

**CITY OF NORTHFIELD ECONOMIC DEVELOPMENT AUTHORITY
NORTHFIELD REVOLVING LOAN FUND LOAN AGREEMENT**

THIS LOAN AGREEMENT (this "Agreement") is made and entered into as of this _____ day of _____, 2019 (the "Effective Date,"), by and between 5th & Division Street Partners LLC, dba Reunion, a Minnesota limited liability company, 501 Division Street, Northfield, MN 55057 (the "Recipient"), and the City of Northfield Economic Development Authority, a public corporation and political subdivision of the State of Minnesota (the "EDA").

WITNESSETH THAT,

WHEREAS, the EDA administers the Northfield Revolving Loan Fund Program to assist local businesses throughout the City in financing land and building purchases, building construction, renovation, and/or expansion, machinery and equipment purchases, inventory and working capital; and

WHEREAS, Recipient has applied to the EDA for a Revolving Loan in the amount of One Hundred Thousand Dollars (\$100,000.00) to assist with the financing of Recipient's building renovation of Reunion, a restaurant and entertainment space to be located at 501-505 Division Street S, in the City of Northfield (the "Redevelopment Property"); and

WHEREAS, the EDA has determined that Recipient's loan application is consistent with the intent of the Northfield Revolving Loan Fund Program and has agreed to make a loan in the principal amount of One Hundred Thousand Dollars (\$100,000.00) to Recipient from its Northfield Revolving Loan Fund in accordance with the terms and conditions provided herein.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. AMOUNT AND TERMS OF THE LOAN.

a. Loan. Subject to, and upon the terms and conditions herein set forth, the EDA agrees to make a loan to Recipient in the principal amount of One Hundred Thousand Dollars (\$100,000.00) (the "Loan").

b. Interest. Interest shall accrue for two hundred and forty (240) months on the unpaid principal balance of the Loan at an annual rate of 5.25 percent annum (the "Loan Rate").

c. Disbursements. The Loan shall be disbursed to Recipient in one lump sum payment on the effective date of this Agreement.

2. REPRESENTATIONS OF RECIPIENT. Recipient warrants that the following statements are true:

- a. The statements and representations made in Recipient's request for the Loan were at the time of the request and are as of the date hereof true and correct.
 - b. Recipient is in good standing with all public entities having any authority or jurisdiction over Recipient, and Recipient is in compliance and shall at all times remain in compliance with all federal, state and local laws, rules and regulations which apply to Recipient.
 - c. Recipient shall use the Loan funds for, and only for, the purposes stated in Recipient's request or as otherwise approved by the EDA in the award of the Loan, specifically, to assist with the financing of Recipient's construction and start-up of The Family Residence to be located on the Redevelopment Property.
 - d. Recipient is current on local property tax and special assessment payments owing on the Redevelopment Property.
3. **DISCLOSURE BY RECIPIENT.** Recipient shall provide to the EDA, upon request, any and all business and financial records as may be necessary to confirm to the EDA that Recipient continues to be in good standing and operating successfully on the Redevelopment Property and that the Loan funds have been used in compliance with the approved purposes of the Loan. Recipient shall also provide to the EDA a year-end report annually until the Loan has been repaid in full following the effective date of this Loan Agreement. "Year-end" shall be defined as December 31, with the year-end report being due by the following January 31. The year-end reports shall demonstrate to the EDA the status or completion of the purposes for which the Loan was given and shall document the continuing existence of the business on the Redevelopment Property in Northfield and whether the business has created or retained jobs.
 4. **REPAYMENT OF LOAN FUNDS.** Recipient shall repay the Loan in monthly installments pursuant to the Amortization Schedule attached hereto as Schedule A. Monthly payments of principal and interest pursuant to Schedule A shall be due on the 25th day of the month, provided that should such date not be a business day, interest shall be payable on the next business day. Any amount of principal and accrued interest which is not paid when due shall bear interest from the date on which such amount is due until such amount is paid in full, payable on demand, at the Loan Rate or the maximum rate allowable by law. Interest shall be computed daily at the Loan Rate on the basis of the actual number of days in which all or any portion of the principal amount hereof is outstanding computed on the basis of a 365 day year. Recipient may prepay the Loan at any time without penalty. Principal and interest shall be payable in lawful money of the United States at the EDA's offices located at 801 Washington Street, Northfield, Minnesota.
 5. **SECURITY.** As security for the payment of principal and accrued interest under this Agreement, Recipient hereby grants the following to the EDA:

a. Mortgage. A mortgage upon three properties (the “Mortgaged Properties”) owned by the Recipient and located in the City of Northfield, legally described as follows:

1. 309 Division Street S, Northfield, MN 55057:

The North 22 feet of the South 44 Feet of Lot 6; and also the North 22 feet of the South 44 feet of the West 40 feet of Lot 4; all in Block 23, on the Original Town (now City) of Northfield, Rice County, Minnesota; subject to a right of way over and across the East 8 feet thereof and subject to and together with party wall agreements as set forth in Book F. of Mis Records, on pages 545-546, and in Book F. of Mis Records, on pages 554-555, on the Office of the Register of Deeds Office, of said Rice County, Minnesota.

AND ALSO

That part of the north 22.00 feet of the south 44.00 feet of the west 40.00 feet of Lot 4, Block 23, Original Town of Northfield, according to the recorded plat thereof, Rice County, Minnesota, lying northerly of the south line of the North 1/3 of the west 40.00 feet of said Lot 4, Block 23, Original Town of Northfield.

AND ALSO

That part of Lot 6, Block 23, Original Town of Northfield, according to the recorded plat thereof, Rice County, Minnesota, described as follows:
Commencing at the southwest corner of said Lot 6; thence North 23 degrees 07 minutes 02 seconds East (assumed bearing), along the westerly line of said Lot 6, a distance of 47.54 feet to the southwest corner of the North 88.00 feet of said Lot 6; thence continuing North 23 degrees 07 minutes 02 seconds east along the westerly line of said Lot 6, a distance of 19.59 feet; thence North 89 degrees 50 minutes 37 seconds East, parallel with the south line of the North 88.00 feet of said Lot 6, a distance of 47.06 feet; thence South 00 degrees 09 minutes 23 seconds East a distance of 18.00 feet to the south line of the North 88.00 feet of said Lot 6, and the point of beginning; thence North 89 degrees 50 minutes 37 seconds East, along said south line of the North 88.00 feet, a distance of 7.21 feet to the east line of said Lot 6; thence North 00 degrees 03 minutes 39 seconds West, along said east line, 0.33 feet to the north line of the South 44.00 feet of said Lot 6; thence South 89 degrees 50 minutes 37 seconds West, along said north line of the South 44.00 feet, a distance of 7.21 feet; thence South 00 degrees 09 minutes 23 seconds East 0.33 feet to the point of beginning.

2. 411 Division Street S, Northfield, MN 55057:

The South One-third (S1/3) of Lot 7, in Block 33, in the Original Town, now City,

or Northfield, Rice County, Minnesota; except alley.

3. 413 Division Street S, Northfield, MN 55057:

The North One-third (N1/3) of Lot 8, in Block 33, in the Original Town, now City, or Northfield, Rice County, Minnesota; except alley.

b. Subordination. The EDA's mortgage on the Mortgaged Properties shall be subject to a first mortgage in the amount of \$495,000.00, granted by REO Properties, LLC, a Minnesota limited liability company, as Mortgagor in favor of Bridgewater Bank, a Minnesota banking corporation, as Mortgagee, dated May 14, 2018, and recorded on August 3, 2018 as Document No. A709212 in the offices of the Rice County Recorder/Registrar.

c. Personal Guarantee. The personal guarantee of Greg Heymans and Brett Reese that, in the event of Recipients' default with respect to this Loan, they shall repay any overdue installment or installments that are due and payable, or the entire amount of principal and interest remaining owing.

6. EVENTS OF DEFAULT OF RECIPIENT. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

a. Recipient shall fail to pay when due (whether by acceleration or otherwise) principal or interest under this Agreement, and such default unless otherwise cured shall have continued for a period of thirty calendar days after Recipient receives notice thereof from the EDA;

b. Any representation or warranty made by or on behalf of Recipient in this Agreement, in any other Loan Document or in any statement or certificate given in writing pursuant thereto or in connection therewith is false, misleading or incomplete in any material respect when made (or deemed to have been made);

c. Recipient fails or neglects to perform, keep or observe any covenant set forth in this Agreement and the same has not been cured within thirty calendar days after Recipient receives notice thereof from the EDA;

d. Recipient shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail

generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

e. An involuntary case or other proceeding shall be commenced against Recipient seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 days; or an order for relief shall be entered against Recipient under the federal bankruptcy laws as now or hereafter in effect; or

f. This Agreement, for any reason (other than the satisfaction in full of all amounts owing in connection with the Loan) ceases to be, or is asserted by Recipient not to be, a legal, valid and binding obligation of Recipient, enforceable in accordance with its terms, and such occurrence has not been cured to the EDA's satisfaction within five (5) calendar days after Recipient receives notice thereof from the EDA.

7. EDA REMEDIES IN EVENT OF DEFAULT. If an Event of Default shall occur and be continuing or shall exist, the outstanding principal amount of the Loan and interest accrued thereon shall be immediately due and payable without presentment demand, protest or further notice of any kind, all of which are hereby expressly waived, interest thereon shall accrue on the total amount of the Loan (principal and interest) outstanding from and after the date of default at a rate equal to the interest rate on state court judgments established by the State Court Administrator's office in effect at the time of default, and an action therefore shall immediately accrue. After the date of default, payments by Recipient shall be applied first to interest and then to principal. Recipient shall also pay any costs of collection, including but not limited to reasonable attorneys' fees and expenses, incurred by the EDA in enforcing this obligation.

8. GENERAL TERMS.

a. Voluntary and Knowing Action. The parties, by executing this Agreement, state that they have carefully read this Agreement and understand fully the contents thereof; that in executing this Agreement they voluntarily accept all terms described in this Agreement without duress, coercion, undue influence, or otherwise, and that they intend to be legally bound thereby.

b. Authorized Signatories. The parties each represent and warrant to the other that (1) the persons signing this Agreement are authorized signatories for the entities represented, and (2) no further approvals, actions or ratifications are needed for the full enforceability of this Agreement against it; each party indemnifies and holds the other harmless against any breach of the foregoing representation and warranty.

c. Assignment. This Agreement may not be assigned by either party without the written

consent of the other party.

d. Modifications/Amendment. Any alterations, variations, modifications, amendments or waivers of the provisions of this Agreement shall only be valid when they have been reduced to writing, and signed by authorized representative of the EDA and Recipient.

e. Records—Availability and Retention. Pursuant to Minn. Stat. § 16C.05, subd. 5, Recipient agrees that the City of Northfield, the EDA, State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of Recipient and involve transactions relating to this Agreement.

Recipient agrees to maintain these records for a period of six years from the date of termination of this Agreement.

f. Compliance with Laws. Recipient shall abide by all Federal, State and local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement or to the facilities, programs and staff for which Recipient is responsible.

g. Interest by City/EDA Officials. No elected official, officer, or employee of the City of Northfield or the EDA shall, during his or her tenure or employment and for one year thereafter, have any interest, direct or indirect, in this Agreement or the proceeds thereof.

h. Governing Law. This Agreement shall be deemed to have been made and accepted in Rice County, Minnesota, and the laws of the State of Minnesota shall govern any interpretations or constructions of the Agreement without regard to its choice of law or conflict of laws principles.

i. Data Practices. The parties acknowledge that this Agreement is subject to the requirements of Minnesota's Government Data Practices Act, Minnesota Statutes, Section 13.01 *et seq.*

j. No Waiver. Any party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving party.

k. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its

invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.

l. Entire Agreement. These terms and conditions constitute the entire Agreement between the parties regarding the subject matter hereof. All discussions and negotiations are deemed merged in this Agreement.

m. Headings and Captions. Headings and captions contained in this Agreement are for convenience only and are not intended to alter any of the provisions of this Agreement and shall not be used for the interpretation of the validity of the Agreement or any provision hereof.

n. Survivability. All covenants, indemnities, guarantees, releases, representations and warranties by any party, and any undischarged obligations of the EDA and Recipient arising prior to the expiration of this Agreement (whether by completion or earlier termination), shall survive such expiration.

o. Execution. This Agreement may be executed simultaneously in two or more counterparts that, when taken together, shall be deemed an original and constitute one and the same document. The signature of any party to the counterpart shall be deemed a signature to the Agreement, and may be appended to, any other counterpart. Facsimile and email transmissions of executed signature pages shall be deemed as originals and sufficient to bind the executing party.

**THE CITY OF NORTHFIELD ECONOMIC
DEVELOPMENT AUTHORITY**

By: _____
Britt Ackerman, Its President

Date: _____

By: _____
Andrew Ehrmann, Its Vice President

Date: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF RICE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019, by Britt Ackerman, President, and Andrew Ehrmann, Vice President, on behalf of the City Northfield Economic Development Authority.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:

FLAHERTY & HOOD, P.A.
Northfield City Attorneys
525 Park Street, Suite 470
St. Paul, MN 55103-2122
651-225-8840

SCHEDULE A
AMORTIZATION SCHEDULE FOR PRINCIPAL AND INTEREST PAYMENTS