

## CITY LOAN AGREEMENT

THIS CITY LOAN AGREEMENT is entered into as of \_\_\_\_\_, 2010, by and between the City of Ramsey, Minnesota, a charter city organized and existing under the constitution and laws of the State of Minnesota (the "City") and F & C Ramsey, LLC, an Indiana limited liability company (the "Developer").

### RECITALS:

A. The City and the Developer are parties to the Development Agreement and the Purchase Agreement, as defined below, pursuant to which the City is selling the "Development Property" as defined below, to the Developer.

B. The Developer has also asked the City to lend the Developer \$1,420,000.00 to finance the construction and completion of the Minimum Improvements, as defined below.

C. The City has agreed to lend the Developer \$1,420,000.00 to finance the construction and completion of the Minimum Improvements, as defined below.

D. The City has agreed to make the City Loan to the Developer upon the terms and subject to the conditions hereinafter set forth.

### AGREEMENTS:

NOW, THEREFORE, in consideration of the premises and the covenants hereinafter set forth, and of one dollar and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

## ARTICLE I.

### DEFINITIONS

For purposes of this City Loan Agreement the following terms shall have the meanings set forth in this Article I. Terms used in this City Loan Agreement and not otherwise defined herein have the meanings set forth in the Development Agreement.

"Advance" means an advance to the Developer of all or any portion of the proceeds of the City Loan in accordance with the terms hereof.

"City Counsel" means Briggs and Morgan, P.A.

"City Loan" shall mean the extension of credit evidenced by the City Note.

"City Loan Agreement" means this City Loan Agreement as the same may hereafter be amended, modified, extended or restated from time to time.

"City Note" means that certain Promissory Note bearing even date herewith made payable by Developer to the order of City in the original principal amount of up to \$1,420,000.00, and all amendments, modifications, replacements, renewals and substitutions therefor.

"Completion" or "Completed" means that (a) the Minimum Improvements are completed in accordance with the Final Construction Plans; (b) the City has issued the Certificate of Completion described in Section 5.5 of the Development Agreement; and (c) no Default or Event of Default has occurred and is continuing.

"Completion Date" means the earlier of (a) the date Developer's construction of the Minimum Improvements is Completed; or (b) December 31, 2012; provided, however, if a Developer's completion of construction of the Minimum Improvements is delayed as a result of an "Unavoidable Delay," as defined in the Development Agreement, the Developer gives the City notice of the Unavoidable Delay within thirty (30) days after the onset of the Unavoidable Delay and the Developer uses all commercially reasonable efforts to complete the construction of the Minimum Improvements as promptly as reasonably possible given the conditions causing the Unavoidable Delay, the Completion Date, as defined herein, will extend for a period of time equal to the duration of the condition causing the Unavoidable Delay plus a reasonable time for recovery and restoration following the cessation of such condition.

"Construction Cost Statement" means the Sworn Construction Cost Statement referred to in Section 2.3 hereof executed or to be executed by the Developer and the General Contractor.

"Construction Contract" means that certain agreement dated \_\_\_\_\_, 2011 between the Developer and the General Contractor.

"Contractor" means any Person including, without limitation, the General Contractor, that has a contract or subcontract under which payment may be required for any work done, materials supplied, or services furnished in connection with the design, construction and/or completion of the Minimum Improvements.

"Default" means any Event of Default or the occurrence of any event which, with the giving of notice or the lapse of any applicable grace period, or both, would be an Event of Default.

"Development Agreement" means that certain Development Agreement by and between the Developer and the City dated as of \_\_\_\_\_, 2010.

"Development Property" means Lot 3, Block 1, COR ONE, Anoka County, Minnesota and all improvements constructed thereon.

"Draw Request" means a Draw Request and Draw Request Certification in the form of Exhibit A hereto.

"Environmental Laws" shall mean, collectively, all applicable federal, state, local and foreign laws, common law or regulations, treaties, orders, decrees, permits, licenses, authorizations, judgments or injunctions issued, promulgated, approved or entered thereunder, now or hereafter in effect in each case relating to pollution or protection of individual, public or employee health or safety or the environment (including, without limitation, ambient and indoor air, surface water, groundwater, soil, land surface or subsurface, and natural resources such as wetlands, flora and fauna) including, without limitation, laws relating to (a) emissions, discharges, releases or threatened releases of Hazardous Materials into the environment and (b) the manufacture, processing, distribution, use, generation, treatment, storage, disposal, transport or handling of Hazardous Materials.

"Event of Default" shall have the meaning given in Section 8.1 hereof.

"Final Construction Plans" has the meaning set forth in the Development Agreement.

"General Contractor" means Flaherty & Collins Construction, Inc.

"Guarantor" means Flaherty & Collins Construction, Inc.

"Guaranty" means that certain Guaranty bearing even date herewith executed by the Guarantor in favor of the City pursuant to which the Guarantor has unconditionally guaranteed the full payment and prompt performance of all obligations of the Developer under the Loan Documents.

"Hazardous Materials" the term "Hazardous Materials" includes but is not limited to substances defined as "hazardous substances," "toxic substances" or "hazardous wastes" in the Comprehensive Environmental Response Compensation Liability Act of 1980, as amended, 42 U.S.C. §9601, et seq., and substances defined as "hazardous wastes," "hazardous substances," "pollutants, or contaminants" as defined in the Minnesota Environmental Response Liability Act, Minnesota Statutes §115B.02. The term "Hazardous Materials" also includes asbestos, polychlorinated biphenyls, petroleum, including crude oil or any fraction thereof, petroleum products, heating oil, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas useable for fuel (or mixtures of natural gas or synthetic gas).shall mean any pollutant, contaminant, toxic or hazardous substance, constituent or waste, or any other constituent, waste, material, compound or substance including, without limitation, asbestos, petroleum (including crude oil or any fraction thereof) or any petroleum product, which is subject to regulation or which can give rise to liability under any Environmental Law.

"Loan Documents" means this City Loan Agreement, the City Note, the Guaranty and any and all documents, instruments, certificates and agreements executed by the Developer and/or the Guarantor in connection with the City Loan, and any and all renewals, replacements, supplements, modifications, extensions and/or amendments of any of the foregoing.

"Minimum Improvements" means the "Minimum Improvements" as defined in the Development Agreement.

"Organizational Documents" means (a) as to any corporation, the certificate or articles of incorporation or association, the bylaws, any unanimous shareholder agreement or declaration, any certificate of determination or instrument relating to the rights of preferred shareholders of such corporation, any shareholder rights agreement or voting trust agreement and all other documents of a comparable nature, (b) as to any limited liability company, the articles of organization, the operating agreement, any unanimous member agreement or voting trust agreement and all other documents of a comparable nature, (c) as to any partnership, its partnership agreement, its certificate of partnership and all other documents of the nature described above, and (d) as to any other entity, its organizational or governing documents and all other documents of the nature described above.

"Permits" means collectively all building permits, licenses and approvals required to be obtained prior to commencing construction of the Minimum Improvements.

"Person" means a natural person, corporation, partnership, limited partnership, unincorporated association, or proprietorship.

"Project" has the meaning set forth in the Development Agreement.

"Purchase Agreement" means the purchase agreement between the Housing and Redevelopment Authority for the City of Ramsey, Minnesota and the Developer dated \_\_\_\_\_, 2010.

## ARTICLE II.

### DOCUMENTS

In addition to the other conditions to the extension of credit contained in this City Loan Agreement, including but not limited to the conditions to advances set forth in Article IV hereof, the City shall have no obligation to make any advance against the City Note until the Developer has delivered the following items to the City, all of which shall be in form and substance satisfactory to the City:

2.1 Loan Documents. The executed Loan Documents.

2.2 Opinion of Counsel. Opinions of counsel of the Developer and the Guarantor in form and substance acceptable to City.

2.3 Sworn Construction Cost Statement. A sworn construction cost statement executed by the Developer and the General Contractor bearing even date herewith which:

- a. Lists the actual and estimated costs to complete the Minimum Improvements;
- b. Lists the names of all Contractors; and
- c. Shows that the funds available to the Developer are sufficient to assure completion of construction of the Minimum Improvements.

2.4 Insurance. One or more forms "ACORD 28 Evidence of Insurance" (or other evidence satisfactory to City) which substantiate that the insurance coverages required to be maintained by the Developer hereunder, and that all insurance policies relating thereto are in full force and effect.

## ARTICLE III.

### Construction LOAN COMMITMENT

3.1 Commitment of the City to Lend and the City Loan Agreement. Subject to the terms and conditions hereof and of the City Note and other Loan Documents delivered herewith, the City agrees to loan to the Developer, and the Developer agrees to borrow from the City, an amount not to exceed \$1,420,000.00. City shall make Advances against the City Note until the City Loan is fully advanced, in the stages and subject to the limitations as set forth below. The City shall have no obligation to make any Advances against the City Note after the Completion Date.

## ARTICLE IV.

### ADVANCES AND DISBURSEMENTS

4.1 Conditions of All Advances. Without limiting any of the other terms of this City Loan Agreement, the obligation of the City to make any Advance hereunder shall be subject to the fulfillment of all of the following conditions:

- a. All representations, warranties and covenants contained in this City Loan Agreement or any documents or other written statement delivered to the City prior to or on the date of this City Loan Agreement shall be true and correct on and as of the date of this City Loan Agreement as though such representations, warranties and covenants had been made on and as of such date.
- b. No Default or Event of Default shall have occurred and be continuing.
- c. The City shall have received the documents and other items listed in Article II hereof.
- d. The Developer shall provide the City with lien waivers from all persons providing labor or materials to be paid for from the Advance.
- e. The Developer shall provide the City with evidence, reasonably acceptable to the City, that the Developer has spent more than \$1,300,000.00 of Developer equity on the Project.

4.2 Procedures and Requirements for Advances. Except as set forth in Section 4.6, to obtain Advances of the City Loan against the City Note, the Developer shall submit to the City, no more often than monthly, written Draw Requests stating the amount of the requested Advance and identifying the Contractors or other persons and entities who will be paid from the Advance, and certifying such amounts to be currently payable for costs incurred in connection with the development and construction of the Project. Each Draw Request shall be supported by the General Contractor's certification to the effect that:

- a. The construction work to be paid for has been completed in a workmanlike manner in accordance with the Plans;
- b. The funds remaining undisbursed on the City Loan together with the funds remaining undisbursed on Developer's Construction Loan, as defined in the Development Agreement, are sufficient to fully complete the Minimum Improvements in accordance with the Plans and the certified Construction Costs Statement; and
- c. The work is progressing so that it will be completed on or before the Completion Date.

Within ten (10) business days from receipt of such Draw Request and General Contractor's Certification the City shall disburse proceeds of the City Loan directly to the Developer and the other Contractors or other persons and entities identified in the relevant Draw Request; provided that the City shall have the right, at its option, to refuse to make Advances should it determine that an Event of Default has occurred and is continuing.

4.3 Forms of Draw Request, etc. The form of Draw Request, the General Contractor's certificate, mechanic's lien waivers, certificates, and any and all other instruments or documents required to be delivered in connection with an advance hereunder shall be in form and substance satisfactory to the City in the City's reasonable discretion.

4.4 Sufficiency of Loan. It is expressly understood and agreed that the City assumes no liability or responsibility for the sufficiency of the City Loan to complete the Project.

4.5 Additional Rights and Remedies of City. In addition to all other rights and remedies available to the City hereunder and under the other Loan Documents, the City shall have the following rights:

a. The City may take such steps as it may deem appropriate, at its option, to verify the application of proceeds of the City Loan to work done and material furnished for the Project, and to vary the procedures for Advances herein set forth, if the same becomes necessary or desirable to assure the proper application of Advances authorized pursuant hereto, including but not limited to, authorizing Advances directly to the Contractors and corresponding reductions in the amount of Advances to be made to any Contractor or Developer hereunder. The foregoing notwithstanding, in no event shall the City be obligated to conduct any such verification or to so vary said procedures.

b. In the event that the City shall determine, in its reasonable judgment, that proper documentation to support a given Advance, as required by this City Loan Agreement, has not been furnished, it may withhold authorization of all or such portion of such Advance as shall not be so supported by proper documentation, and shall promptly notify the Developer of the discrepancy in or omission of such documentation. Until such time as such discrepancy or omission is corrected to the satisfaction of the City, it may withhold such amount.

c. From and after the occurrence of an Event of Default, the City reserves the right to authorize Advances which are allocated to any of the designated items in the Construction Cost Statement for such other purposes or in such different proportions as the City may, in its reasonable discretion, deem necessary or advisable. Developer may not reallocate items of cost or change the Construction Cost Statement without the consent of the City.

4.6 Advance to Pay Fee. In lieu of interest, the City is charging the Developer a \$120,000.00 fee for the extension of the City Loan to the Developer. The first Draw Request that the Developer submits to the City will be deemed to include a request that the City Advance \$120,000.00 and will be deemed to direct the City to retain the \$120,000.00 Advance in full payment of the fee described in this Section 4.6.

4.7 Additional Limitations on Advances. The City is not obligated to and will not make any Advances to the Developer before the Developer commences construction of the Minimum Improvements. For purposes of this Section 4.7, the Developer is deemed to have Commenced Construction when Developer has

a. obtained all building permits from the City of Ramsey necessary for the construction of the Minimum Improvements; and

b. commenced work related to the construction of the Minimum Improvements on the Development Property which work would constitute "the actual and visible

beginning of the improvement on the ground" as that phrase is used in Minnesota Statute Section 514.05 and interpreted by the Minnesota courts.

If Developer does not commence construction of the Minimum Improvements on or before June 30, 2011, the City is not obligated to make any Advances under this Agreement, and the City may terminate this Agreement upon five (5) days written notice to the Developer. The City is not obligated to and will not make any Advances after December 31, 2011. The City will not disburse proceeds of the City Loan to pay "Eligible Costs," as defined in the Development Agreement.

## ARTICLE V.

### REPRESENTATIONS AND WARRANTIES

To induce City to make the requested Loan hereunder, the Developer represents and warrants to City as of the date of this City Loan Agreement that:

5.1 Organization and Qualification of the Developer. The Developer is a corporation duly organized, validly existing and in good standing under the laws of the State of Indiana. The Developer has the power and authority to own its property and to carry on its activities as now being conducted, and is qualified and licensed to do business and is in good standing in every jurisdiction where failure to qualify could have a material adverse effect on the financial condition, activities, or operations of the Developer.

5.2 Organization and Qualification of Guarantor. The Guarantor is a corporation duly organized, validly existing and in good standing under the laws of the State of Indiana. The Guarantor has the power and authority to own its property and to carry on its activities as now being conducted, and is qualified and licensed to do business and is in good standing in every jurisdiction where failure to qualify could have a material adverse effect on the financial condition, activities, or operations of the Guarantor.

5.3 Authority; Validity; Binding Effect. The execution and delivery of the Loan Documents, the borrowing of funds contemplated thereby, and the performance or observance by Developer of its obligations under the Loan Documents do not contravene or violate any provision of law, or any covenant, indenture or agreement of or binding upon the Developer and do not require the consent or approval of any governmental entity or agency thereof. The execution and delivery of the Guaranty and the performance or observance by the Guarantor of its obligations under the Guaranty have been duly authorized by all necessary corporate action the of Guarantor, do not contravene or violate any provision of law, any Organizational Document of Guarantor or any covenant, indenture or agreement of or binding upon Guarantor and do not require the consent or approval of any governmental entity or agency thereof. The Loan Documents are legal, valid and binding obligations of the Developer and the Guarantor, and the Loan Documents are enforceable against the Developer and the Guarantor (as the case may be) in accordance with their respective terms.

5.4 Compliance with Laws. To the best of the Developer's actual knowledge, no violation of any law, ordinance, regulation or requirement exists with respect to the Project, and the Developer is in compliance with all other laws, ordinances, regulations and requirements where the failure to comply would reasonably be expected to have a material adverse effect on the Developer, its activities or its financial condition.

5.5 Pending Actions. There are no material actions, suits or proceedings pending, or to the knowledge of the Developer, threatened against or affecting the Developer or the Project, and the

Developer is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority.

5.6 No Breach. The consummation of the transaction contemplated hereby and performance of this City Loan Agreement, the Loan Documents, and all other documents executed and delivered in connection herewith will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, partnership agreement or other instrument to which the Developer or the Guarantor is a party, or by which the Developer or the Guarantor may be bound or affected.

5.7 No Event of Default. No Default or Event of Default has occurred and is continuing as of the date hereof.

5.8 Use of City Loan Funds. The Developer will use the proceeds of the City Loan solely to finance the development and construction of the Project.

5.9 Need for City Loan. The Developer would not undertake the Project without the assistance the City is providing to the City Loan.

## ARTICLE VI.

### AFFIRMATIVE COVENANTS

The Developer hereby covenants and agrees with the City that for so long as the City has any obligation to make Advances hereunder or any amount remains unpaid on any indebtedness of the Developer to the City hereunder, the Developer will:

6.1 Books, Records and Inspections. Maintain complete and accurate books and records; permit, and cause the Guarantor to permit, reasonable access by the City to the books and records of the Developer and the Guarantor; and permit the City to inspect the Project and other operations of the Developer and the Guarantor.

6.2 Insurance. Maintain insurance to such extent and against such hazards and liabilities as is commonly maintained by companies similarly situated or as the City may reasonably request from time to time, which insurance shall include without limitation the following:

a. Development Property Insurance. So-called "all risk" insurance with respect to the Project and all personal property located thereon, insuring against any peril now or hereafter included within the classification of "Special Perils" or "Cause of Loss – Special Form" (sometimes referred to as "All Risk of Physical Loss") in an amount equal to the full insurable value of such property.

b. Liability Insurance. Commercial general liability insurance on the so-called "occurrence" form, including bodily injury, death and property damage liability, insurance against any and all claims, including all legal liability to the extent insurable and imposed upon the City and all court costs and legal fees and expenses, arising out of or connected with the possession, use, leasing, operation, maintenance or condition of the Project in such amounts as are generally available at commercially reasonable premiums but in any event for a limit per occurrence of at least \$1,000,000 and an annual aggregate of at least \$2,000,000. The City shall be named as additional insured with respect to any insurance policy providing the coverage required by the immediately preceding sentence, and the Developer shall cause each provider of

any such insurance to agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the City, that it will give the City thirty (30) days prior written notice before any such policy or policies shall be altered or canceled, and that no act or default of the Developer shall affect the rights of the City under such policy or policies.

c. Worker's Compensation Insurance. Statutory workers' compensation and disability insurance.

6.3 Taxes and Liabilities. Pay, when due, all taxes, assessments and other liabilities except as contested in good faith and by appropriate proceedings.

6.4 Real Estate Taxes and Insurance Premiums. Promptly advise the City of the non-payment when due of any real estate taxes or installments of special assessments payable with respect to the Project.

6.5 Construction of Minimum Improvements. Commence construction of the Minimum Improvements on or before June 30, 2011. Complete the Minimum Improvements on or before the Completion Date in a good and workmanlike manner, in accordance with the Plans and in compliance with applicable laws, rules, regulations, building codes, and ordinances.

6.6 Reimbursement of Expenses. Promptly reimburse the City for any and all expenses of collection of any loan made or to be made hereunder, including reasonable attorneys' fees, whether or not suit is commenced.

6.7 Financial Information Regarding Guarantor's Net Worth and Substitute Guarantor. Until the City Note is paid in full, the Developer shall cause the Guarantor to provide the City with a reviewed financial statement for the Guarantor for the immediately preceding calendar year prepared by a certified public account (who may be any employee of the Guarantor) in accordance with generally accepted accounting principles, consistently applied on or before May 15 of each calendar year. If, in any year, the Guarantor's net worth is less than \$2,200,000.00, Developer must provide a replacement guaranty from another individual or entity reasonably acceptable to the City and having a net worth of not less than \$2,200,000.00. If a replacement guaranty is provided, the person or entity providing the replacement guaranty shall be the "Guarantor" for purposes of this Agreement.

6.8 On or before April 1, 2014 and on or before each April 1 thereafter until April 1, 2029, the Developer must provide the City with a statement from a certified public accountant setting forth the "Net Cash Flow," "Net Operating Expenses" and "Operating Expenses," as defined in the Development Agreement, for the immediately preceding calendar year and with such back-up documentation regarding income, expenses and debt service as the City may reasonably request to confirm the certified public accountant's calculation of "Net Cash Flow," "Net Operating Income," and "Operating Expenses." The certified public accountant who prepares the statement may be an employee of Borrower or an Affiliate of Borrower.

## ARTICLE VII.

### EVENTS OF DEFAULT AND THEIR EFFECT

7.1 Events of Default. Each of the following shall constitute an "Event of Default" under this City Loan Agreement:

a. Nonpayment of Note. Developer fails to pay any installment of principal on the City Note when due, and such payment is not made within a period of five (5) days after Written Notice thereof shall have been given by the City to the Developer.

b. Other Covenants. The Developer defaults in the due performance or observance of any term, covenant or agreement contained in this City Loan Agreement and such default shall continue for a period of fifteen (15) days after written notice thereof shall have been given by the City to the Developer.

c. Other Loan Documents. The Developer defaults in the due performance or observance of any term, covenant or agreement contained in any one or more of the Loan Documents and (a) such default constitutes an "Event of Default" under the terms of such other Loan Document(s), or (b) such default shall continue beyond the applicable notice and cure, if any, set forth in such other Loan Document.

d. Development Agreement. The Developer defaults in the due performance or observance of any term, covenant or agreement contained in the Development Agreement and such default shall continue beyond the applicable notice and cure period, if any, set forth in the Development Agreement.

e. Insolvency of Developer or Guarantor. The Developer or the Guarantor (i) becomes insolvent or unable to pay its debts generally as they mature, (ii) suspends business, (iii) makes a general assignment for the benefit of creditors, (iv) admits in writing its inability to pay its debts generally as they mature; (v) files or has filed against it a petition in bankruptcy or a petition or answer seeking a reorganization, arrangement with creditors or other similar relief under the federal bankruptcy laws or under any other applicable law of the United States of America or any state thereof, (vi) consents to the appointment of a trustee or receiver for it or for a substantial part of its property, (vii) takes any organizational action for the purpose of effecting or consenting to any of the foregoing.

f. Representations and Warranties. If any representation or warranty contained herein or in any other Loan Document, or in any letter, financial statement, or certificate furnished or to be furnished to the City, proves to be false in any material respect as of the date this City Loan Agreement is executed or at the time such letter or certificate is delivered to the City.

g. Completion of Minimum Improvements. If the Developer has not Completed the Minimum Improvements on or before the Completion Date.

7.2 Effect of Event of Default. If any Event of Default shall occur, the City Note shall, at the City's option, become immediately due and payable, in full, by giving the Developer written notice of such acceleration. In addition, and without limiting any other remedy available to the City, upon the occurrence of an event set forth in Section 8.1(e) above, all sums outstanding on the City Note shall become immediately due and payable automatically without notice to the Developer. If any Event of Default shall occur, the City may, at its option, exercise any of its available rights and remedies under the Loan Documents and under any applicable law, rule or regulation, including, without limitation, the following:

a. terminate the City's obligation to Advance any further sums pursuant hereto; or

b. declare all amounts advanced against the City Note, plus all accrued but unpaid interest thereon, to be immediately due and payable, and demand payment in full of the then-outstanding principal balance of the City Note and all accrued but unpaid interest thereon.

7.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this City Loan Agreement, the other Loan Documents, the Development Agreement 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.

## ARTICLE VIII.

### MISCELLANEOUS

8.1 Conflicts of Interest. No member of the governing body or other official of the City shall participate in any decision relating to this City Loan Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by the Developer or successor or on any obligations under the terms of this City Loan Agreement.

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

8.3 Binding Effect. The parties hereto agree that this City Loan Agreement shall be binding upon and inure to the benefit of their respective successors in interest and assigns including any holder of or participant in the Note; provided, however, that the Developer may not assign or transfer its interest herein without the prior written consent of the City. Nothing herein shall be interpreted or construed as creating any rights in any person other than the parties hereto.

8.4 Governing Law, Waiver of Right to Jury Trial, Jurisdiction, Venue and Severability. This City Loan Agreement is made in the state of Minnesota and shall be construed in accordance with the laws thereof. The parties consent to the personal jurisdiction of the state and federal courts located in the state of Minnesota in connection with any controversy related to this City Loan Agreement and the parties waive any argument that venue in such forms is not convenient. The parties agree that any litigation initiated by either party against the other shall be venued either in the district court in Anoka County, Minnesota or the U.S. District Court, District of Minnesota. The City and the Developer, each having been represented by counsel each knowingly and voluntarily waives a right to a trial by jury in any action or proceeding to enforce or defend any rights under this City Loan Agreement or any amendment to this City Loan Agreement. If any provision of this City Loan Agreement is in conflict with any statute or rule of law of the state of Minnesota or is otherwise unenforceable, such provision shall be deemed null and void only to the extent of such conflict or unenforceability, and shall be deemed separate from and shall not invalidate any other provision of this City Loan Agreement.

8.5 Notices. Any notices required or contemplated hereunder shall be effective upon the placing thereof in the United States mails, certified mail and with return receipt requested, postage prepaid, or sent by overnight courier, or sent by facsimile, and addressed as follows:

If to Developer: F&C Ramsey, LLC  
8900 Keystone Crossing #1200  
Indianapolis, IN 46240  
Attn: David M. Flaherty  
Telephone No.: (317) 816-9300  
Facsimile No.: (317) 816-9301  
Email: dflaherty@flahertycollins.com

With copies to: Barnes & Thornburg  
11 S. Meridian St.  
Indianapolis, IN 46204  
Attn: Stephen Lee  
Telephone No.: (317) 231-7200  
Facsimile No.: (317) 231-7433  
Email: stephen.lee@BTLaw.com

If to City: City of Ramsey, Minnesota  
Ramsey Municipal Center  
7550 Sunwood Drive  
Ramsey, MN 55303  
Attn: City Administrator  
Telephone No.: (763) 427-1410  
Facsimile No.: (763) 433-9888  
Email: kulrich@ci.ramsey.mn.us

With copies to: Briggs and Morgan, P.A.  
2200 IDS Center  
80 South Eighth Street  
Minneapolis, Minnesota 55402  
Attn: Tom Bray  
Email: [tbray@briggs.com](mailto:tbray@briggs.com)  
Facsimile No. (612) 977-8650

8.6 No Waivers. No failure or delay on the part of the City in exercising any right, power or privilege hereunder and no course of dealing between the Developer and the City shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

8.7 Amendment and Waiver. Neither this City Loan Agreement nor any provision hereof may be modified, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought. In the event any agreement contained in this City Loan Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

8.8 Counterparts. This City Loan Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and either of the parties may execute this City Loan Agreement by signing any such counterparts.

8.9 Superseding Effect. This City Loan Agreement, the Loan Documents, the Development Agreement, and the Purchase Agreement constitute the entire agreement between the City and Developer with respect to the matters addressed in those agreements and documents, and those agreements and documents supersede and replace any prior agreements, either oral or written, with respect to those matters.

8.10 Indemnification. The Developer hereby agrees to defend, protect, indemnify and hold harmless City and its affiliates and the directors, officers, employees of the City and its affiliates (each of the foregoing being an "Indemnitee" and all of the foregoing being collectively the "Indemnitees") from and against any and all claims, actions, damages, liabilities, judgments, costs and expenses (including all reasonable fees and disbursements of counsel which may be incurred in the investigation or defense of any matter) imposed upon, incurred by or asserted against any Indemnitee, whether direct, indirect or consequential and whether based on any federal, state, local or foreign laws or regulations (including securities laws, environmental laws, commercial laws and regulations), under common law or on equitable cause, or on contract or otherwise:

a. by reason of, relating to or in connection with the execution, delivery, performance or enforcement of any Loan Document, any commitments relating thereto, or any transaction contemplated thereby; or

b. by reason by, relating to or in connection with any credit extended or used under any Loan Document or any act done or omitted by any Person, or the exercise of any rights or remedies thereunder, including the acquisition of any collateral by the City by way of foreclosure of the lien thereon, deed or bill of sale in lieu of such foreclosure or otherwise;

provided, however, that the Developer shall not be liable to any Indemnitee for any portion of such claims, damages, liabilities and expenses resulting from such Indemnitee's gross negligence or willful misconduct. In the event this indemnity is unenforceable as a matter of law as to a particular matter or consequence referred to herein, it shall be enforceable to the full extent permitted by law.

The indemnification provisions set forth above shall be in addition to any liability the Developer may otherwise have. Without prejudice to the survival of any other obligation of the Developer hereunder, the indemnities and obligations of the Developer contained in this Section 9.9 shall survive the payment in full of the sums outstanding on the Note.

8.11 Developer Acknowledgments. The Developer hereby acknowledges that (a) it has been advised by counsel in the negotiation, execution and delivery of this City Loan Agreement and the other Loan Documents, (b) the City has no fiduciary relationship to the Developer, the relationship between the Developer and the City being solely that of debtor and creditor, (c) no joint venture exists between the Developer and the City, and (d) the City undertakes no responsibility to the Developer to review or inform the Developer of any matter in connection with any phase of the business or operations of the Developer and the Developer shall rely entirely upon its own judgment with respect to its business, and any review, inspection or supervision of, or information supplied to, the Developer by the City is for the protection of the City and neither the Developer nor any third party is entitled to rely thereon.

8.12 Time of Essence. The parties' timely performance of each of the obligations set forth in this City Loan Agreement is an essential term of this City Loan Agreement.

8.13 Survival. The City and the Developer intend that the terms of this City Loan Agreement shall survive the parties' execution of the Development Agreement, Purchase Agreement, the deeds and other documents referenced in the Purchase Agreement, the Loan Documents and none of the

terms or conditions of this City Loan Agreement shall be merged into any other documents executed in connection with the transactions contemplated herein.

8.14 Interpretation. The City and the Developer agree that this City Loan Agreement shall be interpreted without regard to which party drafted the City Loan Agreement.

8.15 No Relationship. The City and the Developer are not, for any purpose, partners or joint ventures with respect to the development contemplated by this City Loan Agreement.

[Remainder of page intentionally left blank;  
Signature page follows]

IN WITNESS WHEREOF, the parties hereby have caused this City Loan Agreement to be executed and delivered the date and year first above written.

DEVELOPER:

F&C Ramsey, LLC.

By \_\_\_\_\_  
Its \_\_\_\_\_

CITY:

CITY OF RAMSEY, Minnesota, a public body corporate and politic under the laws of Minnesota

By \_\_\_\_\_  
Its Mayor

By \_\_\_\_\_  
Its City Clerk

**EXHIBIT A**

**FORM OF DRAW REQUEST AND  
DRAW REQUEST CERTIFICATION**

F& C Ramsey, LLC, an Indiana limited liability company ("Developer"), hereby certify as follows (all terms not otherwise defined herein having the meanings set forth in the City Loan Agreement ("City Loan Agreement") dated \_\_\_\_\_, 2010, between the Developer and the City of Ramsey, Minnesota, a public body corporate and politic under the laws of Minnesota:

a. At the date hereof no suit or proceeding at law or in equity, and no notice has been received that any investigation or proceeding of any governmental body has been instituted or, to the knowledge of Developer, is threatened, which in either case could have a material adverse effect on the financial condition or business operations of Developer.

b. At the date hereof, no default or event of default (other than any attributable to City) under the City Loan Agreement or under any of the other Loan Documents has occurred and is continuing, and no event has occurred which, upon the service of notice and/or the lapse of time, would constitute an event of default thereunder, except the following:

c. The representations and warranties set forth in Article V of the City Loan Agreement are hereby reaffirmed and restated, and Developer represents and warrants to City that the same are true, correct and complete on the date hereof, except as to the following:  
\_\_\_\_\_.

d. No material adverse change has occurred in the financial condition or in the assets or liabilities of Developer from those set forth in the latest financial statements for each furnished to City, except the following: \_\_\_\_\_.

e. The progress of construction of the Project is such that it can be completed on or before the Completion Date specified in the City Loan Agreement for the cost originally represented to City, except for the following: \_\_\_\_\_.

f. The City Loan, as of the date hereof, is in balance as required by the City Loan Agreement, and the undisbursed proceeds of the City Loan, including the Advance requested herein, together with undisbursed proceeds of Developer's loan from \_\_\_\_\_ are adequate and sufficient to pay for all labor, materials, equipment, work, services and supplies necessary for the completion of the Minimum Improvements to which such Advance relates, including the installation of all fixtures and equipment required for the operation of the completed Project, except for the following increases in the total cost of the Minimum Improvements:  
\_\_\_\_\_.

g. The labor, materials, equipment, work, services and supplies described herein have been performed upon or furnished to the Project in full accordance with the Plans, which have not been amended except as expressly permitted by the City Loan Agreement.

h. There have been no changes in any estimated costs relating to the completion of the Minimum Improvements from those set forth on the Construction Cost

Statement, as amended by any amendment thereto heretofore delivered by Developer to City and approved by City, if such approval is required by the City Loan Agreement.

i. All bills for labor, materials, equipment, work, services and supplies furnished in connection with the construction of the Minimum Improvements, which could give rise to a mechanic's lien if unpaid, have been paid, will be paid out of the requested Advance or are not yet due and payable.

j. All claims for mechanics' liens which shall have arisen or could arise for labor, materials, equipment, work, services or supplies furnished in connection with the Project through the last day of the period covered by the requested Advance have been effectively waived in writing, or will be effectively waived in writing when payment is made and such written lien waiver shall be delivered to City or its disbursing agent prior to the next Advance or final Advance against the City Note, or sooner as may be requested by the Title Company or City.

k. All funds advanced under the City Loan Agreement to date have been utilized as specified in the Draw Requests pursuant to which the same were advanced, exclusively to pay costs incurred for or in connection with constructing the Minimum Improvements and developing the Development Property and the Project, and Developer represents that no part of the City Loan proceeds have been paid for labor, materials, equipment, work, services or supplies incorporated into or employed in connection with any project other than the Project, as that term is defined in the City Loan Agreement. Developer further represents that all funds covered by this Draw Request are for payment for labor, materials, equipment, work, services or supplies furnished solely in connection with the construction and completion of the Minimum Improvements.

Developer authorizes and requests City to charge the total amount of this Draw Request against Developer's City Loan account and to advance from the proceeds of the City Loan the funds hereby requested, and to make or authorize disbursement of said funds to the Title Company for disbursement to Developer in amounts up to, but not exceeding, the amounts listed herein, subject to the requirements of and in accordance with the procedures provided in the City Loan Agreement. The Advance made pursuant to this Draw Request is acknowledged to be an accommodation to Developer and is not a waiver by City of any Defaults or Events of Default under the City Loan Agreement or any of the other Loan Documents or any other claims of City against Developer.

The advances and disbursements on the attached sheets are hereby approved and authorized.

F & C Ramsey, LLC,  
An Indiana limited liability company

By \_\_\_\_\_  
Its \_\_\_\_\_