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Appellate Court Case No. A08-1814

STATE OF MINNESOTA

IN COURT OF APPEALS

American National Bank of Minnesota, Appellant,

vs.

Housing and Redevelopment Authority
for the City of Brainerd, Respondent.

APPELLANT'S REPLY BRIEF

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STATEMENT OF THE LEGAL ISSUES

I. DID THE CROW WING COUNTY DISTRICT COURT ERR IN ITS APPLICATION OF LAW IN GRANTING THE HRA'S MOTION FOR SUMMARY JUDGMENT AND DENYING ANB'S MOTION FOR SUMMARY JUDGMENT?

The District Court granted the HRA's motion for summary judgment and denied ANB's motion for summary judgment. The issue on appeal is whether the HRA is obligated to fully repay the amount that is due and owing ANB.

STATEMENT OF THE CASE

The District Court erroneously confused the Brainerd HRA's (1) contractual obligation to repay American National Bank of Minnesota (hereinafter "ANB") under a promissory note with (2) the security that was pledged on the Revenue Note. The simple issue is whether the HRA is contractually obligated to fully repay the principal, interest and attorneys' fees due and owing to ANB or whether the HRA is only obligated to the extent of the pledged security.

The promissory note states that the HRA is contractually obligated to fully repay the outstanding amounts due and owing to ANB. ANB loaned $2,159,000.00 to the HRA for the development of market rate and affordable homes in the Brainerd Oaks Project, located in the City of Brainerd. With the proceeds from the loan, the HRA constructed ten homes in the Brainerd Oaks Project.

Unfortunately, the Brainerd Oaks Project did not perform to expectations, as only three of the ten homes have sold. The proceeds from the sales of the three homes were applied to pay down the amount owed by the HRA. The principal balance due and owing ANB is $1,616,893.15, not including interest, attorneys' fees or expenses.

The HRA defaulted under the terms of the Revenue Note because it failed to repay the outstanding balance on maturity, which was July 12, 2007. Because of the default, ANB proceeded to foreclose by action, as explicitly allowed in the Construction Loan Agreement and the Series 2005 Mortgage.

The HRA and ANB brought cross-motions for summary judgment before the District Court. ANB argued that it was entitled to be repaid the entire amount it was

owed, as contractually agreed by the HRA in the Revenue Note. The HRA argued that its contractual obligation to repay the HRA only extended to the pledged security, even in the event the pledged security was insufficient to satisfy the amount due and owing ANB.

The District Court granted ANB a decree of foreclosure but refused to enter money judgment in favor of ANB. The District Court ruled that ANB is only entitled to be repaid from the pledged collateral; the seven remaining homes.

The issue on this appeal is whether the HRA is contractually obligated to fully repay the amount due and owing ANB. The Crow Wing County District Court ruled that the HRA is only obligated to the extent of its pledged security, despite no authority found in any of the Loan Documents[1]. To put it another way, is there something different about a promissory note signed by an HRA compared to a promissory note signed by any other borrower?

[1] The Loan Documents referred to are as follows: Resolution 469, Resolution 471, the Taxable Housing Revenue Note, Series 2005 " Revenue Note", Construction Loan Agreement and Note, Combination Mortgage, Assignment of Rents, Security Agreement and Fixture Financing Statement, Investment Letter and Bond counsel Opinion

STATEMENT OF FACTS

Resolution 469

1. On July 8, 2005, the HRA's Board of Commissioners entered into Resolution No. 469 which, among other things, authorized the issuance and sale of the Revenue Note to ANB in the aggregate principal amount of $2,159.200.00. The primary purpose of the Revenue Note was to finance the construction of ten homes in the Brainerd Oaks Development. The goal of the Brainerd Oaks Development was to promote diverse housing opportunities in the City of Brainerd. **AA-041.**

2. Resolution No. 469 provided that the Revenue Note would mature on July 12, 2007 and bear interest beginning on August 1, 2005 and the first day of each month thereafter. **AA-042.**

3. Resolution No. 469 provided that payment of principal and interest due on the Note was to be *secured* by (i) a Combination Mortgage, Security Agreement, and Fixture Financing Statement, dated July 1, 2005 (the "Series 2005 Mortgage"), made by the HRA in favor of ANB, (ii) proceeds of the sales of ten homes; (iii) an interest reserve fund in the amount of $141,000.00; and (iv) a pledge from the HRA to place all net proceeds from the sale of two commercial properties within the Brainerd Oaks Development. **AA-042**. *Emphasis added.*

Taxable Housing Revenue Note, Series 2005

4. On July 12, 2005, ANB and the HRA executed the Revenue Note. **AA-053-54.**

5. The Revenue Note states that the HRA was indebted to ANB and promised to pay $2,159,200.00. **AA-049.**

6. The Revenue Note provides that the HRA "acknowledges itself to be indebted and for value received hereby *promises to pay* to the Registered Owner [ANB] specified above or registered assigns, *the Principal Amount* specified above [$2,159,200.00], or so much thereof as may have been disbursed pursuant to the terms and conditions of the Construction Loan Agreement, dated July 12, 2005 (the "Construction Loan Agreement"), between the Authority and American National Bank of Minnesota, plus accrued interest on so much of the principal amount of the Note which may be disbursed from time to time and remains unpaid, at the variable interest rate described herein." **AA-049, 1st ¶.** *Emphasis added.*

7. The principal and interest on the Revenue Note were "payable *primarily* from revenues resulting from the sale of the ten (10) homes to be constructed with the proceeds of the Note as set forth in the Resolution to which reference is made for a full statement of rights and powers thereby conferred." **AA-050, 4th¶.** *Emphasis added.* Nowhere in any of the documents does the HRA limit the source of principal and interest payment. **AA-049.**

8. "Payment of principal and interest due on the Note will be *secured* by (i) a Combination mortgage, Security Agreement, and Fixture Financing Statement, dated as of July 1, 2005 (the "Series 2005 Mortgage"), made by the Authority in favor of American National Bank of Minnesota, the original purchaser of the Note; (ii) proceeds of the sales of the ten (10) homes to be constructed with the proceeds of the Note; (iii) an

interest reserve fund in the amount of $141,000 to be deposited with the Purchaser for the payment of interest payments during the construction period; and (iv) a pledge from the Authority to place all net proceeds from the sale of the two commercial properties within the Brainerd Oaks Development, when sold, in trust for the security of the Note." **AA-050, 4th ¶.** *Emphasis added.*

9. The Revenue Note states that "[i]n the event of any failure to make when due any interest payments or principal and interest payments required under this Note, the interest payment or principal and interest payment so in default shall *continue* as an obligation hereof until the interest payment or principal payment in default shall have been *fully* paid, and interest shall be due thereon (including, to the extent permitted by law, interest on overdue installments of interest) at the applicable variable rate of interest borne on this Note." **AA-051, 2nd ¶.** *Emphasis added.*

10. The Revenue Note states that in the event of default, ANB is entitled to recover "any attorney's fees incurred by the Registered Owner [the HRA] in collecting or enforcing payment of interest or principal of this Note...." **AA-051, 3rd ¶.**

Construction Loan Agreement and Note

11. The HRA's Board of Commissioners entered into Resolution 471 which granted authority to the HRA's Chairperson and Executive Director to negotiate and execute the Construction Loan Agreement. **AA-059.**

12. On July 12, 2005, ANB and the HRA executed the Construction Loan Agreement whereby ANB was the lender and the HRA was the borrower. The amount of the construction loan agreement was $2,159,200.00.

13. The Construction Loan Agreement provides that in the event of default, ANB is entitled "to foreclose any mortgage, lien, security interest or other encumbrance on the Collateral, and in the case of the combined mortgage and Security Agreement to foreclose either by advertisement or action." **AA-117, 15(g).**

Combination Mortgage, Assignment of Rents, Security Agreement and Fixture Financing Statement

14. The Series 2005 Mortgage, which was executed on July 12, 2005, granted ANB a first priority security interest and mortgage lien in 10 pieces of real estate located in Crow Wing County.

15. The Series 2005 Mortgage states that "[t]he Mortgagee [the Bank] may (and is hereby authorized and empowered to) foreclose this Mortgage by *action*[2] *or advertisement*, pursuant to the statutes of the State of Minnesota in such case made and provided, power being expressly granted to sell the Mortgaged Property at public auction and convey the same to the Mortgagee in fee simple and, out of the proceeds arising from such sale, to pay all Indebtedness secured hereby with interest, and all legal costs and charges of such foreclosure and the maximum attorneys' fees permitted by law, which costs, charges and fees the Mortgagor agrees to pay." **AA-074, ¶ 17(c).** *Emphasis added.*

16. The HRA sold three properties in the Brainerd Oaks Project and as a result, ANB released its interest in the three properties and applied the money to the balance owed by the HRA. **AA-098.**

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[2] By statute, a foreclosure by action always includes the right to a deficiency judgment Minn Stat §§ 581.09 and 582 30

17. ANB retains a first priority security interest in the remaining seven pieces of real estate.

18. Payments and performance under the above-described loan documents are in default, and the debt of the HRA to ANB under said loan documents is now due and payable in full in the following amount:

Principal	$1,616,893.15
Interest to 04/16/2008	$374,521.37
(Per Diem $404.22)	
Total Amount Due	$1,991,414.52.

The HRA is liable to ANB in the sum of $1,958,268.48, plus additional accrued interest, costs of collection and attorneys' fees.

19. The delinquency in payments and failure of performance under the Loan Documents constitute events of default and entitle the Bank to exercise all of the remedies afforded to it under said Loan Documents.

20. The Loan Documents provide that the HRA shall pay or reimburse ANB for its fees, costs, and expenses incurred by ANB in any proceedings to collect under said Loan Documents, including attorneys' fees. ANB is entitled to an award of attorneys' fees, out-of-pocket expenses, and other costs incurred plaintiff in these proceedings and in efforts to address the defaults under the Loan Documents. The HRA is indebted to ANB for said collection costs. ANB has incurred attorneys' fees in the amount of $17,351.00. **AA-211-213**. In addition to the attorneys' fees incurred, ANB has incurred costs of collection in the amount of $1,058.93 and attorney expenses in the amount of

$34.07 because of the HRA's default. **AA-211.** Additionally, ANB has incurred additional attorneys' fees and expenses as the result of this appeal, which are recoverable.

21. The HRA is "liable in contract or tort in the same manner as a private corporation." **Minnesota Statutes § 469.014.**

22. ANB has a valid, perfected, first security interest in the seven homes.

Bond Counsel's Opinion Letter

23. Kennedy & Graven Chartered, acted as bond counsel with regard to the transaction with the HRA. **AA-156.**

24. Kennedy & Graven stated that the Revenue Note and Series 2005 Mortgage are valid and binding obligations of the HRA and are enforceable in accordance with their terms. **AA-156.**

25. The term *exclusive* or *exclusively* is nowhere in bond counsel's opinion from Kennedy & Graven dated July 12, 2005. **AA-156.**

26. No one at Kennedy & Graven objected to any of the language in the final versions of the Revenue Note, Series 2005 Mortgage or Construction Loan Agreement. **AA-208 & 209.**

27. No one from the HRA objected to any of the language in the final versions of the Revenue Note, Series 2005 Mortgage or Construction Loan Agreement. **AA-209.**

ARGUMENT AND LAW

I. THE CROW WING COUNTY DISTRICT COURT ERRED IN GRANTING THE HRA'S MOTION FOR SUMMARY JUDGMENT AND DENYING ANB'S MOTION FOR SUMMARY JUDGMENT.

A. Introduction

An ordinary note, with a contractual obligation to repay, is collectible against an ordinary borrower. There is nothing different in this case. Nothing in the Revenue Note, the other Loan Documents, or in the statutes changes that principle where the borrower is an HRA. Whatever is or is not pledged as security on a note has nothing, whatsoever, to do with a promise to pay on the note.

The Revenue Note is a common contract. It lays out the obligations of each party. It is a contract to borrow money and repay the borrowed money, including principal, interest and attorneys' fees. **AA-049.**

The issue in this case can be more clearly understood through a hypothetical: assume that the HRA borrowed money from ANB, signed a promissory note, pledged no security on the promissory note, and the promissory note states that the loan will be paid primarily from the proceeds of sales of homes. Also assume that the HRA defaulted under the terms of the promissory note. Under those facts, is the HRA contractually obligated to repay the money? Following the HRA's argument and the district court's decision, the answer is no because the HRA's obligation to repay ANB only extends to pledged security. That is wrong. The promissory note obligates the HRA to repay the amount it borrowed, whether or not security was pledged for the promissory note.

The various provisions in the documents which describe the collateral which secures repayment are a red herring. There is nothing in the description of the security which changes ANB's rights and the HRA's obligations under the Revenue Note itself.

B. Standard of Review

The standard of review on a summary judgment decision is a determination of (1) whether the district court erred in its application of the law and (2) whether any genuine issues of material fact exist. Harbal v. Fed. Land Bank of St. Paul, 449 N.W.2d 442, 446 (Minn. App. 1989) *review denied* (Minn. Feb 21, 1990). The construction of a statute, which is at issue in this case, is a question of law that is subject to de novo review by the Minnesota Court of Appeals. Harbal, 449 N.W.2d at 446. The construction and effect of a contract is a question of law, unless the contract is ambiguous. Denelsbeck v. Wells Fargo & Co., 666 N.W.2d 334, 346 (Minn. 2003).

C. The District Court erroneously granted summary judgment in favor of the HRA

Nothing in the Revenue Note or the other Loan Documents limits the HRA's obligation to repay ANB. The District Court ruled that the Revenue is payable only from the pledged security. **AA-269.** The District Court went further and stated that the "specifically enumerated repayment sources" means that the monies borrowed by the HRA were "meant to be repaid solely from the four sources listed." **AA-269.** The decision was in error. The District Court erroneously read terms in the Revenue Note and the Loan Documents that do not exist. There is no language limiting payment to the

pledged security. The clear language of the Revenue Note requires ANB to be repaid in full, not solely from the collateral. **AA-049**.

The District Court ruled that the Revenue Note satisfied the requirements of Minnesota Statutes § 469.034, subd. 1. **AA-269.** Because this issue deals with the construction of a statute, it is reviewed de novo. The District Court, in error, held that because the Revenue Note satisfied Minnesota Statutes § 469.034, subd. 1, the amount due and owing to ANB was exclusively payable from the pledged security. **AA-269**. Neither the statute nor the Revenue Note limits the sources of repayment.

The issue on this appeal is a simple one, is the HRA obligated to fully repay the principal, interest and attorneys' fees that are due and owing to ANB or is HRA's obligation to repay ANB limited to the pledged security?

D. The HRA issued a bond pursuant to Minnesota Statutes § 469.034, subd. 1

To finance the Brainerd Oaks Project, the HRA issued a bond pursuant to Minnesota Statutes § 469.034, subd. 1. The type of bond the HRA issued was a Revenue Note. **Minn. Stat. § 469.034, subd. 19** (defining the term bond as a note). The Revenue Note was in the amount of $2,159,200.00. **AA-049.** The HRA pledged security for the Revenue Note. **AA-049.** There is no dispute as to the pledged security: (1) The Series 2005 Mortgage, (2) the sale proceeds from ten homes, (3) an interest reserve fund in the amount of $141,000.00 and (4) the proceeds from the sale of two (2) commercial properties. **AA-050, 4th ¶.** The Revenue Note did not limit the sources of payment to the pledged security. **AA-049.**

Minnesota Statutes § 469.034, subd. 1, provides the HRA with the authority to issue the Revenue Note. "An authority may issue bonds for any of its corporate purposes. The bonds *may be the type the authority determines,* including bonds on which the principal and interest are payable exclusively from the income and revenues of the project financed with the proceeds of the bonds, or exclusively from the income and revenues of certain designated projects, whether or not they are financed in whole or in part with the proceeds of the bonds." **Minn. Stat. § 469.034, subd. 1.** *Emphasis added.* Because the Legislature used the term "including," it makes the examples found in the statute non-exclusive. There is no limitation as to the type of bond the HRA could issue.

There are two requirements that the HRA had to follow in issuing the Revenue Note pursuant to Minnesota Statutes § 469.034, subd. 1: (1) the Revenue Note must be issued for one of the HRA's corporate purposes and (2) the Revenue Note be the type the HRA determines. **Minn. Stat. § 469.034, subd. 1.**

The first requirement was met because the HRA issued the Revenue Note to promote diverse housing opportunities in the City of Brainerd. **Minn. Stat. §469.001. AA-041.** Additionally, the second requirement was met because the HRA dictated the terms and conditions of the Revenue Note. **AA-160.** (stating that HRA's counsel prepared the initial draft of all the documents in the Bond Transcript, with the exception of the Construction Loan Agreement).

Minnesota Statutes § 469.034, subd. 1, grants the HRA the authority to determine the type of bond to issue. Minnesota Statutes § 469.034, subd. 1, provides examples of the types of bonds the HRA can issue. The statute places no restrictions or limitations on

the types of bonds it can issue or how to structure payment on the bonds. Minnesota Statutes § 469.034, subd. 1, provides the language that the HRA could have used to make principal and interest payable exclusively from the pledged security. The HRA did not make the pledged security the exclusive source of payment on principal and interest. **AA-049.**

In this case, the HRA determined the type of bond (the Revenue Note) to issue because the HRA drafted the Revenue Note. **AA-160**. The HRA chose not to make the principal and interest payable exclusively from the pledged security. **AA-049.** Nowhere in the Revenue Note does it state that interest and principal is payable exclusively from the Brainerd Oaks Project. **AA-049.** The Revenue Note simply designated the pledged security. There is a distinct difference between what is pledged as security and ANB's ability to go beyond the pledged security in the event that the security does not cover the outstanding amount due and owing. Again, the HRA could have made principal and interest payable exclusively from the pledged security. Minnesota Statutes § 469.034, subd. 1, provides the exact language to make principal and interest payable exclusively from the security. The HRA did not make principal and interest payable exclusively from the security. The Revenue Note does *not* state that principal and interest are payable exclusively from the income and revenues of the Brainerd Oaks Project.

E. <u>The HRA is in default</u>

The HRA failed to repay the Revenue Note on its maturity date of July 14, 2007, which was an event of default. **AA-200.** As a result, the HRA is indebted to ANB in the principal amount of $1,616,893.15. **AA-200.** Although the HRA pledged security for

payment on the Revenue Note, it did not limit repayment of principal and interest to the pledged security. **AA-049.** The HRA and ANB did not contract to make principal and interest payable exclusively from the pledged security.

F. The HRA is contractually obligated to repay the ANB

Because the HRA issued the Revenue Note pursuant to Minnesota Statutes § 469.034, subd. 1, the next step is to determine the parties' contractual obligations under the Revenue Note. The HRA is "liable in contract or in tort in the same manner as a private corporation." **Minn. Stat. § 469.014.** The HRA must be held to its contractual obligation, to fully repay the amount it owes ANB. The District Court failed to do so and this Court must require the HRA to abide by its contractual obligation to fully repay ANB.

The simple issue is whether the HRA is contractually obligated to fully repay the principal, interest and attorneys' fees due and owing to ANB or whether the HRA is only obligated to the extent of the pledged security. The Revenue Note unequivocally states that the HRA was contractually obligated to pay back ANB. "[T]he interest payment or principal and interest payment so in default shall continue as an obligation hereof until the interest payment or principal payment in default shall have been fully paid...." **AA-049 & 051.**

The District Court, in its decision, stated that "[t]he Revenue Note is payable from the sale of the homes in the financed project; an interest reserve funded by the Revenue Note; and a pledge of proceeds from the sale of commercial properties in the project."

AA-269. The District Court did not require the HRA to abide by what it contractually agreed to do. That was in error.

The HRA contracted to repay $2,159,200.00, plus accrued interest and attorneys' fees to ANB. **AA-049 & 051.** The HRA contracted that in the event of default, the interest and principal so in default "shall *continue* as an obligation hereof until the interest payment in default shall have been *fully* paid...." **AA-051, 2nd ¶.** *Emphasis added.* The HRA did not contract to repay the Revenue Note solely from the pledged security. Minnesota Statutes § 469.034, subd. 1, provided the HRA with the exact language to make principal and interest exclusively payable from the pledged security. The HRA did not use this language and did not contract to limit payment from the pledged security. Consequently, the HRA is contractually obligated to fully repay ANB.

Despite the clear language in the Revenue Note, the District Court ruled that the HRA's obligation was solely limited to the pledged security. There is nothing in the Revenue Note that states that the HRA's obligation to repay ANB is limited to the pledged security.

Nowhere in the Revenue Note does it state that payment is to come solely from the sale of the homes, an interest reserve fund and a pledge of the proceeds from the sale of the commercial properties. The pledged security is vastly different than the sources of repayment.

The HRA contractually agreed to repay the amount it borrowed from ANB. **AA-049.** The HRA contractually agreed that its obligation to repay the outstanding principal and interest balance was a continuing obligation until the amount was paid in full. **AA-**

049. Despite the plain language of the Revenue Note, which contractually obligates the HRA to fully repay ANB, the District Court ruled that ANB is only entitled to be repaid from the pledged security. **AA-269** The District Court ignored the express contractual obligations of the HRA and limited its obligation to repay ANB to the pledged security. That is not the HRA's contractual obligation under the Revenue Note.

Minnesota Statutes § 469.034, subd. 1, allows the HRA to issue bonds of the type that it determines. That section does not limit the types of bonds the HRA can issue.

The HRA had a full and fair opportunity to make the payment of principal and interest exclusively payable from the pledged security. The HRA did not do so. In fact, the HRA drafted the Revenue Note. The HRA could have easily followed one of the examples of the types of bonds found in Minnesota Statutes § 469.034, subd. 1 and stated that principal and interest are payable exclusively from the secured sources. The HRA failed to do so. It cannot now claim that it intended to do so or that it was its understanding that principal and interest were payable exclusively from the secured sources.

G. The terms of the Revenue Note dictate the HRA's obligations

In the summary judgment proceedings, the HRA attempted to shirk its contractual obligations by hiding behind terms commonly used by attorneys that routinely deal with bonds: recourse, non-recourse general obligation and full faith and credit. Those terms are nowhere to be found in the Revenue Note or in any of the other Loan Documents.

The HRA's refutation is likely to be that conventional wisdom, in the bond world, is that there are only two types of bonds: (1) the type where the HRA is forced to levy a

tax if necessary to repay and (2) a bond where repayment of an obligation is to come solely from pledged security. That very well may be the conventional wisdom but Minnesota Statutes § 469.034, provides otherwise. The statute does not only provide for those two types of bonds. That fact is evidenced by this case. This Revenue Note does not fall into either of these two categories, but is nevertheless a bond pursuant to Minnesota Statutes § 469.034, subd. 1. The bond was issued for one of the HRA's corporate purposes and the HRA determined the type of bond to issue. The HRA drafted the Revenue Note; it had the opportunity to have drafted it to make principal and interest payable exclusively from the security if that had been the arrangement.

The HRA's obligations are found solely in the Revenue Note. Terms cannot be implied in the Revenue Note to determine the HRA's contractual obligations. The terms recourse, non-recourse, general obligation and full faith and credit cannot be read into the Revenue Note. Although those terms may be common bond terms, they are nowhere in the Revenue Note.

Requiring the HRA to fulfill its contractual obligation will not turn the municipal bond world upside down or invite a slew of lawsuits. This is a unique case. There is nothing to suggest that these are boilerplate documents. This case is specific to the terms used in the Revenue Note. Had the Revenue Note read "principal and interest is payable exclusively from the income and revenues of the Brainerd Oaks" project, ANB would not be before this Court. The HRA failed to limit the sources of repayment and as such, must be required to fully repay ANB.

A potential source of confusion for the District Court was the fact that the HRA argued that because it did not pledge its full faith and credit or general obligation pursuant to Minnesota Statutes § 469.034, subd. 2, ANB is only entitled to be repaid from the proceeds of the pledged security. The District Court agreed with the HRA's argument. That was in error. At no point has ANB argued that the HRA pledged its general obligation or its full faith and credit. The term general obligation is defined as an obligation that pledges the full faith and credit of the HRA for the payment of a debt. **Minnesota Statutes § 475.51, subd. 10.** The HRA did not pledge its full faith and credit as security in this transaction.

Despite the fact that the HRA did not pledge its full faith and credit, the HRA is still obligated to abide by its contractual obligations. The HRA is liable in contract and tort, as any private corporation. **Minn. Stat. § 469.014.** The fact that the HRA did not pledge its full faith and credit simply means that the HRA cannot be forced to levy a tax to satisfy the amounts it is contractually obligated to pay. ANB is not asking for a tax to be levied. Although ANB cannot force the HRA to levy a tax to repay the money, the HRA is still liable to fulfill its contractual obligation to repay ANB.

The HRA cannot be allowed to hide behind poor draftsmanship. Neither the Revenue Note nor the other Loan Documents state that the principal and interest payments are to come exclusively from the pledged security. The Revenue Note states the opposite: the HRA "acknowledges itself to be indebted and for value received hereby *promises to* pay to the Registered Owner (ANB)...the Principal Amount...plus accrued

interest." **AA-049.** The HRA must be required to fully repay the amount that it owes, as it contractually agreed to do.

Neither the HRA nor the District Court identified any language that limits the HRA's obligation to fully repay the Revenue Note. Both failed to do so because there was no limitation on the HRA's obligation. This Court must hold the HRA to its contractual obligation. The HRA agreed to fully repay ANB and must do so.

CONCLUSION

The HRA is contractually obligated to fully repay ANB. The HRA's obligation extends to principal, interest, attorneys' fees and costs. The HRA followed the requirements of Minnesota Statutes § 469.034, when it issued the Revenue Note. It contracted to repay ANB. The District Court erroneously ruled that repayment to ANB is limited to the pledged security. Nowhere in the documents does it so state. The HRA is contractually obligated to fully repay ANB. The District Court's decision must be reversed and the issue of ANB's attorneys' fees and costs must be remanded to the District Court.

Respectfully Submitted,

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Dated: November 14, 2008

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