1. Call to Order
2. Roll Call: Ellingson-Allendorf-Acomb-Wiersum-Bergstedt- Wagner-Schneider
3. Approval of Agenda
4. Approval of Minutes: April 20, 2015
5. Business Items:
   A. Music Barn Apartments TIF Pooling Request
      Recommendation: Adopt the resolution (4 Votes)
6. Adjourn
1. **Call to Order**

President Schneider called the meeting to order at 8:47 p.m.

2. **Roll Call**

EDA Commissioners Tony Wagner, Dick Allendorf, Patty Acomb, Brad Wiersum, Tim Bergstedt and Terry Schneider were present. Bob Ellingson was excused.

3. **Approval of Agenda**

Bergstedt moved, Wagner seconded a motion to accept the agenda, as presented. All voted “yes.” Motion carried.

4. **Approval of Minutes: March 23, 2015**

Bergstedt moved, Wiersum seconded a motion to approve the March 23, 2015 minutes. Allendorf, Acomb, Wiersum, and Bergstedt voted “yes.” Wagner and Schneider abstained. Motion carried.

5. **Business Items:**

   A. **Resolutions adopting a Redevelopment Plan, TIF contract for At Home Apartments**

   Wischnack gave the staff report.

   Wagner moved, Wiersum seconded a motion to
   1. Adopt resolution 2015-02 establishing the redevelopment project, redevelopment plan, and establishing and adopting a tax increment financing district and plan
   2. Adopt resolution 2015-03 approving a contract for private development

   Allendorf, Wiersum, Bergstedt, Wagner and Schneider voted “yes.” Acomb voted “no.” Motion carried.

6. **Adjournment**

Wiersum moved, Bergstedt seconded a motion to adjourn the meeting at 8:48 p.m. All voted “yes.” Motion carried.
Respectfully submitted,

David E. Maeda  
City Clerk
EDA Agenda Item # 5A  
Meeting of May 18, 2015

Brief Description       Music Barn Apartments TIF Pooling Request

Recommendation         Adopt the resolution

Background

As part of the Music Barn Apartments proposal, the applicant will be making all 27 units affordable to those at 50% Area Median Income ($43,300 for a family of four) or less. This was noted as 60% in the EDAC report. The developer clarified at the meeting that the units would be at 50% Area Median Income. In June, the developer will make an application to Minnesota Housing for housing tax credits. If tax credits are awarded later this year, there will still be a gap in the financing. The developer has requested $500,000 in TIF pooling funds from the city to assist in filling the gap.

EDAC review and recommendation

On April 30, the EDAC reviewed the request, including a Contract for Private Development. The staff report can be found on pages A1 to A3. In general, the commission agreed that the request for funds was appropriate using the TIF Pooling Council Policy (found on pages A4 to A5) as a guide; however, the amount of funds being requested prompted discussion with the commission. Because the applicant still needed to apply to Minnesota Housing for funding assistance, the total gap will not be known until the funding awards are made later this fall. The commission and applicant agreed to a review of what that funding gap is after final sources and uses are known.

On a 6-0 vote, the commission recommended that the city council approve the proposal with the caveat that prior to the execution of the contract the EDAC will review all committed funding sources and uses for the project.

Since the EDAC review

Since the EDAC review, the Contract for Private Development (pages A6-A57) has been updated in Section 3.3 with more details concerning the review of funding sources as requested by the EDAC, and the reduction of the funds if the city’s financial advisor determines that the full request is not needed.

Recommendation

Staff recommends the EDA adopt the resolution (pages A58 to A59) approving the Contract for Private Development, but that prior to execution of the contract, a review of sources and uses and the total gap will be completed by the EDAC and the city’s financial advisor.
Submitted through:
   Geralyn Barone, City Manager
   Julie Wischnack, AICP, Community Development Director

Originated by:
   Elise Durbin, AICP, Community Development Supervisor
EDAC Agenda Item #4  
Meeting of April 30, 2015

**Brief Description**  
Shelter Corporation-Music Barn TIF Pooling Request

**Recommendation**  
Recommend the EDA approve the Contract for Private Development

**Background**

In May 2014, the EDAC reviewed a plan from Shelter Corporation for a multi-family development at 5740 and 5750 Shady Oak Road, commonly referred to as “The Music Barn” (page A1). At that meeting, the EDAC was supportive of exploring a funding inquiry and voted to have a subcommittee review the request (pages A2-A4).

**Current Proposal**

The property is located approximately one-half mile west of the proposed Opus LRT station. A total of 27 two- and three-bedroom units are planned for general occupancy. All of the units will be targeted for those at 60 percent Average Median Income ($51,960 for a family of four) or less. The barn will remain on the site and be utilized as a community space as well as offices for the property manager (pages A5-A6).

**Funding Request**

In June, the developer will make an application to Minnesota Housing for housing tax credits. If tax credits are awarded (recommendations are made later this year), there will still be a gap in the financing. The developer has requested $500,000 in TIF pooling funds from the city to assist in filling the gap.

**Subcommittee Review**

Commissioner Aanenson and Commissioner Knickerbocker met on July 21, 2014 as a subcommittee to discuss the funding request.

*TIF Pooling Policy*

As part of their review, the subcommittee went through the TIF Pooling council policy (pages A7 to A8). They specifically analyzed the request with the evaluation criteria:

- The project supports reinvestment in an identified village center and addresses the goals set out in the comprehensive plan for that center.
The proposed development is within the Opus regional village center. One of the strategies outlined in the comprehensive plan for this area is for additional residential development to expand housing choice.

- Priority will be provided for projects that are within a “regional” village center or support transit areas.

  The proposed development is within the Opus regional village center.

- Weight will be given when the proportion of affordability is greater than what is customary in other tax increment financed projects in the city, overall affordability of 20% of units (usually at 60% AMI for rental).

  The development will be 100% affordable to those at 60% area median income or less. The units will be required to stay affordable for a minimum of 30 years.

- The project may request both tax increment financing and pooling dollars as long as the project has provided data that “but for” the additional pooling dollars, this project would not occur.

  The project is only requesting TIF pooling funds.

- If the project is receiving funds from other sources, the pooled dollars would be the last source utilized unless it impacts other sources.

  The developer will be submitting a funding request to Minnesota Housing in June 2015. The order of the use of funds will be outlined in a Contract for Private Development and will depend upon the contracts of the other funding sources.

Connection to Opus LRT Station

The subcommittee reviewed the site in proximity to the Opus LRT station, and how pedestrians and bicyclists could access the station. While the site is on the edge of the half-mile radius (the distance that research uses as to how far people will walk to LRT), the site is outside of a 10-minute walkshed because of a lack of pedestrian connections (page A9). As part of the Opus Systems Analysis completed in 2013, a series of pedestrian connections are under consideration in order to expand the walkshed. Some of these connections have been added to the city’s Capital Improvement Plan for construction in 2018 (page A10). These connections will bring the 10 minute walkshed to near the development site.

In addition to pedestrian connections, there is the ability to access the station via bicycle. Again, research shows that most people are willing to bike from one to three miles to get to LRT. The development site sits within this distance and will be accessible by bike to the Opus station.
Subcommittee Recommendation

The subcommittee was supportive of both the project and the TIF pooling request.

Comparison to other affordable housing projects

When reviewing requests for assistance, staff prepares a comparison of the request to other projects where the city has provided assistance. The chart on page A11 has been updated to show the comparison. This request calculates to $617 per unit per year, which is less than the other TIF pooling project at The Ridge at $657 per unit per year. Homes Within Reach has a lesser amount of assistance per unit per year.

Contract for Private Development

Based upon these previous discussions, a Contract for Private Development (pages A12-A62) for the use of TIF pooling funds has been drafted. Key items in the agreement are:

- TIF Pooling assistance up to $500,000, which will be used for the construction of building.
- Construction to begin by July 1, 2016 and be completed by December 31, 2017.
- All 27 units will be affordable to those at 60% AMI or less for 30 years. Both the rent and the income will be restricted.
- Property management covenant.

Recommendation

Staff recommends the EDAC recommend the EDA approve the Contract for Private Development.

Submitted through:
  Julie Wischnack, AICP, Community Development Director

Originated by:
  Elise Durbin, AICP, Community Development Supervisor
Policy Number 2.14
Tax Increment Financing Pooling Funds

Purpose of Policy: This policy establishes evaluation criteria that guide the city council in consideration of use of tax increment financing pooling funds

Introduction

Under the Minnesota Statutes Chapter 469, at least 75 percent of tax increment in a redevelopment tax increment financing (TIF) district must be spent on eligible activities within the district, leaving up to 25 percent of the funds to be pooled and therefore eligible to be spent outside of the district, but within the project area.

An exception to the pooling funds is for affordable rental housing. The city may allow the pooling allowance to be increased to 35 percent, which can then go to finance certain affordable housing projects. The project may be located anywhere in the city, and not limited to the project area. Each financed project must be rental housing that is eligible for federal low income housing tax credits. The amount of the assistance is also limited to any amount that satisfies tax credit rules.

The council is aware that use of such TIF pooled funds may be of benefit to the city and will consider requests for pooled funds subject to this council policy. The council considers the use of these funds to be a privilege, not a right.

It is the judgment of the council that TIF pooled funds is to be used on a selective basis. It is the applicant’s responsibility to demonstrate the benefit to the city, and that they should understand that although approval may have been granted previously by the city TIF pooled funds for a similar project, the council is not bound by that earlier approval.

Evaluation Criteria

The city will use the following criteria when evaluating a development proposal requesting the use of TIF pooled funds:

- The project supports reinvestment in an identified village center and addresses the goals set out in the comprehensive plan for that center.
- Priority will be provided for projects that are within a “regional” village center or support transit areas.
- Weight will be given when the proportion of affordability is greater than what is customary in other tax increment financed projects in the city, overall affordability of 20% of units (usually at 60% AMI for rental).
- The project may request both tax increment financing and pooling dollars as long as the project has provided data that “but for” the additional pooling dollars, this project would not occur.
• If the project is receiving funds from other sources, the pooled dollars would be the last source utilized unless it impacts other sources.

**Other Provisions**

• A project will not normally be given financing approval until all city planning and zoning requirements have been met. Planning and zoning matters may be considered simultaneously with preliminary approval of the financing.

• The city is to be reimbursed and held harmless for any out-of-pocket expenses related to the TIF pooling funds, but not limited to, legal fees, financial analyst fees, bond counsel fees, and the city’s administrative expenses in connection with the application. The applicant must execute a letter to the city undertaking to pay all such expenses.

• The applicant will be required to enter into a development agreement with the city outlining the terms of the use of TIF pooled funds.

Adopted by Resolution No. 2011-039
Council Meeting of May 16, 2011
CONTRACT
FOR
PRIVATE DEVELOPMENT
between
ECONOMIC DEVELOPMENT AUTHORITY
IN AND FOR THE
CITY OF MINNETONKA, MINNESOTA,
and
COMMUNITY HOUSING CORPORATION OF AMERICA, INC.
and
[TBD LIMITED PARTNERSHIP]
Dated __________, 201_
This document was drafted by:
KENNEDY & GRAVEN, Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, Minnesota  55402
Telephone:  (612) 337-9300
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SCHEDULE B Certificate of Completion
SCHEDULE C Declaration of Restrictive Covenants
CONTRACT FOR PRIVATE DEVELOPMENT

THIS CONTRACT FOR PRIVATE DEVELOPMENT, made on or as of the ____ day of _________, 2015 (the “Agreement”), is by and between the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Authority”), COMMUNITY HOUSING CORPORATION OF AMERICA, INC., a Delaware nonprofit corporation (“CHCA”), and [TBD LIMITED PARTNERSHIP], a Minnesota limited partnership (the “Owner”).

WITNESSETH:

WHEREAS, the Authority was created pursuant to Minnesota Statutes, Sections 469.090 through 469.1082, as amended (the “Act”), and was authorized to transact business and exercise its powers by a resolution of the City Council of the City of Minnetonka (the “City”); and

WHEREAS, the Authority and City have undertaken a program to promote economic development and job opportunities, promote the development and redevelopment of land which is underutilized within the City, and facilitate the development of affordable housing, and in this connection created a development district known as Development District No. 1 (the “Project”) in the City, pursuant to Minnesota Statutes, Sections 469.124 to 469.134, as amended; and

WHEREAS, by Resolution No. 93-9649, the City transferred control, authority and operation of the Project from the City to the Authority; and

WHEREAS, the City and the Authority have established Redevelopment Tax Increment Financing District No. 2 (the “TIF District”) within the Project and adopted a financing plan (the “TIF Plan”) for the TIF District in order to facilitate redevelopment of certain property in the Project, all pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended (the “TIF Act”); and

WHEREAS, pursuant to Section 469.1763, subdivision 2(d) of the TIF Act, the Authority and City modified the TIF Plan for the TIF District in order to increase the amount of Tax Increments (defined hereinafter) that may be spent outside the boundaries of the TIF District from twenty-five percent (25%) to thirty-five percent (35%), provided that such pooled Tax Increment is used solely to assist the development of rental housing that meets the requirements for federal low income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended (the “Code”); and

WHEREAS, CHCA is the sole member of [________________, LLC], a Minnesota limited liability company and sole general partner of the Owner (the “General Partner”); and

WHEREAS, the Owner has proposed a development of an affordable rental housing facility described further herein as the “Minimum Improvements” on certain property (the...
“Development Property”) located in the Project, which facility is expected to receive federal low income tax credits; and

WHEREAS, upon CHCA’s receipt of the financial assistance provided by the Authority under this Agreement it will either loan such funds to the Owner or contribute them to the General Partner and the General Partner shall then contribute them to the Owner; and

WHEREAS, the Owner shall utilize such funds to partially finance the acquisition and construction of the Minimum Improvements on the Development Property; and

WHEREAS, the Authority believes that the development of the Development Property pursuant to this Agreement, and fulfillment generally of this Agreement, are in the vital and best interests of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable State of Minnesota and local laws and requirements;

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:

(The remainder of this page is intentionally left blank.)
ARTICLE I
Definitions

Section 1.1. Definitions. In this Agreement, unless a different meaning clearly appears from the context:

“Act” means the Economic Development Authority Act, Minnesota Statutes, Sections 469.090 through 469.1082, as amended.

“Affiliate” means with respect to CHCA or the Owner (a) any corporation, partnership, corporation or other business entity or person controlling, controlled by or under common control with the Owner or CHCA, as applicable, and (b) any successor to such party by merger, acquisition, reorganization or similar transaction involving all or substantially all of the assets of such party (or such Affiliate). For the purpose hereof the words “controlling,” “controlled by,” and “under common control with” shall mean, with respect to any corporation, partnership, corporation or other business entity, the ownership of fifty percent or more of the voting interests in such entity, possession, directly or indirectly, of the power to direct or cause the direction of management policies of such entity, whether ownership of voting securities or by contract or otherwise.

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

“Authority” means the Economic Development Authority in and for the City of Minnetonka, Minnesota, or any successor or assign.

“Authority Representative” means the Executive Director of the Authority, or any person designated by the Executive Director to act as the Authority Representative for the purposes of this Agreement.

“Business Day” means any day except a Saturday, Sunday, legal holiday, a day on which the City is closed for business, or a day on which banking institutions in the City are authorized by law or executive order to close.


“Certificate of Completion” means the certification to be provided the Owner, pursuant to Section 4.4 hereof and substantially in the form attached as Schedule B.

“CHCA” means Community Housing Corporation of America, Inc, a Delaware nonprofit corporation, or its permitted successors or assigns.

“City” means the City of Minnetonka, Minnesota.
“Closing Date” has the meaning provided in Section 3.3(b) hereof.


“Construction Plans” means the plans, specifications, drawings and related documents on the construction work to be performed on the Development Property which (a) shall be as detailed as the plans, specifications, drawings and related documents which are submitted to the appropriate building officials of the City, and (b) shall include at least the following for each building: (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) landscape plan; and (8) such other plans or supplements to the foregoing plans as the Authority may reasonably request to allow it to ascertain the nature and quality of the proposed construction work.

“County” means the County of Hennepin, Minnesota.

“Declaration” means the Declaration of Restrictive Covenants attached as Schedule C hereto.

“Development District” means the Authority’s Development District No. 1.

“Development Plan” means the Development Program for the Development District.

“Development Property” means the property described in Schedule A hereto.

“Disbursing Agent” means the title company selected by the Owner to serve as the disbursing agent under the Master Disbursing Agreement.

“Event of Default” means an action by a party described in Section 9.1 hereof.

“General Partner” means [___________________, LLC], a Minnesota limited liability company and sole general partner of the Owner, or its permitted successors or assigns.

“Holder” means the owner or mortgagee of a Mortgage.

“Management Consultant” means an entity experienced in the management and leasing of low and moderate income housing projects, qualified to study operations of facilities like the Minimum Improvements and having a favorable reputation in the industry.

“Master Disbursing Agreement” means the Master Disbursing Agreement to be entered into between the Authority, the Owner, the Disbursing Agent, Other Lenders, and other parties (if any) with respect to the Development Property and the Minimum Improvements.

“Minimum Improvements” means the construction on the Development Property of a three-story rental housing facility containing 27 Rental Housing Units, subject to the
affordability requirements and bedroom configurations described in Section 4.5 hereof, and underground parking.

“Mortgage” means any mortgage made by the Owner in favor of one of the Other Lenders which is secured, in whole or in part, with the Development Property, and which is a permitted encumbrance pursuant to the provisions of Article VIII hereof.

“Other Lenders” means any entities (other than the Authority and the Tax Credit Investor) that provide grants or loans to the Owner in order to finance a portion of the cost of the Minimum Improvements.

“Owner” means [TBD LIMITED PARTNERSHIP], a Minnesota limited partnership, or its permitted successors or assigns.

“Rental Housing Units” means the rental housing units constructed as part of the Minimum Improvements.

“State” means the State of Minnesota.

“Tax Credit Investor” means __________________________, the limited partner of the Owner that has agreed to make capital contributions to the Owner in exchange for 99.99% of the low-income housing tax credits allocated to the Development Property.

“Tax Credit Law” means Section 42 of the Code.

“Tax Increment” means that portion of the real property taxes which is paid with respect to the TIF District and which is remitted to the Authority as tax increment pursuant to the Tax Increment Act.

“Tax Increment Act” or “TIF Act” means the Tax Increment Financing Act, Minnesota Statutes, Sections 469.174 through 469.1794, as amended.

“Tax Increment District” or “TIF District” means the Authority’s Redevelopment Tax Increment Financing District No. 2.

“Tax Increment Plan” or “TIF Plan” means the Authority’s Tax Increment Financing Plan for the TIF District, as most recently modified by the Authority and City on December 20, 2010, and as it may be amended from time to time.

“Tax Official” means any County assessor, County auditor, County or State board of equalization, the commissioner of revenue of the State, or any State or federal court including the tax court of the State.

“Termination Date” means the later of the date the TIF Grant is paid in full in accordance with its terms, or the date of termination of the “Qualified Project Period” as defined in the Declaration.
“TIF Grant” has the meaning provided in Section 3.3(a) hereof.

“Transfer” has the meaning set forth in Section 8.2(a) hereof.

“Unavoidable Delays” means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of war, terrorism, strikes, other labor troubles, fire or other casualty to the Minimum Improvements, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the City or the Authority in exercising its rights under this Agreement) which directly result in delays. Unavoidable Delays shall not include delays in the Owner’s obtaining of permits or governmental approvals necessary to enable construction of the Minimum Improvements by the dates such construction is required under Section 4.3 hereof, unless (a) the Owner has timely filed any application and materials required by the City for such permit or approvals, and (b) the delay is beyond the reasonable control of the Owner.

(The remainder of this page is intentionally left blank.)
ARTICLE II

Representations and Warranties

Section 2.1.  Representations and Covenants by the Authority.

(a) The Authority is an economic development authority duly organized and existing under the laws of the State. Under the provisions of the Act and the TIF Act, the Authority has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The Authority will use its best efforts to facilitate development of the Minimum Improvements, including but not limited to cooperating with the Owner and CHCA in obtaining necessary administrative and land use approvals and construction and/or permanent financing pursuant to Section 7.1 hereof.

(c) The activities of the Authority are undertaken for the purpose of fostering the development of affordable rental housing, which will also revitalize this portion of the Development District and increase tax base.

(e) 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 provisions of charter or statutory limitation or any indebtedness, agreement or instrument of whatever nature to which the Authority is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(f) The Authority shall promptly advise CHCA and the Owner in writing of all litigation or claims affecting any part of the Minimum Improvements.

Section 2.2.  Representations and Warranties by CHCA and the Owner.  CHCA and the Owner represent and warrant that:

(a) CHCA is a nonprofit corporation organized and in good standing under the laws of the State of Delaware, is not in violation of any provisions of its articles of incorporation or bylaws, or, to the best of its knowledge, the laws of the State or the State of Delaware, is duly authorized to transact business within the State, has power to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action of its Board of Directors.

(b) The Owner is a limited partnership form and in good standing under the laws of the State of Minnesota, is not in violation of any provisions of its certificate of limited partnership, partnership agreement, or, to the best of its knowledge, the laws of the State, has power to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action of it partners.
(c) The Owner will construct, operate and maintain the Minimum Improvements in accordance with the terms of this Agreement, the Construction Plans, and all applicable local, State and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations) in all material respects.

(d) The Owner 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.

(e) 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 provisions of any partnership or company restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which CHCA or the Owner is now a party or by which either is bound, or constitutes a default under any of the foregoing.

(f) CHCA and the Owner shall promptly advise the Authority in writing of all litigation or claims affecting any part of the Minimum Improvements and all written complaints and charges made by any governmental authority materially affecting the Minimum Improvements or materially affecting the Owner or its business, which may delay or require changes in construction of the Minimum Improvements.

(g) The proposed redevelopment on the Development Property hereunder would not occur but for the financial assistance being provided by the Authority hereunder.

(The remainder of this page is intentionally left blank.)
ARTICLE III

Tax Increment Assistance

Section 3.1. Status of the Property. As of the date of this Agreement, the Owner is the owner of a fee interest in the Development Property.

Section 3.2. Environmental Conditions.

(a) Each of CHCA and the Owner acknowledges that the Authority makes no representations or warranties as to the condition of the soils on the Development Property or the fitness of the Development Property for construction of the Minimum Improvements or any other purpose for which the Owner may make use of such property, and that the assistance provided to CHCA and indirectly to the Owner under this Agreement neither implies any responsibility by the Authority or the City for any contamination of the Development Property or poor soil conditions, nor imposes any obligation on such parties to participate in any cleanup of the Development Property or correction of any soil problems.

(b) Without limiting its obligations under Section 8.3 hereof, each of CHCA and the Owner further agrees that it will indemnify, defend, and hold harmless the Authority, the City, and their governing body members, officers, and employees, from any claims or actions arising out of the presence, if any, of hazardous wastes or pollutants on the Development Property as a result of the actions or omissions of CHCA or the Owner, unless and to the extent that such hazardous wastes or pollutants are present as a result of the actions or omissions of the indemnitees. Nothing in this section will be construed to limit or affect any limitations on liability of the City or Authority under State or federal law, including without limitation Minnesota Statutes, Sections 466.04 and 604.02.

Section 3.3. Tax Increment Assistance. In order to make development of the Minimum Improvements financially feasible, the Authority will provide to CHCA the following assistance:

(a) TIF Grant. The Authority will also make a grant to CHCA in an amount that is the lesser of (i) $500,000 or (ii) the qualified basis of the Minimum Improvements (as such term is defined in the Tax Credit Law), less the aggregate amount of any tax credit with respect to the Minimum Improvements allowed under the Tax Credit Law (the “TIF Grant”). The amount of the TIF Grant is subject to reduction as described in paragraph (b) of this Section, and proceeds of the TIF Grant shall be disbursed in accordance with paragraph (b). CHCA shall either make a loan to the Owner in the amount of the TIF Grant or make a capital contribution to General Partner and then cause the General Partner to make a capital contribution to the Owner in the amount of the TIF Grant.

(b) Disbursement of TIF Grant. The Authority will deposit the TIF Grant with the Disbursing Agent on the effective date of the Master Disbursing Agreement (the “Closing Date”). Notwithstanding anything to the contrary herein, if the total costs of developing the Minimum Improvements as of the Closing Date are reduced below the amounts estimated as of
the date of this Agreement, such reduction shall be applied first to reduce the amount of the TIF Grant, prior to reducing any other funding sources; provided that if CHCA or the Owner demonstrates to the Authority’s reasonable satisfaction that such reduction in the TIF Grant will impair the Owner’s eligibility to receive the full amount of tax credits awarded for the Minimum Improvements under the Tax Credit Law, then the TIF Grant reduction amount will be adjusted to a level that prevents such impairment. The Authority’s obligation to fund the TIF Grant is subject to satisfaction of the following conditions as of the Closing Date:

(i) the Owner and CHCA having delivered to the Authority a copy of the executed Master Disbursing Agreement;

(ii) CHCA or the Owner having provided evidence satisfactory to the Authority that the Owner has established a separate accounting system for the Minimum Improvements for the purpose of recording the receipt and expenditure of the TIF Grant proceeds;

(iii) the Owner having delivered to the Authority evidence of the amount specified in Section 3.3(a)(ii) hereof, together with a statement from an independent certified public accountant that the calculation of that amount is an accurate calculation of projected qualified basis of the Minimum Improvements less the projected amount of the low-income housing tax credits calculated in accordance with the Tax Credit Law based upon the then current development budget.

(iv) the Authority having approved Construction Plans for the Minimum Improvements in accordance with Article IV hereof;

(v) the Owner having obtained, and the Authority having approved, financing as described in Article VII hereof;

(vi) the Owner having delivered to the Authority the executed Declaration in accordance with Section 4.5 hereof;

(vii) CHCA and the Owner having delivered to the Authority a list of all sources of funding to be used to develop the Minimum Improvements and evidence of the total costs of developing the Minimum Improvements, in a form reasonably satisfactory to the Authority, evidencing any reduction in the amount TIF Grant as described in this paragraph; and

(viii) there being no uncured Event of Default under this Agreement.

(c) **Reduction of TIF Grant.** Subject to the provisions of Section 3.3(b), if after review of the sources of funds and total costs of developing the Minimum Improvements provided by CHCA and the Owner pursuant to Section 3.3(b)(vii), the Authority’s financial advisor determines that the entire amount of the TIF Grant is not necessary to cover a gap in the amount of funds needed to construct the Minimum Improvements, the TIF Grant will be reduced
to the amount necessary to cover the gap in the amount of funds needed to construct the Minimum Improvements.

(d) **Master Disbursing Agreement.** The Master Disbursing Agreement must require that proceeds of the TIF Grant are used solely to pay the costs of the Minimum Improvements. Authority officials are authorized and directed to execute a Master Disbursing Agreement that substantially complies with the requirements in this Section.

(e) CHCA and the Owner further agree that: (i) the aggregate amount paid to the CHCA and the Owner as a developer fee from proceeds of all sources of funding under the Master Disbursing Agreement, and from the proceeds of permanent financing entered into upon completion of construction of the Minimum Improvements (but net of any portion of such fee reinvested to pay Minimum Improvements costs) shall not exceed ten percent (10%) of the total cost of development of the Minimum Improvements and (ii) any amount paid to CHCA or the General Partner as distributions from annual cash flow shall not exceed the amounts specified in the first mortgage held by the Minnesota Housing Finance Agency, if applicable. Upon completion of the Minimum Improvements (and as a condition to issuance of a Certificate of Completion), the Owner shall provide to the Authority a report from an independent certified public accountant evidencing compliance with clause (i) of this paragraph. Upon request from the Authority from time to time (but no more often than annually), CHCA or the Owner shall provide to the Authority a report certifying and evidencing compliance with clause (ii) of this paragraph.

Section 3.4. **Payment of Authority Costs.**

(a) The City and the Authority will pay Authority Costs up to a maximum amount of $4,000. CHCA and the Owner are responsible to pay all Authority Costs that are incurred by the City or the Authority that exceed $5,000. The term “Authority Costs” means out-of-pocket, reasonable costs incurred by the City or Authority from and after March 15, 2015 for: (i) the Authority’s financial advisor in connection with the Authority’s financial participation in redevelopment of the Development Property, (ii) the City or Authority’s outside legal counsel in connection with negotiation and drafting of this Agreement and any related agreements or documents, and any legal services related to the Authority’s financial participation in redevelopment of the Development Property, including without limitation costs related to the TIF Grant.

(b) On or after the Closing Date, but not more often than monthly, the City or Authority may request payment of Authority Costs, and CHCA agrees to pay all Authority Costs within thirty (30) days of the City or Authority’s written request, supported by suitable billings, receipts or other evidence of the amount and nature of Authority Costs incurred. At CHCA’s request, but no more often than monthly, the Authority will provide CHCA with a written report on current and anticipated expenditures for Authority Costs, including invoices or other comparable evidence.
Section 3.5. Exemption from Business Subsidy Act. The parties agree and understand that all financial assistance provided by the Authority under this Agreement represents assistance for housing, and accordingly is not subject to the Business Subsidy Act.

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ARTICLE IV

Construction of Minimum Improvements

Section 4.1. Construction of Minimum Improvements. The Owner will construct or cause construction of the Minimum Improvements on the Development Property in accordance with approved Construction Plans and at all times through the Termination Date will operate, maintain, preserve and keep the respective components of the Minimum Improvements or cause such components to be operated, maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition.

Section 4.2. Construction Plans.

(a) Generally. Before commencing construction of the Minimum Improvements, CHCA and the Owner shall submit Construction Plans for the Minimum Improvements to the Authority. The City’s chief building official and community development director will review and approve all Construction Plans on behalf of the Authority, and for the purposes of this Section the term “Authority” means those named officials. The Construction Plans shall provide for the construction of the Minimum Improvements and shall be in conformity with this Agreement and all applicable State and local laws and regulations. The Authority will approve the Construction Plans in writing or by issuance of a permit if: (i) the Construction Plans conform to all terms and conditions of this Agreement in all material respects; (ii) the Construction Plans conform to the goals and objectives of the TIF Plan; (iii) the Construction Plans conform to all applicable federal, State, and local laws, ordinances, rules and regulations; (iv) the Construction Plans are adequate to provide for construction of the Minimum Improvements; and (v) there is no uncured Event of Default. No approval by the Authority shall relieve the Owner or CHCA of the obligation to comply with the terms of this Agreement, applicable federal, State, and local laws, ordinances, rules and regulations, or to construct the Minimum Improvements in accordance therewith. No approval by the Authority shall constitute a waiver of an Event of Default, or waiver of any State or City building or other code requirements that may apply. Within 30 days after receipt of complete Construction Plans and permit applications for the Minimum Improvements, the Authority will deliver to CHCA and the Owner an initial review letter describing any comments or changes requested by Authority staff. Thereafter, the parties shall negotiate in good faith regarding final approval of Construction Plans for that building. The Authority’s approval shall not be unreasonably withheld or delayed. Said approval shall constitute a conclusive determination that the Construction Plans (and the Minimum Improvements constructed in accordance with said plans) comply to the Authority’s satisfaction with the provisions of this Agreement relating thereto.

Each of CHCA and the Owner hereby waives any and all claims and causes of action whatsoever resulting from the review of the Construction Plans by the Authority and/or any changes in the Construction Plans requested by the Authority, except for any failure by Authority to perform its obligations under this Section. Neither the Authority, the City, nor any employee or official of the Authority or City shall be responsible in any manner whatsoever for any defect
in the Construction Plans or in any work done pursuant to the Construction Plans, including changes requested by the Authority.

(b) **Construction Plan Changes.** If the Owner desires to make any material change in the Construction Plans or any component thereof after their approval by the Authority, the Owner shall submit the proposed change to the Authority for its approval. If the Construction Plans, as modified by the proposed change, conform to the requirements of this Section 4.2 with respect to such previously approved Construction Plans, the Authority shall approve the proposed change and notify the Owner and CHCA in writing of its approval. Such change in the Construction Plans shall, in any event, be deemed approved by the Authority unless rejected, in whole or in part, by written notice by the Authority to the Owner and CHCA, setting forth in detail the reasons therefor. Such rejection shall be made as soon as reasonably practicable but in any event within 30 days after receipt of the notice of such change. The Authority’s approval of any such change in the Construction Plans will not be unreasonably withheld.

Section 4.3. **Completion of Construction.**

(a) Subject to Unavoidable Delays, the Minimum Improvements must be constructed in accordance with the following schedule: commence construction on or about July 1, 2016 and complete construction by December 31, 2017. Construction is considered to be commenced upon the beginning of physical improvements beyond grading.

(b) All work with respect to the Minimum Improvements to be constructed or provided by the Owner on the Development Property shall be in substantial conformity with the Construction Plans as submitted by the Owner and approved by the Authority. The Owner agrees for itself, its successors and assigns, and every successor in interest to the Development Property, or any part thereof, that the Owner, and such successors and assigns, shall promptly begin and diligently prosecute to completion the redevelopment of the Development Property through the construction of the Minimum Improvements thereon, and that, subject to Unavoidable Delays, such construction shall be commenced and completed within the period specified in this Section 4.3. Until construction of the Minimum Improvements has been completed, CHCA and the Owner shall make reports, in such detail and at such times as may reasonably be requested by the Authority, as to the actual progress of the Owner with respect to such construction.

Section 4.4. **Certificate of Completion.**

(a) Promptly after substantial completion of the Minimum Improvements in accordance with those provisions of the Agreement relating solely to the obligations of the Owner to construct the Minimum Improvements (including the dates for completion thereof), and delivery of the developer fee evidence described in Section 3.3(e) hereof, the Authority will furnish the Owner and CHCA with a Certificate of Completion in substantially the form attached as Schedule B. Such certification by the Authority shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the Agreement and in any deed with respect to the obligations of the Owner and CHCA, and its successors and assigns, to construct the Minimum Improvements and the dates for the completion thereof. Such
certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Owner or CHCA to any Holder of a Mortgage, or any insurer of a Mortgage, securing money loaned to finance the Minimum Improvements, or any part thereof.

(b) The Certificate of Completion provided for in this Section 4.4 shall be in such form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Development Property. If the Authority shall refuse or fail to provide any certification in accordance with the provisions of this Section 4.4, the Authority shall, within 30 days after written request by the Owner or CHCA, provide the Owner and CHCA with a written statement, indicating in adequate detail in what respects the Owner has failed to complete the Minimum Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the Authority, for the Owner to take or perform in order to obtain such certification.

(c) The construction of the Minimum Improvements will be considered substantially complete when the Owner has received a certificate of occupancy from the City for all Residential Housing Units.

Section 4.5. Affordable Housing Covenants.

(a) The Owner shall cause at least 27 (100%) of the Rental Housing Units in the Minimum Improvements to be rent-restricted and income-restricted in accordance with the Tax Credit Law, all as further described in the Declaration attached as Schedule C. Notwithstanding anything to the contrary in the Tax Credit Law, such restrictions shall remain in effect for the 30-year period described in the Declaration. On or before the Closing Date, the Owner shall deliver the executed Declaration to the Authority in recordable form.

(b) Pursuant to the Section 3(iv) of the Declaration, the Owner shall provide the Authority with annual reports regarding tenant eligibility and rents within the Minimum Improvements.

(c) The Authority and its representatives shall have the right at all reasonable times while the covenants in this Section are in effect, after reasonable notice to inspect, examine and copy all books and records of CHCA and the Owner and its successors and assigns relating to the Development Property’s satisfaction of the covenants described in this Section and in the Declaration.

Section 4.6. Records. The Authority, the legislative auditor, and the State auditor’s office, through any authorized representatives, shall have the right after reasonable notice to inspect, examine and copy all books and records of CHCA and the Owner relating to the construction of the Minimum Improvements. CHCA shall maintain or shall cause the Owner to maintain such records and provide such rights of inspection for a period of six years after issuance of the Certificate of Completion for the Minimum Improvements.
Section 4.7. Property Management Covenant. CHCA shall cause its property manager to operate the Minimum Improvements in accordance with the policies described in this Section. For any documented disorderly violations by a tenant or guest, including but not limited to prostitution, gang-related activity, intimidating or assultive behavior (not including domestic), unlawful discharge of firearms, illegal activity, or drug complaints (each a “Violation”), CHCA agrees and understands that the following procedures shall apply:

(a) After a first Violation regarding any unit in the Minimum Improvements, the City police department will send notice to CHCA and the property manager requiring CHCA and the property manager to take steps necessary to prevent further Violations.

(b) If a second Violation occurs regarding the same tenancy within 12 months after the first Violation, the City police department will notify CHCA and the property manager of the second Violation. Within 10 days after receiving such notice, CHCA or the property manager must file a written action plan with the Authority and the City police department describing steps to prevent further Violations.

(c) If a third Violation occurs regarding the same tenancy within 12 continuous months after the first Violation, the City police department will notify CHCA and the property manager of the third Violation. Within 10 days after receiving such notice, CHCA or the property manager shall commence termination of the tenancy of all occupants of that unit. CHCA shall not enter into a new lease agreement with the evicted tenant(s) for at least one year after the effective date of the eviction.

(d) If CHCA or the property manager fails to comply with any the requirements in this Section, then the Authority may provide at least 10 days’ written notice to CHCA and the property manager directing attendance at a meeting to determine the cause of the continuing Violations in the Minimum Improvements and provide an opportunity for CHCA and the property manager to explain their failure to comply with the procedures in this Section.

(e) If CHCA and property manager fail to respond to the written notice under paragraph (d), or at least two additional Violations occur within the next 12-month period after the date of the notice under paragraph (d), then the Authority may direct CHCA to terminate the management agreement with the existing property manager and to replace that entity with a replacement property manager selected by the CHCA but approved by the Authority. The parties agree and understand that appointment of any replacement manager may be subject to consent by the Tax Credit Investor and the Holder of a first Mortgage on the Development Property.

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ARTICLE V

Insurance

Section 5.1. Insurance.

(a) The Owner or the general contractor engaged by the Owner will provide and maintain at all times during the process of constructing the Minimum Improvements an All Risk Broad Form Basis Insurance Policy and, from time to time during that period, at the request of the Authority, furnish the Authority with proof of payment of premiums on policies covering the following:

(i) Builder’s risk insurance, written on the so-called “Builder’s Risk – Completed Value Basis,” in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in nonreporting form on the so-called “all risk” form of policy. The interest of the Authority shall be protected in accordance with a clause in form and content satisfactory to the Authority;

(ii) Commercial general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations and contractual liability insurance) together with an Owner’s Contractor’s Policy with limits against bodily injury and property damage of not less than $2,000,000 for each occurrence, and shall be endorsed to show the City and Authority as additional insured (to accomplish the above-required limits, an umbrella excess liability policy may be used); and

(iii) Workers’ compensation insurance, with statutory coverage.

(b) Upon completion of construction of the Minimum Improvements and prior to the Termination Date, the Owner shall maintain, or cause to be maintained, at its cost and expense, and from time to time at the request of the Authority shall furnish proof of the payment of premiums on, insurance as follows:

(i) Insurance against loss and/or damage to the Minimum Improvements under a policy or policies covering such risks as are ordinarily insured against by similar businesses.

(ii) Commercial general public liability insurance, including personal injury liability, against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of $2,000,000 and shall be endorsed to show the City and Authority as additional insureds.

(iii) Such other insurance, including workers’ compensation insurance respecting all employees of the Owner, if any, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure.
(c) All insurance required in this Article V shall be taken out and maintained in responsible insurance companies selected by the Owner that are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Owner will deposit annually with the Authority a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V each policy shall contain a provision that the insurer shall not cancel nor modify it in such a way as to reduce the coverage provided below the amounts required herein without giving written notice to the Owner and the Authority at least 30 days before the cancellation or modification becomes effective. In lieu of separate policies, the Owner may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Owner shall deposit with the Authority a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Minimum Improvements.

(d) CHCA and the Owner agrees to notify the Authority immediately in the case of damage exceeding $100,000 in amount to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. In such event the Owner will forthwith repair, reconstruct, and restore the Minimum Improvements to substantially the same or an improved condition as it existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction, and restoration, the Owner will apply the net proceeds of any insurance relating to such damage received by the Owner to the payment or reimbursement of the costs thereof.

(e) The Owner shall complete the repair, reconstruction and restoration of the Minimum Improvements, regardless of whether the net proceeds of insurance received by the Owner for such purposes are sufficient to pay for the same. Any net proceeds remaining after completion of such repairs, construction, and restoration shall be the property of the Owner.

Section 5.2. Subordination. Notwithstanding anything to the contrary herein, the rights of the Authority with respect to the receipt and application of any insurance proceeds shall, in all respects, be subordinate and subject to the rights of any Holder under a Mortgage allowed pursuant to Article VII hereof.

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ARTICLE VI

Tax Increment; Taxes

Section 6.1. Right to Collect Delinquent Taxes. Each of CHCA and the Owner acknowledges that the Authority is providing substantial aid and assistance in furtherance of the redevelopment described in this Agreement. The Owner understands that, while the Development Property itself is not located within the TIF District or any other tax increment financing district, one purpose of the assistance under this Agreement is to increase the property tax base of the City. To that end, the Owner agrees for itself, its successors and assigns, in addition to the obligation pursuant to statute to pay real estate taxes, that it is also obligated by reason of this Agreement to pay before delinquency all real estate taxes assessed against the Development Property and the Minimum Improvements. The Owner acknowledges that this obligation creates a contractual right on behalf of the Authority through the Termination Date to sue the Owner or its successors and assigns to collect delinquent real estate taxes and any penalty or interest thereon and to pay over the same as a tax payment to the county auditor. In any such suit, the Authority shall also be entitled to recover its costs, expenses and reasonable attorneys’ fees. Notwithstanding the foregoing, nothing in this Agreement in any way limits or prevents the Owner from contesting the assessor’s proposed market values for the Development Property or the Minimum Improvements.

Section 6.2. Review of Taxes. The Owner agrees that prior to the Termination Date, it will not cause a reduction in the real property taxes paid in respect of the Development Property through: (A) willful destruction of the Development Property or any part thereof; or (B) willful refusal to reconstruct damaged or destroyed property pursuant to Section 5.1 hereof. The Owner also agrees that it will not, prior to the Termination Date, apply for a deferral of property tax on the Development Property pursuant to any law, or transfer or permit transfer of the Development Property to any entity whose ownership or operation of the property would result in the Development Property being exempt from real estate taxes under State law (other than any portion thereof dedicated or conveyed to the City or Authority in accordance with this Agreement). The Owner may, at any time following the issuance of the Certificate of Completion, seek through petition or other means to have the estimated market value for the Development Property reduced. The Authority and the Owner acknowledge and understand that the Owner intends to seek the “class 4d” property classification rate for affordable rental properties under Minnesota Statutes, Section 273.13 for the Development Property at all times during the term of this Agreement.

Section 6.3. Use of Tax Increment. The parties agree and understand that the Authority expects to finance the TIF Grant under Section 3.3 hereof from Tax Increments generated from the TIF District. However, the Authority may use any funds available to the Authority to fund the TIF Grant, and may also, in its discretion, approve an interfund loan to apply Tax Increments toward repayment of other funds used for those purposes. Neither the Owner nor CHCA has any title or interest in Tax Increments, except to the extent the Authority elects to use Tax Increment to fund the TIF Grant.
ARTICLE VII

Financing

Section 7.1. Financing.

(a) Before the Closing Date, the Owner shall submit to the Authority evidence of receipt of a reservation of low income tax credits under the Tax Credit Law from the Minnesota Housing Finance Agency, together with commitments for other financing (including without limitation grants or loans from Other Lenders) which, together with committed equity for such construction, is sufficient for acquisition of the Development Property construction of the Minimum Improvements. Such commitments may be submitted as short-term financing, long-term mortgage financing, a bridge loan with a long-term take-out financing commitment, or any combination of the foregoing.

(b) If the Authority finds that the financing is sufficiently committed and adequate in amount to pay the costs specified in paragraph (a) then the Authority shall notify the Owner and CHCA in writing of its approval. Such approval shall not be unreasonably withheld and either approval or rejection shall be given within 20 days from the date when the Authority is provided the evidence of financing. A failure by the Authority to respond to such evidence of financing shall be deemed to constitute an approval hereunder. If the Authority rejects the evidence of financing as inadequate, it shall do so in writing specifying the basis for the rejection. In any event the Owner shall submit adequate evidence of financing within 10 days after such rejection.

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ARTICLE VIII

Prohibitions Against Assignment and Transfer; Indemnification

Section 8.1. Representation as to Redevelopment. CHCA represents and agrees that its purchase of the Development Property and its other undertakings pursuant to the Agreement are, and will be used, for the purpose of redevelopment of the Development Property by the Owner and not for speculation in land holding.

Section 8.2. Prohibition Against Transfer of Property and Assignment of Agreement. The Owner represents and agrees that until the Termination Date:

(a) Except as specifically described in this Agreement, the Owner 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, or any trust or power, or transfer in any other mode or form of or with respect to this Agreement or the Development Property or any part thereof or any interest therein, or any contract or agreement to do any of the same, to any person or entity (collectively, a “Transfer”), without the prior written approval of the Authority’s Board of Commissioners. The term “Transfer” does not include (i) encumbrances made or granted by way of security for, and only for, the purpose of obtaining construction, interim or permanent financing necessary to enable the Owner or any successor in interest to the Development Property or to construct the Minimum Improvements or component thereof; (ii) any lease, license, easement or similar arrangement entered into in the ordinary course of business related to operation of the Minimum Improvements; or (iii) a transfer of any ownership interests in the Owner in accordance with the terms of the Owner’s partnership agreement. The Owner may effect a Transfer of the Development Property to CHCA or its Affiliate without approval by the Authority provided that CHCA submit to the Authority an assignment and assumption executed by the Affiliate in accordance with Section 8.2(b)(2) hereof.

(b) If CHCA seeks to effect a Transfer, the Authority shall be entitled to require as conditions to such Transfer that:

(1) Any proposed transferee shall have the qualifications and financial responsibility, in the reasonable judgment of the Authority, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Owner and CHCA as to the portion of the Development Property to be transferred; and

(2) Any proposed transferee, by instrument in writing satisfactory to the Authority and in form recordable in the public land records of the County, shall, for itself and its successors and assigns, and expressly for the benefit of the Authority, have expressly assumed all of the obligations of CHCA and the Owner under this Agreement as to the portion of the Development Property to be transferred and agreed to be subject to all the conditions and restrictions to which each of CHCA and the Owner is subject as to such portion; 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 Authority) deprive the Authority of any rights or remedies or controls with respect to the Development Property, the Minimum Improvements or any part thereof or the construction of the Minimum Improvements; 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 Authority of or with respect to any rights or remedies on controls provided in or resulting from this Agreement with respect to the Development Property that the Authority would have had, had there been no such transfer or change. In the absence of specific written agreement by the Authority to the contrary, no such transfer or approval by the Authority thereof shall be deemed to relieve CHCA, or any other party bound in any way by this Agreement or otherwise with respect to the Development Property, from any of its obligations with respect thereto; and

(3) Any and all instruments and other legal documents involved in effecting the transfer of any interest in this Agreement or the Development Property governed by this Article VIII shall be in a form reasonably satisfactory to the Authority.

(c) If the conditions described in paragraph (b) are satisfied, then the Transfer will be approved and CHCA and the Owner shall be released from their obligations under this Agreement, as to the portion of the Development Property that is transferred, assigned, or otherwise conveyed, unless the parties mutually agree otherwise. Notwithstanding anything to the contrary herein, any Transfer that releases CHCA and the Owner from their obligations under this Agreement (or any portion thereof) shall be approved by the Authority’s Board of Commissioners, which approval shall not be unreasonably withheld, conditioned, or delayed. If CHCA or the Owner remains fully bound under this Agreement notwithstanding the Transfer, as documented in the transfer instrument, the Transfer may be approved by the Authority Representative. The provisions of this paragraph (c) apply to all subsequent transferors.

Section 8.3. Release and Indemnification Covenants.

(a) Each of CHCA and the Owner releases from and covenants and agrees that the Authority and the City and the governing body members, officers, agents, servants and employees thereof shall not be liable for and agrees to indemnify and hold harmless the Authority and the City and the governing body members, officers, agents, servants and employees thereof 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.

(b) Except for willful or negligent misrepresentation, misconduct or negligence of the Indemnified Parties (as hereafter defined), and except for any breach by any of the Indemnified Parties of their obligations under this Agreement, each of CHCA and the Owner agrees to protect and defend the Authority and the City and the governing body members, officers, agents,
servants and employees thereof (the “Indemnified Parties”), now or forever, and further agrees to hold the Indemnified Parties harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Minimum Improvements.

(c) Except for any negligence of the Indemnified Parties (as defined in clause (b) above), and except for any breach by any of the Indemnified Parties of their obligations under this Agreement, the Indemnified Parties shall not be liable for any damage or injury to the persons or property of CHCA, the Owner, or their respective officers, agents, servants or employees or any other person who may be about the Minimum Improvements due to any act of negligence of any person.

(d) All covenants, stipulations, promises, agreements and obligations of the Authority contained herein shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Authority and not of any governing body member, officer, agent, servant or employee of the Authority in the individual capacity thereof.
ARTICLE IX

Events of Default

Section 9.1. 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, after the non-defaulting party provides 30 days’ written notice to the defaulting party of the event, but only if the event has not been cured within said 30 days or, if the event is by its nature incurable within 30 days, the defaulting party does not, within such 30-day period, provide assurances reasonably satisfactory to the party providing notice of default that the event will be cured and will be cured as soon as reasonably possible:

(a) Subject to Unavoidable Delays, failure by CHCA or the Owner on the one hand or the Authority on the other to observe or perform any covenant, condition, obligation, or agreement on its part to be observed or performed under this Agreement; or

(b) CHCA or the Owner having:

(i) filed any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act or under any similar federal or State law and failing to discharge the same within 90 days;

(ii) made an assignment for benefit of its creditors;

(iii) admitted in writing its inability to pay its debts generally as they become due; or

(iv) been adjudicated as bankrupt or insolvent.

Section 9.2. Remedies on Default.

(a) Whenever any Event of Default referred to in Section 9.1 hereof occurs, the non-defaulting party may exercise its rights under this Section 9.2 after providing 30 days’ written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said 30 days or, if the Event of Default is by its nature incurable within 30 days, the defaulting party does not provide assurances reasonably satisfactory to the non-defaulting party that the Event of Default will be cured and will be cured as soon as reasonably possible. The Authority agrees that it will provide notice and an opportunity to cure any Event of Default to the Tax Credit Investor and that it will accept such cure as though it was made by the Owner or CHCA, as applicable.

(b) Upon an Event of Default by CHCA or the Owner, the Authority may (i) demand repayment of the outstanding principal and accrued interest on the TIF Grant from CHDC, and
(ii) take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

Section 9.3. **No Remedy Exclusive.** No remedy herein conferred upon or reserved to the Authority, CHCA, or the Owner 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. In order to entitle the Authority to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article IX.

Section 9.4. **No Additional Waiver Implied by One Waiver.** In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the 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.

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ARTICLE X

Additional Provisions

Section 10.1. Conflict of Interests; Authority Representatives Not Individually Liable. The Authority, the Owner, and CHCA, to the best of their respective knowledge, represent and agree that no member, official, or employee of the Authority shall have any personal interest, direct or indirect, in the Agreement, nor shall any such member, official, or employee 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 Authority shall be personally liable to CHCA or the Owner, or any successor in interest, in the event of any default or breach by the Authority or County or for any amount which may become due to CHCA, the Owner, or their successors or on any obligations under the terms of the Agreement.

Section 10.2. Equal Employment Opportunity. Each of CHCA and the Owner, for their respective successors and assigns, agrees that during the construction of the Minimum Improvements provided for in the Agreement it will comply with all applicable federal, State and local equal employment and non-discrimination laws and regulations.

Section 10.3. Restrictions on Use. Each of CHCA and the Owner agrees that until the Termination Date, CHCA, the Owner, and such successors and assigns, shall devote the Development Property to the operation of the Minimum Improvements for uses described in the definition of such term in this Agreement and shall not discriminate upon the basis of race, color, creed, sex or national origin in the sale, lease, or rental or in the use or occupancy of the Development Property or any improvements erected or to be erected thereon or any part thereof.

Section 10.4. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring any interest in the Development Property and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 10.5. 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 10.6. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, overnight mail, or delivered personally; and

(a) in the case of CHCA, is addressed to or delivered personally to CHCA at:

Community Housing Corporation of America, Inc.
161 Saint Anthony Avenue # 820
Saint Paul, MN 55103
Attention: _____________________

(b) in the case of the Owner, is addressed to or delivered personally to the Owner at:

________________________________
________________________________
________________________________
Attention: _____________________

with copies to:

Winthrop & Weinstine, P.A.
Capella Tower, Suite 3500
225 South Sixth Street
Minneapolis, MN 55402
Attention: Jeffrey Koerselman

and, so long as the Tax Credit Investor is a partner in the Owner to:

________________________________
________________________________
________________________________
Attention: _____________________

(c) in the case of the Authority, is addressed to or delivered personally at:

Economic Development Authority in and for the City of Minnetonka
14600 Minnetonka Boulevard
Minnetonka, Minnesota 55345-1502
Attention: Executive Director

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

Section 10.7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 10.8. Recording. The Authority may record this Agreement and any amendments thereto with the County recorder or registrar of titles, as the case may be. CHCA shall pay all costs for recording.

Section 10.9. Amendment. This Agreement may be amended only by written agreement approved by the Authority, the Owner, and CHCA.
Section 10.10. **Authority Approvals.** Unless otherwise specified, any approval required by the Authority under this Agreement may be given by the Authority Representative.

Section 10.11. **Termination.** This Agreement terminates on the Termination Date, except that termination of the Agreement does not terminate, limit or affect the rights of any party that arise before the Termination Date.

(The remainder of this page is intentionally left blank.)
IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed in its name and behalf on or as of the date and year first written above.

ECONOMIC DEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF MINNETONKA,
MINNESOTA

By ____________________________
  Its President

By ____________________________
  Its Executive Director

STATE OF MINNESOTA  )
                   ) SS.
COUNTY OF HENNEPIN  )

The foregoing instrument was acknowledged before me this __________, 201_, by Terry Schneider, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

___________________________________________
Notary Public

STATE OF MINNESOTA  )
                   ) SS.
COUNTY OF HENNEPIN  )

The foregoing instrument was acknowledged before me this __________, 201_, by Geralyn Barone, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

___________________________________________
Notary Public
COMMUNITY HOUSING CORPORATION OF AMERICA, INC.

By ________________________________
   Its ______________________________

STATE OF MINNESOTA    )
   ) SS.
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this ______________, 201_, by
____________________, the __________________ of Community Housing Corporation of
America, Inc., a Delaware nonprofit corporation, on behalf of the corporation.

______________________________
Notary Public
[TBD LIMITED PARTNERSHIP]

By ________________________________
   Its ________________________________

STATE OF MINNESOTA    )
   ) SS.
COUNTY OF HENNEPIN    )

The foregoing instrument was acknowledged before me this ____________, 201_, by ____________________, the ____________ of [TBD Limited Partnership], a Minnesota limited partnership, on behalf of such limited partnership.

____________________________________
Notary Public
SCHEDULE A

DESCRIPTION OF DEVELOPMENT PROPERTY

Parcel 1:

That part of the East 30.00 acres of the Southeast Quarter of the Northeast Quarter of Section 35, Township 117, Range 22, Hennepin County, Minnesota, described as follows:

Commencing at the Southeast corner of said Southeast Quarter of the Northeast Quarter; thence on an assumed bearing of South 87 degrees 06 minutes 28 seconds West along the South line of said Southeast Quarter of the Northeast Quarter a distance of 972.80 feet; thence North 2 degrees 53 minutes 46 seconds West a distance or 448.09 feet, said last described line if extended would intersect the North line of said Southeast Quarter of the Northeast Quarter at a point 1008.65 feet West of the Northeast corner of said Southeast Quarter of the Northeast Quarter; thence North 87 degrees 06 minutes 28 seconds East a distance or 97.56 feet to the point or beginning of the land to be described; thence South 26 degrees 34 minutes 09 seconds East a distance of 160.00 feet; thence North 63 degrees 25 minutes 51 seconds East a distance of 208.69 feet to the Southeasterly right of way line of County Road Number 61; thence Northwesterly along said right of way line to its intersection with a line bearing North 63 degrees 25 minutes 51 seconds East to the point of beginning; thence South 63 degrees 25 minutes 51 seconds West to the point of beginning.

Hennepin County, Minnesota
Abstract Property

Parcel 2:

That part of the East 30 acres of the Southeast Quarter of the Northeast Quarter of Section 35, Township 117, Range 22, Hennepin County, Minnesota, described as follows:

Commencing at the East Quarter corner of Section 35; thence South 87 degrees 06 minutes 28 seconds West, assumed bearing, along the South line of said Southeast Quarter of the Northeast Quarter, 996.01 feet; thence North 1 degree 19 minutes 39 seconds West 388.02 feet; thence North 86 degrees 20 minutes 14 seconds East 12.59 feet, which point is marked by a Judicial Landmark; thence North 2 degrees 53 minutes 46 seconds West 460.27 feet to the point of beginning of the land to be described, which point is marked by a Judicial Landmark; thence South 2 degrees 53 minutes 46 seconds East, along the last described line, 400.23 feet; thence North 87 degrees 06 minutes 28 seconds East 97.56 feet; thence North 63 degrees 25 minutes 51 seconds East 186.14 feet to the Southwesterly right-of-way line of County Road 61 (also known as Shady Oak Road); thence North 34 degrees 35 minutes 25 seconds West, along said right-of-way, 248.72 feet; thence North 39 degrees 23 minutes 15 seconds West, along said right of way, 173.57 feet, to its intersection with a line which bears North 50 degrees 09 minutes 52 seconds East from the point of beginning; thence South 50 degrees 09 minutes 52 seconds West, along said line, 42.72 feet to the point of beginning.

Hennepin County, Minnesota
Abstract Property
SCHEDULE B
CERTIFICATE OF COMPLETION

The undersigned hereby certifies that [TBD Limited Partnership], a Minnesota limited partnership (the “Owner”), and Community Housing Corporation of America, Inc., a Delaware nonprofit corporation (“CHCA”), have fully complied with their obligations under Articles III and IV of that document titled “Contract for Private Development” dated ____________, 20___ (the “Contract”), by and between the Economic Development Authority in and for the City of Minnetonka, Minnesota, the Owner, and CHCA, with respect to construction of the Minimum Improvements in accordance with the Construction Plans, and that each of the Owner and CHCA is released and forever discharged from its obligations to construct the Minimum Improvements under Articles III and IV of the Contract, but all other covenants under the Contract remain in full force and effect.

Dated: ______________, 20__.

ECONOMIC DEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF MINNETONKA,
MINNESOTA

By ______________________________
Executive Director

STATE OF MINNESOTA )
COUNTY OF HENNEPIN ) SS.

The foregoing instrument was acknowledged before me this ____________, 20__, by ______________________________, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the Authority.

______________________________
Notary Public
SCHEDULE C

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (this “Declaration”) dated as of _____________, 201_, by [TBD LIMITED PARTNERSHIP], a Minnesota limited partnership (the “Owner”), is given to the ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA (the “Authority”).

RECITALS

WHEREAS, the Authority entered into that certain Contract for Private Development, dated ___________, 2015, filed _____________, 20____ in the Office of the [Recorder] [Registrar of Titles] for Hennepin County as Document No. _________ (the “Contract”), between the Authority, the Owner, and Community Housing Corporation of America, Inc., a Delaware nonprofit corporation (“CHCA”); and

WHEREAS, pursuant to the Contract, the Owner is obligated to cause construction of 27 housing units of rental housing on the property described in Exhibit A hereto (the “Property”), and to cause compliance with certain affordability covenants described in Section 4.5 of the Contract; and

WHEREAS, Section 4.5 of the Contract requires that the Owner cause to be executed an instrument in recordable form substantially reflecting the covenants set forth in Section 4.5 of the Contract; and

WHEREAS, the Owner intends, declares, and covenants that the restrictive covenants set forth herein shall be and are covenants running with the Property for the term described herein and binding upon all subsequent owners of the Property for such term, and are not merely personal covenants of the Owner; and

WHEREAS, capitalized terms in this Declaration have the meaning provided in the Contract unless otherwise defined herein.

NOW, THEREFORE, in consideration of the promises and covenants hereinafter set forth, and of other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CHCA agrees as follows:

1. Term of Restrictions.

(a) Occupancy and Rental Restrictions. The term of the Occupancy Restrictions set forth in Section 3 hereof and the Rental Restriction set forth in Section 4 hereof shall commence at the end of the first taxable year of credit period for the Property under the Tax Credit Law. The period from commencement to termination is the “Qualified Project Period.”
(b) **Termination of Declaration.** This Declaration shall terminate upon the date that is 30 years after the commencement of the Qualified Project Period.

(c) **Removal from Real Estate Records.** Upon termination of this Declaration, the Authority shall, upon request by the Owner or its assigns, file any document appropriate to remove this Declaration from the real estate records of Hennepin County, Minnesota.

2. **Project Restrictions.**

   (a) The Owner represents, warrants, and covenants that:

      (i) All leases of units to Qualifying Tenants (as defined in Section 3(a)(i) hereof) shall contain clauses, among others, wherein each individual lessee:

         (1) Certifies the accuracy of the statements made in its application and Eligibility Certification (as defined in Section 3(a)(ii) hereof); and

         (2) Agrees that the family income at the time the lease is executed shall be deemed substantial and material obligation of the lessee’s tenancy, that the lessee will comply promptly with all requests for income and other information relevant to determining low or moderate income status from the Owner or the Authority, and that the lessee’s failure or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of the lessee’s tenancy.

      (ii) The Owner shall permit any duly authorized representative of the Authority to inspect the books and records of the Owner pertaining to the income of Qualifying Tenants residing in the Project.

3. **Occupancy Restrictions.**

   (a) **Tenant Income Provisions.** The Owner represents, warrants, and covenants that:

      (i) **Qualifying Tenants.** From the commencement of the Qualified Project Period, at least 27 Rental Housing Units shall be occupied (or treated as occupied as provided herein) or held vacant and available for occupancy by Qualifying Tenants. Qualifying Tenants shall mean those persons and families who shall be determined from time to time by the Owner to have combined adjusted income that does not exceed fifty percent (50%) of the Minneapolis-St. Paul metropolitan statistical area (the “Metro Area”) median income for the applicable calendar year. For purposes of this definition, the occupants of a residential unit shall not be deemed to be Qualifying Tenants if all the occupants of such residential unit at any time are “students,” as defined in Section 151(c)(4) of the Internal Revenue Code of 1986, as amended (the “Code”), not entitled to an exemption under the Code. The determination of whether an individual or family is of low or moderate income shall be made at the time the tenancy commences and on an ongoing basis thereafter, determined at least annually. If during their tenancy a
Qualifying Tenant’s income exceeds 140 percent of the maximum income qualifying as low or moderate income for a family of its size, the next available unit (determined in accordance with the Code and applicable regulations) (the “Next Available Unit Rule”) must be leased to a Qualifying Tenant or held vacant and available for occupancy by a Qualifying Tenant. If the Next Available Unit Rule is violated, the Unit will not continue to be treated as a Qualifying Unit.

(ii) **Certification of Tenant Eligibility.** As a condition to initial and continuing occupancy, each person who is intended to be a Qualifying Tenant shall be required annually to sign and deliver to the Owner a Certification of Tenant Eligibility substantially in the form attached as Exhibit B hereto, or in such other form as may be approved by the Authority (the “Eligibility Certification”), in which the prospective Qualifying Tenant certifies as to qualifying as low or moderate income. In addition, such person shall be required to provide whatever other information, documents, or certifications are deemed necessary by the Authority to substantiate the Eligibility Certification, on an ongoing annual basis, and to verify that such tenant continues to be a Qualifying Tenant within the meaning of Section 3(a)(i) hereof. Eligibility Certifications will be maintained on file by the Owner with respect to each Qualifying Tenant who resides in a Project unit or resided therein during the immediately preceding calendar year.

(iii) **Lease.** The form of lease to be utilized by the Owner in renting any units in the Project to any person who is intended to be a Qualifying Tenant shall provide for termination of the lease and consent by such person to immediate eviction for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the Eligibility Certification.

(iv) **Annual Report.** The Owner covenants and agrees that during the term of this Declaration, it will prepare and submit to the Authority on or before _____________ of each year, a certificate substantially in the form of Exhibit C hereto, executed by the Owner, (a) identifying the tenancies and the dates of occupancy (or vacancy) for all Qualifying Tenants in the Project, including the percentage of the dwelling units of the Project which were occupied by Qualifying Tenants (or held vacant and available for occupancy by Qualifying Tenants) at all times during the year preceding the date of such certificate; (b) describing all transfers or other changes in ownership of the Project or any interest therein; and (c) stating, that to the best knowledge of the person executing such certificate after due inquiry, all such units were rented or available for rental on a continuous basis during such year to members of the general public and that the Owner was not otherwise in default under this Declaration during such year.

(v) **Notice of Non-Compliance.** The Owner will immediately notify the Authority if at any time during the term of this Declaration the dwelling units in the Project are not occupied or available for occupancy as required by the terms of this Declaration.
4. **Rental Restrictions.** The Owner represents, warrants and covenants that the maximum gross rent for all units occupied by Qualifying Tenants shall not exceed 30 percent of the 50 percent income limitation, all in accordance with the Tax Credit Law.

5. **Transfer Restrictions.** The Owner covenants and agrees that the Owner will cause or require as a condition precedent to any Transfer (as defined in the Contract) that the transferee of the Project pursuant to the Transfer assume in writing, in a form acceptable to the Authority, all duties and obligations of the Owner under this Declaration, including this Section 5, in the event of a subsequent Transfer by the transferee prior to expiration of the Rental Restrictions and Occupancy Restrictions provided herein (the “Assumption Agreement”). The Owner shall deliver the Assumption Agreement to the Authority prior to the Transfer.

6. [Intentionally omitted.]

7. **Enforcement.**

   (a) The Owner shall permit, during normal business hours and upon reasonable notice, any duly authorized representative of the Authority to inspect any books and records of the Owner regarding the Project with respect to the incomes of Qualifying Tenants.

   (b) The Owner shall submit any other information, documents or certifications requested by the Authority which the Authority deems reasonably necessary to substantial continuing compliance with the provisions specified in this Declaration.

   (c) The Owner acknowledges that the primary purpose for requiring compliance by the Owner with the restrictions provided in this Declaration is to ensure compliance of the property with the housing affordability covenants set forth in Section 4.5 of the Contract, and by reason thereof, the Owner, in consideration for assistance provided by the Authority under the Contract that makes possible the construction of the Minimum Improvements (as defined in the Contract) on the Property, hereby agrees and consents that the Authority shall be entitled, upon any breach of the provisions of this Declaration and the Owner’s failure to cure such breach within the cure periods described in Section 9.1 of the Contract, and in addition to all other remedies provided by law or in equity, to enforce specific performance by the Owner of its obligations under this Declaration in a state court of competent jurisdiction. The Owner hereby further specifically acknowledges that the Authority cannot be adequately compensated by monetary damages in the event of any default hereunder.

   (d) The Owner understands and acknowledges that, in addition to any remedy set forth herein for failure to comply with the restrictions set forth in this Declaration, the Authority may exercise any remedy available to it under Article IX of the Contract.

8. **Indemnification.** The Owner hereby indemnifies, and agrees to defend and hold harmless, the Authority from and against all liabilities, losses, damages, costs, expenses (including attorneys’ fees and expenses), causes of action, suits, allegations, claims, demands, and judgments of any nature arising from the consequences of a legal or administrative proceeding or action brought against them, or any of them, on account of any failure by the
Owner to comply with the terms of this Declaration, or on account of any representation or warranty of the Owner contained herein being untrue.

9. **Agent of the Authority.** The Authority shall have the right to appoint an agent to carry out any of its duties and obligations hereunder, and shall inform the Owner of any such agency appointment by written notice.

10. **Severability.** The invalidity of any clause, part or provision of this Declaration shall not affect the validity of the remaining portions thereof.

11. **Notices.** All notices to be given pursuant to this Declaration shall be in writing and shall be deemed given when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing. The Owner and the Authority may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, or other communications shall be sent. The initial addresses for notices and other communications are as follows:

To the Authority: Economic Development Authority in and for the City of Minnetonka  
14600 Minnetonka Blvd.  
Minnetonka, MN 55345  
Attention: Community Development Director

To the Owner: ____________________________  
____________________________  
____________________________  
____________________________  

With copies to:  
Winthrop & Weinstine, P.A.  
Capella Tower, Suite 3500  
225 South Sixth Street  
Minneapolis, MN  55402  
Attention: Jeffrey Koerselman

And, so long as the Tax Credit Investor is a partner in the Owner to:

____________________________  
____________________________  
____________________________

12. **Governing Law.** This Declaration shall be governed by the laws of the State of Minnesota and, where applicable, the laws of the United States of America.
13. **Attorneys’ Fees.** In case any action at law or in equity, including an action for declaratory relief, is brought against the Owner to enforce the provisions of this Declaration, the Owner agrees to pay the reasonable attorneys’ fees and other reasonable expenses paid or incurred by the Authority in connection with such action.

14. **Declaration Binding.** This Declaration and the covenants contained herein shall run with the real property comprising the Project and shall bind the Owner and its successors and assigns and all subsequent owners of the Project or any interest therein, and the benefits shall inure to the Authority and its successors and assigns for the term of this Declaration as provided in Section 1(b) hereof.

15. **Relationship to Tax Credit Law Requirements.** Notwithstanding anything to the contrary, during any period while at least 27 units in the Property are subject to income and rent limitations under the Tax Credit Law, evidence of compliance with such Tax Credit Law requirements filed with the Authority at least annually will satisfy any requirements otherwise imposed under this Declaration. During any portion of the Qualified Project Period as defined herein when the Tax Credit Law income and rent restrictions do not apply to the Property, this Declaration controls.

Drafted by:

Kennedy & Graven Chartered (JAE)
470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
IN WITNESS WHEREOF, the Owner has caused this Declaration of Restrictive Covenants to be signed by its respective duly authorized representatives, as of the day and year first written above.

[TBD LIMITED PARTNERSHIP]

By ______________________________
Its ______________________________

STATE OF MINNESOTA )
) SS.
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this ___________ __, 201_, by __________________, the ________________ of [TBD Limited Partnership], a Minnesota limited partnership, on behalf of such limited partnership.

________________________________________
Notary Public
This Declaration is acknowledged and consented to by:

ECONOMIC DEVELOPMENT AUTHORITY IN AND FOR THE CITY OF MINNETONKA, MINNESOTA

By ________________________________
   Its President

By ________________________________
   Its Executive Director

STATE OF MINNESOTA  )
   ) SS.
COUNTY OF HENNEPIN  )

The foregoing instrument was acknowledged before me this _____________, 201_, by Terry Schneider, the President of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the authority.

______________________________
Notary Public

STATE OF MINNESOTA  )
   ) SS.
COUNTY OF HENNEPIN  )

The foregoing instrument was acknowledged before me this _____________, 201_, by Geralyn Barone, the Executive Director of the Economic Development Authority in and for the City of Minnetonka, Minnesota, on behalf of the authority.

______________________________
Notary Public
EXHIBIT A

Legal Description

The land referred to is situated in the State of Minnesota, County of Hennepin, and is described as follows:

Parcel 1:

That part of the East 30.00 acres of the Southeast Quarter of the Northeast Quarter of Section 35, Township 117, Range 22, Hennepin County, Minnesota, described as follows:

Commencing at the Southeast corner of said Southeast Quarter of the Northeast Quarter; thence on an assumed bearing of South 87 degrees 06 minutes 28 seconds West along the South line of said Southeast Quarter of the Northeast Quarter a distance of 972.80 feet; thence North 2 degrees 53 minutes 46 seconds West a distance of 448.09 feet, said last described line if extended would intersect the North line of said Southeast Quarter of the Northeast Quarter at a point 1008.65 feet West of the Northeast corner of said Southeast Quarter of the Northeast Quarter; thence North 87 degrees 06 minutes 28 seconds West a distance or 97.56 feet to the point or beginning of the land to be described; thence South 2 degrees 34 minutes 09 seconds East a distance of 160.00 feet; thence North 63 degrees 25 minutes 51 seconds East a distance of 208.69 feet to the Southeasterly right-of-way line of County Road Number 61; thence Northwesterly along said right-of-way line to its intersection with a line bearing North 63 degrees 25 minutes 51 seconds East to the point of beginning; thence South 63 degrees 25 minutes 51 seconds West to the point of beginning.

Hennepin County, Minnesota
Abstract Property

Parcel 2:

That part of the East 30 acres of the Southeast Quarter of the Northeast Quarter of Section 35, Township 117, Range 22, Hennepin County, Minnesota, described as follows:

Commencing at the East Quarter corner of Section 35; thence South 87 degrees 06 minutes 28 seconds West, assumed bearing, along the South line of said Southeast Quarter of the Northeast Quarter, 996.01 feet; thence North 1 degree 19 minutes 39 seconds West 388.02 feet; thence North 86 degrees 20 minutes 14 seconds East 12.59 feet, which point is marked by a Judicial Landmark; thence North 2 degrees 53 minutes 46 seconds West 460.27 feet to the point of beginning of the land to be described, which point is marked by a Judicial Landmark; thence South 2 degrees 53 minutes 46 seconds East, along the last described line, 400.23 feet; thence North 87 degrees 06 minutes 28 seconds West 97.56 feet; thence North 63 degrees 25 minutes 51 seconds East 186.14 feet to the Southeasterly right-of-way line of County Road 61 (also known as Shady Oak Road); thence North 34 degrees 35 minutes 25 seconds West, along said right-of-way, 248.72 feet; thence North 39 degrees 23 minutes 15 seconds West, along said right of way, 173.57 feet, to its intersection with a line which bears North 50 degrees 09 minutes 52 seconds East from the point of beginning; thence South 50 degrees 09 minutes 52 seconds West, along said line, 42.72 feet to the point of beginning.

Hennepin County, Minnesota
Abstract Property
EXHIBIT B

Certification of Tenant Eligibility

(INCOME COMPUTATION AND CERTIFICATION)

Project: [Address]
Owner:
Unit Type: ____ 2 BR ____ 3 BR

1. I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully, frankly and personally each of the following questions for all persons (including minors) who are to occupy the unit in the above apartment development for which application is made, all of whom are listed below:

<table>
<thead>
<tr>
<th>Name of Members of the Household</th>
<th>Relationship To Head of Household</th>
<th>Age</th>
<th>Place of Employment</th>
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</table>

Income Computation

2. The anticipated income of all the above persons during the 12-month period beginning this date,

   (a) including all wages and salaries, overtime pay, commissions, fees, tips and bonuses before payroll deductions; net income from the operation of a business or profession or from the rental of real or personal property (without deducting expenditures for business expansion or amortization of capital indebtedness); interest and dividends; the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits and other similar types of periodic receipts; payments in lieu of earnings, such as unemployment and disability compensation, worker’s compensation and severance pay; the maximum amount of public assistance available to the above persons; periodic and determinable allowances, such as alimony and child support payments and regular contributions and gifts received from persons not residing in the dwelling; and all regular pay, special pay and allowances of a member of the Armed Forces (whether or not living in the dwelling) who is the head of the household or spouse; but
(b) excluding casual, sporadic or irregular gifts; amounts which are specifically for or in reimbursement of medical expenses; lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workmen’s compensation), capital gains and settlement for personal or property losses; amounts of educational scholarships paid directly to the student or the educational institution, and amounts paid by the government to a veteran for use in meeting the costs of tuition, fees, books and equipment, but in either case only to the extent used for such purposes; special pay to a serviceman head of a family who is away from home and exposed to hostile fire; relocation payments under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; foster child care payments; the value of coupon allotments for the purchase of food pursuant to the Food Stamp Act of 1964 which is in excess of the amount actually charged for the allotments; and payments received pursuant to participation in ACTION volunteer programs, is as follows: $_____________.

3. If any of the persons described above (or whose income or contributions was included in item 2) has any savings, bonds, equity in real property or other form of capital investment, provide:

   (a) the total value of all such assets owned by all such persons: $____________;

   (b) the amount of income expected to be derived from such assets in the 12 month period commencing this date: $_____________ ; and

   (c) the amount of such income which is included in income listed in item 2: $__________.

4. (a) Will all of the persons listed in item 1 above be or have they been full-time students during five calendar months of this calendar year at an educational institution (other than a correspondence school) with regular faculty and students?

   Yes _________________   No ________________

   (b) Is any such person (other than nonresident aliens) married and eligible to file a joint federal income tax return?

   Yes _________________   No ________________
THE UNDERSIGNED HEREBY CERTIFY THAT THE INFORMATION SET FORTH ABOVE IS TRUE AND CORRECT. THE UNDERSIGNED ACKNOWLEDGE THAT THE LEASE FOR THE UNIT TO BE OCCUPIED BY THE UNDERSIGNED WILL BE CANCELLED UPON 10 DAYS WRITTEN NOTICE IF ANY OF THE INFORMATION ABOVE IS NOT TRUE AND CORRECT.

__________________________________________
Head of Household

__________________________________________
Spouse
1. Calculation of Eligible Tenant Income:

   (a) Enter amount entered for entire household in 2 above: $__________

   (b) If the amount entered in 3(a) above is greater than $5,000, enter the greater of (i) the amount entered in 3(b) less the amount entered in 3(c) or (ii) 10% of the amount entered in 3(a): $__________

   (c) TOTAL ELIGIBLE INCOME (Line 1(a) plus Line 1(b)): $__________

2. The amount entered in 1(c) is less than or equal to _______ 50% of median income for the area in which the Project is located, as defined in the Declaration. 50% is necessary for status as a “Qualifying Tenant” under Section 3(a) of the Declaration.

3. Rent:

   (a) The rent for the unit is $________________.

   (b) The amount entered in 3(a) is less than or equal to the maximum rent permitted under the Declaration.

4. Number of apartment unit assigned: ___________.

5. This apartment unit was ____ was not ____ last occupied for a period of at least 31 consecutive days by persons whose aggregate anticipated annual income as certified in the above manner upon their initial occupancy of the apartment unit was less than or equal to 50% of Median Income in the area.

6. Check as applicable: _______ Applicant qualifies as a Qualifying Tenant (tenants of at least ___ units must meet), or ____ Applicant otherwise qualifies to rent a unit.

THE UNDERSIGNED HEREBY CERTIFIES THAT HE/SHE HAS NO KNOWLEDGE OF ANY FACTS WHICH WOULD CAUSE HIM/HER TO BELIEVE THAT ANY OF THE INFORMATION PROVIDED BY THE TENANT MAY BE UNTRUE OR INCORRECT.

NAME OF OWNER,

a Minnesota ____________________

By _____________________________

Its _____________________________
EXHIBIT C

Certificate of
Continuing Program Compliance

Date: _______________________, ______.

The following information with respect to the Project located at ________________, Minnetonka, Minnesota (the “Project”), is being provided by ________________ (the “Owner”) to the Economic Development Authority in and for the City of Minnetonka, Minnesota (the “Authority”), pursuant to that certain Declaration of Restrictive Covenants dated ______, 2015 (the “Declaration”), with respect to the Project:

(A) The total number of residential units which are available for occupancy is 27. The total number of such units occupied is ________________.

(B) The following residential units (identified by unit number) have been designated for occupancy by “Qualifying Tenants,” as such term is defined in the Declaration (for a total of ____ units):

<table>
<thead>
<tr>
<th>2 BR Units:</th>
<th>3 BR Units:</th>
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</table>

(C) The following residential units which are included in (B) above, have been re-designated as units for Qualifying Tenants since ________________, 20____, the date on which the last “Certificate of Continuing Program Compliance” was filed with the Authority by the Owner:

<table>
<thead>
<tr>
<th>Unit Number</th>
<th>Previous Designation of Unit (if any)</th>
<th>Replacing Unit Number</th>
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Music Barn-Shelter Corp
May 18, 2015 EDA
(D) The following residential units are considered to be occupied by Qualifying Tenants based on the information set forth below:

<table>
<thead>
<tr>
<th>Unit Number</th>
<th>Name of Tenant</th>
<th>Number of Persons Residing in the Unit</th>
<th>Number of Bedrooms</th>
<th>Total Adjusted Gross Income</th>
<th>Date of Initial Occupancy</th>
<th>Rent</th>
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(E) The Owner has obtained a “Certification of Tenant Eligibility,” in the form provided as EXHIBIT B to the Declaration, from each Tenant named in (D) above, and each such Certificate is being maintained by the Owner in its records with respect to the Project. Attached hereto is the most recent “Certification of Tenant Eligibility” for each Tenant named in (D) above who signed such a Certification since _____________, _____________, the date on which the last “Certificate of Continuing Program Compliance” was filed with the Authority by the Owner.
(F) In renting the residential units in the Project, the Owner has not given preference to any particular group or class of persons (except for persons who qualify as Qualifying Tenants); and none of the units listed in (D) above have been rented for occupancy entirely by students, no one of which is entitled to file a joint return for federal income tax purposes. All of the residential units in the Project have been rented pursuant to a written lease, and the term of each lease is at least ___ months.

(G) The information provided in this “Certificate of Continuing Program Compliance” is accurate and complete, and no matters have come to the attention of the Owner which would indicate that any of the information provided herein, or in any “Certification of Tenant Eligibility” obtained from the Tenants named herein, is inaccurate or incomplete in any respect.

(H) The Project is in continuing compliance with the Declaration.

(I) The Owner certifies that as of the date hereof at least ____ of the residential dwelling units in the Project are occupied or held open for occupancy by Qualifying Tenants, as defined and provided in the Declaration.

(J) The rental levels for each Qualifying Tenant comply with the maximum permitted under the Declaration.

IN WITNESS WHEREOF, I have hereunto affixed my signature, on behalf of the Owner, on ____________________, 201_.

[TBD LIMITED PARTNERSHIP]

By______________________________

Its ____________________________
EDA Resolution No. 2015-xx

Resolution Approving a Contract for Private Development Between
The Economic Development Authority In And For The City Of
Minnetonka And Community Housing Corporation Of America

BE IT RESOLVED by the Board of Commissioners (the "Board") of the Economic Development Authority in and for the City of Minnetonka (the “Authority”) as follows:

Section 1. Background.

1.01. The Authority and the City of Minnetonka (“City”) have undertaken a program to promote economic development and job opportunities, promote the development and redevelopment of land which is underutilized within the City, and facilitate the development of affordable housing, and in this connection created a development district known as Development District No. 1 (the “Project”) in the City, pursuant to Minnesota Statutes, Sections 469.124 to 469.134, as amended.

1.02. The City and the Authority have established Redevelopment Tax Increment Financing District No. 2 (the “TIF District”) within the Project and adopted a financing plan (the “TIF Plan”) for the TIF District in order to facilitate redevelopment of certain property in the Project, all pursuant to Minnesota Statutes, Sections 469.174 through 469.1794, as amended.

1.03. In order to facilitate development of affordable rental housing in the Project, the Authority has caused to be prepared a Contract for Private Development (the “Contract”) between the Authority and Community Housing Corporation of America, a Delaware nonprofit corporation (“CHCA”), under which CHCA will construct a three-story, approximately 27-unit multifamily housing rental facility on certain real property in the Project (the “Development Property”), subject to certain income and rent limitations, and the Authority will provide certain financial assistance to CHCA using tax increment revenues derived from the TIF District.

1.04. CHCA intends to transfer the Development Property to a limited partnership for which CHCA will serve as general partner, for the development of the Minimum Improvements.

1.05. The Board has reviewed the Contract and finds that the execution thereof by the Authority and performance of the Authority’s obligations thereunder are in the best interest of the City and its residents.
Section 2. Board Action.

2.01. The Contract is approved in substantially the form on file in City Hall, subject to modifications that do not alter the substance of the transaction and are approved by the President and Executive Director; provided that execution of the document will be conclusive evidence of their approval.

2.02. The President and Executive Director are authorized and directed to execute the Contract and any other documents or certificates necessary to carry out the transactions described therein.

Adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka this 18th day of May, 2015.

______________________________
Terry Schneider, President

ATTEST:

______________________________
David E. Maeda, Secretary

ACTION ON THIS RESOLUTION:

Motion for adoption:
Seconded by:
Voted in favor of:
Voted against:
Abstained:
Absent:
Resolution adopted.

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Board of Commissioners of the Economic Development Authority in and for the City of Minnetonka, Minnesota, at a duly authorized meeting held __________, 2015.

______________________________Secretary