

## **FIFTH AMENDMENT TO PURCHASE AGREEMENT**

THIS FIFTH AMENDMENT TO PURCHASE AGREEMENT (this "**Amendment**") is dated February \_\_, 2012 ("**Effective Date**"), by and between The Housing and Redevelopment Authority in and for the City of Ramsey, Minnesota, a public body politic and corporate under the laws of the State of Minnesota (the "**Seller**") and TOTI Holdings, LLC, a Minnesota limited liability company (the "**Buyer**").

### **Recitals**

A. Seller and Buyer are parties to that certain Purchase Agreement dated September 15, 2010 (the "**Purchase Agreement**") pursuant to which Seller has agreed to sell and Buyer has agreed to purchase certain real property located in Outlot M, RAMSEY TOWN CENTER ADDITION, and Outlot A, RAMSEY TOWN CENTER FIFTH ADDITION, Anoka County, Minnesota, which legal description shall change to Lot 4, Block 1, COR ONE, Anoka County, Minnesota upon the recordation of the Final Plat, as that term is defined in the First Amendment (the "**Property**"). The Purchase Agreement was amended by that certain Amendment to Purchase Agreement by and between Seller and Buyer dated January 18, 2011 (the "**First Amendment**"); that certain Reinstatement of and Second Amendment to Purchase Agreement by and between Seller and Buyer dated April 21, 2011 (the "**Second Amendment**"); that certain Third Amendment to Purchase Agreement by and between Seller and Buyer dated August 15, 2011 (the "**Third Amendment**"); and that certain Fourth Amendment to Purchase Agreement by and between Seller and Buyer dated November 22, 2011 (the "**Fourth Amendment**").

B. Under the terms of the Purchase Agreement, as amended, the Date of Closing is January 15, 2012. Buyer was not ready, willing and able to close on January 15, 2012.

C. Buyer has proposed to Seller that the Date of Closing be extended; that Seller finance \$762,300.00 of the Purchase Price; and that certain other terms of the Purchase Agreement be amended, and Seller has agreed to do so subject to the terms and conditions set forth herein.

D. Buyer and Seller desire to enter into this Fifth Amendment to memorialize their agreements with regard to the above items.

### **Agreement**

**NOW, THEREFORE**, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

1. All capitalized terms not expressly defined herein shall have the meanings ascribed to them in the Purchase Agreement, as amended.

2. Contemporaneously with the execution of this Amendment, Buyer shall pay to Seller, via certified check or wire transferred funds, a non-refundable extension fee of \$20,000.00. The \$20,000.00 extension fee is consideration for Seller's Agreement to extend the Date of Closing pursuant to the terms of this Amendment, is not considered Earnest Money, is not refundable and shall not be credited against the Purchase Price.

3. Subject to Buyer's right to make the election described in Section 4 below, Buyer shall deposit with Title, on or before 5:00 p.m. on Thursday, March 15, 2012, the sum of \$100,000.00 via certified check or wire transferred funds and an executed Escrow Agreement in substantially the form attached as Exhibit B to the Purchase Agreement. The \$100,000.00 shall constitute "Earnest Money" as

defined in the Purchase Agreement and shall be held and disbursed by Title pursuant to the terms of the Purchase Agreement and the Escrow Agreement. Within five business days after Buyer's deposit of the Earnest Money and the executed Escrow Agreement with Title, Seller shall also deliver to Title an executed copy of an Escrow Agreement in substantially the form attached as Exhibit B to the Purchase Agreement. In addition, the Date of Closing is hereby extended from March 1, 2012 to June 15, 2012.

4. Buyer may, by written notice delivered to Seller on or before 5:00 p.m. on Tuesday, March 6, 2012, elect to proceed pursuant to this Section 4 rather than pursuant to Section 3 above. If Buyer provides Seller with a written notice that Buyer elects to proceed pursuant to this Section 4 on or before 5:00 p.m. on Tuesday, March 6, 2012, Section 3 of this Amendment shall be of no further force and effect; the Date of Closing shall be extended to March 15, 2012; and Section 7(b) of the Purchase Agreement shall be amended and restated in its entirety as follows:

(i) Execute and deliver to Seller, as partial payment of the Purchase Price, a promissory note in the form attached as Exhibit A in the amount of \$705,582.50 (the "**Note**") and execute and deliver to Seller a Mortgage in the form attached hereto as Exhibit B (the "**Mortgage**") which Mortgage secures Buyer's performance of Buyer's obligations under the Note.

(ii) Tender the balance of Purchase Price (\$655,582.50 which is equal to \$1,411,165.00 less the \$50,000.00 of Earnest Money previously disbursed to Seller pursuant to the Restatement of and Second Amendment to Purchase Agreement and less the amount of the Note described in subsection (b)(ii) above) to Seller in wire-transferred funds;

(iii) Reimburse Seller for all Platting Fees Seller has paid to the City and pay any remaining Platting Fees to the City;

(iv) Cause Brian R. Wingses to execute and deliver to Seller a guarantee in the form attached hereto as Exhibit C; and

(v) Pay or provide evidence of payment of the following: real estate taxes, if any, pursuant to the provisions of Section 8; the cost of recording the Limited Warranty Deed from Seller to Buyer; the cost of the Title Commitment, to the extent that the cost exceeds the \$675 that Seller is obligated to pay pursuant to Section 7(a)(vii) above; all premiums and other charges for any title insurance policies Buyer purchases for itself and its lender; all costs associated with Buyer's financing, including but not limited to payment of mortgage registry tax due in connection with filing the Mortgage in the Anoka County land records; and one-half of any reasonable and customary closing fees imposed by any closing agent engaged to conduct the closing of this transaction.

5. Buyer acknowledges and agrees that the Mortgage shall be recorded immediately following the recording of the Warranty Deed from Seller to Buyer and before any other mortgages or liens granted by Buyer to any third party. Seller's obligation to close is contingent upon Seller's obtaining or determining, to Seller's reasonable satisfaction, that Seller can obtain, a title insurance policy insuring the validity and first lien priority of the Mortgage.

6. Except as expressly modified hereby, the terms and conditions set forth in the Purchase Agreement shall remain in full force and effect. To the extent that the Purchase Agreement and this Amendment conflict, the terms and conditions of this Amendment shall govern and control.

7. This Amendment may be executed in two or more counterparts, each one of which may be construed as an original.

IN WITNESS WHEREOF, the undersigned has executed this Fifth Amendment as of the Effective Date.

**SELLER:**

**THE HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RAMSEY, MINNESOTA**, a public body, politic and corporate, under the laws of the State of Minnesota

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Chair

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Executive Director

IN WITNESS WHEREOF, the undersigned has executed this Fifth Amendment as of the Effective Date.

**BUYER:**

**TOTI HOLDINGS, LLC,**  
a Minnesota limited liability company

By: \_\_\_\_\_  
Name: Brian R. Wings  
Its: Chief Manager