

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE  
CITY OF RAMSEY, MINNESOTA,

THE CITY OF RAMSEY, MINNESOTA

AND

F & C RAMSEY, LLC

## TABLE OF CONTENTS

|             |   | Page |
|-------------|---|------|
| ARTICLE I   | RECITALS .....  | 1    |
| ARTICLE II  | DEFINITIONS.....  | 2    |
| Section 2.1 | Definitions.....  | 2    |
| ARTICLE III | REPRESENTATIONS, WARRANTIES AND COVENANTS .....   | 6    |
| Section 3.1 | Representations and Warranties of the City and the HRA .....  | 6    |
| Section 3.2 | Representations, Warranties and Covenants of Developer.....   | 7    |
| ARTICLE IV  | PURCHASE AGREEMENT .....  | 8    |
| Section 4.1 | Purchase Agreement .....  | 8    |
| Section 4.2 | Relationship Between this Agreement and the Purchase Agreement.....   | 8    |
| Section 4.3 | Right of Reverter.....  | 8    |
| ARTICLE V   | DEVELOPER'S CONSTRUCTION OF THE MINIMUM IMPROVEMENTS .....  | 8    |
| Section 5.1 | Required Approvals .....  | 8    |
| Section 5.2 | Submission of Construction Plans .....  | 9    |
| Section 5.3 | Review of the Construction Plans.....   | 9    |
| Section 5.4 | Commencement and Completion of Construction of the Minimum Improvements .....   | 9    |
| Section 5.5 | Certificate of Completion .....   | 10   |
| ARTICLE VI  | TIF FINANCING.....  | 10   |
| Section 6.1 | Issuance of the TIF Note.....   | 10   |
| Section 6.2 | Amount of the TIF Note. If the City is obligated to issue the TIF Note pursuant to Section 6.1, the TIF Note shall be for an amount equal to the lesser of: ..... | 11   |
| Section 6.3 | Interest.....   | 11   |
| Section 6.4 | Payments.....   | 11   |
| Section 6.5 | TIF Note Shall Be a Limited Obligation of the City .....  | 11   |
| Section 6.6 | Conditions Subsequent.....  | 11   |
| Section 6.7 | Terms of the TIF Note .....   | 11   |
| Section 6.8 | Developer's Prepayment of Loan No. 2 .....  | 11   |
| ARTICLE VII | LOAN NO. 1.....   | 12   |
| Section 7.1 | Loan No. 1 .....  | 12   |

**TABLE OF CONTENTS**  
(continued)

|  |   | <b>Page</b> |
|--|---|-------------|
| Section 7.2  | Loan Agreement, Note No. 1 and Corporate Guaranty .....   | 12          |
| Section 7.3  | Fee in Lieu of Interest and Default Interest Rate .....   | 12          |
| Section 7.4  | Repayment Terms .....   | 12          |
| Section 7.5  | Prepayments .....   | 13          |
| Section 7.6  | Submission of Financial Information.....  | 13          |
| ARTICLE VIII LOAN NO. 2.....   |   | 13          |
| Section 8.1  | Loan No. 2 .....  | 13          |
| Section 8.2  | Loan Agreement, Note No. 2, and Personal Guaranty .....   | 13          |
| Section 8.3  | Initial Interest Rate, Interest Rate Increase and Default Interest<br>Rate .....  | 14          |
| Section 8.4  | Repayment Terms .....   | 14          |
| Section 8.5  | Prepayments.....  | 14          |
| Section 8.6  | Limitations on Disbursements and Disbursement of Costs of<br>Issuance.....  | 14          |
| Section 8.7  | Credit Against Interest .....   | 15          |
| ARTICLE IX PARKING RAMP IMPROVEMENTS .....   |   | 15          |
| Section 9.1  | Parking Ramp Improvements .....   | 15          |
| ARTICLE X REAL ESTATE TAX PAYMENTS AND ASSESSMENT<br>AGREEMENT .....                                 |   | 15          |
| Section 10.1   | Real Property Taxes .....   | 15          |
| Section 10.2   | Assessment Agreement.....   | 16          |
| ARTICLE XI RESTRICTIONS ON ASSIGNMENTS AND TRANSFERS,<br>SUBORDINATION AND RENTAL RESTRICTIONS ..... |   | 16          |
| Section 11.1   | Prohibition against Transfer of the Development Property;<br>Assignment of Development Agreement and Assignment of the<br>TIF Note..... | 16          |
| Section 11.2   | Permitted Collateral Assignments.....   | 17          |
| Section 11.3   | Subordination of Development Agreement to Project Mortgage<br>and Extension of Time to Cure .....                                       | 17          |
| Section 11.4   | Rental Restrictions .....   | 17          |
| ARTICLE XII INDEMNIFICATION OF THE CITY AND THE HRA .....  |   | 18          |
| Section 12.1   | Indemnification of the City and the HRA.....  | 18          |

**TABLE OF CONTENTS**  
(continued)

|  | <b>Page</b> |
|--|-------------|
| ARTICLE XIII DEVELOPER EVENTS OF DEFAULT.....                      | 18          |
| Section 13.1 Events of Default Defined .....                       | 18          |
| Section 13.2 Remedies on Default.....                              | 19          |
| ARTICLE XIV ADDITIONAL PROVISIONS .....                            | 20          |
| Section 14.1 Conflicts of Interest.....                            | 20          |
| Section 14.2 No Remedy Exclusive.....                              | 20          |
| Section 14.3 No Implied Waiver .....                               | 20          |
| Section 14.4 Titles of Articles and Sections .....                 | 20          |
| Section 14.5 Notices and Demands .....                             | 20          |
| Section 14.6 Counterparts.....                                     | 22          |
| Section 14.7 Law Governing .....                                   | 22          |
| Section 14.8 Covenants to Run with Title .....                     | 22          |
| Section 14.9 Time is of the Essence .....                          | 22          |
| Section 14.10 Enforceability.....                                  | 22          |
| Section 14.11 No Third Party Beneficiaries .....                   | 22          |
| Section 14.12 Termination.....                                     | 23          |
| Section 14.13 Business Days .....                                  | 23          |
| Section 14.14 Agreement to Pay Attorney's Fees and Expenses .....  | 23          |
| EXHIBIT A CERTIFICATE OF COMPLETION .....                          | 1           |
| EXHIBIT B FORM OF TIF NOTE.....                                    | 1           |
| EXHIBIT C LOAN AGREEMENT .....                                     | 5           |
| EXHIBIT D-1 NOTE NO. 1.....  | 1           |
| EXHIBIT D-2 NOTE NO. 2.....  | 5           |
| EXHIBIT E-1 CORPORATE GUARANTY .....                               | 1           |
| EXHIBIT E-1 PERSONAL GUARANTY.....                                 | 5           |
| EXHIBIT F ASSESSMENT AGREEMENT .....                               | 1           |
| EXHIBIT G DEVELOPMENT FEES.....                                    | 1           |
| EXHIBIT H DESCRIPTION OF THE ADDITIONAL PARKING IMPROVEMENTS ..... | 1           |
| EXHIBIT I DESCRIPTION OF THE MINIMUM IMPROVEMENTS.....             | 1           |

## **DEVELOPMENT AGREEMENT**

The parties to this Development Agreement (the "Agreement") are The Housing and Redevelopment Authority in and for the City of Ramsey, Minnesota a public body politic and corporate under the laws of the State of Minnesota (the "HRA"); the City of Ramsey, Minnesota (the "City"), a home rule charter city organized and existing under the constitution and laws of the State of Minnesota and F & C Ramsey, LLC, an Indiana limited liability company ("Developer"). This Development Agreement is dated, for reference purposes, and is effective as of \_\_\_\_\_, 2011 (the "Effective Date"). This Agreement replaces the Development Agreement between the HRA, the City and Developer dated January 31, 2011, and the January 31, 2011 Development Agreement is hereby terminated and of no further force or effect.

### **ARTICLE I**

#### **RECITALS**

WHEREAS, the HRA owns the "Development Property," as defined below.

WHEREAS, the Development Property is located in the Development District. The City established the Development District on August 27, 1985 pursuant to Minnesota Statutes, Sections 469.124 through 469.134. The City adopted the Development Program for the Development District on August 27, 1985, and the City has amended it from time to time. The most recent amendments to the Development Program were adopted on or about December 14, 2010.

WHEREAS, Developer wants to acquire the Development Property from the HRA and construct the Minimum Improvements on the Development Property, but Developer has determined that it cannot acquire the Development Property and construct the Minimum Improvements on the Development Property without financial assistance from the City and the HRA.

WHEREAS, the HRA and the City are entering into this Development Agreement with Developer to further the objectives of the Development Program and, particularly, to make the Development Property available for development by private enterprise in conformance with the Development Program.

WHEREAS, the HRA had determined that 50% of the Minimum Improvements constitutes a Housing Development Project pursuant to the Act.

WHEREAS, the HRA has adopted a housing program in connection with the Housing Development Project.

WHEREAS, pursuant to the Act and the Tax Increment Act the City has the authority to issue bonds to finance all or a portion of the cost of the Housing Development Project.

WHEREAS, the City believes that the Project and the fulfillment of this Agreement are in the best interests of the City and further the health, safety, morals and welfare of residents of

the City and that the Project has been undertaken and is being assisted in accordance with a public purpose and the provisions of the applicable state and local laws and requirements.

## ARTICLE II

### DEFINITIONS

Section 2.1 Definitions. Capitalized word and phrases used in this Development Agreement have the following meanings:

Act means collectively, Minnesota Statutes 469 and 462C;

Affiliate means a natural person, trust, trustee, corporation, limited liability company, partnership or limited partnership that: controls Developer, is controlled by Developer or is controlled by the same individuals and entities that control Developer. A person or entity "controls" an entity if the person or entity, directly or indirectly or acting in or through one or more subsidiaries, owns, controls or holds with power to vote, more than 50 percent of the voting interest in the entity. An entity is "controlled by" a person or entity if that person or entity, directly or indirectly or acting in or through one or more subsidiaries, owns, controls or holds with power to vote, more than 50 percent of the voting interests in the entity. Control does not exist if the powers described in this subsection are held solely as a security interest and have not been exercised;

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

Amended PUMA means the Amended and Restated Parking Improvement Use and Maintenance Agreement for Parking District A that is attached to the Purchase Agreement as Exhibit A and that the Purchase Agreement obligates the City and the HRA to execute and record prior to or contemporaneously with the HRA's conveyance of the Development Property to Developer;

Assessment Agreement means an Assessment Agreement pursuant to Minnesota Statutes, Section 469.177, Subd. 8 specifying minimum market values for the Development Property as of January 2, 2013 and each January 2 thereafter through and including January 2, 2036 which minimum market values will be used for the calculation of real property taxes due and payable with respect to the Development Property. The form of Assessment Agreement is attached as Exhibit F;

Business Day means any day other than a Saturday, Sunday or a state or federal holiday that financial institutions or post offices in the state of Minnesota close to observe;

Certificate of Completion means a certificate in the form attached as Exhibit A;

City means the City of Ramsey, Minnesota;

Commencement Date means the date 90 days after the date the HRA and the Developer close on the Developer's purchase of the Development Property from the HRA pursuant to the Purchase Agreement;

Completion Date means the date two years after the Commencement Date;

Construction Plans means the plans, specifications, drawings and related documents for the construction of the Minimum Improvements that Developer submits to the City pursuant to Section 5.2;

Corporate Guarantor means Flaherty & Collins Construction, Inc., an Indiana Corporation;

Corporate Guaranty means the guaranty that the Corporate Guarantor executes in favor of the HRA to provide security for the performance of Developer's obligations under the Note No. 1. The form of Corporate Guaranty is attached as Exhibit E-1;

Cost of Issuance means all costs and expenses the City and the HRA will incur and any underwriter's discount the HRA will give in connection with the issuance of the Temporary Tax Increment Bonds including but not limited to: rating agency fees, financial advisor's fees, bond attorney's fees, county fees, up to a maximum of \$91,000.00. The City will not have issued the Temporary Tax Increment Bonds as of the Date of Closing, so Costs of Issuance will be determined based on the City's reasonable estimate;

County means Anoka County, Minnesota;

Date of Closing means the "Date of Closing" as defined in the Purchase Agreement;

Developer means F & C Ramsey, LLC, an Indiana limited liability company and any successor in title to all or any portion of the Development Property;

Development District means the City's Development District No. 1;

Development Fees means the fees and charges payable to the City pursuant to Chapter 117 of the City's Ordinances in connection with City's approval of the plat of COR ONE. The categories of the "Development Fees" and the City's current estimate of the amounts of the various "Development Fees" are specifically identified on Exhibit G;

Development Program means the development program the City has approved for the Development District;

Development Property means the portion of Lot 1, Block 1, Lot 2, Block 1 and Outlot A, RAMSEY TOWN CENTER 5TH ADDITION, Anoka County, Minnesota depicted as Lot 3, Block 1 on the Preliminary Plat of COR ONE, Anoka County, Minnesota that the City approved on November 23, 2010 and all improvements currently located or subsequently constructed thereon;

Eligible Costs means 50% of the actual costs the Developer incurs to acquire the Developer Property and construct the Minimum Improvements; provided, however, that any costs that Developer pays with the proceeds of Loan No. 1 are not Eligible Costs and provided further that any costs that Developer pays with the proceeds of the Loan No. 2 are not Eligible Costs unless and until Loan No. 2 is repaid in full in accordance with the terms of this Agreement;

Event of Default means any of the events described in Section 13.1;

Existing Parking Ramp means the approximately 590 stall public parking ramp located at 7650 Sunwood Drive, Ramsey, Minnesota;

Final Construction Plans means construction plans that the City has approved pursuant to Section 5.3;

Housing Development Project means 50% of the Minimum Improvements which are intended for occupancy by persons of moderate income and their families;

HRA means The Housing and Redevelopment Authority in and for the city of Ramsey, Minnesota, a public body politic incorporated under the laws of the State of Minnesota;

Loan Agreement means the loan agreement between the HRA and Developer which establishes the HRA's and Developer's rights and obligations with respect to Loan No. 1 and Loan No. 2. The form of the Loan Agreement is attached as Exhibit C;

Loan No. 1 means the \$1,420,000.00 loan the HRA makes to Developer for the Housing Development Project pursuant to Article VII;

Loan No. 2 means the loan the HRA makes to Developer for the Housing Development Project pursuant to Article VIII. The original principal amount of Loan No. 2 will be equal to the sum of (i) \$6,825,000; and (ii) the Costs of Issuance;

Minimum Improvements means the improvements described on Exhibit I until the City approves the Construction Plans and means the improvements described and depicted on the Final Construction Plans, after the City approves the Construction Plans;

Net Cash Flow means, for any calendar year, Net Operating Income for that calendar year less the scheduled debt service payments due on the Project Loan in that calendar year and less reasonable contributions to replacement reserves;

Net Operating Income. means, for any calendar year, all income Developer derives from the Development Property, including, but not limited to rents received from the rental of residential apartments, parking stalls or non-residential space, in the Development Property less Operating Expenses actually incurred in that calendar year;

Note No. 1 means the \$1,420,000.00 Promissory Note that Developer executes and delivers to the HRA to evidence Developer's obligation to repay the Loan No. 1. The form of the Note No. 1 is attached as Exhibit D-1;

Note No. 2 means the Promissory Note that Developer executes and delivers to the HRA to evidence Developer's obligation to repay the Loan No. 2. The form of the Note No. 2 is attached as Exhibit D-2. Prior to Developer's execution of Note No. 2 pursuant to Section 8.2, the HRA will determine the Costs of Issuance and to notify Developer of the original principal amount of Loan No. 2;

Operating Expenses. means the reasonable and customary expenses Developer incurs to operate and maintain the Development Property. Operating Expenses do not include (i) debt service payments on any loans to Developer; (ii) expenses Developer incurs to make improvements, repairs or replacements to the Development Property, the cost of which Developer is obligated to capitalize rather than expense under generally accepted accounting principles, consistently applied; or contributions to replacement reserves;

Parking Ramp Addition means the approximately 200 stall addition to the Existing Parking Ramp that the Purchase Agreement obligates the City to construct on the Parking Ramp Property;

Parking Ramp means the Existing Parking Ramp and the Parking Ramp Addition which will be located on the Parking Ramp Property;

Parking Ramp Property means the portion of Lot 1, Block 1, RAMSEY TOWN CENTER 5TH ADDITION, Anoka County, Minnesota depicted as Lot 2, Block 1, COR ONE, Ramsey County, Minnesota;

Personal Guarantor means David M. Flaherty;

Personal Guaranty means the guaranty that the Personal Guarantor executes in favor of the HRA to provide security for the performance of Developer's obligations under the Note No. 2. The form of Personal Guaranty is attached as Exhibit E-1;

Project Loan. means (1) the credit facility described in the Proposal Letter dated August 4, 2011 and executed by PNC Bank, National Association and Flaherty & Collins Properties and the Summary of Terms and Conditions attached thereto; and (2) a loan that a third party makes to a Developer if (a) all or a portion of the proceeds of the loan are used to fully satisfy a prior Project Loan; and (b) the loan is secured by a first lien mortgage on the Development Property;

Project Mortgage means a first lien mortgage on the Development Property that Developer grants to a third party to secure the repayment of a Project Loan;

Purchase Agreement means the Purchase Agreement between the HRA and Developer of even date herewith that sets forth the terms and conditions under which the HRA will convey the Development Property to Developer;

Project means Developer's acquisition of the Development Property and construction of the Minimum Improvements in accordance with the terms of this Agreement;

Sale of the Development Property means a voluntary or involuntary conveyance of all or any undivided interest in Developer's fee title to all or any material portion of the Development

Property to an entity other than an Affiliate; a lease of all or any material portion of the Development Property to an entity other than an Affiliate for a term (including any rights to renew or extend) that exceeds twenty (20) years; or a voluntary or involuntary transfer of any membership interests in Developer to an entity other than an Affiliate;

State means the State of Minnesota;

Tax Increments means 85% of the tax increments derived from the Development Property as determined by the City in its sole discretion, which have been paid to the City between January 1, 2015 and February 1, 2038 and which the City is entitled to retain pursuant to the provisions of the Tax Increment Act;

Tax Increment Act means the Tax Increment Financing Act, Minnesota Statutes, Sections 469.174 through 469.1799, as amended;

Tax Increment District means the City's Tax Increment District No. 14;

Tax Increment Financing Plan means the plan for the Tax Increment District that the City adopted, by resolution, on December 14, 2010;

Temporary Tax Increment Bonds means the Temporary Tax Increment Bonds the City issues pursuant to the Tax Increment Act, the proceeds of which the City will make available to the HRA and a portion of which proceeds the HRA will use to fund Loan No. 2;

Termination Date means the earlier of (i) the date Developer has completed construction of the Minimum Improvements; Developer has repaid the Loan No. 1 in full; Developer has repaid the Loan No. 2 in full; and the City has paid the TIF Note in full; or (ii) the last TIF Note Payment Date;

TIF Note means a Tax Increment Revenue Note, in the form attached as Exhibit B;

TIF Note Payment Date means October 1, 2015 and each February 1 and August 1 thereafter through and including February 1, 2038; provided, that if any such TIF Note Payment Date is not a Business Day, the TIF Note Payment Date is the next succeeding Business Day; and

Unavoidable Delay means a delay in Developer's commencement or completion of the Minimum Improvements that is the direct result of an act of God, other than weather related conditions or events that are reasonably foreseeable both in terms of the likelihood of their occurrence and their severity; war, riots, or civil disorder; labor strikes or labor shortages; shortages of necessary materials; or litigation commenced by third parties that, either by injunction or other similar judicial action or by the exercise of reasonable discretion, directly results in delays.

## ARTICLE III

### **REPRESENTATIONS, WARRANTIES AND COVENANTS**

Section 3.1 Representations and Warranties of the City and the HRA. The City and the HRA make the following representations and warranties:

(a) The City represents and warrants that the City is a municipal corporation and political subdivision organized under the provisions of the constitution and laws of the State of Minnesota and has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The City represents and warrants that the development of the Development Property contemplated in this Agreement conforms with the development objectives of the Development Program.

(c) On or about December 14, 2010, the City approved and adopted the Tax Increment Financing Plan and established the Tax Increment District which includes the Development Property and that qualifies as a redevelopment district under the Tax Increment Act.

(d) The HRA represents and warrants that the HRA is a body politic and corporate under the laws of the State of Minnesota and has the power to enter into this Agreement and carry out its obligations hereunder.

(e) The HRA represents and warrants that at a public hearing held on September 27, 2011 after published notice, the HRA's Board approved this Development Agreement and approved the HRA's conveyance of the Development Property to Developer pursuant to this Development Agreement and without public bidding, all as required by Minnesota Statutes Section 469.029, Subd. 2.

Section 3.2 Representations, Warranties and Covenants of Developer. Developer makes the following representations, warranties and covenants:

(a) Developer represents and warrants that it is a limited liability company organized, validly existing and in good standing under the laws of the State of Indiana, that it has the power to enter into this Agreement and to perform its obligations hereunder and by entering into and performing its obligations under this Agreement Developer will not be in violation of the its articles or bylaws.

(b) Developer represents that Developer would not undertake the Project and in Developer's opinion, the Project would not be economically feasible within the reasonably foreseeable future without the assistance and benefit provided for in this Agreement.

(c) Developer represents and warrants that neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provision of any

contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(d) Developer agrees that Developer will cooperate fully with the City and the HRA with respect to any litigation a third party may commence with respect to the Development Property; provided, however, that Developer shall not be obligated to settle any litigation to which it is a party unless it approves such settlement in its sole discretion. This covenant shall survive the termination of this Agreement.

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

#### ARTICLE IV

### **PURCHASE AGREEMENT**

Section 4.1 Purchase Agreement. The HRA and Developer are executing the Purchase Agreement and delivering it to one another contemporaneously with the execution and delivery of this Agreement.

Section 4.2 Relationship Between this Agreement and the Purchase Agreement. In the event of a conflict between the terms of this Agreement and the terms of the Purchase Agreement, the terms of this Agreement control. If the HRA or Developer terminate the Purchase Agreement, this Agreement automatically terminates except as to terms and provisions that this Agreement expressly states survive a termination of this Agreement. The Purchase Agreement provides that if the City, HRA or Developer terminate this Agreement, the Purchase Agreement automatically terminates except as to terms and provisions that the Purchase Agreement expressly states survive a termination of this Agreement.

Section 4.3 Right of Reverter. The Purchase Agreement provides for the HRA's conveyance of the Development Property to Developer subject to a right of reverter. The Right of Reverter shall provide that (a) if Developer does not commence construction of the Minimum Improvements on or before the Commencement Date, as the same may be extended pursuant to Section 5.4 as a result of an Unavoidable Delay; (b) if Developer fails to substantially complete the construction of the Minimum Improvements in accordance with the Final Construction Plans on or before the Completion Date, as the same may be extended pursuant to Section 5.4 as a result of an Unavoidable Delay; or (c) if the holder of a Project Mortgage commences proceedings to foreclose the Project Mortgage prior to Developer's substantial completion of the Minimum Improvements, the HRA may commence an action in Anoka County District Court seeking an order that re-vests title to the Development Property in the HRA and grants the HRA immediate possession of the Development Property. In the Purchase Agreement, the HRA agrees that the HRA will subject the HRA's interest in the Development Property pursuant to the Right of Reverter to the lien of any Project Mortgage provided the holder of the Project Mortgage acknowledges, in writing, that if the Project Mortgage is foreclosed and if the HRA obtains a District Court Order re-vesting title to the Development Property in the HRA, the HRA

shall be entitled to redeem the Development Property from foreclosure, as an owner, pursuant to Minnesota Statutes Sections 580 or 581, as applicable.

## ARTICLE V

### **DEVELOPER'S CONSTRUCTION OF THE MINIMUM IMPROVEMENTS**

Section 5.1 Required Approvals. Developer must obtain, in a timely manner, any governmental permits, licenses, approvals, consents or authorizations that are legally required in connection with the construction of the Minimum Improvements.

Section 5.2 Submission of Construction Plans. Developer must submit construction plans to the City for review and approval or disapproval. The Construction Plans must (a) provide for the construction of the Minimum Improvements on the Development Property and (b) must include at least the following: (1) a site plan; (2) a foundation plan; (3) a basement plan; (4) a floor plan for each floor; (5) cross sections of each floor (length and width); (6) elevations (all sides); (7) grading and drainage plans; and (8) a landscape plan.

Section 5.3 Review of the Construction Plans. The City must approve the Construction Plans in writing if: (a) the Construction Plans conform to the terms and conditions of this Agreement; (b) the Construction Plans conform to all applicable federal, state and local laws, ordinances, rules and regulations; (c) the Construction Plans are adequate for purposes of this Agreement to provide for the construction of the Minimum Improvements; and (d) no Event of Default under the terms of this Agreement has occurred; provided, however, that any such approval of the Construction Plans pursuant to this Section 5.3 constitutes approval for the purposes of this Agreement only and shall not be deemed to constitute approval or waiver by the City with respect to any building, zoning or other ordinances or regulations of the City. If the City rejects the Construction Plans the City must notify Developer, in writing, within thirty (30) days after Developer's submission of Construction Plans that satisfy the requirements of Section 5.2 or the City shall be deemed to have been approved the Construction Plans as submitted. If the City notifies Developer that the City is rejecting the Construction Plans, the notice must include a written statement specifying the respects in which the Construction Plans submitted by Developer fail to conform to the requirements of this Section 5.3. If the City rejects the Construction Plans in whole or in part, Developer must submit new or corrected Construction Plans within thirty (30) days after Developer's receipt of the City's rejection notice. The provisions of this Section 5.3 relating to approval, rejection and resubmission of corrected Construction Plans shall continue to apply until the City approves the Construction Plans; provided, however, Developer may not commence construction of the Minimum Improvements until the City has approved or is deemed to have approved the Construction Plans. Approval of the Construction Plans by the City shall not relieve Developer of any obligation to comply with the terms and provisions of this Agreement or the provision of applicable federal, state and local laws, ordinances and regulations, nor shall the City's approval of the Construction Plans constitute a waiver of any Event of Default. If Developer desires to make any material modification to the scope, size, appearance, value or use of the Minimum Improvements or to the Final Construction Plans after the City has approved the Construction Plans and before Developer has substantially completed the Minimum Improvements, Developer must submit a description of the proposed modification(s) and revised Construction Plans showing the

proposed modification(s) to the City for its approval. If such material change in the Construction Plans conforms to the approval criteria listed in this Section 5.3 with respect to the original Construction Plans, the revised Construction Plans shall be deemed approved unless the City notifies Developer that the City rejects the revised Construction Plans in writing within thirty (30) days after submission. If Developer desires to make any change which does not materially modify the scope, size, appearance, value or use of the Minimum Improvements, Developer is not obligated to resubmit the Construction Plans to the City for approval.

Section 5.4 Commencement and Completion of Construction of the Minimum Improvements. Developer must commence construction of the Minimum Improvements on or before the Commencement Date. Developer is deemed to have commenced construction when Developer has: (a) obtained all building permits from the City necessary for the construction of the Minimum Improvements on the Development Property; and (b) Buyer has commenced the construction of the footings and foundations for the Minimum Improvements. Developer must substantially complete the construction of the Minimum Improvements in accordance with the Final Construction Plans on or before the Completion Date. For purposes of this Agreement, the Minimum Improvements are substantially complete when they are eligible to receive a certificate of occupancy from the City. If Developer's commencement or completion of construction of the Minimum Improvements is delayed as a result of an Unavoidable Delay, Developer gives the City and the HRA notice of the Unavoidable Delay within thirty (30) days after the onset of the Unavoidable Delay and Developer uses all commercially reasonable efforts to commence and complete the construction of the Minimum Improvements as promptly as reasonably possible given the conditions causing the Unavoidable Delay, the Commencement Date and the Completion Date will be extended 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.

Section 5.5 Certificate of Completion. Developer shall notify the City when Developer has substantially completed construction of the Minimum Improvements. If the City determines that the Minimum Improvements have been constructed in substantial conformity with the Final Construction Plans and all uniformly applied local, state and federal laws and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations), the City shall furnish to Developer a Certificate of Completion. Such Certificate of Completion shall be a conclusive determination of satisfaction and termination of Developer's obligation to construct the Minimum Improvements as set forth in Section 5.4. If Developer has completed the Minimum Improvements on or before the Completion Date, as the same may be extended pursuant to Section 5.4, the HRA will expressly acknowledge and agree in the Certificate of Completion that Developer has satisfied the conditions subsequent described in the Right of Reverter and that the Right of Reverter is terminated and is of no further force or effect.

## ARTICLE VI

### TIF FINANCING

Section 6.1 Issuance of the TIF Note. When, and only when, Developer: (i) acquired the Development Property; (ii) substantially completed the construction of Minimum

Improvements in accordance with the Final Construction Plans; (iii) notified the City that Developer has substantially completed the Minimum Improvements and is entitled to receive the Certificate of Completion described in Section 5.5; (iv) submitted to the City invoices showing the Eligible Costs Developer actually incurred and for which Developer is seeking reimbursement; (v) submitted to the City evidence, reasonably acceptable to the City, that Developer paid those invoices from a source or sources other than the proceeds of the Loan No. 1; and (vi) repaid Loan No. 2, in full, prior to or when due; and if, at that time, Developer is not in default in the performance of Developer's obligations under this Agreement, the City will execute and date the TIF Note and deliver the TIF Note to Developer.

Section 6.2 Amount of the TIF Note. If the City is obligated to issue the TIF Note pursuant to Section 6.1, the TIF Note shall be for an amount equal to the least of:

- (a) \$3,000,000.00; or
- (b) the sum of all Eligible Costs Developer has actually incurred and paid; or
- (c) an amount equal to the City's estimate of 85% of the tax increment that will be derived from Development Property and paid to the City between January 1, of the year that is two years following the City's issuance of Certificate of Completion and February 1, 2038 and that the City will be entitled to retain pursuant to the terms of the Tax Increment Act, as in effect at the time of the City's estimate, assuming that during each year between the year following the year in which the City issues the Certificate of Completion and 2036 the Development Property will have an assessed value for purposes of calculating ad valorem real estate taxes that is equal to the assessed value that the Anoka County Assessor establishes for the Development Property for purposes of ad valorem real estate taxes assessed in the year following the year in which the City issues the Certificate of Completion and due in payable in the following year;

provided, however, the amount of the TIF Note shall not be less than \$2,000,000.00.

Section 6.3 Interest. As set forth in the TIF Note, the unpaid principal amount of the TIF Note shall bear simple, non-compounding interest from the date of issuance of the TIF Note at 6.25% per annum. Interest shall be computed on the basis of a 360 day year consisting of twelve (12) 30-day months.

Section 6.4 Payments. The principal amount of the TIF Note and the interest thereon shall be payable solely from Tax Increments the City receives in 2015 and thereafter. On each TIF Note Payment Date and subject to the provisions of this Section 6.4 and the TIF Note, the City shall pay, against the principal and interest outstanding on the TIF Note, the Tax Increments the City actually received since January 1, 2015, in the case of the first TIF Note Payment Date and since the immediately preceding TIF Note Payment Date in the case of subsequent TIF Note Payment Dates. All such payments shall be applied first to pay accrued, unpaid interest and then to reduce the principal of the TIF Note.

Section 6.5 TIF Note Shall Be a Limited Obligation of the City. The TIF Note shall be a special and limited obligation of the City and not a general obligation of the City, and only

Tax Increments the City receives on or after June 1, 2015 shall be used to pay the principal of and interest accruing on the TIF Note.

Section 6.6 Conditions Subsequent. The City's obligation to make payments on the TIF Note on any TIF Note Payment Date or any date thereafter is conditioned upon the requirements that (i) there shall not be, at the time payment is due, any Event of Default that has occurred and is continuing; and (ii) the City shall not have canceled and rescinded the TIF Note pursuant to Section 13.2(d).

Section 6.7 Terms of the TIF Note. The TIF Note shall be governed by and payable pursuant to the additional terms thereof, as set forth in Exhibit B. In the event of any conflict between the terms of the TIF Note and the terms of this Article VI, the terms of the TIF Note shall govern. The issuance of the TIF Note pursuant and subject to the terms of this Agreement, and the taking by the City of such additional actions as bond counsel for the TIF Note may require in connection therewith, are hereby authorized and approved by the City.

Section 6.8 Developer's Prepayment of Loan No. 2. If Developer prepays Loan No. 2 in full, the City will, prior to the issuance of the TIF Note, revise the TIF Note so that the first TIF Note Payment Date is the first February 1 or August 1 following Developer's payment of Note No. 2 in full and to make the TIF Note payable from Tax Increments the City receives on or after the date Developer has repaid Loan No. 2 in full.

## ARTICLE VII

### LOAN NO. 1

Section 7.1 Loan No. 1. To assist Developer with the construction of the Housing Development Project, the HRA proposes to make a \$1,420,000.00 loan to Developer pursuant to the terms of the Loan Agreement and Note No. 1. The HRA proposes to fund Loan No. 1 with tax increments the City has collected from the City's Tax Increment District No. 1, which the City will make available to the HRA.

Section 7.2 Loan Agreement, Note No. 1 and Corporate Guaranty. Contemporaneous with the HRA's conveyance of the Development Property to Developer: the HRA and Developer must each execute the Loan Agreement and must each deliver an original, executed Loan Agreement to the other party; Developer must execute Note No. 1 and deliver Note No. 1 to the HRA; and Developer must cause the Corporate Guarantor to execute the Corporate Guaranty and deliver the Corporate Guaranty to the HRA. In the event of a conflict between the terms of Note No. 1 and the terms of this Development Agreement, the terms of Note No. 1 control. In the event of a conflict between the terms of this Agreement and the terms of the Loan Agreement, the terms of the Loan Agreement control.

Section 7.3 Fee in Lieu of Interest and Default Interest Rate. Note No. 1 does not obligate Developer to pay interest on the outstanding principal of Loan No. 1 provided Developer is not in default in the timely payment of any amounts due under Note No. 1. In lieu of non-default interest and as consideration for the extension of credit, the HRA will charge Developer and Developer agrees to pay a one-time fee of \$120,000.00. As set forth in the Loan

Agreement, the HRA will be deemed to have made a \$120,000.00 "Advance," to itself from the available proceeds of Loan No. 1 in full payment of this fee contemporaneously with the first "Advance" of the proceeds of Loan No. 1 that the HRA makes pursuant to the terms of the Loan Agreement. If, at any time after the execution of the Loan Agreement, Developer defaults in the timely payment of any amounts due under Note No. 1, the HRA gives Developer "Written Notice" of the default, as provided for in the Loan Agreement, and Developer does not cure the default within ten (10) days of the effective date of the HRA's notice, interest shall accrue on the outstanding principal balance of Note No. 1 from the date of the default through the date Developer cures all defaults under Note No. 1 at the rate of twelve percent (12%) per annum.

Section 7.4 Repayment Terms. Commencing on April 1, 2015 and continuing on each April 1 thereafter until April 1, 2025, Developer must pay to the HRA, in certified or wire transferred funds and for application to the outstanding principal and interest, if any, due under Note No. 1, an amount equal to 20% of the Net Cash Flow for the immediately preceding calendar year. If, prior to April 1, 2025, Developer refinances a Project Loan, Developer must make an additional payment to the HRA, for application to the outstanding principal due under Note No. 1, in an amount equal to 20% of the difference between the principal amount of the new Project Loan and the amount of the outstanding principal and accrued, unpaid interest under the Project Loan that is being refinanced. The preceding sentence applies each time Developer refinances a Project Loan. Notwithstanding anything else in this Section 7.4, if Developer refinances a Project Loan to obtain additional funds that are necessary to complete the initial construction of the Minimum Improvements, Developer is not obligated to pay to the HRA 20% of the amount of the new loan that Developer uses to pay costs of completing the initial construction of the Minimum Improvements. The entire outstanding principal amount of Loan No. 1 and all accrued interest, if any, is due and payable in full upon the earlier of April 1, 2025 or a Sale of the Development Property. Upon the occurrence of an Event of Default, the entire outstanding principal balance of Loan No. 1 and all accrued interest and other amounts due under Note No. 1 shall, at the option of the HRA and subject to the notice and cure provisions set forth in Section 13.1(c) and the Loan Agreement, become immediately due and payable, in full; provided, however that if an Event of Default described in Section 13.1 (i) or (j) occurs, all sums outstanding under Note No. 1 shall become immediately due and payable in full without notice or demand whatsoever.

Section 7.5 Prepayments. Developer may prepay Note No. 1, in whole or in part, at any time and, if in part, from time to time, during the term of Note No. 1. All payments shall be applied first to the payment of accrued, unpaid late charges, then to accrued, unpaid interest, if any, with the balance, if any, applied to the reduction of principal.

Section 7.6 Submission of Financial Information. On or before April 1, 2015 and on or before each April 1 thereafter until April 1, 2025, Developer must provide the HRA 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 HRA 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 VIII

### LOAN NO. 2

Section 8.1 Loan No. 2. To further assist Developer with the construction of the Housing Development Project, the HRA proposes to make a loan to Developer in an original principal amount equal to the sum of (i) \$6,825,000.00 and (ii) the Costs of Issuance pursuant to the terms of the Loan Agreement and the Note No. 2. The HRA will fund Loan No. 2 with the proceeds of the Temporary TIF Bonds. Immediately prior to the HRA's conveyance of the Development Property to Developer and the HRA's and Developer's execution of the Loan Agreement and Note No. 2 pursuant to Section 8.2 below, the City will provide the HRA and Developer with the City's reasonable estimate of the Costs of Issuance and the HRA will complete the Loan Agreement, Note No. 2 and the Personal Guaranty with the original principal amount of Loan No. 2.

Section 8.2 Loan Agreement, Note No. 2, and Personal Guaranty. Contemporaneous with the HRA's conveyance of the Development Property to Developer: the HRA and Developer must each execute the Loan Agreement and must each deliver an original, executed Loan Agreement to the other party; Developer must execute Note No. 2 and deliver Note No. 2 to the HRA; and Developer must cause the Personal Guarantor to execute the Personal Guaranty and deliver the Personal Guaranty to the HRA. In the event of a conflict between the terms of Note No. 2 and the terms of this Development Agreement, the terms of Note No. 2 control. In the event of a conflict between the terms of this Agreement and the terms of the Loan Agreement, the terms of the Loan Agreement control.

Section 8.3 Initial Interest Rate, Interest Rate Increase and Default Interest Rate. Simple interest will accrue on the unpaid principal balance of Note No. 2 from the date funds are advanced until Note No. 2 is paid in full at the rate of 6.27% per annum unless the rate is increased pursuant to this Section 8.3. If the Developer prepays a total of \$3,000,000.00 or more of the outstanding balance of Loan No. 2 on or before the date 18 months after the date of the first disbursement of proceeds of Loan No. 2, the interest rate remains at 6.27% per annum until the maturity date as established pursuant to Section 8.4. If Developer does not prepay a total of \$3,000,000.00 or more on or before the date 18 months after the date of the first disbursement of proceeds of Loan No. 2, the interest rate increases on the date 18 months from the date of the first disbursement of proceeds of Loan No. 2 to 8.27% per annum and remains at 8.27% per annum until the earlier of the date Developer prepays a total of \$3,000,000.00 or more or the maturity date. If after the date 18 months after the date of the first disbursement of proceeds of Loan No. 2 and prior to the maturity date of Note No. 2, Developer prepays a total of \$3,000,000.00, the interest rate will be reduced to 6.27% per annum from and after the date Developer has prepaid a total of \$3,000,000.00. If an Event of Default occurs under the Loan Agreement, the HRA gives Developer notice of the Event of Default and Developer does not cure the default within the cure period, if any, provided for in the Loan Agreement the interest rate then in affect is increased by 5% per annum.

Section 8.4 Repayment Terms. The entire outstanding principal balance and all accrued, unpaid interest under Note No. 2 is due and payable in full upon the earlier of (i) June 1, 2015 or (ii) a Sale of the Development Property. Upon the occurrence of an Event of Default,

the entire outstanding principal balance hereof and all accrued interest and other amounts due hereon shall, at the option of the HRA and subject to the notice and cure provisions set forth in Section 13.1(c) and the Loan Agreement, become immediately due and payable, in full, provided, however that if an Event of Default described in Section 13.1 (i) or (j) occurs, all sums outstanding under Note No. 2 shall become immediately due and payable in full without notice or demand whatsoever.

Section 8.5 Prepayments. Developer may prepay Note No. 2, in whole or in part, at any time and, if in part, from time to time, during the term of Note No. 2. All payments shall be applied first to the payment of accrued, unpaid late charges, then to accrued, unpaid interest, if any, with the balance, if any, applied to the reduction of principal. If Developer prepays \$2,000,000.00 or more on or before the date 12 months after the date of the first disbursement of proceeds of Loan No. 2, the HRA shall forgive \$250,000.00 of the principal amount of Loan No. 2, such forgiveness to be effective as of the date Developer has prepaid at least \$2,000,000.00.

Section 8.6 Limitations on Disbursements and Disbursement of Costs of Issuance. As set forth in the Loan Agreement, the HRA is not obligated to advance proceeds of Loan No. 2 before the later of: the date thirty (30) days after the date the HRA conveys the Development Property to Developer, the date Developer commences construction of the Minimum Improvements, as defined in Section 4.8 of the Loan Agreement or June 1, 2012; the HRA is only obligated to advance up to \$1,000,000.00 of the proceeds of Loan No. 2 between the 31<sup>st</sup> day and 60<sup>th</sup> day following the HRA's conveyance of the Development Property to Developer; and the HRA is only obligated to advance up to an additional \$1,000,000.00 of the proceeds of Loan No. 2 between the 61<sup>st</sup> day and 90<sup>th</sup> day following the HRA's conveyance of the Development Property to Developer. As additional consideration for Loan No. 2, Developer has agreed to pay the HRA, out of the proceeds of Loan No. 2, an amount equal to the City's Costs of Issuance. Immediately upon Developer's execution and delivery of Note No. 2 to Developer, Developer will be deemed to have authorized the HRA to, and the HRA shall make an "advance," as defined in the Development Agreement, to itself from the proceeds of Loan No. 2 in an amount equal to the Costs of Issuance. The HRA's advance to itself of an amount equal to the Costs of Issuance shall not be subject to or count against the limitations on advances set forth in this Section 8.6.

Section 8.7 Credit Against Interest. Developer shall receive a credit against the interest accruing on Note No. 2 pursuant to Section 8.3 in an amount equal to 85% of any tax increments that are derived from the Development Property and paid to the City in 2014.

## ARTICLE IX

### PARKING RAMP IMPROVEMENTS

Section 9.1 Parking Ramp Improvements. As a part of the City's construction of the Parking Ramp Addition pursuant to the Purchase Agreement, the City will cause its contractors to construct and install the additional improvements described on Exhibit H. Upon the City's completion of the additional improvements described on Exhibit H, Developer must reimburse the City for all costs and expenses the City incurs to construct and install the additional improvements described on Exhibit H.

## ARTICLE X

### REAL ESTATE TAX PAYMENTS AND ASSESSMENT AGREEMENT

Section 10.1 Real Property Taxes. Developer agrees that prior to December 31, 2038:

(a) It will not seek administrative review or judicial review of the applicability of any tax statute relating to the taxation of all or any portion of the Development Property determined by any tax official to be applicable to the Development Property or Developer or raise the inapplicability of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; provided, however, "tax statute" does not include any local ordinance or resolution levying a tax;

(b) It will not seek administrative review or judicial review of the constitutionality of any tax statute relating to the taxation of all or any portion of the Development Property determined by any tax official to be applicable to the Development Property or Developer or raise the unconstitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; provided, however, "tax statute" does not include any local ordinance or resolution levying a tax;

(c) It will not seek any tax deferral or abatement, either presently or prospectively authorized under any other State or federal law, of the taxation of all or any portion of the Development Property;

(d) It will not ask the County Assessor for or commence or participate in any legal or administrative process seeking a reduction in the assessed value of the Development Property for purposes of the ad valorem real estate taxes except that if, in any given year, the assessed value exceeds the assessed value set forth for that year in the Assessment Agreement, Developer may seek a reduction in the assessed value of the Development Property to any amount equal to or greater than the assessed value set forth for that year in the Assessment Agreement. If Developer seeks a reduction in the assessed value of the Development Property to any amount equal to or greater than the assessed value set forth for that year in the Assessment Agreement, Developer must first provide not less than thirty (30) days written notice to the City. In that event, the City will continue to make Tax Increment payments to Developer on the TIF Note Payment Dates, but the payments will be based on 85% of the tax increments that would have been derived from the Development Property based on the minimum market values set forth in the Assessment Agreement for the applicable time periods rather than on the Tax Increments, and the City will withhold the difference until such time as the City can determine the actual Tax Increments for the year in question based on the assessed value of the Development Property as finally determined upon the conclusion of Developer's attempts to have the assessed value reduced.

(e) It will pay, when due, all real property taxes due and payable with respect to the Development Property.

Section 10.2 Assessment Agreement. Contemporaneously with the HRA's conveyance of the Development Property to Developer, Developer must execute the Assessment Agreement,

deliver the Assessment Agreement to the City and record the Assessment Agreement in the Anoka County land records. The schedule of minimum market values attached to the Assessment Agreement as Exhibit B is based on the City's estimate. Prior to the City's and Developer's execution of the Assessment Agreement, the schedule of minimum market values attached to the Assessment Agreement as Exhibit B may be modified as follows:

(a) The Tax Increment Act requires that the Anoka County Assessor certify that the minimum market values set forth in the Assessment Agreement are reasonable. After Developer submits Construction Plans to the City pursuant to Section 5.2, the City will provide the Anoka County Assessor with copies of the Construction Plans and request that the County Assessor execute the certification attached to the Assessment Agreement. The City and Developer agree that if the County Assessor requires modifications to the schedule of minimum market values attached as Exhibit B to the Assessment Agreement as a condition of the County Assessor's execution of the required certification, the City and Developer will modify the schedule of minimum market values to the minimum extent necessary to obtain the County Assessor's Certification; and

(b) If the amount of the TIF Note is determined pursuant to Section 6.2(c), the City and Developer will amend Exhibit B of the Assessment Agreement so that the minimum market values for the years 2014 – 2036 are equal to the assessed value that the Anoka County Assessor establishes for the Development Property for purposes for real property taxes assessed in the year following the year of which the City issues the Certificate of Completion, and the minimum market value for 2013 is 30% of the minimum market value for 2014. **DEVELOPER MUST RECORD THE ASSESSMENT AGREEMENT AGAINST TITLE TO THE DEVELOPMENT PROPERTY PRIOR TO THE RECORDING OF ANY MORTGAGE OR OTHER LIEN ON THE DEVELOPMENT PROPERTY THAT DEVELOPER GRANTS TO THIRD PARTY OR, IF SUCH THIRD PARTY MORTGAGE OR LIEN IS RECORDED FIRST, MUST OBTAIN AND RECORD AN INSTRUMENT WHEREBY THE HOLDERS OF SUCH MORTGAGE OR LIEN ACKNOWLEDGE AND AGREE THAT THEY AND THEIR SUCCESSORS AND ASSIGNS ARE SUBJECT TO THE RIGHTS OF THE CITY UNDER THE ASSESSMENT AGREEMENT. IF THE ASSESSMENT AGREEMENT IS AMENDED PURSUANT TO SECTION 10.2(B) ABOVE, DEVELOPER MUST CAUSE ANY PARTIES HOLDING LIENS ON THE DEVELOPMENT PROPERTY TO EXECUTE A CONSENT TO THE ASSESSMENT AGREEMENT AMENDMENT SUFFICIENT TO CAUSE THE LIEN HOLDERS INTEREST IN THE PROPERTY TO BE SUBJECT TO THE ASSESSMENT AGREEMENT, AS AMENDED.**

## ARTICLE XI

### RESTRICTIONS ON ASSIGNMENTS AND TRANSFERS, SUBORDINATION AND RENTAL RESTRICTIONS

Section 11.1 Prohibition against Transfer of the Development Property; Assignment of Development Agreement and Assignment of the TIF Note. Prior to Developer's substantial completion of the Minimum Improvements and the City's issuance of the Certificate of Completion described in Section 5.5, Developer may not, except as set forth in Section 11.2, convey; mortgage; lease, other than in the ordinary course of Developer's business; or otherwise

transfer the Development Property or any part thereof or interest therein; may not assign its rights or obligations under this Development Agreement; and may not assign the TIF Note, without the prior written approval of the City, which approval the City may grant, withhold or condition in the City's sole and absolute discretion.

Section 11.2 Permitted Collateral Assignments. The City expressly approves Developer's granting of a Project Mortgage and Developer's collateral assignment of Developer's rights and obligations under this Development Agreement and the TIF Note to the holder of the Project Mortgage as additional security for the repayment of the Project Loan; provided the holder of the collateral assignment of Developer's rights and obligations under this Development Agreement and the TIF Note agrees, in the collateral assignment, that upon enforcement of the collateral assignment and the assignees acquisition of Developer's rights and obligations under either this Development Agreement, the TIF Note or both, the assignee will be subject to and liable for the performance of each of Developer's obligations under this Development Agreement.

Section 11.3 Subordination of Development Agreement to Project Mortgage and Extension of Time to Cure. The City and the HRA will, upon the request of the holder of a Project Mortgage, execute and record a subordination agreement pursuant to which the City and the HRA agree that, upon a default by Developer under a Project Mortgage, the holder of the Project Mortgage may elect, in an instrument to be recorded in the Anoka County land records and delivered to the City and the HRA before the commencement of proceedings to foreclose the Project Mortgage, to either (1) treat this Development Agreement as being subordinate to the lien of the Project Mortgage such that the foreclosure of the Project Mortgage and the failure of any owner to redeem the Development Property from such foreclosure will terminate this Development Agreement and the TIF Note (but not the Assessment Agreement); or (2) to treat this Development Agreement as having priority over the Project Mortgage in which case this Development Agreement and the TIF Note will survive the foreclosure of the Project Mortgage and this Development Agreement will be binding upon the holder of the Sheriff's Certificate issued in conjunction with the foreclosure of the Project Mortgage. If the holder of the Project Mortgage fails to notify the City and the HRA of its election under this Section 11.3 on or before the commencement of foreclosure proceedings, the holder of the Project Mortgage shall be deemed to have elected to treat this Development Agreement as being subordinate to the lien of the Project Mortgage such that the foreclosure of the Project Mortgage and the failure of any owner to redeem the Development Property from such foreclosure will terminate this Development Agreement and the TIF Note (but not the Assessment Agreement). The City further agrees that if the holder of the Project Mortgage elects to treat this Development Agreement as having priority over the Project Mortgage and the City will, upon the completion of the foreclosure without redemption by Developer or any junior creditor, amend this Development Agreement to extend the time for the completion of the Minimum Improvements to a date 12 months following the expiration of all applicable redemption period.

Section 11.4 Rental Restrictions. Developer covenants and agrees that at all times prior to the Termination Date, Developer will lease not less than \_\_\_\_% of the apartment units in the Project to tenants whose family income is equal to or less than \_\_\_\_% of the median family income as established by the United States Department of Housing and Urban Development for Anoka County. From and after the date Developer pays the HRA all amounts due and owing to

the HRA pursuant to Note No. 2, the City's and the HRA's sole remedy for a breach of this Section 11.4 shall be to terminate TIF Note pursuant to Section 13.1 (g) and 13.2 (d).

## ARTICLE XII

### INDEMNIFICATION OF THE CITY AND THE HRA

Section 12.1 Indemnification of the City and the HRA. Developer agrees to defend the City, the HRA, their governing body members, officers, agents, including independent contractors, consultants and legal counsel, servants and employees (hereinafter, for purposes of this Section, collectively the "Indemnified Parties"); to hold the Indemnified Parties harmless from; and to indemnify the Indemnified Parties against any third party claims, demands, suits, actions or other proceedings ("Claims") arising or purportedly arising from the actions or inactions of Developer (or if other persons acting on its behalf or under its direction or control) (i) pursuant to this Development Agreement or (ii) in connection with the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Development Property. The provisions of this Section 12.1 are intended to survive the termination of this Agreement.

## ARTICLE XIII

### DEVELOPER EVENTS OF DEFAULT

Section 13.1 Events of Default Defined. The following shall each be an "Event of Default" under this Agreement:

(a) Developer's default in the performance of one or more of Developer's obligations under the Purchase Agreement if the HRA gives any notice of default provided for in the Purchase Agreement and Developer fails to cure the default within any applicable cure period provided for in the Purchase Agreement.

(b) Developer's failure to commence or to substantially complete the construction of the Minimum Improvements pursuant to the terms and conditions of and within the time frame set forth in Section 5.5 of this Development Agreement, as the same may be extended pursuant to Section 11.3 of this Agreement.

(c) Developer's default in the performance of one or more of Developer's obligations under the Loan Agreement, Note No. 1 or Note No. 2, if the City gives Developer any notice of default provided for in the Loan Agreement and Developer fails to cure the default within any applicable cure period provided for in the Loan Agreement.

(d) Developer's default in the timely payment of any amounts due under Article IX within thirty (30) days after the City notifies Developer that Developer is delinquent in the payment thereof.

(e) Developer's failure to pay any ad valorem real property taxes or installments of special assessments due and payable with respect to the Development Property

within thirty (30) business days after the City or the HRA notifies Developer that Developer is delinquent in the payment thereof.

(f) Developer's breach of one or more of the restrictions set forth in Section 11.1;

(g) Developer's failure to perform Developer's obligations under Section 11.4, Section 12.1 or Section 14.14 if the City or the HRA gives Developer notice of the default and Developer fails to cure the default within thirty (30) days after the effective date of the notice.

(h) The holder of any mortgage on the Development Property, or any portion thereof, commencing foreclosure proceedings.

(i) Developer's;

(i) Filing of any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended or under any similar federal or state law; or

(ii) making an assignment for the benefit of its creditors; or

(iii) admission, in writing, that it is unable to pay its debts generally as they become due; or

(iv) being adjudicated a bankrupt or insolvent;

(j) The filing of a petition or answer proposing the adjudication of Developer as bankrupt or its reorganization under any present or future federal bankruptcy act or any similar federal or state law in any court and such petition or answer not being discharged or denied within ninety (90) days after the filing thereof; or

(k) The appointment of a receiver, trustee or liquidator of Developer or of the Development Property, or part thereof, in any proceeding brought against Developer, and said receiver, trustee or liquidator not being discharged within ninety (90) days after such appointment.

Section 13.2 Remedies on Default. At any time after the occurrence of an Event of Default as defined in Section 13.1 the City and the HRA may, in addition to any other rights the City or the HRA may have at law or in equity, take any one or more of the following actions:

(a) The City and the HRA may suspend their performance under this Development Agreement and the Loan Agreement until they

(i) receive assurances from Developer, deemed adequate by the City and the HRA, that Developer will cure the default and continue its performance under this Development Agreement, the Loan Agreement, Note No. 1 and Note No. 2; or

(ii) receive assurance from the holder of a Project Mortgage, deemed adequate by the City and the HRA, that the holder of the Project Mortgage will cure the default or, if the holder of the Project Mortgage cannot cure the default without first obtaining possession of the Development Property, will foreclose the Project Mortgage, elect, pursuant to Section 11.3, to treat this Development Agreement as having priority over the Project Mortgage and, upon the completion of the foreclosure proceedings and the expiration of all applicable redemption periods, cure the default and perform the obligations of Developer under this Agreement, the Loan Agreement, Note No. 1 and Note No. 2;

(b) The City or the HRA may terminate this Development Agreement;

(c) The HRA may terminate the Loan Agreement and declare the entire amount of the outstanding principal due and payable under Loan No. 1 and Loan No. 2 immediately due and payable, in full; or

(d) If the Event of Default is an Event of Default under Section 13.1 (a), (b), (c), (d), (e), (f) or (g), the City may refuse to issue or cancel and rescind the TIF Note.

#### ARTICLE XIV

#### **ADDITIONAL PROVISIONS**

Section 14.1 Conflicts of Interest. No member of the governing body or other official of the City shall participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by Developer or successor or on any obligations under the terms of this Agreement.

Section 14.2 No Remedy Exclusive. No remedy herein conferred upon or reserved to any party 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 Development Agreement or now or hereafter existing at law or in equity or by statute to the extent provided herein. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 14.3 No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 14.4 Titles of Articles and Sections. Any titles of the several parts, articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 14.5 Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered the day following the day if it is dispatched by overnight courier; two business days after it is mailed, via registered or certified mail, postage prepaid, return receipt requested; or the day it is delivered personally, and

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

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](mailto:dflaherty@flahertycollins.com)

With a copy 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](mailto:stephen.lee@BTLaw.com)

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

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](mailto:kulrich@ci.ramsey.mn.us)

With a copy to:

Briggs and Morgan, PA  
2200 IDS Center  
80 South 8<sup>th</sup> Street  
Minneapolis, Minnesota 55402-2157  
Attn: Thomas L. Bray  
Telephone No. 612-977-8285  
Facsimile No. 612-977-8650

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

The Housing and Redevelopment Authority in and for the City of Ramsey,  
Minnesota  
Ramsey Municipal Center  
7550 Sunwood Drive  
Ramsey, MN 55303  
Attn: Executive Director  
Telephone No.: (763) 427-1410  
Facsimile No.: (763) 427-5543  
Email: [hnelson@ci.ramsey.mn.us](mailto:hnelson@ci.ramsey.mn.us)

With a copy to:

Briggs and Morgan, PA  
2200 IDS Center  
80 South 8<sup>th</sup> Street  
Minneapolis, Minnesota 55402-2157  
Attn: Thomas L. Bray  
Telephone No. 612-977-8285  
Facsimile No. 612-977-8650

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

Section 14.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 14.7 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

Section 14.8 Covenants to Run with Title. The rights and obligations of Developer under this Agreement run with title to the Development Property and are binding on Developer and Developers successors in title to all or any portion of the Development Property.

Section 14.9 Time is of the Essence. Developers timely performance of its obligations under this Agreement is an essential term of this Agreement.

Section 14.10 Enforceability. If any provision of this Agreement is adjudged to be invalid or unenforceable by a court of competent jurisdiction, this Agreement should be construed as if such invalid or unenforceable provision had not been inserted herein and should not affect the validity or enforceability of the remainder of this Agreement.

Section 14.11 No Third Party Beneficiaries. Nothing in this Agreement, expressed or implied, is intended to confirm any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective permitted successors and assigns.

Section 14.12 Termination. This Agreement shall terminate and be of no further force and effect as of the Termination Date.

Section 14.13 Business Days. If the date this Agreement establishes for a party's performance of an obligation or delivery of a notice is not a Business Day, the date for such performance or for the delivery of such notice is automatically extended to the next Business Day.

Section 14.14 Agreement to Pay Attorney's Fees and Expenses. Whenever a party defaults in the performance of the party's obligations under this Agreement and one or both of the other parties to this Agreement employs one or more attorneys to advise and represent it in connection with such default or incurs other expenses in connection with or as a result of the default, the defaulting party must, upon demand therefore, reimburse the non-defaulting parties their reasonable fees of such attorneys and such other reasonable expenses as the non-defaulting parties may incur.







**EXHIBIT A**

**CERTIFICATE OF COMPLETION**

**CERTIFICATE OF COMPLETION AND RELEASE OF FORFEITURE**

The City Ramsey, a home rule city organized and existing under the constitution and laws of the State of Minnesota (the "City") and The Housing and Redevelopment Authority in and for the City of Ramsey, Minnesota, a public body politic and corporate under the laws of the State of Minnesota (the "HRA"), hereby acknowledge that F & C Ramsey, LLC, an Indiana limited liability company ("Developer"), has substantially has completed the construction of the "Minimum Improvements" as defined in that certain Development Agreement by and between the HRA, the City of Ramsey and Developer, dated as of \_\_\_\_\_, 2011, and recorded in the office of the Anoka County Registrar of Titles on \_\_\_\_\_, 2011 as Document No. \_\_\_\_\_ as the same may be amended from time to time (the "Development Agreement") and has fully satisfied Developer's obligations to commence and complete construction of the Minimum Improvements under Section 5.4 of the Development Agreement. The HRA further expressly acknowledges and agrees that Developer has satisfied all of the conditions subsequent of the Right of Reverter that is described in Section 4.3 of the Development Agreement and reserved in the Limited Warranty Deed from the HRA to Developer dated \_\_\_\_\_, 2011 and recorded in the office of the Anoka County Registrar of Titles on \_\_\_\_\_, 2011 as Document No. \_\_\_\_\_ and that said Right of Reverter has terminated and is of no further force or effect.

THE HOUSING AND REDEVELOPMENT  
AUTHORITY IN AND FOR THE CITY OF  
RAMSEY, MINNESOTA

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

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

STATE OF MINNESOTA    )  
  ) ss  
COUNTY OF ANOKA     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by \_\_\_\_\_ and \_\_\_\_\_, the Chair and the Secretary, respectively, of The Housing and Redevelopment Authority in and for the City of Ramsey, Minnesota, a public body politic and corporate organized and existing under the laws of the State of Minnesota.

\_\_\_\_\_  
Notary Public



**EXHIBIT B**

**FORM OF TIF NOTE**

No. \_\_\_\_\_

\$ \_\_\_\_\_

UNITED STATES OF AMERICA  
STATE OF MINNESOTA  
COUNTY OF ANOKA  
CITY OF RAMSEY

**TAX INCREMENT REVENUE NOTE  
(F & C DEVELOPMENT, INC. PROJECT)**

The City of Ramsey, Minnesota (the "City"), hereby acknowledges itself to be indebted and, for value received, hereby promises to pay the amounts hereinafter described (the "Payment Amounts") to F & C Ramsey, LLC, an Indiana limited liability company ("Developer") or any Successor Holder (as defined below), but only in the manner, at the times, from the sources of revenue, and to the extent hereinafter provided. This Note is being issued pursuant to the terms of that certain Development Agreement by and between the Housing and Redevelopment Authority in and for the City of Ramsey, Minnesota (the "HRA"), the City and Developer dated \_\_\_\_\_, 2011 (the "Development Agreement"). All capitalized terms used in this Note that are not expressly defined in this Note have the meanings given to such terms in the Development Agreement.

The principal amount of this Note is \$ \_\_\_\_\_, as reduced to the extent that principal shall have been paid in whole or in part pursuant to the terms hereof. The unpaid principal amount of this Note shall bear simple, non-compounding interest from the date of issuance of this Note at 6.25% per annum Interest shall be computed on the basis of a 360 day year consisting of twelve (12) 30-day months.

The amounts due under this Note shall be payable on October 1, 2015, February 1, 2016 and on each August 1 and February 1 thereafter through and including February 1, 2038, or, if such date is not a Business Day (as defined in the Development Agreement), the next succeeding Business Day (each a "Payment Date" and collectively the "Payment Dates"). On each Payment Date the City shall pay by check or draft mailed to the person that was Developer or a Successor Holder of this Note at the close of the last business day of the City preceding such Payment Date an amount equal to the sum of the Tax Increments (as defined in the Development Agreement) received by the City since January 1, 2015, in the case of the first Payment Date, and since the prior Payment Date in the case of subsequent Payment Dates. All payments made by the City under this Note shall be applied first to pay accrued, unpaid interest and then to principal.

The Payment Amounts due hereon shall be payable solely from Tax Increments (as defined in the Development Agreement) the City receives on or after January 1, 2015. This Note shall terminate and be of no further force and effect following the last Payment Date defined above, on any date upon which the City shall have canceled and rescinded this Note pursuant to Section 13.2(d) of the Development Agreement, on the date the Tax Increment District is

terminated, or on the date that all principal and interest payable hereunder shall have been paid in full, whichever occurs earliest.

The City makes no representation or covenant, express or implied, that the Tax Increments the City receives from and after January 1, 2015, will be sufficient to pay, in whole or in part, the amounts which are or may become due and payable hereunder.

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

This Note is a special, limited revenue obligation and not a general obligation of the City and is payable by the City only from the sources and subject to the qualifications stated or referenced herein. This Note is not a general obligation of the City, and neither the full faith and credit nor the taxing powers of the City are pledged to the payment of the principal of this Note and no property or other asset of the City, save and except Tax Increments the City receives on or after January 1, 2015 shall be a source of payment of the City's obligations hereunder.

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

This Note may be assigned only to transferees permitted or deemed to be permitted pursuant to the Development Agreement (each such permitted successor is referred to as "Successor Holder"), and any permitted assignment of the rights and obligations of the Development Agreement shall be deemed to be an assignment of the benefits of Developer pursuant to this Note. In order to assign the Note, the assignee shall surrender the same to the City either in exchange for a new fully registered note or for transfer of this Note on the registration records for the Note maintained by the City. Each permitted assignee shall take this Note subject to the foregoing conditions and subject to all provisions stated or referenced herein.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions, and things required by the Constitution and laws of the State of Minnesota to be done, to have happened, and to be performed precedent to and in the issuance of this Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; and that this Note, together with all other indebtedness of the City outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the City to exceed any constitutional or statutory limitation thereon.

IN WITNESS WHEREOF, the City of Ramsey, Minnesota, by its City Council, has caused this Note to be executed by the manual signatures of its Mayor and City Administrator and has caused this Note to be dated as of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Administrator

**CERTIFICATION OF REGISTRATION**

It is hereby certified that the foregoing Note, as originally issued on \_\_\_\_\_, 20\_\_\_, was on said date registered in the name of F & C Ramsey, LLC and that, at the request of the Registered Owner of this Note, the undersigned has this day registered the Note in the name of such Registered Owner, as indicated in the registration blank below, on the books kept by the undersigned for such purposes.

| <u>NAME AND ADDRESS OF<br/>REGISTERED OWNER</u> | <u>DATE OF<br/>REGISTRATION</u> | <u>SIGNATURE OF<br/>CITY ADMINISTRATOR</u> |
|---|---------------------------------|--|
| F & C Ramsey, LLC<br>_____<br>_____<br>_____    | _____<br>_____<br>_____         | _____<br>_____<br>_____                    |

## EXHIBIT C

### LOAN AGREEMENT

THIS LOAN AGREEMENT is entered into as of \_\_\_\_\_, 201\_, by and between The Housing and Redevelopment Authority in and for the City of Ramsey, Minnesota, a public body politic and corporate under the laws of the State of Minnesota (the "HRA") and F & C Ramsey, LLC, an Indiana limited liability company (the "Developer").

#### RECITALS:

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

B. The Developer has also asked the HRA to lend the Developer \$\_\_\_\_\_ [**\$1,420,000.00 plus (\$6,825,000.00 plus Costs of Issuance, as defined in the Development Agreement)**] to finance a portion of the cost of constructing the Housing Development Project, as defined below.

C. The HRA has agreed to make two loans totaling \$\_\_\_\_\_ to Developer [**to be completed with the same amount as inserted in Recital B**] to finance a portion of the cost of constructing the Housing Development Project, as defined below.

D. The HRA has agreed to make the Loans 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 Loan Agreement the following terms shall have the meanings set forth in this Article I. Terms used in this 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 either of the Loans in accordance with the terms hereof.

"Complete," "Completed" and "Completion" mean that (a) the Minimum Improvements are completed in accordance with the Final Construction Plans; (b) the HRA 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 Completes construction of the Minimum Improvements; or (b) the "Completion Date" as defined in the Development Agreement; 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 HRA 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 \_\_\_\_\_, 201\_ 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.

"Corporate Guarantor" means Flaherty & Collins Construction, Inc.

"Corporate Guaranty" means that certain Corporate Guaranty bearing even date herewith executed by the Corporate Guarantor in favor of the HRA pursuant to which the Corporate Guarantor has unconditionally guaranteed the full payment and prompt performance of Loan No. 1 and all obligations of the Developer under the Loan Documents related thereto.

"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 among the Developer, the HRA and the City of Ramsey, Minnesota dated as of \_\_\_\_\_, 2011, and recorded in the office of the Anoka County Registrar of Titles on \_\_\_\_\_ as Document No. \_\_\_\_\_.

"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 7.1 hereof.

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

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

"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.

"Housing Development Project" means the Housing Development Project as defined in the Development Agreement.

"Inspecting Architect" means the architect the HRA engages pursuant to Section 4.9 to provide the certifications required in Section 4.1.

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

"Loan Documents" means this Loan Agreement, the Notes, the Corporate Guaranty, the Personal Guaranty and the Pledge Agreement and any and all renewals, replacements, supplements, modifications, extensions and/or amendments of any of the foregoing.

"Loan No. 1" means the extension of credit evidenced by Note No. 1.

"Loan No. 2" means the extension of credit evidenced by Note No. 2.

"Loans" means collectively Loan No. 1 and Loan No. 2.

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

"Note No. 1" means that certain Promissory Note bearing even date herewith made payable by Developer to the order of HRA in the original principal amount of up to \$1,420,000.00, and all amendments, modifications, replacements, renewals and substitutions therefor.

"Note No. 2" means that certain Promissory Note bearing even date herewith made payable by Developer to the order of HRA in the original principal amount of up to \$\_\_\_\_\_, [**to be completed with an amount equal to the sum of \$6,825,000.00 plus the "Costs of Issuance" as defined in the Development Agreement**] and all amendments, modifications, replacements, renewals and substitutions therefor.

"Notes" means collectively Note No. 1 and Note No. 2.

"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.

"Personal Guarantor" means David M. Flaherty.

"Personal Guaranty" means that certain Personal Guaranty bearing even date herewith executed by the Personal Guarantor in favor of the HRA pursuant to which the Personal Guarantor has unconditionally guaranteed the full payment and prompt performance of Loan No. 2 and all obligations of the Developer under the Loan Documents related thereto.

"Pledge Agreement" means that certain Membership Interest Pledge Agreement bearing even date herewith executed by the Pledgors in favor of the HRA pursuant to which the Pledgors have pledged 100% of the membership interests of the Developer.

"Pledgors" means [\_\_\_\_\_].

"PNC Loan Documents" means any and all documents, instruments and other agreements between Developer and PNC Bank, National Association entered into from time to time.

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

"Purchase Agreement" means the purchase agreement among the HRA, the Developer and the City of Ramsey, Minnesota dated \_\_\_\_\_, 2011.

## ARTICLE II

### DOCUMENTS

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

Section 2.1 Loan Documents. The executed Loan Documents.

Section 2.2 Opinion of Counsel. Due authority and enforceability opinions from counsel for the Developer and counsel for the Corporate Guarantor and an enforceability opinion from counsel for the Personal Guarantor, all in form and substance acceptable to HRA.

Section 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.

Section 2.4 Final Construction Plans and Assessment Agreement. The Final Construction Plans and the "Assessment Agreement," as defined in the Development Agreement. The Assessment Agreement must be properly recorded in the office of the Anoka County Registrar of Titles and must be recorded prior to any mortgages or other liens encumbering the Development Property.

Section 2.5 Insurance. One or more forms "ACORD 28 Evidence of Insurance" (or other evidence satisfactory to HRA) 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

Section 3.1 Commitment of the HRA to Lend and the Loan Agreement. Subject to the terms and conditions hereof and of the Notes and other Loan Documents delivered herewith, the HRA agrees to loan to the Developer, and the Developer agrees to borrow from the HRA, an amount not to exceed \$\_\_\_\_\_ [to be completed prior to execution with an amount equal to the sum of (i) \$1,420,000; (ii) \$6,825,000; and (iii) the Costs of Issuance, as defined in the Development Agreement]. HRA shall make Advances against the Notes until the Loans are fully advanced, in the stages and subject to the limitations as set forth below. The HRA shall have no obligation to make any Advances against the Notes after the Completion Date.

## ARTICLE IV

### ADVANCES AND DISBURSEMENTS

Section 4.1 Conditions of All Advances. Without limiting any of the other terms of this Loan Agreement, the obligation of the HRA 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 Loan Agreement or any documents or other written statement delivered to the HRA prior to or on the date of this Loan Agreement shall be true and correct on and as of the date of this 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) No default or event of default (however denominated) shall have occurred and be continuing under any of the PNC Loan Documents and all conditions precedent to the disbursement of the proceeds of the loan evidenced by the PNC Loan Documents shall be satisfied except for conditions precedent related to the substantial construction of the "Rail Stop" as defined in the Development Agreement and conditions precedent related to the full disbursement of the proceeds of the Loans.
- (d) The HRA shall have received the documents and other items listed in Article II hereof.
- (e) The HRA shall have received a certification from the Inspecting Architect that any materials to be paid for from the Advance have been delivered to the Development Property and any construction work to be paid for from the Advance has been completed in a workmanlike manner in accordance with the Final Construction Plan.

(f) Developer shall have provided the HRA with the General Contractor's Certification described in Section 4.2.

(g) The Developer shall provide the HRA with lien waivers from all persons providing services, labor or materials to be paid for from the Advance.

(h) The Developer shall provide the HRA with evidence, reasonably acceptable to the HRA, that the Developer has spent at least \$1,000,000.00 of Developer equity on the Project.

(i) Commercial Partners Title, LLC or such other title company as reasonably selected by the HRA shall review the status of title to the Development Property and confirm, to the reasonable satisfaction of the HRA, that there have been no liens filed against title to the Development Property other than the lien of a "Project Mortgage," as defined in the Development Agreement. **[The HRA and the Developer shall enter into a disbursing agreement with Commercial Partners Title pursuant to which the HRA engages Commercial Partners Title to make Advances to Developer pursuant to the terms of this Agreement.]**

Section 4.2 Procedures and Requirements for Advances. Except as set forth in Section 4.6, to obtain Advances of the Loans against the Notes, the Developer shall submit to the HRA, 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) Any materials to be paid for from the Advance have been delivered to the Development Property, and any construction work to be paid for from the Advance has been completed in a workmanlike manner in accordance with the Final Construction Plans;

(b) The funds remaining undisbursed on the Loans 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 Final Construction 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.

Subject to the satisfaction of the requirements set forth in Sections 2.1 and 4.1 and the limitations set forth in Section 4.8, the HRA shall, within ten (10) business days from receipt of a Draw Request and the documentation required by Sections 2.1 and 4.1, disburse proceeds of the Loans directly to the Developer and the other Contractors or other persons and entities identified in the relevant Draw Request; provided that the HRA 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.

Section 4.3 Forms of Draw Request, etc. The form of Draw Request, the Inspecting Architect's certificate, 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 HRA in the HRA's reasonable discretion.

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

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

(a) The HRA may take such steps as it may deem appropriate, at its option, to verify the application of proceeds of the Loans 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 HRA be obligated to conduct any such verification or to so vary said procedures.

(b) In the event that the HRA shall determine, in its reasonable judgment, that proper documentation to support a given Advance, as required by this 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 HRA, it may withhold such amount.

(c) From and after the occurrence of an Event of Default, the HRA 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 HRA 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 HRA.

Section 4.6 Advances to Pay Fees and Costs of Issuance. In lieu of interest on Loan No. 1, the HRA is charging the Developer a \$120,000.00 fee for the extension of Loan No. 1 to the Developer. The first Draw Request that the Developer submits to the HRA will be deemed to include a request that the HRA Advance \$120,000.00 and will be deemed to direct the HRA to retain the \$120,000.00 Advance in full payment of the fee described in this Section 4.6. As set forth in Section 8.6 of the Development Agreement, contemporaneously with the execution of this Loan Agreement and with the parties' execution of this Loan Agreement and Developer's execution of Note No. 2, Developer will be deemed to have authorized the HRA to and the HRA shall make an Advance to itself from the proceeds of Loan No. 2 in an amount

equal to the "Costs of Issuance," as defined in the Development Agreement. The HRA's Advance to itself of an amount equal to the Costs of Issuance is not subject to the limitations on advances set forth in Section 4.8.

Section 4.7 Interest on Loan No. 2. The unpaid principal amount of Advances of Loan No. 2 shall bear interest as set forth in Note No. 2.

Section 4.8 Additional Limitations on Advances of the Proceeds of Loan No. 2. The HRA is not obligated to and will not Advance any proceeds of Loan No. 2 to Developer before the later of the date thirty (30) days after the HRA conveys the Development Property to Developer, the date Developer commences construction of the Minimum Improvements or June 1, 2012. For purposes of this Section 4.8, the Developer is deemed to have Commenced Construction when Developer has

(a) obtained all building permits from the City of Ramsey, Minnesota, necessary for the construction of the Minimum Improvements; and

(b) commenced the construction of the footings and foundations for the Minimum Improvements, as defined in the Development Agreement.

In addition, the HRA is not obligated to and will not Advance more than \$1,000,000 of the proceeds of Loan No. between the 31<sup>st</sup> day and 60<sup>th</sup> day following the HRA's conveyance of the Development Property to Developer and is not obligated to and will not Advance more than an additional \$1,000,000 of the proceeds of Loan No. 2 to Developer between the 61<sup>st</sup> day and 90<sup>th</sup> day following the HRA's conveyance of the Development Property to the Developer.

Section 4.9 Inspecting Architect. The HRA shall hire an architect licensed in the State of Minnesota to review Developer's Draw Requests and to provide the certification described in Section 4.1(e). Developer is responsible for payment of the Inspecting Architect's fees and costs which payments may be included in the Draw Request. The HRA will cooperate with Developer in the selection of the Inspecting Architect, it being the intent of the HRA and the Developer to use the same architect that PNC Bank, National Association uses as PNC Bank, National Association's inspecting architect for purposes of the PNC Loan Documents.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

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

Section 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.

Section 5.2 Organization and Qualification of Corporate Guarantor. The Corporate Guarantor is a \_\_\_\_\_ duly organized, validly existing and in good standing under the laws of the State of Indiana. The Corporate 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 Corporate Guarantor.

Section 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 Corporate Guaranty and the performance or observance by the Corporate Guarantor of its obligations under the Corporate Guaranty have been duly authorized by all necessary corporate action the of Corporate Guarantor, do not contravene or violate any provision of law, any Organizational Document of Corporate Guarantor or any covenant, indenture or agreement of or binding upon Corporate 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, the Corporate Guarantor and the Personal Guarantor, and the Loan Documents are enforceable against the Developer, the Corporate Guarantor and the Personal Guarantor (as the case may be) in accordance with their respective terms.

Section 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.

Section 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.

Section 5.6 No Breach. The consummation of the transaction contemplated hereby and performance of this 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, the Corporate Guarantor or the Personal Guarantor is a party, or by which the Developer, the Corporate Guarantor or the Personal Guarantor may be bound or affected.

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

Section 5.8 Use of Loan Funds. The Developer will use the proceeds of the Loans solely to finance the development and construction of the Housing Development Project.

Section 5.9 Need for Loans. The Developer would not undertake the Project without the assistance of the HRA in providing the Loans.

## ARTICLE VI

### AFFIRMATIVE COVENANTS

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

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

Section 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 HRA 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 HRA 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 HRA 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 HRA, that it will give the HRA 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 HRA under such policy or policies.

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

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

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

Section 6.5 Construction of Minimum Improvements. Commence construction of the Minimum Improvements on or before June 30, 2012. Complete the Minimum Improvements on or before the Completion Date in a good and workmanlike manner, in accordance with the Final Construction Plans and in compliance with applicable laws, rules, regulations, building codes, and ordinances.

Section 6.6 Reimbursement of Expenses. Promptly reimburse the HRA 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.

Section 6.7 Financial Information Regarding Guarantors; Substitute Guarantors. Until the Notes are paid in full, the Developer shall:

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

(b) Personal Guarantor. Cause the Personal Guarantor to provide the HRA with a personal financial statement for the Personal Guarantor for the immediately preceding calendar year certified by the Personal Guarantor and a copy of the Personal Guarantor's filed federal tax return. If, in any year, the Personal Guarantor's liquid net worth is less than \$1,000,000.00, the Developer must provide a replacement guaranty from another individual or entity reasonably acceptable to the HRA and having a liquid net worth of not less than \$1,000,000.00. If such replacement guaranty is provided, the person or entity providing the replacement guaranty shall be the "Personal Guarantor" for purposes of this Agreement.

Section 6.8 CPA-Prepared Financial Statements. On or before April 1, 2015 and on or before each April 1 thereafter until April 1, 2025, the Developer must provide the HRA 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 HRA 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 Developer or an Affiliate of Developer.

Section 6.9 No Liens. Unless the HRA provides its prior written consent, ensure that the Development Property (and all portions thereof) remains free of all mortgages, liens, security interests and other encumbrances other than (a) the first lien mortgage in favor of PNC Bank, National Association securing an aggregate amount of not more than \$20,500,000, and (b) leases entered into by Developer in the ordinary course of its business.

Section 6.10 **[ADDITIONAL COVENANTS TO BE ADDED TO CONFORM WITH PNC'S COVENANTS.]**

## ARTICLE VII

### EVENTS OF DEFAULT AND THEIR EFFECT

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

(a) Nonpayment of Note. Developer fails to pay any installment of principal on either of the Notes when due, and such payment is not made within a period of ten (10) days after Written Notice thereof shall have been given by the HRA to the Developer.

(b) Other Covenants. The Developer defaults in the due performance or observance of any term, covenant or agreement contained in this Loan Agreement and such default shall continue for a period of fifteen (15) days after written notice thereof shall have been given by the HRA 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 Guarantors. The Developer, the Corporate Guarantor or the Personal Guarantor (i) becomes insolvent or unable to pay its debts generally as they mature, (ii) suspends business (with respect to the Developer or the Corporate Guarantor), (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 (with respect to the Developer or the Corporate Guarantor), 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 (with respect to the Developer or the Corporate Guarantor) 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 HRA, proves to be false in any material respect as of the date this Loan Agreement is executed or at the time such letter or certificate is delivered to the HRA.

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

Section 7.2 Effect of Event of Default. If any Event of Default shall occur, the Notes shall, at the HRA'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 HRA, upon the occurrence of an event set forth in Section 7.1(e) above, all sums outstanding on the Notes shall become immediately due and payable automatically without notice to the Developer. If any Event of Default shall occur, the HRA 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 HRA's obligation to Advance any further sums pursuant hereto; or

(b) declare all amounts advanced against the Notes, 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 Notes and all accrued but unpaid interest thereon.

Section 7.3 No Remedy Exclusive. No remedy herein conferred upon or reserved to the HRA 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 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

Section 8.1 Conflicts of Interest. No member of the governing body or other official of the HRA shall participate in any decision relating to this 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 HRA shall be personally liable to the HRA in the event of any default or breach by the Developer or successor or on any obligations under the terms of this Loan Agreement.

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

Section 8.3 Binding Effect. The parties hereto agree that this 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 either of the Notes; provided, however, that the Developer may not assign or transfer its interest herein without the prior written consent of the HRA. Nothing herein shall be interpreted or construed as creating any rights in any person other than the parties hereto.

Section 8.4 Governing Law, Waiver of Right to Jury Trial, Jurisdiction, Venue and Severability. This 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 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 HRA 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 Loan Agreement or any amendment to this Loan Agreement. If any provision of this 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 Loan Agreement.

Section 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<br>8900 Keystone Crossing #1200<br>Indianapolis, IN 46240<br>Attn: David M. Flaherty<br>Telephone No.: (317) 816-9300<br>Facsimile No.: (317) 816-9301<br>Email: dflaherty@flahertycollins.com |
|------------------|--|

|                 |   |
|-----------------|---|
| With copies to: | Barnes & Thornburg<br>11 S. Meridian St.<br>Indianapolis, IN 46204<br>Attn: Stephen Lee |
|-----------------|---|

Telephone No.: (317) 231-7200  
Facsimile No.: (317) 231-7433  
Email: stephen.lee@BTLaw.com

If to HRA:

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, MN 55402  
Attn: Tom Bray  
Email: tbray@briggs.com  
Facsimile No.: (612) 977-8650

Section 8.6 No Waivers. No failure or delay on the part of the HRA in exercising any right, power or privilege hereunder and no course of dealing between the Developer and the HRA 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.

Section 8.7 Amendment and Waiver. Neither this 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 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.

Section 8.8 Counterparts. This 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 Loan Agreement by signing any such counterparts.

Section 8.9 Superseding Effect. This Loan Agreement, the Loan Documents, the Development Agreement, and the Purchase Agreement constitute the entire agreement between the HRA 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.

Section 8.10 Indemnification. The Developer hereby agrees to defend, protect, indemnify and hold harmless HRA and its affiliates and the directors, officers, employees of the

HRA 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 HRA 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 8.10 shall survive the payment in full of the sums outstanding on the Notes.

Section 8.11 Developer Acknowledgments. The Developer hereby acknowledges that (a) it has been advised by counsel in the negotiation, execution and delivery of this Loan Agreement and the other Loan Documents, (b) the HRA has no fiduciary relationship to the Developer, the relationship between the Developer and the HRA being solely that of debtor and creditor, (c) no joint venture exists between the Developer and the HRA, and (d) the HRA 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 HRA is for the protection of the HRA and neither the Developer nor any third party is entitled to rely thereon.

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

Section 8.13 Survival. The HRA and the Developer intend that the terms of this 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 Loan Agreement shall be merged into any other documents executed in connection with the transactions contemplated herein.

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

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

[Remainder of page intentionally left blank;

Signature page follows]

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

DEVELOPER:

F & C RAMSEY, LLC,  
an Indiana limited liability company

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

HRA:

THE HOUSING AND REDEVELOPMENT  
AUTHORITY IN AND FOR THE CITY OF RAMSEY,  
MINNESOTA, A PUBLIC BODY POLITIC AND  
CORPORATE UNDER THE LAWS OF THE STATE  
OF MINNESOTA

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

By \_\_\_\_\_  
Its Executive Secretary

**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 Loan Agreement (as amended from time to time, the "Loan Agreement")) dated \_\_\_\_\_, 2011, between the Developer and The Housing and Redevelopment Authority in and for the City of Ramsey, Minnesota, a public body politic and corporate under the laws of the State of Minnesota ("HRA"):

(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 HRA) under the 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 Loan Agreement are hereby reaffirmed and restated, and Developer represents and warrants to HRA 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 HRA, 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 Loan Agreement for the cost originally represented to HRA, except for the following: \_\_\_\_\_.

(f) The Loans, as of the date hereof, are in balance as required by the Loan Agreement, and the undisbursed proceeds of the Loans, 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 Final Construction Plans, which have not been amended except as expressly permitted by the 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 HRA and approved by HRA, if such approval is required by the 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 HRA or its disbursing agent prior to the next Advance or final Advance against the Notes, or sooner as may be requested by the Title Company or HRA.

(k) All funds advanced under the 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 proceeds of the Loans has 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 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 HRA to charge the total amount of this Draw Request against Developer's Loan account and to advance from the proceeds of the Loans 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 Loan Agreement. The Advance made pursuant to this Draw Request is acknowledged to be an accommodation to Developer and is not a waiver by HRA of any Defaults or Events of Default under the Loan Agreement or any of the other Loan Documents or any other claims of HRA 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 \_\_\_\_\_

**EXHIBIT D-1**

**NOTE NO. 1**

**PROMISSORY NOTE**

\$1,420,000.00

Ramsey, Minnesota  
\_\_\_\_\_, 201\_

FOR VALUE RECEIVED, F & C Ramsey, LLC, an Indiana limited liability company ("Borrower") promises to pay to the order of The Housing and Redevelopment Authority in and for the City of Ramsey, Minnesota, a public body politic and corporate under the laws of the State of Minnesota ("Lender") the principal sum of ONE MILLION FOUR HUNDRED TWENTY THOUSAND AND 00/100 DOLLARS (\$1,420,000.00), or so much thereof as Lender has actually advanced to Borrower pursuant to the terms of that certain Loan Agreement between Lender and Borrower of even date herewith (the "Loan Agreement"), together with interest thereon as provided for in this Promissory Note. Lender shall disburse the proceeds of this Promissory Note to Borrower pursuant to the terms of the Loan Agreement.

Borrower shall make payments provided for in this Promissory Note to Lender at Ramsey Municipal Center, 7550 Sunwood Drive, Ramsey, Minnesota 55303, or at such other place as Lender may from time to time designate, in writing, in lawful money of the United States of America.

Borrower, Lender and the City of Ramsey, Minnesota, are also parties to a Development Agreement dated \_\_\_\_\_, 2011 and recorded in the office of the Anoka County Registrar of Titles on \_\_\_\_\_, 2011, as Document No. \_\_\_\_\_ (the "Development Agreement"). Capitalized terms used in this Promissory Note and not defined herein have the meanings established for such terms in the Development Agreement.

Absent a default by Borrower in the timely payment of amounts due under this Promissory Note, no interest shall accrue on amounts advanced under this Promissory Note. In lieu of non-default interest and as consideration for the extension of credit, Lender is charging Borrower a one-time fee of \$120,000.00 as set forth in the Loan Agreement. If, at any time, Borrower defaults in the timely payment of any amounts due under this Promissory Note, Lender gives Borrower notice of the default and Borrower does not cure the default within ten (10) days of Lender's notice, interest shall accrue on the outstanding principal balance of this Promissory Note from the date of the default through the date Borrower cures all defaults under this Promissory Note at the rate of twelve percent (12%) per annum.

Commencing on April 1, 2015 and continuing on each April 1 thereafter until April 1, 2025, Borrower must pay to Lender, in certified or wire transferred funds and for application to the outstanding principal and interest, if any, due under this Promissory Note, an amount equal to 20% of the Net Cash Flow, as defined in the Development Agreement, for the immediately preceding calendar year. Commencing on April 1, 2015 and continuing on each April 1 thereafter until April 1, 2025, Borrower must also provide Lender with a statement from a certified public account (who may be an employee of an affiliate of Borrower) 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 Lender may reasonably request to confirm the certified public accountant's calculation of "Net Cash Flow," "Net Operating Income," and "Operating Expenses."

In addition to the annual payments described in the preceding paragraph, if and each time Developer refinances a "Project Loan," as defined in the Development Agreement, Developer must make an additional payment to Lender, for application to the outstanding principal and accrued, unpaid interest, if any, due under this Promissory Note, in an amount equal to 20% of the difference between the principal amount of the new Project Loan and the amount of the outstanding principal and accrued, unpaid interest under the Project Loan that is being refinanced. Notwithstanding the foregoing, if Developer refinances a Project Loan to obtain additional funds that are necessary to complete the initial construction of the Minimum Improvements, Developer is not obligated to pay Lender 20% of the amount of the new loan that Developer uses to pay costs of completing the initial construction of the Minimum Improvements.

The entire outstanding principal amount of this Promissory Note and all accrued interest, if any, is due and payable in full upon the earlier of April 1, 2025 or the date there is a "Sale of the Development Property," as defined in the Development Agreement.

Borrower may prepay this Promissory Note, in whole or in part, at any time and, if in part, from time to time, during the entire term of this Promissory Note. All payments shall be applied first to the payment of accrued, unpaid late charges then to and accrued, unpaid interest, if any, with the balance, if any, applied to the reduction of principal.

This Promissory Note is the note referred to as "Note No. 1" in the Development Agreement and in the Loan Agreement and is subject to the additional terms and conditions set forth in the Development Agreement, the Loan Agreement and each of the "Loan Documents," as defined in the Loan Agreement.

If a payment due hereunder is not made within five days after the date when due, Borrower shall pay to Lender a late payment charge of 5% of the amount of the overdue payment to compensate Lender for a portion of the cost related to handling the overdue payment. Failure to exercise any option provided herein shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. Borrower agrees that if, and as often as, this Note is given to an attorney for collection or to defend or enforce any of Lender's rights hereunder, Borrower will pay to the Lender Lender's reasonable attorneys' fees together with all court costs and other expenses paid by Lender.

Borrower waives presentment, protest and demand, notice of protest, demand and of dishonor and nonpayment of this Promissory Note and any lack of diligence or delays in collection or enforcement of this Note. Borrower agrees that this Promissory Note, or any payment hereunder, may be extended from time to time, and Borrower consents to the release of any party liable for the obligation evidenced by this Promissory Note, the release of any of the security for this Note, the acceptance of any other security therefore, or any other indulgence or

forbearance whatsoever, all without notice to any party and without affecting the liability of Borrower.

Borrower represents and warrants to Lender that Borrower will use the proceeds of the loan evidenced by this Promissory Note solely for business purposes.

If Borrower defaults on the performance of one or more of Borrower's obligations under this Promissory Note or upon the occurrence of any other "Event of Default" (as defined in the Development Agreement or the Loan Agreement), the entire outstanding principal balance hereof and all accrued interest and other amounts due hereon shall, at the option of the Lender and subject to the notice and cure provisions set forth in Section 13.1 (c) of the Development Agreement and in the Loan Agreement, become immediately due and payable; provided, however that if an Event of Default described in Section 13.1(i) or (j) of the Loan Agreement occurs, all sums outstanding on this Note shall become immediately due and payable in full without notice or demand whatsoever.

THIS NOTE SHALL BE CONSTRUED UNDER AND GOVERNED BY THE LAWS OF THE STATE OF MINNESOTA, WITHOUT GIVING EFFECT TO CONFLICT OF LAWS OR PRINCIPLES THEREOF. WHENEVER POSSIBLE, EACH PROVISION OF THIS NOTE AND ANY OTHER STATEMENT, INSTRUMENT OR TRANSACTION CONTEMPLATED HEREBY OR RELATING HERETO, SHALL BE INTERPRETED IN SUCH MANNER AS TO BE EFFECTIVE AND VALID UNDER SUCH APPLICABLE LAW, BUT, IF ANY PROVISION OF THIS NOTE OR ANY OTHER STATEMENT, INSTRUMENT OR TRANSACTION CONTEMPLATED HEREBY OR RELATING HERETO SHALL BE HELD TO BE PROHIBITED OR INVALID UNDER SUCH APPLICABLE LAW, SUCH PROVISION SHALL BE INEFFECTIVE ONLY TO THE EXTENT OF SUCH PROHIBITION OR INVALIDITY, WITHOUT INVALIDATING THE REMAINDER OF SUCH PROVISION OR THE REMAINING PROVISIONS OF THIS NOTE OR ANY OTHER STATEMENT, INSTRUMENT OR TRANSACTION CONTEMPLATED HEREBY OR RELATING HERETO.

AT THE OPTION OF LENDER, THIS NOTE MAY BE ENFORCED IN MINNESOTA STATE COURT SITTING IN ANOKA COUNTY; AND BORROWER CONSENTS TO THE JURISDICTION AND VENUE OF SUCH COURT AND WAIVES ANY ARGUMENT THAT VENUE IN SUCH FORUM IS NOT CONVENIENT. IN THE EVENT BORROWER COMMENCES ANY ACTION IN ANOTHER JURISDICTION OR VENUE UNDER ANY TORT OR CONTRACT THEORY ARISING DIRECTLY OR INDIRECTLY FROM THE RELATIONSHIP CREATED BY THIS NOTE, LENDER AT ITS OPTION SHALL BE ENTITLED TO HAVE THE CASE TRANSFERRED TO THE JURISDICTION AND VENUE ABOVE-DESCRIBED, OR IF SUCH TRANSFER CANNOT BE ACCOMPLISHED UNDER APPLICABLE LAW, TO HAVE SUCH CASE DISMISSED WITHOUT PREJUDICE.

BORROWER AND LENDER IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR ANY OF THE LOAN DOCUMENTS (AS DEFINED IN THE LOAN AGREEMENT) OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Time is of the essence of this Note and each of the provisions hereof.

IN WITNESS WHEREOF, Borrower has executed this Note as of the date first above written.

F & C RAMSEY, LLC

By: \_\_\_\_\_

Its: Chief Manager

**EXHIBIT D-2**

**NOTE NO. 2**

**PROMISSORY NOTE**

\$ \_\_\_\_\_

Ramsey, Minnesota  
\_\_\_\_\_, 201\_

FOR VALUE RECEIVED, F & C Ramsey, LLC, an Indiana limited liability company ("Borrower") promises to pay to the order of The Housing and Redevelopment Authority in and for the City of Ramsey, Minnesota, a public body politic and corporate under the laws of the State of Minnesota ("Lender") the principal sum of [**SIX MILLION EIGHT HUNDRED TWENTY FIVE THOUSAND AND 00/100 DOLLARS (\$6,825,000.00) PLUS COSTS OF ISSUANCE AS DEFINED IN THE DEVELOPMENT AGREEMENT**], or so much thereof as Lender has actually advanced to Borrower pursuant to the terms of that certain Loan Agreement between Lender and Borrower of even date herewith (the "Loan Agreement"), together with interest thereon as provided for in this Promissory Note. Lender shall disburse the proceeds of this Promissory Note to Borrower pursuant to the terms of the Loan Agreement.

Borrower shall make payments provided for in this Promissory Note to Lender at Ramsey Municipal Center, 7550 Sunwood Drive, Ramsey, Minnesota 55303, or at such other place as Lender may from time to time designate, in writing, in lawful money of the United States of America.

Borrower, Lender and the City of Ramsey, Minnesota, are also parties to a Development Agreement dated \_\_\_\_\_, 2011 and recorded in the office of the Anoka County Registrar of Titles on \_\_\_\_\_, 2011, as Document No. \_\_\_\_\_ (the "Development Agreement"). Capitalized terms used in this Promissory Note and not defined herein have the meanings established for such terms in the Development Agreement.

Interest shall accrue on amounts advanced under this Promissory Note from the date of advance at the rate of 6.27% per annum; provided, however, if Borrower does not make one or more voluntary prepayments totaling \$3,000,000.00 or more on or before the date 18 months from the date of the first advance under this Promissory Note, the interest rate shall increase to 8.27% per annum as of the date 18 months from the date of the first advance under this Promissory Note and shall remain at 8.27% per annum until the date Borrower makes one or more voluntary prepayments totaling \$3,000,000.00 or more (at which time the interest rate will be reduced back to 6.27% per annum). If, at any time, Borrower defaults in the timely payment of any amounts due under this Promissory Note, Lender gives Borrower notice of the default and Borrower does not cure the default within ten (10) days of Lender's notice, the interest rate shall increase by 5% per annum.

The entire outstanding principal amount of this Promissory Note and all accrued, unpaid interest is due and payable in full on the earlier of June 1, 2015 or a "Sale of the Development Property," as defined in the Development Agreement.

Borrower may prepay this Promissory Note, in whole or in part, at any time and, if in part, from time to time, during the entire term of this Promissory Note. All payments shall be applied first to the payment of accrued, unpaid late charges then to and accrued, unpaid interest, if any, with the balance, if any, applied to the reduction of principal. If Borrower prepays \$2,000,000.00 or more on or before the date 12 months after the date of the first advance under this Promissory Note, Lender shall forgive \$250,000.00 of the principal amount of this Promissory Note, such forgiveness to be effective as of the date Lender has prepaid at least \$2,000,000.00.

This Promissory Note is the note referred to as "Note No. 2" in the Development Agreement and in the Loan Agreement and is subject to the additional terms and conditions set forth in the Development Agreement, the Loan Agreement and each of the "Loan Documents," as defined in the Loan Agreement.

If a payment due hereunder is not made within five days after the date when due, Borrower shall pay to Lender a late payment charge of 5% of the amount of the overdue payment to compensate Lender for a portion of the cost related to handling the overdue payment. Failure to exercise any option provided herein shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. Borrower agrees that if, and as often as, this Note is given to an attorney for collection or to defend or enforce any of Lender's rights hereunder, Borrower will pay to the Lender Lender's reasonable attorneys' fees together with all court costs and other expenses paid by Lender.

Borrower waives presentment, protest and demand, notice of protest, demand and of dishonor and nonpayment of this Promissory Note and any lack of diligence or delays in collection or enforcement of this Note. Borrower agrees that this Promissory Note, or any payment hereunder, may be extended from time to time, and Borrower consents to the release of any party liable for the obligation evidenced by this Promissory Note, the release of any of the security for this Note, the acceptance of any other security therefore, or any other indulgence or forbearance whatsoever, all without notice to any party and without affecting the liability of Borrower.

Borrower represents and warrants to Lender that Borrower will use the proceeds of the loan evidenced by this Promissory Note solely for business purposes.

If Borrower defaults on the performance of one or more of Borrower's obligations under this Promissory Note or upon the occurrence of any other "Event of Default" (as defined in the Development Agreement or the Loan Agreement), the entire outstanding principal balance hereof and all accrued interest and other amounts due hereon shall, at the option of the Lender and subject to the Notice and cure provisions set forth in Section 13.1 (c) of the Development Agreement and in the Loan Agreement become immediately due and payable; provided, however that if an Event of Default described in Section 13.1(i) or (j) of the Loan Agreement

occurs, all sums outstanding on this Note shall become immediately due and payable in full without notice or demand whatsoever.

THIS NOTE SHALL BE CONSTRUED UNDER AND GOVERNED BY THE LAWS OF THE STATE OF MINNESOTA, WITHOUT GIVING EFFECT TO CONFLICT OF LAWS OR PRINCIPLES THEREOF. WHENEVER POSSIBLE, EACH PROVISION OF THIS NOTE AND ANY OTHER STATEMENT, INSTRUMENT OR TRANSACTION CONTEMPLATED HEREBY OR RELATING HERETO, SHALL BE INTERPRETED IN SUCH MANNER AS TO BE EFFECTIVE AND VALID UNDER SUCH APPLICABLE LAW, BUT, IF ANY PROVISION OF THIS NOTE OR ANY OTHER STATEMENT, INSTRUMENT OR TRANSACTION CONTEMPLATED HEREBY OR RELATING HERETO SHALL BE HELD TO BE PROHIBITED OR INVALID UNDER SUCH APPLICABLE LAW, SUCH PROVISION SHALL BE INEFFECTIVE ONLY TO THE EXTENT OF SUCH PROHIBITION OR INVALIDITY, WITHOUT INVALIDATING THE REMAINDER OF SUCH PROVISION OR THE REMAINING PROVISIONS OF THIS NOTE OR ANY OTHER STATEMENT, INSTRUMENT OR TRANSACTION CONTEMPLATED HEREBY OR RELATING HERETO.

AT THE OPTION OF LENDER, THIS NOTE MAY BE ENFORCED IN MINNESOTA STATE COURT SITTING IN ANOKA COUNTY; AND BORROWER CONSENTS TO THE JURISDICTION AND VENUE OF SUCH COURT AND WAIVES ANY ARGUMENT THAT VENUE IN SUCH FORUM IS NOT CONVENIENT. IN THE EVENT BORROWER COMMENCES ANY ACTION IN ANOTHER JURISDICTION OR VENUE UNDER ANY TORT OR CONTRACT THEORY ARISING DIRECTLY OR INDIRECTLY FROM THE RELATIONSHIP CREATED BY THIS NOTE, LENDER AT ITS OPTION SHALL BE ENTITLED TO HAVE THE CASE TRANSFERRED TO THE JURISDICTION AND VENUE ABOVE-DESCRIBED, OR IF SUCH TRANSFER CANNOT BE ACCOMPLISHED UNDER APPLICABLE LAW, TO HAVE SUCH CASE DISMISSED WITHOUT PREJUDICE.

BORROWER AND LENDER IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS NOTE OR ANY OF THE LOAN DOCUMENTS (AS DEFINED IN THE LOAN AGREEMENT) OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Time is of the essence of this Note and each of the provisions hereof.

IN WITNESS WHEREOF, Borrower has executed this Note as of the date first above written.

F & C RAMSEY, LLC

By: \_\_\_\_\_  
Its: Chief Manager

## EXHIBIT E-1

### CORPORATE GUARANTY

\_\_\_\_\_, 2011

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce The Housing and Redevelopment Authority in and for the City of Ramsey, Minnesota, a body politic and corporate under the laws of the State of Minnesota (the "HRA"), to lend \$1,420,000 to F & C Ramsey, LLC, an Indiana limited liability company ("Developer") pursuant to the terms of that certain Loan Agreement between Developer and the HRA of even date herewith (the "Loan Agreement") and the related Promissory Note executed by Developer in favor of the HRA of even date herewith ("Note No. 1"), the undersigned hereby absolutely and unconditionally guarantees to the HRA the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, all amounts payable by Developer to the HRA pursuant to Note No. 1, as the same may be amended, supplemented, restated, replaced or otherwise modified from time to time, whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several or joint and several (all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness").

The undersigned further acknowledges and agrees with HRA that:

1. No act or thing need occur to establish the liability of the undersigned hereunder, and no act or thing, except full payment and discharge of all Indebtedness, shall in any way exonerate the undersigned or modify, reduce, limit or release the liability of the undersigned hereunder.

2. So long as any portion of the Indebtedness remains outstanding, the undersigned shall, on or before May 15 of each year, provide the HRA with (a) a reviewed financial statement for the undersigned prepared by a certified public accountant (who may be an employee of the undersigned) in accordance with generally accepted accounting principles, consistently applied, and (b) a copy of the undersigned's filed federal tax return. If, in any year, the undersigned's net worth is less than \$2,200,000.00 then the HRA shall have the right, upon ten (10) days written notice to Developer and Developer's failure to provide a replacement guaranty from another individual or entity reasonably acceptable to the HRA and having a net worth of \$2,200,000.00 or more, as evidenced by a current reviewed financial statement for the replacement guarantor prepared by an independent accounting firm in accordance with generally accepted accounting principles, consistently applied, to declare the Indebtedness immediately due and payable, and the undersigned will forthwith pay to the HRA the full amount of all Indebtedness, whether due and payable or unmatured. If the undersigned voluntarily commences or there is commenced involuntarily against the undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

3. The liability of the undersigned hereunder shall include, in addition to the Indebtedness, all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the undersigned hereunder. The HRA may apply any sums received by or available to the HRA on account of the Indebtedness from Developer, from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the undersigned hereunder.

4. The undersigned will pay or reimburse the HRA for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by the HRA in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

5. Whether or not any existing relationship between the undersigned and Developer has been changed or ended and whether or not this guaranty has been revoked, the HRA may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the undersigned and without any notice to the undersigned. The liability of the undersigned shall not be affected or impaired by any of the following acts or things (which the HRA is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver or indulgence granted to Developer, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Developer or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof of substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any modification, substitution, discharge, impairment, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the HRA under §1111(b) of the United States Bankruptcy Code.

6. The undersigned waives any and all defenses, claims and discharges of Developer, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the undersigned will not assert, plead or enforce against the HRA any defense of waiver, release, discharge in bankruptcy, statute of limitations, res judicata, statute of frauds, anti-deficiency statute, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Developer or any other person liable in respect of any Indebtedness, or any setoff available against the HRA to Developer or any such other person, whether or not on account of a related transaction. The undersigned

expressly agrees that the undersigned shall be and remain liable for any deficiency remaining after foreclosure of any deed of trust or security interest securing Indebtedness, whether or not the liability of Developer or any other obligor for such deficiency is discharged pursuant to statute or judicial decision.

7. The undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. The HRA shall not be required first to resort for payment of the Indebtedness to Developer or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

8. If any payment applied by the HRA to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Developer or any other obligor) the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

9. The liability of the undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the undersigned to the HRA as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

10. The undersigned represents and warrants to the HRA that (i) the undersigned has full power and authority to make and deliver this guaranty; (ii) the execution, delivery and performance of this guaranty by the undersigned does not and will not violate the provisions of, or constitute a default under, any presently applicable law or any agreement presently binding on the undersigned; (iii) this guaranty has been duly executed and delivered by the undersigned and constitutes the undersigned's lawful, binding and legally enforceable obligation (subject to the United States Bankruptcy Code and other similar laws generally affecting the enforcement of creditors' rights); and (iv) the execution and delivery and performance of this guaranty does not require notification to, registration with, or consent or approval by, any federal, state or local regulatory body or administrative agency.

11. This guaranty shall be effective upon delivery to the HRA, without further act, condition or acceptance by the HRA, shall be binding upon the undersigned and the successors and assigns of the undersigned and shall inure to the benefit of the HRA and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are to be severable. This guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the undersigned and the HRA. The undersigned waives notice of the HRA's acceptance hereof and waives the right to a trial by jury in any action based on or pertaining to this guaranty.

12. This guaranty shall be construed according to the laws of the State of Minnesota in which state it shall be performed by the undersigned. The undersigned hereby consents to the personal jurisdiction of the state and federal courts located in the State of

Minnesota in connection with any controversy related to this guaranty, waives any argument that venue in such forums is not convenient, and agrees that any litigation initiated by the undersigned against the HRA in connection with this guaranty may be venued in either the District Court of Anoka County, Minnesota or the United States District Court in Minnesota.

13. The undersigned represents, warrants, acknowledges and agrees that: (i) the undersigned will receive direct economic benefit from the loans and advances made by the HRA to Developer evidenced by the Indebtedness, (ii) the HRA is making advances to Developer in reliance upon this guaranty, and (iii) the undersigned has received reasonably equivalent value in return for the undersigned's execution and delivery of this guaranty.

14. The undersigned waives and relinquishes any right of subrogation or other right of reimbursement from Developer or Developer's estate and any other right to payment from Developer or Developer's estate, arising out of or on account of any sums paid or agreed to be paid by the undersigned under this guaranty, whether any such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured. The provisions of this paragraph are made for the express benefit of Developer as well as HRA and may be enforced independently by Developer.

15. The creation or existence from time to time of Indebtedness in excess of the amount to which the right of recovery under this Guaranty is limited is hereby authorized, without notice to the undersigned, and shall in no way affect or impair the rights of the Lender and the obligations of the undersigned under this Guaranty.

IN WITNESS WHEREOF, this guaranty has been duly executed by the undersigned the day and year first above written.

Flaherty & Collins Construction, Inc.,  
an Indiana corporation

By:

---

Its: President

**EXHIBIT E-2**

**PERSONAL GUARANTY**

\_\_\_\_\_, 2011

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce The Housing and Redevelopment Authority in and for the City of Ramsey, Minnesota, a body politic and corporate under the laws of the State of Minnesota (the "HRA"), to lend \$[\_\_\_\_\_] to F & C Ramsey, LLC, an Indiana limited liability company ("Developer") pursuant to the terms of that certain Loan Agreement between Developer and the HRA of even date herewith (the "Loan Agreement") and the related Promissory Note executed by Developer in favor of the HRA of even date herewith ("Note No. 2"), the undersigned hereby absolutely and unconditionally guarantees to the HRA the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, all amounts payable by Developer to the HRA pursuant to Note No. 2, as the same may be amended, supplemented, restated, replaced or otherwise modified from time to time, whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several or joint and several (all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness").

The undersigned further acknowledges and agrees with HRA that:

1. No act or thing need occur to establish the liability of the undersigned hereunder, and no act or thing, except full payment and discharge of all Indebtedness, shall in any way exonerate the undersigned or modify, reduce, limit or release the liability of the undersigned hereunder.

2. So long as any portion of the Indebtedness remains outstanding, the undersigned shall, on or before May 15 of each year, provide the HRA with (a) a personal financial statement for the undersigned certified by the undersigned, and (b) a copy of the undersigned's filed federal tax return. If, in any year, the undersigned's liquid net worth is less than \$1,000,000.00 then the HRA shall have the right, upon ten (10) days written notice to Developer and Developer's failure to provide a replacement guaranty from another individual or entity reasonably acceptable to the HRA and having a liquid net worth of \$1,000,000.00 or more, as evidenced by a current reviewed financial statement for the replacement guarantor prepared by an independent accounting firm in accordance with generally accepted accounting principles, consistently applied, to declare the Indebtedness immediately due and payable, and the undersigned will forthwith pay to the HRA the full amount of all Indebtedness, whether due and payable or unmatured. If the undersigned voluntarily commences or there is commenced involuntarily against the undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.

3. The liability of the undersigned hereunder shall include, in addition to the Indebtedness, all attorneys' fees, collection costs and enforcement expenses referable thereto.

Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the undersigned hereunder. The HRA may apply any sums received by or available to the HRA on account of the Indebtedness from Developer, from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the undersigned hereunder.

4. The undersigned will pay or reimburse the HRA for all costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by the HRA in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

5. Whether or not any existing relationship between the undersigned and Developer has been changed or ended and whether or not this guaranty has been revoked, the HRA may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of Indebtedness, without any consent or approval by the undersigned and without any notice to the undersigned. The liability of the undersigned shall not be affected or impaired by any of the following acts or things (which the HRA is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the undersigned): (i) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver or indulgence granted to Developer, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Developer or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof or substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any modification, substitution, discharge, impairment, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (ix) any order of application of any payments or credits upon Indebtedness; (x) any election by the HRA under §1111(b) of the United States Bankruptcy Code.

6. The undersigned waives any and all defenses, claims and discharges of Developer, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the undersigned will not assert, plead or enforce against the HRA any defense of waiver, release, discharge in bankruptcy, statute of limitations, res judicata, statute of frauds, anti-deficiency statute, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Developer or any other person liable in respect of any Indebtedness, or any setoff available against the HRA to Developer or any such other person, whether or not on account of a related transaction. The undersigned expressly agrees that the undersigned shall be and remain liable for any deficiency remaining after foreclosure of any deed of trust or security interest securing Indebtedness, whether or not

the liability of Developer or any other obligor for such deficiency is discharged pursuant to statute or judicial decision.

7. The undersigned waives presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. The HRA shall not be required first to resort for payment of the Indebtedness to Developer or other persons or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.

8. If any payment applied by the HRA to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Developer or any other obligor) the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.

9. The liability of the undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the undersigned to the HRA as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

10. The undersigned represents and warrants to the HRA that (i) the undersigned has full power and authority to make and deliver this guaranty; (ii) the execution, delivery and performance of this guaranty by the undersigned does not and will not violate the provisions of, or constitute a default under, any presently applicable law or any agreement presently binding on the undersigned; (iii) this guaranty has been duly executed and delivered by the undersigned and constitutes the undersigned's lawful, binding and legally enforceable obligation (subject to the United States Bankruptcy Code and other similar laws generally affecting the enforcement of creditors' rights); and (iv) the execution and delivery and performance of this guaranty does not require notification to, registration with, or consent or approval by, any federal, state or local regulatory body or administrative agency.

11. This guaranty shall be effective upon delivery to the HRA, without further act, condition or acceptance by the HRA, shall be binding upon the undersigned and the heirs, personal representatives, successors and assigns of the undersigned and shall inure to the benefit of the HRA and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are to be severable. This guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the undersigned and the HRA. The undersigned waives notice of the HRA's acceptance hereof and waives the right to a trial by jury in any action based on or pertaining to this guaranty.

12. This guaranty shall be construed according to the laws of the State of Minnesota in which state it shall be performed by the undersigned. The undersigned hereby consents to the personal jurisdiction of the state and federal courts located in the State of Minnesota in connection with any controversy related to this guaranty, waives any argument that

venue in such forums is not convenient, and agrees that any litigation initiated by the undersigned against the HRA in connection with this guaranty may be venued in either the District Court of Anoka County, Minnesota or the United States District Court in Minnesota.

13. The undersigned represents, warrants, acknowledges and agrees that: (i) the undersigned will receive direct economic benefit from the loans and advances made by the HRA to Developer evidenced by the Indebtedness, (ii) the HRA is making advances to Developer in reliance upon this guaranty, and (iii) the undersigned has received reasonably equivalent value in return for the undersigned's execution and delivery of this guaranty.

14. The undersigned waives and relinquishes any right of subrogation or other right of reimbursement from Developer or Developer's estate and any other right to payment from Developer or Developer's estate, arising out of or on account of any sums paid or agreed to be paid by the undersigned under this guaranty, whether any such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured. The provisions of this paragraph are made for the express benefit of Developer as well as HRA and may be enforced independently by Developer.

15. The creation or existence from time to time of Indebtedness in excess of the amount to which the right of recovery under this Guaranty is limited is hereby authorized, without notice to the undersigned, and shall in no way affect or impair the rights of the Lender and the obligations of the undersigned under this Guaranty.

16. This Guaranty shall terminate and be of no further force or effect at such time as the HRA has advanced the proceeds of Note No. 2 to Developer and Developer has made payments to the HRA sufficient to reduce the outstanding principal and accrued, unpaid interest due under Note No. 2 to either:

- a) \$2,500,000.00; or
- b) if the City has issued the TIF Note, the principal amount of the TIF Note.

IN WITNESS WHEREOF, this guaranty has been duly executed by the undersigned the day and year first above written.

David M. Flaherty

---

**EXHIBIT F**

**ASSESSMENT AGREEMENT**

**ASSESSMENT AGREEMENT**

THIS AGREEMENT, dated as of this \_\_\_\_\_ day of \_\_\_\_\_, 2010, is between the City of Ramsey, Minnesota a home rule charter city organized and existing under the constitution and the laws of the State of Minnesota (the "City") and F & C Development, Inc., an Indiana corporation ("Developer").

**WITNESSETH**

WHEREAS, on or before the date hereof the City, The Housing and Redevelopment Authority in and for the City of Ramsey, Minnesota (the "HRA") and Developer have entered into a Development Agreement dated as of \_\_\_\_\_, 2011 (the "Development Agreement") regarding the property located in the City and legally described on the attached Exhibit A (the "Development Property").

WHEREAS, it is contemplated that pursuant to said Development Agreement, Developer will construct certain "Minimum Improvement," as defined in the Development Agreement, on the Development Property in accordance with construction plans approved by the City (the "Project").

WHEREAS, the City and Developer desire to establish a minimum market value for the Development Property and the improvements constructed or to be constructed thereon, pursuant to Minnesota Statutes, Section 469.177.

WHEREAS, Developer has acquired the Development Property.

WHEREAS, the City and the Assessor have reviewed Final Construction Plans, as defined in the Development Agreement for the Project.

NOW, THEREFORE, the parties to this Agreement, in consideration of the promises, covenants and agreements made by each to the other, do hereby agree as follows:

1. The Project shall be assessed for ad valorem real estate tax purposes at the minimum market values set forth on the attached Exhibit B, for assessment years 2013 through and including 2036.

2. The minimum market values herein established shall be of no further force and effect and this Agreement shall terminate on the earlier of (i) December 31, 2038; or (ii) the date on which the City's Tax Increment Financing District No. 14 expires or is otherwise terminated. If this Agreement terminates earlier than December 31, 2038, the City shall duly execute and record a release of this Agreement, upon the written request of the then holder of fee title to the Development Property.

3. This Agreement shall be recorded by the City with the County Recorder of Anoka County, Minnesota. Developer shall pay all costs of recording.

4. Nothing in this Agreement limits the discretion of the Assessor to assign a market value to the Development Property in excess of the minimum market values set forth herein nor prohibits Developer from seeking, through the exercise of legal or administrative remedies, a reduction of the Development Property's market value for ad valorem real estate tax purposes, but Developer may not seek a reduction of the Development Property's market value for ad valorem real estate tax purposes below the applicable minimum market value with respect to any year during which this Agreement remains in effect.

5. Neither the preambles nor provisions of this Agreement are intended to, or shall they be construed as, modifying the terms of the Development Agreement between the City and Developer.

6. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties.

IN WITNESS WHEREOF, the City, Developer and the Assessor have caused this Agreement to be executed in their names and on their behalf all as of the date set forth above.

CITY OF RAMSEY, MINNESOTA

(SEAL)

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

By \_\_\_\_\_  
Its City Administrator

STATE OF MINNESOTA    )  
  ): ss  
COUNTY OF ANOKA     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2012, by \_\_\_\_\_, the Mayor and \_\_\_\_\_ the City Administrator, of the City of Ramsey on behalf of said City.

\_\_\_\_\_  
Notary Public



EXHIBIT A TO ASSESSMENT AGREEMENT

Legal Description of Development Property

Lot 3, Block 1, COR ONE, Anoka County, Minnesota.

EXHIBIT B

SCHEDULE OF MINIMUM MARKET VALUES

| Assessment Year | Minimum Market Value |
|-----------------|----------------------|
| 2013            | \$6,798,000.00       |
| 2014            | \$22,660,000.00      |
| 2015            | \$22,660,000.00      |
| 2016            | \$22,660,000.00      |
| 2017            | \$22,660,000.00      |
| 2018            | \$22,660,000.00      |
| 2019            | \$22,660,000.00      |
| 2020            | \$22,660,000.00      |
| 2021            | \$22,660,000.00      |
| 2022            | \$22,660,000.00      |
| 2023            | \$22,660,000.00      |
| 2024            | \$22,660,000.00      |
| 2025            | \$22,660,000.00      |
| 2026            | \$22,660,000.00      |
| 2027            | \$22,660,000.00      |
| 2028            | \$22,660,000.00      |
| 2029            | \$22,660,000.00      |
| 2030            | \$22,660,000.00      |
| 2031            | \$22,660,000.00      |
| 2032            | \$22,660,000.00      |
| 2033            | \$22,660,000.00      |
| 2034            | \$22,660,000.00      |
| 2035            | \$22,660,000.00      |
| 2036            | \$22,660,000.00      |



## EXHIBIT G

### DEVELOPMENT FEES

| Fee                | 2010_Amount  | 2011_Amount | Orig_Multiplier | Adjust_Multiplier | Type       | Orig_Total         | Adjust_Total       | Credit          | 2011_Total         | Dif_2010_2011   |
|--------------------|--|-------------|-----------------|-------------------|------------|--------------------|--------------------|-----------------|--------------------|-----------------|
| Park               | 2475   | 2475        | 229             | 195               | Unit       | \$566,775          | \$481,759          | \$85,016        | \$481,759          | \$0             |
| Trail              | 600  | 600         | 229             | 229               | Unit       | \$137,400          | \$137,400          | \$0             | \$137,400          | \$0             |
| Water Trunk        | 2209   | 2308        | 229             | 229               | Unit       | \$505,861          | \$505,861          | \$0             | \$528,532          | \$22,671        |
| Water Lateral      | 8777   | 9102        | 2               | 2                 | Connection | \$17,554           | \$17,554           | \$0             | \$18,204           | \$650           |
| Sewer Trunk        | 1271   | 1318        | 229             | 229               | Unit       | \$291,059          | \$291,059          | \$0             | \$301,822          | \$10,763        |
| Sewer Lateral      | 3847   | 3989        | 2               | 2                 | Connection | \$7,694            | \$7,694            | \$0             | \$7,978            | \$284           |
| Stormwater         | 448  | 465         | 229             | 229               | Unit       | \$102,592          | \$102,592          | \$0             | \$106,485          | \$3,893         |
| SAC                | 2100   | 2230        | 229             | 229               | SAC Unit   | \$480,900          | \$480,900          | \$0             | \$510,670          | \$29,770        |
| WAC                | 1627   | 1701        | 229             | 229               | WAC Unit   | \$372,583          | \$372,583          | \$0             | \$389,529          | \$16,946        |
| SAC Handling       | 200  | 200         | 229             | 229               | SAC Unit   | \$45,800           | \$45,800           | \$0             | \$45,800           | \$0             |
| <b>Grand Total</b> |  |             |                 |                   |            | <b>\$2,528,218</b> | <b>\$2,443,202</b> | <b>\$85,016</b> | <b>\$2,528,179</b> | <b>\$84,977</b> |
|                    | NOTE: This is NOT the official SAC/WAC determination. Final plans will be needed in order for the Metropolitan Council to calculate final SAC determination. |             |                 |                   |            |                    |                    |                 |                    |                 |

THESE FIGURES ARE ESTIMATES ONLY.

**EXHIBIT H**

**DESCRIPTION OF THE ADDITIONAL PARKING IMPROVEMENTS**

Way Finding and Stall Designation Signage

## **EXHIBIT I**

### **DESCRIPTION OF THE MINIMUM IMPROVEMENTS**

An approximately 230 unit, four story, market rate, rental apartment project, consisting of approximately fourteen (14) two-story townhomes, with two levels of flats above, and the balance of the units will be configured as four levels of flats that will wrap around the future parking garage expansion. All parking for the residential units will be in the parking garage, with the exception of the townhome units, which will have their own garage for each unit. The project will include not less than 3,000 sq. ft. of retail space, located on the first floor in the space closest to the Ramsey City Hall.

Amenities for the residential units shall include a fitness center with cardio, theatre, tanning bed, business center, cyber café, game room, courtyards, and a resort style pool. Additionally, all units will have their own washer and dryer. Architecturally, The Residence will combine urban architecture with components that exist in THE COR project today. The building will be Type V Construction, wood framed, with the façade consisting of brick, stone elements, and cement board. The roof will be a "flat roof" to further pronounce the urban nature of the architecture. All or most HVAC units will be rooftop mounted units so to best screen from street level site lines.