

SUBGRANT AGREEMENT

THIS SUBGRANT AGREEMENT (the “Agreement”) is made and entered into as of _____, 2015 (the “Effective Date”) by and between the City of Ramsey, a Minnesota municipal corporation (the “City”), and CommonBond Communities, a Minnesota nonprofit corporation (the “Subgrantee”).

WITNESSETH:

WHEREAS, the City applied for and has been awarded from the Metropolitan Council (the “Council”) a grant of Livable Communities Demonstration Account in the amount of \$580,000.00 (the “LCDA Grant”) and a grant of funds in connection with its Local Housing Incentives Account in the amount of \$200,000.00 (the “LHIA Grant” and, together with the LCDA Grant, the “Grants”) to be used by the City to meet its affordable and life-cycle housing goals by partially funding the acquisition and development of a 47-unit multifamily housing project to be located in Ramsey, Minnesota (the “Project”);

WHEREAS, the City and the Council have executed Metropolitan Livable Communities Act Grant Agreements in connection with the LCDA Grant (the “LCDA Grant Agreement”) and the LHIA Grant (the “LHIA Grant Agreement” and, together with the LCDA Grant Agreement the “Grant Agreements”), true and correct copies of which are attached hereto as Exhibit A and Exhibit B, respectively;

WHEREAS, CB Ramsey Housing Limited Partnership, a Minnesota limited partnership (the “Owner”), shall be the owner of the Project, CB Ramsey Housing LLC, a Minnesota limited liability company (the “General Partner”), is the sole general partner of Owner, and Subgrantee is the sole member of General Partner;

WHEREAS, the City desires to subgrant the proceeds of the Grants to Subgrantee to provide financing for the eligible activities described in the Grant Agreements and in accordance with the terms and conditions contained in this Agreement;

WHEREAS, upon Subgrantee’s receipt of the proceeds of the Grants from time to time, Subgrantee shall immediately contribute such funds to the General Partner; the General Partner shall then immediately contribute such funds to the Owner; and then the Owner shall use the proceeds to pay for the Improvements; and

WHEREAS, the City and Subgrantee desire to enter into this Agreement for the purpose of setting forth their respective responsibilities with respect to the Grants.

NOW, THEREFORE, the parties hereto agree as follows:

I. DEFINITIONS:

As used in this Agreement, the following terms shall have the following meaning:

Contractor: The contractor(s) who is (are) under contract with the Subgrantee to construct the Improvements.

Disbursement Request: The form, substantially in the form attached hereto as Exhibit D, to be submitted to City when the disbursement is requested and which is referred to in Article VI. hereof.

Improvements: Those improvements that are included among Project Costs that are eligible to be satisfied with proceeds of the Grants.

Plans and Specifications: The final plans and specifications for the construction of the Project approved by the City.

Project Costs: Those Project costs set forth and described in the Grant Agreements that are or will be eligible to be satisfied with the proceeds of the Grants under the Grant Agreements, this Agreement, and applicable law.

II. TERM OF AGREEMENT

This Agreement shall take effect and be in force from and after the Effective Date, and shall remain in effect until Subgrantee has performed all of its obligations hereunder, unless earlier terminated as provided in this Agreement.

III. THE GRANTS

Subject to the terms and conditions of this Agreement, the City awards the Subgrantee the Grants to be contributed by Subgrantee to the General Partner, immediately contributed by the General Partner to the Owner, and then used by the Owner for payment of Project Costs, which Grants shall be disbursed pursuant to this Agreement and under the terms and conditions of the Grant Agreements. In consideration for the Grants, the Subgrantee agrees to perform, and/or shall cause the Owner to perform, all of its obligations under this Agreement.

IV. STATEMENT OF WORK

The Subgrantee shall require the Owner to acquire and construct the Project in accordance with the Plans and Specifications, the Grant Agreements, and this Agreement in all material respects.

V. CONDITIONS OF DISBURSEMENT

The obligation of the City to make or cause to be made the disbursements pursuant to Article VI hereof shall be subject to the conditions precedent that it shall have received on or before the date of the disbursement hereunder the following:

a. Evidence satisfactory to the City that the Project and the construction and contemplated use thereof are permitted by and comply in all material respects with all applicable restrictions and requirements in prior conveyances, zoning ordinances, subdivision and platting requirements and other laws and regulations;

b. All other conditions specified in the Grant Agreements shall have been duly satisfied by the Subgrantee or waived in writing by the City or such conditions which, by their nature, would not be applicable as of the date of such disbursement;

c. No Event of Default, and no event which with the giving of notice or the lapse of time or both would constitute an Event of Default, shall have occurred and be continuing and all representations and warranties made by the Subgrantee in Article VII hereof shall continue to be true and correct as of the date of such disbursement; and

d. Subgrantee shall have provided to the City such evidence of compliance with all of the provisions of this Agreement, including without limitation, the provisions of the Grant Agreements, as the City may reasonably request.

e. Subgrantee or the City shall have obtained the consent of the Metropolitan Council as provided for under paragraph 2.07 of the LCDA Grant Agreement and paragraph 2.08 of the LHIA Grant Agreement.

VI. REQUEST FOR DISBURSEMENT

6.01. Disbursement. The City and the Subgrantee agree that, on the terms and subject to the conditions hereinafter set forth, the proceeds of the Grants shall be disbursed from the City to the Subgrantee as follows: (i) an initial draw of LCDA Grant funds at the closing of the Owner's acquisition of the Project for Project Cost incurred on or prior to such date, and (ii) in monthly disbursements thereafter, with the last disbursement being made upon one hundred percent (100%) completion of the Improvements. Notwithstanding anything to the contrary contained herein, the City shall only be obligated to make the disbursement hereunder to pay Project Costs in an amount up to or equal to the lesser of the amount of the Grants or the amount actually disbursed to the City under the Grant Agreements and such obligation is further subject to the conditions of Article V hereof.

6.02. Disbursement Request.

a. When the Subgrantee desires to obtain a disbursement, the Subgrantee shall submit a Disbursement Request duly signed by the Subgrantee and the Owner, as applicable.

The Disbursement Request shall be submitted by the Subgrantee at least ten (10) days prior to the date of the requested disbursement. The Disbursement Request shall constitute a representation and warranty by the Subgrantee to the City that all representations and warranties of the Subgrantee set forth in this Agreement are true and correct as of the date of such Disbursement Request, except for such representations and warranties which, by their nature, would not be applicable as of the date of such Disbursement Request. The City will submit a reimbursement request to the Metropolitan Council within 10 business days of receipt of request from Subgrantee. The City will disburse funds as soon as reasonably acceptable upon receipt of funds from the Metropolitan Council.

b. At the time of submission of the Disbursement Request, the Subgrantee shall also submit the following to the City:

1. a written lien waiver from each Contractor for completed Improvements which were previously paid or are to be paid for pursuant to such Disbursement Request;

2. evidence satisfactory to the City that the Improvements completed to date have been constructed in accordance with the Plans and Specifications in all material respects; and

3. a certified statement of the Owner reflecting the use to which the proceeds of the Grants have been applied in addition to those uses reflected in the Grant Agreements.

c. Compliance with Accounting Audit and Report Requirements. All Disbursement Requests shall demonstrate compliance with the Accounting, Audit and Report requirements as contained in Section III paragraphs 3.01, 3.02 and 3.03 of the Grant Agreements.

VII. SUBGRANTEE'S COVENANTS, REPRESENTATIONS, WARRANTIES AND AGREEMENTS

Subgrantee covenants, represents, warrants and agrees that:

a. Subgrantee is a nonprofit corporation duly incorporated under the laws of the State of Minnesota, is duly authorized to operate in the State of Minnesota, has the power to enter into and execute this Agreement and by appropriate corporate action has authorized the execution and delivery of this Agreement.

b. Subgrantee's execution of this Agreement will not result in any breach of or constitute a default under any other mortgage, lease, loan, grant or credit agreement, corporate charter, by-law or other instrument to which Subgrantee is a party or by which it may be bound or affected.

c. This Agreement constitutes the legal and binding obligation enforceable against the Subgrantee.

d. Prior to Subgrantee's submission of any Disbursement Request, the Owner shall have all necessary approvals, licenses and permits required for construction and operation of the Project except those which cannot be obtained until completion of the Project.

e. Subgrantee shall permit and/or shall cause the Owner to permit, as applicable, the City, upon reasonable notice, to examine all books, records, contracts, plans, permits, bills and statements of account pertaining to the Project and to make copies as the City may require.

f. Subgrantee shall cause the Owner to obey and comply with all federal, state and local laws, rules and regulations in connection with the Project.

g. Subgrantee agrees to provide and/or obtain all matching funds, if any, required by the Grant Agreements. Subgrantee agrees to pay for all of the costs incurred to construct the Improvements including any cost overruns in excess of those in the sources and uses set forth in Exhibit C.

h. Subgrantee represents that all uses to which the Grants funds shall be used will be grant eligible uses as provided for within the Grant Agreements.

i. Subgrantee will indemnify and hold the City harmless relative to the Grant Agreements to the extent that its performance or lack thereof under the terms of this Agreement places the City in non-compliance with the Grants.

VIII. DEFAULT

Any one or more of the following shall constitute an "Event of Default" under this Agreement:

a. Subgrantee shall default in the performance or observance of any agreement, covenant or condition required to be performed or observed by Subgrantee under the terms of this Agreement, and such default shall not be remedied within thirty (30) days after written notice to Subgrantee from the City specifying such default.

b. Subgrantee shall be in default of any material term of any other agreement relating to the Project to which it is a party, and such default shall not be remedied within any applicable cure period.

c. Any representation or warranty made by Subgrantee herein or any document or certificate furnished to the City shall prove to be materially incorrect or misleading as of the date made.

d. Subgrantee engages in any illegal activities that have or are likely to have a material adverse effect on the Project.

e. Subgrantee or the Owner uses any of the Grants funds contrary to this Agreement, and fails to correct such error within thirty (30) days.

f. The Owner shall fail to obtain and/or keep in force insurance of the types and in the amounts as specified within this Agreement.

g. Subgrantee violates any term or provision of the Grant Agreements as imposed upon the City or otherwise makes compliance by the City with the terms and provisions thereof impossible or impractical, and such violation is not cured within any applicable cure period set forth in the Grant Agreements.

Notwithstanding anything to the contrary herein, Wincopin Circle LLLP, the expected limited partner of Owner (“Investor Limited Partner”), shall have the right, but not the obligation, to cure any Event of Default under this Agreement and the City shall accept performance by Investor Limited Partner of any obligation of Subgrantee or the Owner as though tendered by Subgrantee or the Owner itself, as applicable, provided such performance has occurred during the applicable cure period, if any, provided to Subgrantee or the Owner under this Agreement.

IX. REMEDIES

Upon the occurrence of an Event of Default, any one or more of the following remedial steps may be taken by the City:

- a. The City may terminate this Agreement;
- b. The City may suspend or terminate any further disbursements to be made under this Agreement;
- c. The City may suspend its performance under this Agreement during the continuance of the Event of Default; or
- d. The City may take whatever action at law or in equity may appear necessary or appropriate to seek repayment or reimbursement of the Grants funds disbursed to Subgrantee to the extent required under the Grant Agreements, to enforce performance and observance of any obligation, agreement, covenant, representation or warranty of the Subgrantee under this Agreement; or to otherwise compensate the City for any damages on account of such Event of Default.

X. ADDITIONAL PROVISIONS

a. Indemnity, Hold Harmless. The Subgrantee shall bear all loss, expense (including reasonable attorney's fees) and damage in connection with, and hereby releases and agrees to indemnify, defend, and hold harmless the City, its agents, servants and employees from and against all claims demands, losses expenses and judgments made or recovered against or suffered by the City, its agents, servants and employees from any cause whatsoever, arising out of, incidental to, or in connection with the construction of the Project, except to the extent such losses result solely due to any act or omission, including negligence, of the City or its or their employees, servants or agents.

b. Independent Contractor. For the purpose of this Agreement, Subgrantee shall be deemed an independent contractor and not an employee or agent of the City. Any and all employees or agents of the Subgrantee shall not be considered employees or agents of the City.

XI. INSURANCE

With respect to the Improvements, the Subgrantee shall cause the Owner to require the Contractor and its subcontractors to procure and maintain, at their sole expense and until completion of the Improvements, the following insurance coverages in at least the following amounts (unless otherwise agreed to by the City and the Subgrantee) and observe all requirements of the pertinent policies:

(i) To the extent required under applicable law, workers' compensation in an amount not less than prescribed by law and employer's liability insurance in the amount of One Million Dollars (\$1,000,000); and

(ii) If applicable, automobile liability insurance (covering owned, non-owned, and hired) with a combined single limit of One Million Dollars (\$1,000,000) per occurrence, which policy shall have a policy extension for sudden and accidental pollution coverage; and

(iii) Commercial general liability insurance with limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate for bodily injury, including death, and property damage, which policy shall have a policy extension for broad-form completed operations, explosion, collapse, underground property damage, and environmental liability coverage; and

(v) Umbrella liability insurance with limits of One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate covering claims in excess of the employer's liability, automobile liability and commercial general liability limits above.

With the exception of workers' compensation/employers liability coverage, the City, the Subgrantee, and the Owner shall be named as additional insureds. All policies shall require that thirty (30) days' advance written notice be given to the City, the Subgrantee, and the Owner prior to cancellation. Prior to commencing construction of the Improvements, the Subgrantee shall

cause the Owner to deliver to the City proof of insurance evidencing the above coverages and any endorsements thereto. Thereafter, the Subgrantee shall cause the Owner to make copies of renewal policies available for inspection by the City.

XII. RECORDS AND REPORTS

The Subgrantee shall cause the Owner to submit to the City a full account of the status of the activities undertaken as part of this Agreement. The following records shall be maintained by the Subgrantee, copies of which shall be submitted in such form as City staff may prescribe:

- a. All receipts and invoices relating to expenditure of Grants funds.
- b. Records shall be sufficient to reflect all costs incurred in performance of the Grants. The books, records, documents, and accounting procedures, relevant to the Grants shall be subject to examination by the City and state agencies and the legislative auditor.
- c. Records of insurance required under this Agreement, including proof of insurance in effect, and proof of payment of insurance premiums.

XIII. EXHIBITS

The following identified exhibits are incorporated into and made part of this Agreement:

- Exhibit A – LCDA Grant Agreement
- Exhibit B – LHIA Grant Agreement
- Exhibit C – Project Budget
- Exhibit D – Disbursement Request Form

XIV. AMENDMENT

This Agreement shall not be amended or modified except in writing signed by the Subgrantee and the City.

XV. INCORPORATION OF GRANT AGREEMENTS.

Subgrantee acknowledges and agrees that all terms, conditions and obligations contained in the Grant Agreements are incorporated herein, and made a part of this Agreement. In addition to the terms, conditions and obligations described herein, the Subgrantee further acknowledges, accepts and assumes all of the City's obligations described in the Grant Agreements. For purposes of enforcing this Agreement, Subgrantee acknowledges, accepts and agrees that the City shall inure to, and possess the rights and authority of the Council as described in the Grant Agreements.

XVI. MISCELLANEOUS

a. Notices. All notices provided for herein shall be in writing and shall be deemed to have been given when delivered personally or when deposited in the United States mail, registered or certified, postage prepaid, addressed as follows:

If to Subgrantee: CommonBond Communities
1080 Montreal Avenue
Saint Paul, MN 55116
Attention: Vice President of Development

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

Wincopin Circle LLLP
c/o Enterprise Community Asset Management, Inc.
70 Corporate Center
11000 Broken Land Parkway, Suite 700
Columbia, MD 21044
Attention: General Counsel

and

Bocarsly Emden Cowan Esmail & Arndt LLP
7700 Old Georgetown Road, Suite 600
Bethesda, MD 20814
Attention: Craig A. Emden

If to City: City of Ramsey
7550 Sunwood Drive
Ramsey, MN 55303

or addressed to any such party at such other address as such party shall hereafter furnish by notice to the other parties as above provided.

b. Binding Effect; Waiver. The provisions of this Agreement shall inure to the benefit of and be binding upon Subgrantee and City and their respective successors and assigns. No delay on the part of City in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege constitute such waiver nor exhaust the same, which shall be continuing.

c. Survival of Agreements, Representations and Warranties. All agreements, representations and warranties made in this Agreement by Subgrantee shall survive its termination.

d. Governing Law. This Agreement and the attachments are to be construed and enforced according to and governed by the laws of the State of Minnesota.

e. Counterparts. This Agreement may be executed in any number of counterparts, all of which shall constitute a single agreement, any one of which bearing signatures of all parties shall be deemed an original.

f. Time. Time is of the essence in the performance of this Agreement.

g. Entire Agreement. This Agreement contains the entire agreement of the parties hereto on the matters covered herein. No other agreement, statement or promise made by any party or by any employee, officer or agent of any party hereto that is not in writing and signed by all the parties to this Agreement shall be binding.

h. No Joint Venture. The relationship between City and Subgrantee is solely that of grantor and grantee and the relationship by and among City, and Subgrantee is not, nor shall it be deemed to create, a partnership or joint venture in the Project.

i. Assignment. This Agreement may not be assigned by Subgrantee without the prior written consent of City.

j. Permitted Transfers. Notwithstanding anything to the contrary contained in this Agreement, it shall not constitute a default or event of default under this Agreement and the consent of the City is not required, for: (a) the transfer of limited partner interests in the Owner to an affiliate of the Investor Limited Partner in accordance with the terms of the Owner's partnership agreement, as amended (the "Partnership Agreement"), (b) the transfer of ownership interests in a limited partner of the Owner, so long as the manager, managing member or general partner of such limited partner is an affiliate of Investor Limited Partner, (c) the removal of the General Partner for cause in accordance with the Partnership Agreement by Investor Limited Partner and the replacement of the General Partner with an affiliate of Investor Limited Partner, or (d) an amendment of the Partnership Agreement (i) memorializing the transfers or removal described above or (ii) which does not materially and adversely affect the ability of the Owner to perform the Owner's obligations under this Agreement.

[The remainder of this page has been left blank intentionally.]

IN WITNESS WHEREOF, the parties have caused this Subgrant Agreement to be executed as of the date first above written.

SUBGRANTEE:

COMMONBOND COMMUNITIES,
a Minnesota nonprofit corporation

By: _____
Ellen Higgins
Its Vice President

CITY:

CITY OF RAMSEY, MINNESOTA

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

EXHIBIT A
LCDA GRANT AGREEMENT
(Attached)

EXHIBIT B
LHIA GRANT AGREEMENT
(Attached)

EXHIBIT C
PROJECT BUDGET
(Attached)

EXHIBIT D

DISBURSEMENT REQUEST FORM

Pursuant to that certain Subgrant Agreement dated as of _____, 2015 (the “Agreement”), between CommonBond Communities (“Subgrantee”) and the City of Ramsey, Minnesota (“City”) Subgrantee hereby requests payment of the expenses listed on the attached Expense Listing.

The total amount to be disbursed for this Disbursement Request is \$_____.

In connection with this Disbursement Request, the undersigned hereby represents as follows:

- a. each obligation listed in the attached exhibit has been incurred and is a Project Cost related to the Improvements,
- b. no license or permit necessary for construction of the Improvements previously issued has been revoked or the issuance thereof subjected to challenge before any court of other governmental authority having or asserting jurisdiction thereover; and
- c. no event has occurred and is continuing which, but for the giving of notice, the expiration of any cure period, or both, would constitute an Event of Default under the Agreement.

Any capitalized terms used herein that are not otherwise defined herein shall have the meanings assigned to such terms in the Agreement.

COMMONBOND COMMUNITIES

By: _____
Name: _____
Its: _____

Approved:

CITY OF RAMSEY

By: _____
Name: _____
Its: _____

Expense Listing

Item

Amount