreed to purchase the Bonds pursuant to a Bond Purchase Agreement (the “Bond Purchase Agreement”) between the Borrower, the Lender, and TCF National Bank, a national banking association.

1.05. To secure the Borrower’s obligations under the Loan Agreement, the Borrower will execute and deliver to the City a Combination Mortgage, Security Agreement and Fixture Financing Statement (the “Mortgage”) and an Assignment of Leases and Rents (the “Assignment of Leases and Rents”), both of which the City has agreed to assign to the “Lender pursuant to an Assignment of Combination Mortgage,
Security Agreement and Fixture Financing Statement and of Assignment of Leases and Rents (the “Assignment of Mortgage”).

1.06. There has been presented to this Board an Assignment and Subordination of Development Contract and Tax Increment Financing Documents (the “Subordination Agreement”), proposed to be entered into by the Authority, the Borrower, and the Lender, pursuant to which (i) the Borrower will assign all of its rights under the Contract to the Lender; (ii) the Borrower will assign all of its rights to payment under the TIF Note to the Lender; and (iii) the Authority will subordinate certain of its rights under the Contract to the rights of the Lender under the Mortgage and the Assignment of Leases and Rents.

1.07. The Board has reviewed the Subordination Agreement and finds that the execution thereof by the Authority and performance of the Authority’s obligations thereunder are in the best interest of the City and its residents.

Section 2. Board Action.

2.01. The Subordination Agreement is approved in substantially the form on file in City Hall, subject to modifications that do not alter the substance of the transaction and are approved by the President and Executive Director of the Authority; provided that execution of the documents will be conclusive evidence of their approval.

2.02. The President and Executive Director are authorized and directed to execute the Subordination Agreement and any other documents or certificates necessary to carry out the transactions described therein.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota this 1st day of June, 2015.

Terry Schneider, President

Attest:

_____________________
David E. Maeda, Secretary
Action on this Resolution:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, at a duly authorized meeting held June 1, 2015.

David E. Maeda, Secretary
I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, at a duly authorized meeting held June 1, 2015.

Secretary