

TAX INCREMENT DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF NORTHFIELD, MINNESOTA

AND

STROBEL & WERNER REAL ESTATE HOLDING COMPANY, LLC
(AURORA PHARMACEUTICAL PROJECT)

This document drafted by:

Kennedy & Graven, Chartered
470 U.S. Bank Plaza
200 South 6th Street
Minneapolis, MN 55402

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS	2
Section 1.1 Definitions.....	2
ARTICLE II REPRESENTATIONS AND WARRANTIES	5
Section 2.1 Representations and Warranties of the City.....	5
Section 2.2 Representations and Warranties of the Developer.....	5
ARTICLE III UNDERTAKINGS BY DEVELOPER AND City	7
Section 3.1 Costs of the Project.	7
Section 3.2 Reimbursement: TIF Note	7
Section 3.3 Effect of Delay	8
Section 3.4 Business Subsidy Law	9
Section 3.5 Real Property Taxes.....	10
Section 3.6 Change in Use of Minimum Improvements.....	10
Section 3.7 Legal Administrative Expenses	11
ARTICLE IV PROJECT COVENANTS	12
Section 4.1 Construction and Completion of Improvements by the Developer	12
Section 4.2 Certificate of Completion	12
Section 4.3 Insurance	13
Section 4.4 Condemnation, Damage or Destruction.....	13
ARTICLE V PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER	15
Section 5.1 Transfer of Substantially All Assets	15
Section 5.2 Prohibition Against Transfer of Property and Assignment of TIF Note.....	15
ARTICLE VI EVENTS OF DEFAULT.....	17
Section 6.1 Events of Default Defined	17
Section 6.2 Remedies on Default.....	17
Section 6.3 No Remedy Exclusive.....	18
Section 6.4 No Implied Waiver.	18
Section 6.5 Agreement to Pay Attorney’s Fees and Expenses.	18
Section 6.6 Indemnification of City.....	18
ARTICLE VII ADDITIONAL PROVISIONS.....	20
Section 7.1 Conflicts of Interest.....	20
Section 7.2 Titles of Articles and Sections.	20
Section 7.3 Notices and Demands	20
Section 7.4 Counterparts.	20
Section 7.5 Law Governing	20
Section 7.6 Expiration.....	20
Section 7.7 Provisions Surviving Rescission or Expiration.....	21
Section 7.8 Amendment.....	21
EXHIBIT A Description of Development Property	A-1
EXHIBIT B Form of TIF Note	B-1

TAX INCREMENT DEVELOPMENT AGREEMENT

THIS TAX INCREMENT DEVELOPMENT AGREEMENT (the “Agreement”), made as of the ____ day of _____, 2018, by and between the City of Northfield, Minnesota (the “City”), municipal corporation organized and existing under the laws of the State of Minnesota and Strobel & Werner Real Estate Holding Company, LLC, a Minnesota limited liability company (the “Developer”).

WITNESSETH:

WHEREAS, the City has undertaken a program to promote economic development, and the development and redevelopment of land which is underutilized within the City (the “Development Program”), and in this connection created a development district known as the Master Development District (the “Development District”) in the City, pursuant to Minnesota Statutes, Sections 469.124 to 469.133 (the “Municipal Development Act”); and

WHEREAS, pursuant to the provisions of Minnesota Statutes, Section 469.174 through 469.1794, as amended (the “TIF Act”), the City has created within the Development District, a Tax Increment Financing (Economic Development) District (Strobel & Werner Holdings – Aurora Pharmaceutical Expansion Project) (the “TIF District”), and has adopted a Tax Increment Financing Plan (the “TIF Plan”) which provides for the use of tax increment financing in connection with certain development within the TIF 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 certain Minimum Improvements (as hereinafter defined) to be constructed within the TIF District as more particularly set forth in this Agreement; and

WHEREAS, the City believes that the development and construction of the Minimum Improvements, 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 Minimum Improvements has been undertaken and is being assisted; and

WHEREAS, the requirements of the Business Subsidy Law, Minnesota Statutes, Section 116J.993 through 116J.995, apply to this Agreement; and

WHEREAS, the City has adopted criteria for awarding business subsidies that comply with the Business Subsidy Law, after public hearings for which notice was published; and

WHEREAS, the City Council has approved this Agreement as a subsidy agreement under the Business Subsidy Law.

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;

Benefit Date means the date on which a certificate of occupancy is issued by the City for the Minimum Improvements;

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;

Business Subsidy Law means Minnesota Statutes, Sections 116J.993 to 116J.995 in effect as of the date hereof;

City means the City of Northfield, Minnesota;

Condemnation Award means any compensation for a condemnation or transfer in relation to the exercise of power of eminent domain;

Construction Lender means a commercial lender or other financial institution who makes a Construction Loan to the Developer;

Construction Loan means any loan or loans to be made to provide financing for the construction of the Minimum Improvements;

Construction Mortgage means any mortgage or security agreement in which the Developer or a predecessor in interest has granted a mortgage or other security interest in the Development Property, or any portion or parcel thereof, or any improvements constructed thereon to secure any Construction Loan made pursuant to a mortgage commitment obtained by the Developer from a governmental agency or other Construction Lender, or all such mortgages as appropriate;

Construction Plans means the plans, specifications, drawings and related documents of the construction work to be performed by the Developer on the Minimum Improvements and the Development Property and the plans (a) shall be as detailed as the plans, specifications drawings and related documents which are submitted to the building inspector of the City; (b) shall include at least the following: (1) site plan; (2) foundation plan; (3) basement plans; (4) floor plan for each floor; (5) cross sections of each (length and width); (6) elevations (all sides); (7) grading and drainage; and (8) landscape; and (c) shall be approved by the City in connection with the issuance of a building permit for the Minimum Improvements;

Counties means Dakota and Rice Counties, Minnesota;

Developer means Strobel & Werner Real Estate Holding Company, LLC, a Minnesota limited liability company, its successors and assigns;

Development District means the Master Development District consisting of the real property described in the Development Program;

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

Development Property means the real property located at 1200 Minnesota Highway 3 South, Northfield, MN 55057 and described in **Exhibit A** attached to this Agreement;

Event of Default means any of the events described in Section 6.1 hereof;

Lease means the lease agreement between the Developer and the Operator;

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

Minimum Improvements means construction of an approximately 25,000 square foot, 3-story expansion to the Developer's existing building located on the Development Property.

Net Proceeds means any proceeds paid by an insurer to the Developer under a policy or policies of insurance required to be provided and maintained by the Developer pursuant to Article V of this Agreement and remaining after deducting all expenses (including fees and disbursements of counsel) incurred in the collection of such proceeds;

Note Payment Date means each February 1 and August 1, commencing on August 1, 2020 and thereafter to and including the Termination Date; 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;

Operator means Aurora Pharmaceutical, LLC, a Minnesota limited liability company, its successors and assigns;

Site Improvements means construction of a retaining wall, transformer and other utility relocation, storm water ponding, site development, and any other improvements reimbursable with Tax Increments in accordance with the TIF Act, which legal determination shall be in the sole discretion of legal counsel to the City;

State means the State of Minnesota;

Tax Increments means 90% of the tax increments derived from the Development Property which have been received and retained by the City in accordance with the provisions of the TIF Act, including without limitation Minnesota Statutes, Section 469.177, as amended;

Termination Date means the earlier of (i) February 1, 2029, (ii) the date the TIF Note is paid in full, (iii) the date on which the TIF District expires or is otherwise terminated, or (iv) the date this Agreement is terminated or rescinded in accordance with its terms;

TIF Act means Minnesota Statutes, Sections 469.174 through 469.1794, as amended;

TIF District means Tax Increment Financing (Economic Development) District (Strobel & Werner Holdings – Aurora Pharmaceutical Expansion Project), located within the Development District, which was qualified as an Economic Development District under the TIF Act;

TIF Plan means the tax increment financing plan approved for the TIF District by the City Council;

TIF Note means the Taxable Tax Increment Revenue Note to be executed by the City and delivered to the Developer pursuant to Article III hereof, a copy 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 Minimum Improvements, 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 organized and existing under the laws of Minnesota and has the power to enter into this Agreement and carry out its obligations hereunder.

(2) The subject TIF 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 TIF Act.

(3) The development contemplated by this Agreement is in conformance with the development objectives set forth in the Development Program. Land use permits shall be governed by City land use ordinances and specific land use approvals separate from this Agreement.

(4) 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, has power to enter into this Agreement and to perform its obligations hereunder and, by doing so, is not in violation of any provisions of its articles of organization, operating agreement or the laws of the State.

(2) The Developer will cause the Minimum Improvements to be constructed in compliance with the terms of this Agreement, the Development Program, all issued permits for the Minimum Improvements 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 Minimum Improvements would not have been undertaken by the Developer, and in the opinion of the Developer would not be economically feasible within the reasonably foreseeable future, 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 it is bound, or constitutes a default under any of the foregoing.

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

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

(7) The financing commitments which the Developer has obtained to finance construction of the Minimum Improvements, together with the equity funds available to the Developer, together with financing to be provided by the City pursuant to this Agreement, will be sufficient to enable the Developer to successfully complete the Minimum Improvements.

(8) The Developer has made its own projections of Tax Increments and revenues to be generated from the Minimum Improvements and of the Developer's return on investment and the Developer has not relied on any assumptions, calculations, determinations or conclusions made by the City, its governing body members, officers or agents, including the independent contractors, consultants and legal counsel, servants and employees thereof, with respect to the foregoing or in determining to proceed with the Minimum Improvements.

(9) The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed.

(10) The Developer is not currently in default under any business subsidy agreement with any grantor, as such terms are defined in the Business Subsidy Act.

ARTICLE III

UNDERTAKINGS BY DEVELOPER AND CITY

Section 3.1 Costs of the Project. The Developer agrees that it will cause the Minimum Improvements to be constructed on the Development Property substantially in conformance with the approved Construction Plans and as further provided in Article IV. The Developer agrees that the scope and scale of the Minimum Improvements to be constructed shall not be significantly less than the scope and scale of the Minimum Improvements as detailed and outlined in the Construction Plans. Subject to Unavoidable Delays, the Developer shall cause construction of the Minimum Improvements to be commenced on or before December 31, 2018 and, barring Unavoidable Delays, the Minimum Improvements will be substantially completed by December 31, 2019. All work with respect to the Minimum Improvements to be constructed or provided by the Developer on the Development Property shall be in substantial conformity with the Construction Plans as submitted by the Developer and approved by the City in connection with the issuance of a building permit as further provided in Article IV. The parties agree that the acquisition of land and the construction of the Site Improvements to be constructed by the Developer is essential to the successful completion of the Minimum Improvements. The Developer shall pay or reimburse the City for Legal and Administrative Expenses upon execution of this Agreement as provided in Section 3.7. The costs of the land acquisition for the Minimum Improvements and the costs of the Site Improvements and the Minimum Improvements shall be paid by the Developer. Solely as provided in Section 3.2 hereof, the City shall reimburse the Developer for the lesser of \$169,939 or the costs of the land acquisition for the Minimum Improvements and the costs of the Site Improvements actually paid by the Developer (the "Reimbursement Amount").

Section 3.2 Reimbursement: TIF Note. The City shall reimburse the Developer for costs of the land acquisition for the Minimum Improvements and costs of the Site Improvements exclusively 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 (the "Issuance Date"), issued in a principal amount equal to the Reimbursement Amount and delivered to the Developer when:

(a) The Developer shall be in material compliance with all terms and provisions of this Agreement;

(b) The Developer has submitted paid invoices or other evidence reasonably satisfactory to the City showing costs of the land acquisition for the Minimum Improvements and the costs of construction of the Site Improvements in an amount not less than the Reimbursement Amount;

(c) The Developer shall have provided a copy of the Lease for a term of at least 10 years and including language requiring the Operator to comply with Section 3.4 hereof; and

(d) The Developer shall have completed construction of the Minimum Improvements as evidenced by a Certificate of Completion issued by the City pursuant to Section 4.2.

(2) Except during any period that the payments on the TIF Note have been suspended, the outstanding principal amount of the TIF Note shall accrue simple, non-compounding interest from and after the Issuance Date at a rate per annum equal to 5.00% per annum.

(3) The TIF Note shall be payable solely and exclusively from the Tax Increments.

(4) On each Note Payment Date and subject to the provisions of the TIF Note, the City shall pay, solely from the Tax Increments received by the City during the preceding 6 months (or, with respect to the first Note Payment Date, in the period commencing on the date of issuance of the TIF Note through the day prior to the first Note Payment Date) to the extent of the outstanding principal amount of the TIF Note. All such payments shall be applied first to accrued interest and then to the payment of 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 amount of the TIF Note. The City makes no representations or warranties regarding the amount of Tax Increments or that revenues pledged to the TIF Note will be sufficient to pay the principal of and interest 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 requirement that there shall not at that time be an Event of Default that has occurred and is continuing under this Agreement or if the City notifies the Developer that it is not in compliance with any issued permits for the Minimum Improvements.

(7) All conditions for delivery of the TIF Note must be met by no later than the date 5 years after the date of certification of the TIF District. If the conditions for delivery of the TIF Note are not satisfied by the date described in this paragraph, the City has no further obligations under this Section 3.2.

(8) 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 City may require in connection therewith, are hereby authorized and approved by the City.

Section 3.3 Effect of Delay. The Developer acknowledges that if construction of the Minimum Improvements is delayed or not completed, the effect of such delay or failure to complete may be to reduce the amount of the Tax Increment available to pay the TIF Note.

Section 3.4 Business Subsidy Law.

(1) In order to satisfy the provisions of Minnesota Statutes, Sections 116J.993 to 116J.995 (the “Business Subsidies Act”), the Developer acknowledges and agrees that the amount of the “Business Subsidy” granted to the Developer under this Agreement is the amount of the tax increment assistance paid pursuant to Section 3.2, which is approximately \$169,939, and that the Business Subsidy is needed because the Minimum Improvements are not sufficiently feasible for the Developer to undertake without the Business Subsidy. The public purpose of the Business Subsidy is to construct the Minimum Improvements and enable the Developer to expand its current manufacturing, warehouse and distribution facilities increasing the tax base in the City and State, help an existing business remain and expand in the City and stimulate construction and the creation of jobs, including construction jobs. The Developer further represents that, pursuant to the Lease between the Developer and the Operator, the Operator has agreed that, in addition to 120 existing jobs located at the Development Property, it will meet the following job creation goals (the “Goals”): It will create at least 5 full-time equivalent jobs at an average hourly wage of at least \$17.00 per hour plus benefits, within two years from the Benefit Date (“Jobs”).

(2) If none of the Goals are met, the Developer agrees to repay all of the Business Subsidy to the City, plus interest (“Interest”) set at the implicit price deflator defined in Minnesota Statutes, Section 275.70, Subdivision 2, accruing from and after the Benefit Date, compounded semiannually. If the Goals are met in part, the Developer will repay a portion of the Business Subsidy (plus Interest) determined by multiplying the Business Subsidy by a fraction, the numerator of which is the number of jobs in the Goals which were not created at the wage level set forth above and the denominator of which is 5 (i.e. number of Jobs set forth in the Goals).

(3) The Operator has agreed, pursuant to the Lease with the Developer, to (i) report its progress on achieving the Goals to the City until the later of the date the Goals are met or two years from the Benefit Date, or, if the Goals are not met, until the date the Business Subsidy is repaid, (ii) include in the report the information required in Section 116J.994, Subdivision 7 of the Business Subsidies Act on forms developed by the Minnesota Department of Employment and Economic Development, and (iii) send completed reports to the City. The Developer agrees to file or cause the Operator to file these reports no later than March 1 of each year commencing March 1, 2020, and within 30 days after the deadline for meeting the Goals. The City agrees that if it does not receive the reports, it will mail the Developer a warning within one week of the required filing date. If within 14 days of the post marked date of the warning the reports are not made, the Developer agrees to pay to the City a penalty of \$100 for each subsequent day until the report is filed up to a maximum of \$1,000.

(4) The Operator has agreed, pursuant to the Lease with the Developer, to continue operations at the Minimum Improvements for at least 5 years after the Benefit Date.

(5) Other than the tax increment assistance paid pursuant to Section 3.2, there is no other financial assistance from other “grantors” as defined in the Business Subsidies Act in connection with the Minimum Improvements.

(6) There is no parent corporation of the Developer or the Operator **[if either entity has a parent, provide the name of the parent entity]**.

Section 3.5 Real Property Taxes. The Developer shall pay all real property taxes payable with respect to all and any parts of the Development Property acquired and owned by it and any statutory or contractual duty that shall accrue subsequent to the date of its acquisition of title to the Development Property (or part thereof) and until the Developer's obligations have been assumed by any other Person pursuant to the provisions of this Agreement or title to the property is vested in another Person.

The Developer agrees that so long as it owns all or any portion of the Development Property that prior to the Termination Date:

(1) It will not seek administrative review or judicial review of the applicability or constitutionality of any tax statute relating to the taxation of real property contained on the Development Property determined by any tax official to be applicable to the Minimum Improvements or the Developer or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; provided, however, that "tax statute" does not include any local ordinance or resolution levying a tax; and

(2) It will not seek any tax exemption, tax deferral or abatement, either presently or prospectively authorized under Minnesota Statutes, Sections 469.1813 through 469.1815, or any other State or federal law, of the taxation of real property contained in the Development Property between the date of execution of this Agreement and the Termination Date.

(3) The Developer shall notify the City within 10 days of filing any petition to seek reduction in market value or property taxes on any portion of the Development Property under any State law (referred to as a "Tax Appeal"). If as of any Payment Date, any Tax Appeal is then pending, the City will continue to make payments on the TIF Note but only to the extent that the Tax Increments relate to property taxes paid with respect to the market value of the Development Property not being challenged as part of the Tax Appeal and the City will withhold the Tax Increments related to property taxes paid with respect to the market value of the Development Property being challenged as part of the Tax Appeal, all as determined by the City in its sole discretion. The City will apply any withheld amount to the extent not reduced as a result of the Tax Appeal promptly after the Tax Appeal is fully resolved and the amount of Tax Increments, as applicable, attributable to the disputed tax payments is finalized.

Section 3.6 Change in Use of Minimum Improvements. The Developer agrees that for itself, and its successors and assigns, until the Termination Date, it shall devote the Development Property to, and in accordance with, the uses specified in this Agreement. The Developer warrants the continued use of the Development Property throughout the term of this Agreement as a facility for manufacturing and warehousing, including space necessary for and related to these activities, such as office, demonstration and testing laboratory and training space, unless the City first approves any change in use in writing. If the Developer fails to comply with the requirements of this Section 3.6, the City will decertify the TIF District and cease payments to the Developer on the TIF Note.

Section 3.7 Legal Administrative Expenses. The Developer shall be solely responsible for all costs incurred by the Developer. In addition, the Developer shall reimburse the City for Legal and Administrative Expenses within 30 days of delivery of any invoice provided by the City or its agents. This Section 3.7 shall survive termination of this Agreement and shall be binding on the Developer regardless of the enforceability of any other provision of this Agreement.

ARTICLE IV

PROJECT COVENANTS

Section 4.1 Construction and Completion of Improvements by the Developer.

(1) The Developer agrees to construct at its expense the Minimum Improvements substantially in accordance with the Construction Plans. Prior to the completion of the Minimum Improvements, the Developer shall submit any material design modifications for the Minimum Improvements, including but not limited to material changes to the size of the Minimum Improvements, the number of parking spaces, exterior materials, color pallet or the quality of materials, to the City for review and reasonable approval by the City.

(2) The Developer shall or will obtain or cause Operator to construct, operate and maintain the Minimum Improvements at its expense, in accordance with this Agreement, any applicable permits, and with all applicable local, state and federal laws and regulations (including without limitation environmental, zoning, building code, housing code, and public health laws and regulations).

(3) The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed and completed.

(4) All costs of the Minimum Improvements, including without limitation the abatement of hazardous materials, the demolition of any improvements on the Development Property, the relocation or removal of any utilities, and the restoration of sidewalks, streets, alleys and any other improvements located in the public right of way are the responsibility of the Developer.

(5) The Developer is responsible for the costs of any damage to roadways, required sidewalk or street reconstruction, landscaping and streetlighting.

(6) The Minimum Improvements shall be operated and maintained in accordance with this Agreement, with any applicable permits and with all local, state and federal laws and regulations applicable (including without limitation environmental, zoning, building code, housing code, and public health laws and regulations).

Section 4.2 Certificate of Completion. The Developer shall notify the City when construction of the Improvements have been substantially completed. The City shall, within 20 days after such notification, inspect the Improvements in order to determine whether the Improvements have been substantially completed and constructed in accordance with all local, state and federal laws and regulations (including without limitation environmental, zoning, building code, housing code, and public health laws and regulations), and any applicable permits and in substantial conformity with this Agreement, and the Construction Plans approved by the City in connection with issuing construction permits, each as applicable. The following shall be conditions precedent to the City's obligation to execute the Certificate of Completion:

(1) There shall exist no Event of Default hereunder;

(2) The City shall have issued a Certificate of Occupancy for all of the Minimum Improvements, including all Operator improvements sufficient to make the Minimum Improvements operable by the Operator in accordance with the Lease;

(3) The City Administrator and City Engineer on behalf shall have reasonably determined in a timely manner and consistent with the City's practice for similar construction projects that the Improvements have been substantially completed and constructed in accordance with all local, state and federal laws and regulations (including without limitation environmental, zoning, building code, housing code, and public health laws and regulations), and in substantial conformity with this Agreement and the Construction Plans approved by the City in connection with issuing construction permits, each as applicable.

If the City determines that it cannot execute the Certificate of Completion as set forth in Section 4.2, it shall, within 30 days after the Developer's written request for the Certificate of Completion, provide a written statement indicating in adequate detail why it cannot do so and also indicating what measures or acts will be necessary to be taken or performed in order to permit execution of the Certificate of Completion. The Developer shall have a reasonable period of time to remedy such deficiencies. The City shall re-inspect the Improvements within a reasonable period of time after receiving notice that such deficiencies have been remedied in order to determine whether the conditions set forth above have been satisfied.

Within a reasonable period of time after determining that the Minimum Improvements have met the conditions set forth in this Section 4.2, the City will furnish to the Developer a Certificate of Completion in the form attached hereto as **Exhibit C**, which shall then be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement with respect to the completion of the Improvements.

Section 4.3 Insurance. The Developer will provide and maintain or cause to be maintained at all times and, from time to time at the request of the City, furnish the City with proof of payment of premiums on insurance of amounts and coverages normally held by businesses engaged in activities similar to those of the Developer.

Section 4.4 Condemnation, Damage or Destruction. In the event that title to and possession of the Minimum Improvements or any material part thereof shall be taken in condemnation or by the exercise of the power of eminent domain by any governmental body or other person or the Minimum Improvements is damaged or destroyed, the Developer shall, with reasonable promptness after such taking, notify the City as to the nature and extent of such taking; provided that no such notification is required if the City is the condemning authority. Upon receipt of any Condemnation Award or insurance proceeds the Developer shall elect to either: (a) use the entire Condemnation Award or insurance proceeds to reconstruct the Minimum Improvements (or, in the event only a part of Minimum Improvements have been taken, then to reconstruct such part) upon the remaining Development Property to the extent necessary to maintain and continue operations of the Operator required by the Lease; or (b) in the event that the condemnation affects or taking or damage or destruction the Development

Property but not the Minimum Improvements thereon, retain, for the account of the Developer, all of the Condemnation Award or insurance proceeds.

ARTICLE V

PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

Section 5.1 Transfer of Substantially All Assets. Subject to Section 5.2 hereof, as security for the obligations of the Developer under this Agreement, the Developer represents and agrees that prior to the Termination Date, the Developer will not dispose of all or substantially all of its assets; provided that the Developer may sell or otherwise transfer to any Person all or substantially all of its assets and thereafter be discharged from liability hereunder if the transferee Person assumes in writing all of the obligations of the Developer under this Agreement.

Section 5.2 Prohibition Against Transfer of Property and Assignment of TIF Note. The Developer represents and agrees that prior to the Termination Date:

(1) Except for the purpose of obtaining financing necessary to enable the Developer to perform its obligations with respect to acquiring the Development Property and constituting the Minimum Improvements under this Agreement and related improvements and any other purpose authorized by this Agreement, the Developer has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or lease (other than in the normal course of business, which may include, without limitation, leasing a portion of the Minimum Improvements to vendors, utilities companies, or service providers to provide goods or services to the Developer or the Developer's employees), or any trust or power, or transfer in any other mode or form (each a "Transfer") of or with respect to the Agreement, the TIF Note or the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same, without the prior written approval of the City. This prohibition on Transfers shall not apply if Developer Transfers the Agreement, the TIF Note or the Development Property to any entity controlling, controlled by, or under common control with, Developer, which Transfer may be done by the Developer without limitation, upon (i) notice to the City and (ii) delivery to the City of all instruments and other legal documents involved in effecting the Transfer and, with respect to any Transfer of the TIF Note, the items listed in Section 5.2(2)(d).

(2) The City shall be entitled to require, except with respect to those Transfers under Section 5.2(1) for which no consent from the City is required or as otherwise provided in the Agreement, as conditions to any such approval that:

(a) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer.

(b) Any proposed transferee, by instrument in writing satisfactory to the City and in form recordable among the land records, shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject (unless the Developer agrees

to continue to fulfill those obligations, in which case the preceding provisions of this Section 5.2(2)(b) shall not apply); provided, however, that the fact that any transferee of, or any other successor in interest whatsoever to, the Development Property, or any part thereof, shall not, for whatever reason, have assumed such obligations or so agreed, and shall not (unless and only to the extent otherwise specifically provided in this Agreement or agreed to in writing by the City) deprive the City of any rights or remedies or controls with respect to the Development Property or the construction of the Minimum Improvements under this Agreement; it being the intent of the parties as expressed in this Agreement that (to the fullest extent permitted at law and in equity and excepting only in the manner and to the extent specifically provided otherwise in this Agreement) no transfer of, or change with respect to, ownership in the Development Property or any part thereof, or any interest therein, however consummated or occurring, and whether voluntary or involuntary, shall operate, legally or practically, to deprive or limit the City of or with respect to any rights or remedies or controls provided in or resulting from this Agreement with respect to the Minimum Improvements that the City would have had under this Agreement, had there been no such transfer or change. In the absence of specific written agreement by the City to the contrary, no such transfer or approval by the City thereof shall be deemed to relieve the Developer, or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto during the term of this Agreement.

(c) There shall be submitted to the City for review and prior written approval all instruments and other legal documents involved in effecting the Transfer of any interest in this Agreement, the TIF Note or the Development Property governed by this Article V, other than matters approved herein.

(d) No such transfer shall result in the termination of the Operator's operations of the Minimum Improvements.

(e) In any event, no Transfer of the TIF Note shall be effective unless the proposed transferee of the TIF Note shall (i) execute and deliver to the City the Acknowledgment Regarding TIF Note in the form included as Exhibit 1 to the TIF Note and (ii) surrender the TIF Note to the City either in exchange for a new fully registered note or for Transfer of the TIF Note on the registration records for the TIF Note maintained by the City.

ARTICLE VI

EVENTS OF DEFAULT

Section 6.1 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 or special assessments assessed with respect to the Development Property.

(2) Failure by the Developer to cause the construction of the Minimum Improvements to be completed pursuant to the terms, conditions and limitations of this Agreement and/or any issued permits for the Minimum Improvements.

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

(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 as bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer, as a 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 60 days after the filing thereof; or a receiver, trustee or liquidator of the Developer, or of the Minimum Improvements, or part thereof, shall be appointed in any proceeding brought against the Developer, and shall not be discharged within 60 days after such appointment, or if the Developer, shall consent to or acquiesce in such appointment; or

(5) The holder of any mortgage on the Development Property, or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable mortgage documents.

Section 6.2 Remedies on Default. Whenever any Event of Default referred to in Section 6.1 occurs and is continuing, the City, as specified below, may take any one or more of the following actions after the giving of written notice to the Developer citing with specificity the item or items of default and notifying the Developer that it has 30 days within which to cure said Event of Default; provided, however, that if an Event of Default under Section 6.1,

paragraph (2) or (3), cannot be cured within 30 days, then Developer shall have such additional time, not to exceed 180 days, as reasonably necessary to cure the Event of Default if Developer is diligently pursuing the same to completion. If the Event of Default has not been cured within said time period:

(a) The City may suspend its performance under this Agreement and the TIF Note until it receives written assurances from the Developer, deemed adequate by the City, that the Developer will cure its default and continue its performance under this Agreement, and no interest shall accrue on the TIF Note for the benefit of the Developer while performance is suspended in accordance with this Section 6.2.

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

(c) 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 6.3 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 6.4 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 6.5 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 6.6 Indemnification of City.

(1) The Developer releases from and 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 Minimum Improvements.

(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 Minimum Improvements.

(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, as the case may be.

ARTICLE VII

ADDITIONAL PROVISIONS

Section 7.1 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 Minimum Improvements, 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 7.2 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 7.3 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

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

Strobel & Werner Real Estate Holding Company, LLC
1196 MN Highway 3
Northfield, MN 55057
Attn: Michael Strobel

- (b) in the case of the City is addressed to or delivered personally to the City
at:

City of Northfield
801 Washington Street
Northfield, Minnesota 55057
Attn: City Administrator

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

Section 7.5 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State.

Section 7.6 Expiration. This Agreement shall expire on the Termination Date.

Section 7.7 Provisions Surviving Rescission or Expiration. Sections 6.5 and 6.6 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 7.8 Amendment. This Agreement may be amended only by written agreement approved by the City and the Developer.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and on its behalf, and the Developer 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 NORTHFIELD, MINNESOTA

By _____
Its Mayor

By _____
Its Clerk

Signature page to the Tax Increment Development Agreement

STROBEL & WERNER REAL ESTATE
HOLDING COMPANY, LLC

By _____
Its _____

Signature page to the Tax Increment Development Agreement

EXHIBIT A

Description of Development Property

The property located in the City of Northfield, Rice County, Minnesota legally described as:

Lot 1, Block 1, STROBEL-WERNER ADDITION
Parcel No. 22-01-3-02-001

EXHIBIT B

Form of TIF Note

No. R-1

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTIES OF DAKOTA AND RICE
CITY OF NORTHFIELD

TAXABLE TAX INCREMENT REVENUE NOTE

<u>Rate</u>	<u>Date of Issuance</u>	<u>Principal Amount</u>
5.00%	_____, 20__	\$169,939

The City of Northfield, 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 the Strobel & Werner Real Estate Holding Company, 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 \$169,939 as provided in that certain Tax Increment Development Agreement, dated as of _____, 2018, as the same may be amended from time to time (the “TIF Agreement”), by and between the City and the Developer. Simple, non-compounding interest shall accrue on the outstanding principal amount of the Note at a rate equal to 5.00% per annum. Interest shall be computed on the basis of a 360 day year of twelve 30-day months.

The amounts due under this Note shall be payable on each February 1 and August 1 commencing August 1, 2020 and thereafter to and including February 1, 2029, or, if the first should not be a Business Day (as defined in the TIF 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 Tax Increments (hereinafter defined) received by the City during the 6-month period preceding such Payment Date (or, with respect to the first Note Payment Date, in the period commencing on the date of issuance of the TIF Note through the day prior to the first Note Payment Date). All payments made by the City under this Note shall be applied first to accrued interest and then to principal. This Note is pre-

payable by the City, without penalty, in whole or in part, on any date. Interest shall not accrue during the period of any suspension of payments in accordance with the TIF Agreement.

The Payment Amounts due hereon shall be payable solely from 90% of tax increments (the “Tax Increments”) from the Tax Increment Financing (Economic Development) District (Strobel & Werner Holdings – Aurora Pharmaceutical Expansion Project), located within the Master Development District, 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 469.1794, as the same may be amended or supplemented from time to time (the “TIF Act”). This Note shall terminate and be of no further force and effect following the earlier of (a) the last Payment Date defined above, (b) any date upon which the City shall have terminated the TIF Agreement in accordance with its terms, (c) the date the TIF District is terminated, or (d) the date that all principal and interest payable hereunder shall have been paid in full.

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. In the event Tax Increments are not sufficient, the City is not responsible to further fund or reimburse the Developer (or its assigns or creditors) for any such shortfall. The City is not responsible to fund or reimburse any obligation of the Developer (or its assigns or creditors) unless expressly stated in the TIF Agreement.

Subject to the terms of the TIF Agreement, the City’s payment obligations hereunder shall be further conditioned on the fact that no Event of Default under the TIF 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 TIF Agreement the City elects, subject to the provisions of Section 6.2 of the TIF Agreement, to cancel and rescind the TIF 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 TIF Agreement for a fuller statement of the rights and obligations of the City to pay the principal of and interest on 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 and interest on 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 Minimum Improvements pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including the TIF Act.

This Note may be assigned only with the consent of the City in accordance with the Development Agreement. The Note may only be assigned if the assignee shall (i) execute and deliver to the City the Acknowledgment Regarding TIF Note in the form included in **Exhibit 1**

hereto and (ii) surrender this Note 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 Registered Owner of this Note which assigns, transfers or otherwise grants any interest herein agrees to comply with all applicable laws in so doing, including without limitation all applicable state and federal registration and securities laws and regulations. Each permitted assignee shall take this Note subject to the foregoing conditions and subject to all provisions stated or referenced herein and the TIF Agreement.

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 Northfield, Minnesota, by its City Council, has caused this Note to be executed by the manual signatures of its Mayor and City Clerk has caused this Note to be dated as of _____.

By _____
Mayor

By _____
City Clerk

CERTIFICATION OF REGISTRATION

It is hereby certified that the foregoing Note was registered in the name of Strobel & Werner Real Estate Holding Company, 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 FINANCE DIRECTOR</u>
Strobel & Werner Real Estate Holding Company, LLC 1196 MN Highway 3 Northfield, MN 55057 _____	_____	_____
_____ _____ _____	_____	_____
_____ _____ _____	_____	_____
_____ _____ _____	_____	_____
_____ _____ _____	_____	_____
_____ _____ _____	_____	_____

Exhibit 1
To Taxable TIF Note

ACKNOWLEDGMENT REGARDING TIF NOTE

The undersigned, _____ a _____ (“Note Holder”), hereby certifies and acknowledges that:

A. On the date hereof the Note Holder has [acquired from]/[made a loan (the “Loan”) [to/for the benefit] of] Strobel & Werner Real Estate Holding Company, LLC, a Minnesota limited liability company (the “Developer”) [secured in part by] the Taxable Tax Increment Revenue Note (Strobel & Werner Holdings – Aurora Pharmaceutical Expansion Project), a pay-as-you-go tax increment revenue note in the original principal amount of \$_____ dated _____, 20__ of the City of Northfield, Minnesota (the “City”), a copy of which is attached hereto (“Note”).

B. The Note Holder has had the opportunity to ask questions of and receive all information and documents concerning the Note as it requested, and has had access to any additional information the Note Holder thought necessary to verify the accuracy of the information received. In determining to [acquire the Note]/[make the Loan], the Note Holder has made its own determinations and has not relied on the City or information provided by the City.

C. The Note Holder represents and warrants that:

1. The Note Holder is acquiring [the Note]/[an interest in the Note as collateral for the Loan] for its own account, and without any view to resale or other distribution.

2. The Note Holder is an “accredited investor” as defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, and as further described in **Exhibit 1A** hereto and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of acquiring [and holding the Note] [an interest in the Note as collateral for the Loan].

3. The Note Holder understands that the Note is a security which has not been registered under the Securities Act of 1933, as amended, or any state securities law, and must be held until its sale is registered or an exemption from registration becomes available.

4. The Note Holder is aware of the limited payment source for the Note and interest thereon and risks associated with the sufficiency of that limited payment source.

D. The Note Holder understands that the Note is payable solely from certain tax increments derived from certain properties located in a tax increment financing district, if and as received by the City. The Note Holder acknowledges that the City has made no representation or covenant, express or implied, that the revenues pledged to pay the Note will be sufficient to pay, in whole or in part, the principal and interest due on the Note. Any amounts which have not

been paid on the Note on or before the final maturity date of the Note shall no longer be payable, as if the Note had ceased to be an obligation of the City. The Note Holder understands that the Note will never represent or constitute a general obligation, debt or bonded indebtedness of the City, the State of Minnesota, or any political subdivision thereof and that no right will exist to have taxes levied by the City, the State of Minnesota or any political subdivision thereof for the payment of principal and interest on the Note.

E. The Note Holder understands that the Note is payable solely from certain tax increments, which are taxes received on improvements made to certain property (the “Improvements”) in a tax increment financing district from the increased taxable value of the property over its base value at the time that the tax increment financing district was created, which base value is called “original net tax capacity”. There are risk factors in relying on tax increments to be received, which include, but are not limited to, the following:

1. Value of Improvements. If the contemplated Improvements constructed in the tax increment financing district are completed at a lesser level of value than originally contemplated, they will generate fewer taxes and fewer tax increments than originally contemplated.

2. Damage or Destruction. If the Improvements are damaged or destroyed after completion, their value will be reduced, and taxes and tax increments will be reduced. Repair, restoration or replacement of the Improvements may not occur, may occur after only a substantial time delay, or may involve property with a lower value than the Improvements, all of which would reduce taxes and tax increments.

3. Change in Use to Tax-Exempt. The Improvements could be acquired by a party that devotes them to a use which causes the property to be exempt from real property taxation. Taxes and tax increments would then cease.

4. Depreciation. The Improvements could decline in value due to changes in the market for such property or due to the decline in the physical condition of the property. Lower market valuation will lead to lower taxes and lower tax increments.

5. Non-payment of Taxes. If the property owner does not pay property taxes, either in whole or in part, the lack of taxes received will cause a lack of tax increments. The Minnesota system of collecting delinquent property taxes is a lengthy one that could result in substantial delays in the receipt of taxes and tax increments, and there is no assurance that the full amount of delinquent taxes would be collected. Amounts distributed to taxing jurisdictions upon a sale following a tax forfeiture of the property are not tax increments.

6. Reductions in Taxes Levied. If property taxes are reduced due to decreased municipal levies, taxes and tax increments will be reduced. Reasons for such reduction could include lower local expenditures or changes in state aids to municipalities. For instance, in 2001 the Minnesota Legislature enacted an education funding reform that involved the state increasing school aid in lieu of the local general education levy (a component of school district tax levies).

7. Reductions in Tax Capacity Rates. The taxable value of real property is determined by multiplying the market value of the property by a tax capacity rate. Tax capacity rates vary by certain categories of property; for example, the tax capacity rates for residential homesteads are currently less than the tax capacity rates for commercial and industrial property. In 2001, the Minnesota Legislature enacted property tax reform that lowered various tax capacity rates to “compress” the difference between the tax capacity rates applicable to residential homestead properties and commercial and industrial properties.

8. Changes to Local Tax Rate. The local tax rate to be applied in the tax increment financing district is the lower of the current local tax rate or the original local tax rate for the tax increment financing district. In the event that the Current Local Tax Rate is higher than the Original Local Tax Rate, then the “excess” or difference that comes about after applying the lower Original Local Tax Rate instead of the Current Local Tax Rate is considered “excess” tax increment and is distributed by Rice County to the other taxing jurisdictions and such amount is not available to the City as tax increment.

9. Legislation. The Minnesota Legislature has frequently modified laws affecting real property taxes, particularly as they relate to tax capacity rates and the overall level of taxes as affected by state aid to municipalities.

F. The Note Holder acknowledges that the Note was issued pursuant to a Tax Increment Development Agreement between the City and the Developer dated _____, 2018 (“Development Agreement”), and that the City has the right to suspend payments under this Note and/or terminate the Note upon an Event of Default under the Development Agreement.

G. The Note Holder acknowledges that the City makes no representation about the tax treatment of, or tax consequences from, the Note Holder’s acquisition of [the Note]/[an interest in the Note as collateral for the Loan].

WITNESS our hand this ____ day of _____, 20__.

Note Holder:

By _____
Name: _____
Its _____

Exhibit 1A
To Acknowledgment Regarding TIF Note

The Note Holder understands that the representations contained below are made for the purpose of qualifying the Note Holder as an “accredited investor” as that term is defined in Regulation D of the General Rules and Regulations under the Act and for the purpose of inducing a sale of securities to the Note Holder. The Note Holder agrees to furnish any additional information which the City of Northfield, Minnesota (the “City”) deems necessary to verify the answers set forth below. The Note Holder hereby represents that the **statement or statements checked or initialed below** are true and correct in all respects. The Note Holder understands that a false representation may constitute an Event of Default as defined in that certain Tax Increment Development Agreement, dated as of _____, 2018 (as the same may be amended from time to time, the “Development Agreement”), between the City and Strobel & Werner Real Estate Holding Company, LLC, a Minnesota limited liability company, or its registered assigns (the “Developer”).

For purposes of this letter an Accredited Investor shall mean any one of the following entities which by check mark or initials the Note Holder represents that it qualifies:

- _____ The Note Holder is a natural person whose individual net worth, or joint net worth with his or her spouse, exceeds \$1,000,000, exclusive of the fair market value of primary residence of the Note Holder, at the time of the purchase.
- _____ The Note Holder is a natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with the Note Holder’s spouse in excess of \$300,000 in each of those years and who reasonably expects to reach the same income level in the current year.
- _____ The Note Holder hereby certifies that all of the equity owners of the Note Holder qualify as accredited individual investors. (Please submit a copy of this page countersigned by each such equity owner if relying on this item).
- _____ The Note Holder is a bank or savings and loan association as defined in Sections 3(a)(2) and 3(a)(5)(A), respectively, of the Act acting either in its individual or fiduciary capacity.
- _____ The Note Holder is an insurance company as defined in Section 2(13) of the Act.
- _____ The Note Holder is an investment company registered under the Investment Company Act of 1940, as amended, or a business development company as defined in Section 2(a)(48) of that Act.
- _____ The Note Holder is a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) of the Small Business Investment Act of 1958.
- _____ The Note Holder is an employee benefit plan within the meaning of Title I of the Employee Retirement Security Act of 1974 and either (check one or more, as applicable):
- _____ the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser; or
- _____ the employee benefit plan has total assets in excess of \$5,000,000; or
- _____ the plan is a self-directed plan with investment decisions made solely by persons who are “Accredited Investors” as defined under the Act.

_____ The Note Holder is a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940.

_____ The Note Holder has total assets in excess of \$5,000,000, was not formed for the specific purpose of acquiring the Note and is one or more of the following (check one or more, as appropriate):

_____ an organization described in Section 501(c)(3) of the Internal Revenue Code; or

_____ a corporation; or

_____ a Massachusetts or similar business trust; or

_____ a partnership.

_____ The Note Holder is a trust with total assets exceeding \$5,000,000, which was not formed for the specific purpose of acquiring the TIF Note and whose purchase is directed by a person who has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the investment in the TIF Note.

EXHIBIT C

CERTIFICATE OF COMPLETION

WHEREAS, the City of Northfield, Minnesota and Strobel & Werner Real Estate Holding Company, LLC, a Minnesota limited liability company (the “Developer”), have executed a Tax Increment Development Agreement, dated as of _____, 2018 (the “Development Agreement”), with respect to the completion by the Developer of certain improvements (the “Minimum Improvements”), more specifically described in the Development Agreement; and

WHEREAS, the Developer has performed its obligations under the Development Agreement to substantially complete the Minimum Improvements in a manner deemed sufficient by the City to permit the execution of this certificate pursuant to Section 4.2 of the Development Agreement:

NOW, THEREFORE, this is to certify that the construction of the Minimum Improvements has been completed in substantial conformance with the terms of the Development Agreement.

CITY OF NORTHFIELD, MINNESOTA

By _____
Its _____

Dated: _____, 20____