



STAFF REPORT

TO: Mayor Keis and Members of City Council
FROM: Chris Heineman, City Administrator
DATE: January 23, 2019
RE: Approval of Development Agreement for Bix Real Estate Holdings, LLC

The City Council conducted a public hearing and adopted a Resolution approving a modification to Development District No. 7 and establishment of Tax Increment Financing District 7-2 at the City Council meeting on November 28, 2018. Since that time, staff has worked with our consultants at Ehlers and Bond Counsel at Briggs and Morgan to complete the attached Development Agreement for this project.

The Development Agreement follows the Minnesota Statute and Business Subsidy Law and outlines the legal requirements of the City and Developer related to TIF District 7-2. The costs for all site improvements will be paid by the developer, and the City of Little Canada shall reimburse the developer from property tax payments by the developer based on the increased property value as outlined in the TIF Note. The TIF Note shall terminate prior to the final payment date of February 1, 2028, when the payments of principal and interest on the TIF Note equal \$190,615.

According to the Agreement, the tenant (BIX Produce Company) must create at least 18 full time jobs at an hourly wage and benefits totaling of at least \$12.35 per hour plus benefits within two years from the "Benefit Date", which is the earlier of the date the Developer completes the construction of the Project or the Tenant occupies the Project. If the job goals are not met, the Developer must repay all of the Business Subsidy to the City. If the job goals are only met in part, the Developer will repay a portion of the Business Subsidy (plus interest).

In addition to the Business Subsidy provided by the City, the project also received a Minnesota Job Creation Fund award through the MN Department of Employment and Economic Development (DEED). The proposed project will relocate approximately 400 existing jobs and create 160 net new positions over the next five years. The project will require an investment of approximately \$25M to acquire the existing 207,000 square foot facility, up-fit the building to food-grade standards and furniture, fixtures, equipment and IT. The proposed improvements include approximately 60,000 SF of refrigerated, cooler and freezer space; 91,000 SF of storage, dock and maintenance; 26,000 SF of processing; and 20,000 SF of office space.

ACTION REQUESTED:

Staff recommends approval of a Motion to Approve the Development Agreement by and Between the City of Little Canada, Minnesota and Bix Real Estate Holdings, LLC.

DEVELOPMENT AGREEMENT
BY AND BETWEEN

THE CITY OF LITTLE CANADA, MINNESOTA
AND
BIX REAL ESTATE HOLDINGS, LLC

This document drafted by:

BRIGGS AND MORGAN
Professional Association
2200 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402

Table of Contents

	Page
ARTICLE I	DEFINITIONS..... 2
Section 1.1.	Definitions..... 2
ARTICLE II	REPRESENTATIONS AND WARRANTIES..... 4
Section 2.1.	Representations and Warranties of the City..... 4
Section 2.2.	Representations and Warranties of the Developer..... 4
ARTICLE III	UNDERTAKINGS BY DEVELOPER AND CITY 6
Section 3.1.	Site Improvements and Legal and Administrative Expenses 6
Section 3.2.	Limitations on Undertaking of the City 6
Section 3.3.	Reimbursement: TIF Note 6
Section 3.4.	Business Subsidies Act 7
ARTICLE IV	EVENTS OF DEFAULT 9
Section 4.1.	Events of Default Defined 9
Section 4.2.	Remedies on Default..... 9
Section 4.3.	No Remedy Exclusive..... 10
Section 4.4.	No Implied Waiver 10
Section 4.5.	Agreement to Pay Attorney's Fees and Expenses 10
Section 4.6.	Indemnification of City..... 10
ARTICLE V	DEVELOPER'S OPTION TO TERMINATE AGREEMENT 12
Section 5.1.	The Developer's Option to Terminate..... 12
Section 5.2.	Action to Terminate 12
Section 5.3.	Effect of Termination..... 12
ARTICLE VI	ADDITIONAL PROVISIONS 13
Section 6.1.	Restrictions on Use 13
Section 6.2.	Conflicts of Interest..... 13
Section 6.3.	Titles of Articles and Sections 13
Section 6.4.	Notices and Demands 13
Section 6.5.	Counterparts..... 14
Section 6.6.	Law Governing 14
Section 6.7.	Expiration..... 14
Section 6.8.	Provisions Surviving Rescission or Expiration..... 14
Section 6.9.	Assignability of Agreement and TIF Note..... 14
EXHIBIT A	Description of Development Property A-1
EXHIBIT B	Form of TIF Note..... B-1

DEVELOPMENT AGREEMENT

THIS AGREEMENT, made as of the ___ day of _____, 2019, by and between the City of Little Canada, Minnesota (the "City"), a municipal corporation existing under the laws of the State of Minnesota and Bix Real Estate Holdings, LLC, a Minnesota limited liability company (the "Developer").

WITNESSETH:

WHEREAS, pursuant to Minnesota Statutes, Section 469.124 through 469.133, the City has heretofore established Development District No. 7 (the "Development District") and has adopted a development program therefor (the "Development Program"); and

WHEREAS, pursuant to the provisions of Minnesota Statutes, Section 469.174 through 469.1794, as amended (hereinafter, the "Tax Increment Act"), the City has heretofore established, within the Development District, Tax Increment Financing District No. 7-2 (the "Tax Increment District") and has adopted a tax increment financing plan therefor (the "Tax Increment Plan") which provides for the use of tax increment financing in connection with certain development within the Development District; and

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

WHEREAS, the City believes that the development and construction of the Project, and fulfillment of this Agreement are vital and are in the best interests of the City, the health, safety, morals and welfare of residents of the City, and in accordance with the public purpose and provisions of the applicable state and local laws and requirements under which the Project has been undertaken and is being assisted; and

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 a public hearing for which notice was published; and

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

WHEREAS, the Developer intends to lease the Project to Bix Produce Company, LLC, a Delaware limited liability company.

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Definitions. All capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

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

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

City means the City of Little Canada, Minnesota;

County means Ramsey County, Minnesota;

Developer means Bix Real Estate Holdings, LLC, a Minnesota limited liability company, its successors and assigns;

Development District means Development District No. 7, including 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 described in Exhibit A attached to this Agreement;

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

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

Note Payment Date means August 1, 2021, and each February 1 and August 1 of each year thereafter to and including February 1, 2028; 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;

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

Project means the acquisition of an existing facility and to up-fit the facility to food-grade standards for a food processing, warehouse and distribution facility by the Developer on the Development Property located in the City;

Site Improvements means the power upgrades, including without limitation electrical service line upgrades, building power panels and other electrical scope and wiring improvements, to be undertaken on the Development Property;

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 Minnesota Statutes, Section 469.177, which tax increments from the Development Property are calculated in the sole discretion of the City;

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

Tax Increment District means Tax Increment Financing District No. 7-2 located within the Development District, a description of which is set forth in the Tax Increment Financing Plan, which was qualified as an economic development district under the Tax Increment Act;

Tax Increment Financing Plan means the tax increment financing plan approved for the Tax Increment District by the City Council on November 28, 2018, and any future amendments thereto;

Tenant means Bix Produce Company, LLC, a Delaware limited liability company, its successors and assigns;

Termination Date means the earlier of (i) February 1, 2028, (ii) the date the Note is paid as provided in the Note, (iii) the date on which the Tax Increment District expires or is otherwise terminated, or (iv) the date this Agreement is terminated or rescinded in accordance with its terms; and

TIF Note means the Tax Increment Revenue Note (Bix Real Estate Holdings, LLC Project) to be executed by the City and delivered to the Developer pursuant to Article III hereof, the form of which is attached hereto as Exhibit B; and

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

ARTICLE II

REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

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

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

(3) The construction of the Project would not be undertaken by the Developer, and in the opinion of the Developer would not have been or 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 fully with the City with respect to any litigation commenced with respect to the Project.

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

(7) The construction of the Project shall commence no later than April 30, 2019 and barring Unavoidable Delays, will be substantially completed by December 31, 2019.

(8) The Developer will obtain, or cause to be obtained, 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 Project may be lawfully constructed.

(9) The Developer acknowledges that Tax Increment projections contained in the Tax Increment Financing Plan are estimates only and the Developer acknowledges that it shall place no reliance on the amount of projected Tax Increments and the sufficiency of such Tax Increments to reimburse the Developer for a portion of the costs of the construction of the Site Improvements as provided in Article III.

(10) The Developer will not seek a reduction in the market value as determined by the County Assessor of the Project or other facilities, if any, that it constructs on the Development Property, pursuant to the provisions of this Agreement, for so long as the TIF Note remains outstanding.

ARTICLE III

UNDERTAKINGS BY DEVELOPER AND CITY

Section 3.1. Site Improvements and Legal and Administrative Expenses.

(1) The parties agree that the installation of the Site Improvements are essential to the successful completion of the Project. The costs of the Site Improvements shall be paid by the Developer. The City shall reimburse the Developer for the lesser of (a) \$150,000, or (b) the actual costs of the Site Improvements actually incurred and paid by the Developer (the "Reimbursement Amount") as further provided in Section 3.3.

(2) The Developer shall pay the Legal and Administrative Expenses incurred by the City.

Section 3.2. Limitations on Undertaking of the City. Notwithstanding the provisions of Sections 3.1, the City shall have no obligation to the Developer under this Agreement to reimburse the Developer for the Reimbursement Amount, if the City, at the time or times such payment is to be made, is entitled under Section 4.2 to exercise any of the remedies set forth therein as a result of an Event of Default which has not been cured.

Section 3.3. Reimbursement: TIF Note. The City shall reimburse the costs identified in Section 3.1(1) through the issuance of the City's TIF Note in substantially the form attached to this Agreement as Exhibit B, subject to the following conditions.

(1) The TIF Note shall be dated, issued and delivered when the Developer shall have demonstrated in writing to the reasonable satisfaction of the City that the construction of the Site Improvements has been completed and that the Developer has incurred and paid all costs of construction of the Site Improvements, as described in and limited by Section 3.1 and shall have submitted paid invoices for the costs of construction of the Site Improvements in an amount not less than the Reimbursement Amount.

(2) The unpaid principal amount of the TIF Note shall bear simple non-compounding interest from the date of the TIF Note, at 5.50% per annum. Interest shall be computed on the basis of a 360 day year consisting of twelve (12) 30-day months. Interest on the TIF Note accruing from its date of issuance to February 1, 2021 shall be added to the principal of the TIF Note.

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

(4) On each Note Payment Date and subject to the foregoing sentence and the provisions of the TIF Note, the City shall pay, against the principal and interest outstanding on the TIF Note, the Tax Increments received by the City during the preceding six (6) months. All such payments shall be applied first to accrued interest and then to reduce the principal of the TIF Note. Notwithstanding the foregoing, the TIF Note shall terminate prior to the final payment date of February 1, 2028 when the payments of principal and interest on the TIF Note equal \$190,615.

(5) The TIF Note shall be a special and limited obligation of the City and not a general obligation of the City, and only Tax Increments shall be used to pay the principal and interest on the TIF Note. If, on any Note Payment Date, the Tax Increments for the payment of the accrued and unpaid interest on the TIF Note are insufficient for such purposes, the difference shall be carried forward, without interest accruing thereon, and shall be paid if and to the extent that on a future Note Payment Date there are Tax Increments in excess of the amounts needed to pay the accrued interest then due on the TIF Note.

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

(7) The TIF Note shall be governed by and payable pursuant to the additional terms thereof, as set forth in Exhibit B. In the event of any conflict between the terms of the TIF Note and the terms of this Section 3.3, the terms of the TIF Note shall govern. The issuance of the TIF Note pursuant and subject to the terms of this Agreement, and the taking by the City of such additional actions as bond counsel for the TIF Note may require in connection therewith, are hereby authorized and approved by the City.

Section 3.4. Business Subsidies Act.

(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 \$150,000 which is the Reimbursement Amount for the construction of the Site Improvements and that the Business Subsidy is needed because the Project is not sufficiently feasible for the Developer to undertake without the Business Subsidy. The Tax Increment District is an economic development district and the public purpose of the Business Subsidy is to encourage the development of a vacant building for food processing, warehousing and distribution. The Developer agrees that it will cause the Tenant to meet the following goals (the "Goals") in connection with the development of the Development Property. It will cause the Tenant to create at least 18 full time jobs at an hourly wage and benefits totaling of at least \$12.35 per hour plus benefits within two years from the "Benefit Date", which is the earlier of the date the Developer completes the construction of the Project or the Tenant occupies the Project.

(2) If no 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 18 (i.e. number of jobs set forth in the Goals).

(3) The Developer agrees to (i) report the progress of the Tenant 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 Minnesota Statutes, Section 116J.994, Subdivision 7 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 these reports no later than March 1 of each year commencing March 1, 2021, 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 Developer agrees to continue operations within the City for at least five (5) years after the Benefit Date.

(5) There are no other state or local government agencies providing financial assistance for the Project other than the City and the State of Minnesota, acting through the Department of Employment and Economic Development, Economic Development Division, pursuant to that certain Minnesota Job Creation Fund Program Business Subsidy Agreement, as Award Number MJCF-18-0027-H-FY19.

(6) Bix Holdings, LLC is the parent corporation of the Developer.

(7) The Developer certifies that it and the Tenant do not appear on the Minnesota Department of Employment and Economic Development's list of recipients that have failed to meet the terms of a business subsidy agreement.

ARTICLE IV

EVENTS OF DEFAULT

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

(1) Failure by the Developer to timely pay any ad valorem real property taxes and special assessments levied against the Development Property and all public utility or other City payments due and owing with respect to the Development Property.

(2) Failure by the Developer to cause the Project to be completed pursuant to the terms, conditions and limitations of this Agreement.

(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) 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.

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

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

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

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

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

Section 4.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 4.4. No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 4.5. Agreement to Pay Attorney's Fees and Expenses. Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the Developer herein contained, the Developer agrees that it shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses so incurred by the City.

Section 4.6. Indemnification of City.

(1) The Developer (a) releases the City and its governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees (collectively, the "Indemnified Parties") from, (b) covenants and agrees that the Indemnified Parties shall not be liable for, and (c) agrees to indemnify and hold harmless the Indemnified Parties against, any claim, cause of action, suit or liability for loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project or on the Development Property.

(2) Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Developer (or if other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the City

in this Agreement or to any actions undertaken by the City which are not contemplated by this Agreement but shall, in any event and without regard to any fault on the part of the City, apply to any pecuniary loss or penalty (including interest thereon from the date the loss is incurred or penalty is paid by the City at a rate equal to the Prime Rate) as a result of the Project causing the Tax Increment District to not qualify or cease to qualify as an "economic development district" under Section 469.174, Subdivision 12, of the Act and Section 469.176, Subdivision 4c. or to violate limitations as to the use of Tax Increments as set forth in Section 469.176, Subdivision 4c.

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

ARTICLE V

DEVELOPER'S OPTION TO TERMINATE AGREEMENT

Section 5.1. The Developer's Option to Terminate. This Agreement may be terminated by the Developer, if (i) the Developer is in compliance with all material terms of this Agreement and no Event of Default has occurred; and (ii) the City fails to comply with any material term of this Agreement, and, after written notice by the Developer of such failure, the City has failed to cure such noncompliance within ninety (90) days of receipt of such notice, or, if such noncompliance cannot reasonably be cured by the City within ninety (90) days, of receipt of such notice, the City has not provided assurances, reasonably satisfactory to the Developer, that such noncompliance will be cured as soon as reasonably possible.

Section 5.2. Action to Terminate. Termination of this Agreement pursuant to Section 5.1 must be accomplished by written notification by the Developer to the City within sixty (60) days after the date when such option to terminate may first be exercised. A failure by the Developer to terminate this Agreement within such period constitutes a waiver by the Developer of its rights to terminate this Agreement due to such occurrence or event.

Section 5.3. Effect of Termination. If this Agreement is terminated pursuant to this Article V, this Agreement shall be from such date forward null and void and of no further effect; provided, however, the termination of this Agreement shall not affect the rights of either party to institute any action, claim or demand for damages suffered as a result of breach or default of the terms of this Agreement by the other party, or to recover amounts which had accrued and become due and payable as of the date of such termination. Upon termination of this Agreement pursuant to this Article V, the Developer shall be free to proceed with the Project at its own expense and without regard to the provisions of this Agreement; provided, however, that the City shall have no further obligations to the Developer with respect to reimbursement of the expenses set forth in Section 3.2; or to make any further payments on the TIF Note.

ARTICLE VI

ADDITIONAL PROVISIONS

Section 6.1. Restrictions on Use. Until termination of this Agreement, the Developer agrees for itself, its successors and assigns and every successor in interest to the Development Property, or any part thereof, that the Developer and such successors and assigns shall operate, or cause to be operated, the Project as a food processing, warehouse and distribution facility and shall devote the Development Property to, and in accordance with, the uses specified in this Agreement.

Section 6.2. Conflicts of Interest. No member of the governing body or other official of the City shall have any financial interest, direct or indirect, in this Agreement, the Development Property or the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by the Developer or successor or on any obligations under the terms of this Agreement.

Section 6.3. Titles of Articles and Sections. Any titles of the several parts, articles and sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 6.4. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

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

Bix Real Estate Holdings, LLC
Attention: Reed Watson, CEO
3060 Centerville Road
Little Canada, MN 55117

with a copy to:

Ballard Spahr LLP
Attention: Laura L. Krenz
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402

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

City of Little Canada, Minnesota
Attention: City Administrator
515 Little Canada Road East
Little Canada, MN 55117

with a copy to:

Briggs and Morgan, P.A.
Attention: Mary Ippel
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402

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

Section 6.6. Law Governing. This Agreement will be governed and construed in accordance with the laws of the State.

Section 6.7. Expiration. This Agreement shall expire on the Termination Date.

Section 6.8. Provisions Surviving Rescission or Expiration. Sections 4.5 and 4.6 shall survive any rescission, termination or expiration of this Agreement with respect to or arising out of any event, occurrence or circumstance existing prior to the date thereof.

Section 6.9. Assignability of Agreement and TIF Note. This Agreement may be assigned only with the consent of the City, which shall not be unreasonably withheld or conditioned. The TIF Note may only be assigned pursuant to the terms of the TIF Note.

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

By _____
Its Mayor

By _____
Its City Administrator

This is a signature page to the Development Agreement by and between the City of Little Canada, Minnesota and Bix Real Estate Holdings, LLC.

BIX REAL ESTATE HOLDINGS, LLC

By _____
Its Manager Member

This is a signature page to the Development Agreement by and between the City of Little Canada, Minnesota and Bix Real Estate Holdings, LLC.

EXHIBIT A

Description of Development Property

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

052922220016

052922220017

EXHIBIT B

Form of TIF Note

No. R-1

\$_____

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF RAMSEY
CITY OF LITTLE CANADA

TAX INCREMENT REVENUE NOTE
(BIX REAL ESTATE HOLDINGS, LLC PROJECT)

The City of Little Canada, 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 Bix Real Estate Holdings, 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 \$150,000 as provided in that certain Development Agreement, dated as of _____, 2019, as the same may be amended from time to time (the "Development Agreement"), by and between the City and the Developer. Interest on the Note accruing from its date of issuance to February 1, 2021 shall be added to the principal of the Note. The unpaid principal amount hereof shall bear interest from the date of this Note at the simple non-compounded rate of five and one-half percent (5.50%) per annum. Interest shall be computed on the basis of a 360 day year consisting of twelve (12) 30-day months.

The amounts due under this Note shall be payable on August 1, 2021, and on each February 1 and August 1 thereafter to and including February 1, 2028, or, if the first should not be a Business Day (as defined in the Development Agreement), the next succeeding Business Day (the "Payment Dates"). On each Payment Date the City shall pay by check or draft mailed to the person that was the Registered Owner of this Note at the close of the last business day of the City preceding such Payment Date an amount equal to the sum of the Tax Increments (hereinafter defined) received by the City during the six month period preceding such Payment Date. All payments made by the City under this Note shall first be applied to accrued interest and then to principal. This Note is prepayable by the City, in whole or in part, on any date. Notwithstanding the foregoing, this Note shall terminate prior to the final payment date of February 1, 2028 when the payments of principal and interest on the Note equal \$190,615.

The Payment Amounts due hereon shall be payable solely from 90% of tax increments (the "Tax Increments") from the Development Property (as defined in the Development Agreement) within the City's Tax Increment Financing District No. 7-2 (the "Tax Increment District") within its Development District No. 7 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 "Tax Increment Act"). This Note shall terminate and be of no further force and effect following the last Payment Date defined above, on any date upon which the City shall have terminated the Development Agreement under Section 4.2(2) thereof or the Developer shall have terminated the Development Agreement under Article V thereof, on the date the Tax Increment District is terminated, or on the date that all principal and interest payable hereunder shall have been paid in full, whichever occurs earliest.

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

The City's payment obligations hereunder shall be further conditioned on the fact that no Event of Default under the Development Agreement shall have occurred and be continuing at the time payment is otherwise due hereunder, but such unpaid amounts shall become payable if said Event of Default shall thereafter have been cured; and, further, if pursuant to the occurrence of an Event of Default under the Development Agreement the City elects to cancel and rescind the Development Agreement, the City shall have no further debt or obligation under this Note whatsoever. Reference is hereby made to all of the provisions of the Development Agreement, including without limitation Section 3.3 thereof, for a fuller statement of the rights and obligations of the City to pay the principal of this Note, and said provisions are hereby incorporated into this Note as though set out in full herein.

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

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

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

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to have happened, and to be performed precedent to and in the issuance of this Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; and that this Note, together with all other indebtedness of the City outstanding on the date

hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the City to exceed any constitutional or statutory limitation thereon.

IN WITNESS WHEREOF, City of Little Canada, Minnesota, by its City Council, has caused this Note to be executed by the manual signatures of its Mayor and City Administrator and has caused this Note to be dated as of _____, 20__.

City Administrator

Mayor

DO NOT EXECUTE UNTIL PAID INVOICES FOR SITE IMPROVEMENTS ARE GIVEN TO THE CITY - REFER TO SECTION 3.3(1).

CERTIFICATION OF REGISTRATION

It is hereby certified that the foregoing Note was registered in the name of Bix Real Estate Holdings, 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 ADMINISTRATOR</u>
Bix Real Estate Holdings, LLC Attention: Reed Watson, CEO 3060 Centerville Road <u>Little Canada, MN 55117</u>	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____