

  
**ROSEVILLE**  
**REQUEST FOR COUNCIL ACTION**

Date: 06/08/09  
Item No.: 12.c

Department Approval

City Manager Approval



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Item Description: Consider a Resolution for the Imposition and Collection of Fees in the Housing Improvement Area for Westwood Village I (HF0052)

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**BACKGROUND**

On January 23, 2009, the City Council held a public hearing regarding the setting of assessment amounts for the property owners within the Westwood Village I (WWVI) Housing Improvement Area. The assessments were to fund exterior improvements of the WWVI buildings. After the public hearing, the City Council adopted a fee resolution setting assessment amount for each property owner.

After the fee resolution for Westwood Village I (WWVI) was passed on January 23<sup>rd</sup> 2009, staff started working on putting the financing in place for the improvements. Staff had a previous understanding that the City of Roseville could directly place the loan for the HIA with Bremer Bank. Steve Bubul the HRA attorney was consulted regarding the HIA process that Roseville was undertaking for WWV I as he has extensive experience with HIAs. Mr. Bubul informed staff that the loan from Bremer is a "bond" within the meaning of Section 428A.16. That is, the City would essentially issue a bond when placing the loan with Bremer Bank, and used the proceeds to finance the housing improvements described in the ordinance. The bond can be either secured solely by the housing improvement fees, or also secured by the City's full faith and credit. Assuming the loan/bond is a general obligation, the City must reasonably expect that the housing improvements fees will be sufficient to pay debt service--the city's taxing power is pledged only as a back-up.

If the City wants to continue with financial assistance to WWVI without compromising cash reserves earmarked for City programs, then the City will need to issue open-market bonds. The bonds must meet all of the requirements of Minnesota statute, Chapter 475 (except no election is required and the bonds do not count against the city's net debt limits). That just means that this transaction is not handled like a commercial loan. Bond counsel would typically draft the documents, some of which need to be filed with the county auditor.

Mr. Bubul advised that the City must enter into a development agreement for the construction improvements at WWVI. This development agreement requires that the WWVI be responsible for any short falls that may occur from paybacks to the assessments after the bond has been issued. The fee resolution that was passed on January 23<sup>rd</sup>, 2009 allowed for pay off of the assessments anytime after issuances of the bonds. Staff did have Springsted look at what the financial probability of a shortfall

32 could be along with having WWVI maintain a debt service reserve to cover any shortfalls and felt that  
33 the risk was minimal. But because it is unknown how many early payoffs could happen after the  
34 issuance of bonds the, WWVI Board did not want to assume the risk of paying back significant  
35 shortfalls due to early payoffs and has requested that the City of Roseville modify the fee resolution to  
36 not allow for any payoffs of the assessment after the bonds are issued. Staff has sent notice out to all  
37 property owners allowing for early pay off or a portion until July 23<sup>rd</sup> if the new fee resolution is passed  
38 on June 8<sup>th</sup> at the City Council Meeting. In addition Staff has also sent out letters to residents that have  
39 partially and in full prepaid their assessments allowing for them to either get a full refund with interest  
40 or just the interest that has been earned for the money sitting in an interest bearing account with the  
41 City because of the delay. All assessment amounts stayed the same from what was adopted on January  
42 23<sup>rd</sup>, 2009 and will not change as part of the new fee resolution.

43  
44 In addition a disbursement agreement needs to be entered into. The disbursement agreement allows for  
45 collection of lien waivers each time the contractor requests payment. This is a similar document that  
46 has been used in other communities when HIA funds were bonded for.

47  
48 All of the same rights that were provided for on the passing of the Fee Resolution on January 23<sup>rd</sup>, 2009  
49 will be followed when this new fee resolution is adopted on June 8, 2009. The owners will have 45  
50 days to veto the Resolution of Adoption of Fee. If owners of at least 35 percent of the housing units within  
51 the Housing Improvement Area file an objection with the City Clerk before the effective date of this  
52 Resolution. The fee resolution that was adopted on January 23<sup>rd</sup>, 2009 did not have one veto sent to the  
53 City Clerk.

#### 54 **POLICY OBJECTIVE**

55 The prior establishment of a Housing Improvement Area supported investment in multi-family  
56 buildings and neighborhoods consistent with the goals identified in Imagine Roseville 2025, the  
57 Roseville Comprehensive Plan, and the Roseville HRA's Strategic Plan. The passage of the fee  
58 resolution will allow for the project to move forward.

#### 59 **FINANCIAL IMPACT**

60 The City will be collecting an administrative fee to cover the costs of the issuance of the bonds and  
61 staff time.

#### 62 **STAFF RECOMMENDATION**

63  
64 Staff recommends that the City Council adopt the new fee resolution, and authorize the City of Roseville to  
65 enter into a development agreement and disbursing agreement as it relates to the exterior improvements to  
66 be undertaken at Westwood Village I,

#### 67 **REQUESTED COUNCIL ACTION**

68  
69 1) Adopt attached resolution that imposes fees for the improvement of the units within Westwood Village I.  
70 (See attachment A)

71  
72 -and-

73  
74

75 Authorize the City of Roseville to enter into a Development Agreement with Westwood Village  
76 Association. (See attachment B)

77

78 -and-

79

80 Authorize the City of Roseville to enter into a Disbursement Agreement with Commercial Partners Title,  
81 LLC., and Westwood Village Association. (See attachment C).

82

83 Prepared by: Jeanne A. Kelsey, Housing Program Coordinator (651-792-7086)

84

85 Attachment A – Assessment Notice Allowing for Pre or Partial Payment

86 Attachment B – Assessment Notice for Residents that had Partial or Fully Paid

**EXTRACT OF MINUTES OF MEETING  
OF THE  
CITY COUNCIL OF THE CITY OF ROSEVILLE**

\* \* \* \* \*

Pursuant to due call and notice thereof, a regular meeting of the City Council of the City of Roseville, County of Ramsey, Minnesota was duly held on the 8<sup>th</sup> day of June, 2009, at 6:00 p.m.

The following members were present:

and the following were absent:

Member \_\_\_\_\_ introduced the following resolution and moved its adoption:

**RESOLUTION No. \_\_\_\_\_**

**A RESOLUTION IMPOSING IMPROVEMENT FEES IN THE HOUSING  
IMPROVEMENT AREA AND  
PROVIDING FOR THE COLLECTION OF THE FEES**

WHEREAS, pursuant to Minnesota Statutes Section 428A.13, the Roseville City Council has established by Ordinance No. 1337 (the "Ordinance") a housing improvement area for the Westwood Village I Townhomes (the "Housing Improvement Area"); and

WHEREAS, the City has received a petition signed by at least 25 percent of the owners of units in the Housing Improvement Area requesting the City Council to hold a hearing regarding the imposition of a housing improvement fee to finance certain Housing Improvements (as that term is defined in the Ordinance); and

WHEREAS, after proper notice duly given as required by Minnesota Statutes, Section. 428A.14, the City Council on June 8, 2009 held a public hearing regarding the imposition of a fee to finance the cost of housing improvements within the Housing Improvement Area, at which all persons, including owners of property within the Housing Improvement Area, were given an opportunity to be heard.

WHEREAS, Prior to the date hereof, Westwood Village Association (the "Association") has submitted to the City a financial plan prepared by Reserve Data Analysis, Inc., an independent third party, acceptable to the City and the Association, that provides for the Association to finance maintenance and operation of the common elements in the Housing Improvement Area and a long-range plan to conduct and finance capital improvements therein, all in accordance with Section Minnesota Statutes, Section 428A.14; and

WHEREAS, by Resolution No. 10686 approved January 26, 2009 (the "Prior Fee

Resolution”), the City imposed a housing improvement fee for the Housing Improvement Area; and

WHEREAS, this resolution is intended to supersede the Prior Fee Resolution in all respects.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of Roseville, Minnesota, as follows:

1. The City hereby imposes a fee on each housing unit within the Housing Improvement Area (the "Housing Improvement Fee"), as specified in Attachment A attached hereto, which Housing Improvement Fee is imposed on the basis of the cost allocation described in the Association’s Second Amended Declaration for Common Interest Community No. 727 dated April 25, 2008.

2. The owner of any housing unit against which the Housing Improvement Fee is imposed may, at any time before the effective date of this Resolution, pay all or a portion of the total Housing Improvement Fee imposed against such housing unit as specified in Attachment A hereto to the City Treasurer, without interest thereon; provided that if only a portion is prepaid the prepayment amount must be at least 25% of the total fee for that unit. Any Housing Improvement Fee (or a portion thereof) not prepaid in accordance with this Section or Section 3(a), below, shall be payable solely in accordance with Section 4 hereof, and may not be prepaid in whole or in part.

3. If, prior to the date of approval of this Resolution, the owner of any unit in the Housing Improvement Area prepaid the fee imposed under the Prior Fee Resolution, such owner must, by the effective date of this resolution, file a written notice with the City Clerk indicating that the owner elects one of the following two options:

(a) The owner ratifies its decision to prepay the Housing Improvement Fee, in which event the City will retain the amount of the prior prepayment and treat such amount as a prepayment under Section 2 of this Resolution. If this option is selected, the City will refund to the owner the interest accrued on the amount of the owner’s prepayment at the rate of 4.5% accrued from the date of prepayment through June 8, 2009. Such refund will be paid to the owner promptly after the effective date of this Resolution.

(b) The owner withdraws its prior prepayment, in which event the City will return to the owner the amount of the prior prepayment together with interest accrued on such amount at the rate of 4.5% accrued from the date of prepayment through June 8, 2009. Such refund will be paid to the owner promptly after the effective date of this Resolution.

If an owner who previously prepaid does not timely file a written notice electing either option (a) or (b) above, the City will treat the prepayment as being ratified, and the City will retain that amount as a prepayment under this Resolution; provided that in such event, the City will not refund interest to the owner as described in paragraph (a) of this Section.

Furthermore, notwithstanding anything to the contrary herein, if this Resolution does not become effective because of a veto by unit owners in accordance with Minnesota Statutes, Section 428A.18,

the City will promptly refund to any owner the amount of any prepayment under Section 2 or Section 3(a) hereof, together with interest at the rate of 4.5% accrued from the date of prepayment through June 8, 2009 in the case of any prepayment made before June 8, 2009 under the Prior Fee Resolution; and without interest in the case of any prepayment made after June 8, 2009 under this Resolution.

4. If not prepaid in accordance with Section 2 or Section 3(a) hereof, the Housing Improvement Fee (or unpaid portion thereof) shall be payable in equal annual installments extending over a period of fifteen years, the first of the installments to be payable in calendar year 2010, which annual payment shall be deemed to include interest on unpaid Housing Improvement Fee from the date of this Resolution at an annual interest rate of 7.75% per annum. The total original principal amount of the Housing Improvement Fees for each unit is shown in Attachment A.

5. The Housing Improvement Fee, unless prepaid in accordance with Section 2 or Section 3(a) hereof, shall be payable at the same time and in the same manner as provided for payment and collection of ad valorem taxes, as provided in Minnesota Statutes, Sections 428A.15 and 428A.05.

6. Within five days after the adoption of this Resolution, the City Manager is authorized and directed to mail to the owner of each housing unit in the Housing Improvement Area: (a) a summary of this Resolution; (b) notice that owners subject to the Housing Improvement Fee have a right to veto this Resolution if owners of at least 35 percent of the housing units within the Housing Improvement Area file an objection with the City Clerk before the effective date of this Resolution; and (b) and notice that a copy of this resolution is on file with the City Clerk for public inspection.

7. Upon the effective date of this Resolution, the City Manager shall forthwith transmit a certified duplicate of this Resolution to the County Property Records and Taxation Division to be extended on the property tax list of the County, with the direction that the Housing Improvement Fees that were not prepaid as described herein shall be paid over in the same manner as other municipal taxes.

8. This Resolution shall be effective 45 days after adoption hereof.

The motion for the adoption of the foregoing resolution was duly seconded by Member

\_\_\_\_\_ and upon a vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

WHEREUPON said resolution was declared duly passed and adopted.

## ATTACHEMENT A

Assessment breakdown for Westwood Village I

Items	Location/ Detail	Assn Total	#1	#2	#3	#4	#5
			Unit 2656	Unit 2652	Unit 2640	Unit 2666	Unit 2644
Roof, Gutters, Downspouts, Soffits	Common (1/47th)	\$ 339,732.00	\$ 7,228.34	\$ 7,228.34	\$ 7,228.34	\$ 7,228.34	\$ 7,228.34
Doors (1 Garage, 1 courtyard)	Common (1/47th)	\$ 65,253.00	\$ 1,388.36	\$ 1,388.36	\$ 1,388.36	\$ 1,388.36	\$ 1,388.36
Exterior lights per unit	Common (1/47th)	\$ 20,340.00	\$ 433.00	\$ 433.00	\$ 433.00	\$ 433.00	\$ 433.00
Common Siding (garage walls, courtyards ends, misc walls.	Common (1/47th)	\$ 537,153.07	\$ 11,584.79	\$ 11,584.79	\$ 11,584.79	\$ 11,584.79	\$ 11,584.79
Siding (# of levels)	Varies Front/Back: Cost per sq of siding \$461.45	\$ 271,563.32	\$ 6,460.30	\$ 5,768.13	\$ 5,306.68	\$ 4,153.05	\$ 3,230.15
No. of sq. on front/back of units	**Calculation on following page		Fourteen Sq.	Twelve and a half sq.	Eleven and a half Sq.	Nine Sq.	Seven Sq.
Permit	Common (1/47th)	\$ 17,860.00	\$ 380.00	\$ 380.00	\$ 380.00	\$ 380.00	\$ 380.00
Disposal	Common (1/47th)	\$ 9,600.00	\$ 205.00	\$ 205.00	\$ 205.00	\$ 205.00	\$ 205.00
Aluminum Wrap	Common (1/47th)	\$ 67,945.50	\$ 1,445.65	\$ 1,445.65	\$ 1,445.65	\$ 1,445.65	\$ 1,445.65
Subtotal		\$ 1,329,446.89	\$ 29,125.44	\$ 28,433.27	\$ 27,971.82	\$ 26,818.19	\$ 25,895.29
Building Contingency 20%		\$ 265,889.36	\$ 5,825.09	\$ 5,686.66	\$ 5,594.37	\$ 5,363.64	\$ 5,179.06
	Total Amount	\$ 1,595,336.25	\$ 34,950.53	\$ 34,119.93	\$ 33,566.19	\$ 32,181.83	\$ 31,074.35

\*\*\* All Items include labor and material.

#1 Unit 2656, 2658, 2660, 2662, 2694, 2696, 2702,  
2704, 2706, 2712, 2714, 2718, 2722, 2724, 2726,  
2728, 2730, 2734

#2 Unit 2652, 2700, 2708, 2716, 2720, 2732

#3 Unit 2640, 2642, 2646, 2648, 2650, 2654, 2668  
2670, 2672, 2674, 2676, 2678, 2680, 2682, 2686  
2688, 2690

#4 Unit 2666, 2664, 2692, 2710

#5 Unit 2644, 2684

**Fifth Draft, May 27, 2009**

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**DEVELOPMENT AGREEMENT**

**Between**

**CITY OF ROSEVILLE, MINNESOTA**

**and**

**WESTWOOD VILLAGE ASSOCIATION**

Dated as of \_\_\_\_\_, 2009

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This document was drafted by:  
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SCHEDULE A Description of Property  
 SCHEDULE B Housing Improvements

**DEVELOPMENT AGREEMENT**

THIS AGREEMENT, made on or as of the \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the CITY OF ROSEVILLE, a Minnesota municipal corporation (the "City") and WESTWOOD VILLAGE ASSOCIATION, a Minnesota nonprofit corporation (the "Association").

WITNESSETH:

WHEREAS, the City is authorized under Minnesota Statutes, Sections 428A.11 through 428A.21 (the "Act") to establish by ordinance a housing improvement area within which housing improvements are made or constructed and the costs of the improvements are paid in whole or in part from fees imposed within the area; and

WHEREAS, by Ordinance No. 1377 adopted September 22, 2008 (the "Enabling Ordinance"), the Council established the Westwood Village I Housing Improvement Area (the "Housing Improvement Area") in order to facilitate certain improvements to property known as the Westwood Village I Townhouses, which property is legally described in Schedule A hereto and is hereafter referred to as the "Property;" and

WHEREAS, by Resolution No. \_\_\_\_\_ adopted June 8, 2009 (the "Fee Resolution"), the City Council imposed a housing improvement fee on Housing Units (as hereinafter defined) in the Housing Improvement Area in order to finance the Housing Improvements (as hereinafter defined) on the Property; and

WHEREAS, the Act authorizes the City to issue bonds in the amount necessary to defray the expense to be incurred in making the Housing Improvements, which bonds are payable primarily from proceeds of the fee imposed under the Fee Resolution and may be further secured by the pledge of the City's full faith, credit and taxing power; and

WHEREAS, prior to adoption of the Fee Resolution by the City Council, the Association submitted to the City a financial plan in accordance with the Act that provides for the Association to finance maintenance and operation of the common elements in the Housing Improvement Area and a long-range plan to conduct and finance capital improvements therein; and

WHEREAS, the City believes that development of the Housing Improvements to the Property pursuant to this Agreement, and fulfillment generally of this Agreement, are in the vital and best interests of the City and health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of the applicable State and local laws and requirements under which the Housing Improvement Area has been undertaken.

NOW, THEREFORE, in consideration of the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

## ARTICLE I

### Definitions

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

"Act" means Minnesota Statutes, Sections 428A.11 to 428A.21, as amended.

"Annual Debt Service" means the amount of principal, interest and redemption premium, if any, payable on the Bonds on any August 1 and the next succeeding February 1.

"Construction Manager" means Load Bearing, Inc., the construction managers selected by the Association to prepare or cause to be prepared the construction plans for the Housing Improvements.

"Association" means Westwood Village Association or its permitted successors and assigns.

"Association's Authorized Representative" means the President of the Association.

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

"Bonds" means the general obligation bonds or obligations issued by the City under Section 3.1 hereof to finance the Housing Improvements pursuant to the Act, and any bonds or obligations issued to refund any Bonds.

"Bond Fund" means the debt service fund for the Bonds to be established under the Bond Resolution.

"Bond Resolution" means the resolution to be approved by the Council awarding the sale and establishing the terms of the Bonds.

"Contingency Fund" means the contingency fund to be established under the Bond Resolution and to be funded and disbursed as provided in Section 3.5 of this Agreement.

"City" means the City of Roseville, Minnesota.

"City's Authorized Representative" means the City's Community Development Director or other City staff designated in writing by the Community Development Director to serve that function.

"Certificate of Completion" means the certification provided to the Association, pursuant to Section 4.3 of this Agreement.

"Completion Date" means the date of actual completion of the Housing Improvements as certified by the City's Authorized Representative pursuant to Section 4.3 hereof.

"Construction Management Contract" means the agreement by and between the Association and the Construction Manager pertaining to preparation of the construction specifications and supervision of construction of the Housing Improvements.

"Construction Contract" means the construction contract between the Association and the Contractor.

"Contractor" means Eagle Siding, Inc.

"Council" means the City Council of the City.

"County" means the County of Ramsey, Minnesota.

"Disbursing Agent" means \_\_\_\_\_.

"Disbursing Agreement" means the Disbursing Agreement between the City, the Disbursing Agent and the Developer dated as of \_\_\_\_\_, 2009.

"Enabling Ordinance" means Ordinance No. 1377 adopted by the Council on September 22, 2008, which establishes the Housing Improvement Area.

"Event of Default" means an action by the Association listed in Article VII of this Agreement.

"Fee" means the housing improvement fee in connection with the Housing Improvements imposed on all Housing Units in the Housing Improvement Area pursuant to the Fee Resolution.

"Fee Resolution" means Resolution No. \_\_\_\_\_, adopted by the Council on June 8, 2009, which imposes the Fee.

"Fee Revenues" means all proceeds of the Fee payable to the City.

"Financial Advisor" means Springsted, Incorporated, or any successor Independent financial advisory firm retained by the City.

"Financial Plan" means the Capital Reserve Plan for Major Repairs and Replacements, dated September 1, 2008, submitted to the City, as amended annually pursuant to Section 6.3 hereof.

"Fiscal Year" means any year commencing January 1 and ending December 31.

"Housing Improvement Area" means the real property located within the Westwood Village I Housing Improvement Area.

"Housing Improvements" means the housing improvements to the Property as set forth in Schedule B hereof.

"Housing Unit" means real property and improvements thereon within the Housing Improvement Area, consisting of a one-dwelling unit, or an apartment as described in Minnesota

Statutes, Chapter 515 or 515A, that is occupied or intended to be occupied by a person or persons for use as a residence.

"Independent", when used with reference to an attorney, engineer, architect, certified public accountant, or other professional person, means a person who (i) is in fact independent, (ii) does not have any material financial interest in the Association or the transaction to which his or her certificate or opinion relates (other than the payment to be received for professional services rendered), and (iii) is not connected with the City or the Association as an officer, director or employee.

"Reserve Specialist" means a person or entity, experienced in the study and management of common interest community housing and, unless otherwise specified herein, retained or employed by the Association and acceptable to the City whose acceptance shall not be unreasonably withheld.

"Maturity Date" means the date the Bonds have been fully paid, defeased or redeemed in accordance with their terms.

"Net Revenues Available for Debt Service" means, as of the date of calculation, the balance in the Bond Fund and any other fund into which Fee Revenues have been deposited as of the date of calculation, less the amount of fees, as estimated by the City's Financial Advisor, that are anticipated to be payable by the City in connection with the Bonds on or before the next Payment Date to the City's Financial Advisor, the registrar for the Bonds, and the paying agent for the Bonds.

"Payment Date" means any date on which the principal, interest and redemption premium, if any, is due and payable on the Bonds.

"Project Fund" means the Project Fund to be created by the Bond Resolution.

"Property" means the real property described in Schedule A of this Agreement.

"State" means the State of Minnesota.

"Unavoidable Delays" means delays beyond the reasonable control of the party seeking to be excused as a result thereof which are the direct result of strikes, other labor troubles, fire or other casualty to the Housing Improvements, litigation commenced by third parties which, by injunction or other similar judicial action, directly results in delays, or acts of any federal, state or local governmental unit (other than the City in exercising its rights under this Agreement) which directly result in delays. Unavoidable Delays shall not include delays in the Association's obtaining of permits or governmental approvals necessary to enable construction of the Housing Improvements by the dates such construction is required under Section 4.3 of this Agreement.

## ARTICLE II

### **Representations and Warranties**

Section 2.1. Representations by the City. The City makes the following representations as the basis for the undertakings on its part herein contained:

(a) The City is a municipal corporation under the laws of the State and has the power to enter into this Agreement and carry out its obligations hereunder.

(b) The undertaking of the Housing Improvements and the issuance by the City of the Bonds are authorized by the Act.

(c) On Monday, September 22, 2008, after due publication and mailing of notice of hearing, the Council held a public hearing on the adoption of the Enabling Ordinance and approved a first reading thereof.

(d) On Monday, June 8, 2009, after receipt of petitions by owners of at least 25 percent of the Housing Units in the Housing Improvement Area and due publication and mailing of notice of hearing, the Council held a public hearing on the adoption of the Fee Resolution and adopted the Fee Resolution (which Fee Resolution superseded in all respects Resolution No. 10686 adopted by the City on January 26, 2009 regarding the Fee).

(e) The periods for veto of both the Enabling Ordinance and the Fee Resolution have expired without objection by owners of at least 35 percent of the Housing Units in the Housing Improvement Area, all in accordance with the Act.

(f) To finance costs of the Housing Improvements, the City proposes to issue the Bonds as provided in the Act, and to disburse the proceeds thereof to the Association pursuant to this Agreement. The City will initially issue Bonds in the aggregate principal amount as described in Section 3.1 hereof and the Bonds shall be in the form and shall be subject to the terms and provisions set forth in the Bond Resolution and the terms of this Agreement.

(g) There is no litigation pending or, to the best of its knowledge, threatened against the City relating to the Housing Improvements or to the Bonds or questioning the powers or authority of the City under the Act, or questioning the corporate existence or boundaries of the City or the title of any of the present officers of the City to their respective offices.

(h) The execution, delivery and performance of this Agreement do not violate any agreement or any court order or judgment in any litigation to which the City is a party or by which it is bound.

Section 2.2. Representations and Warranties by the Association. The Association represents and warrants that:

(a) The Association is a nonprofit corporation, duly organized and in good standing under the laws of the State of Minnesota, is not in violation of any provisions of its articles of incorporation, bylaws or the laws of the State, is duly authorized to transact business within the

State, has power to enter into this Agreement and has duly authorized the execution, delivery and performance of this Agreement by proper action of its board of directors.

(b) The Association will construct, operate and maintain the Housing Improvements in accordance with the terms of this Agreement, the Financial Plan, and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, building code and public health laws and regulations, the City stormwater management plan and watershed district requirements).

(c) The Association has received no notice or communication from any local, state or federal official that the activities of the Association or the City in the Housing Improvement Area may be or will be in violation of any environmental law or regulation (other than those notices or communications of which the City is aware). The Association is aware of no facts the existence of which would cause it to be in violation of or give any person a valid claim under any local, state or federal environmental law, regulation or review procedure.

(d) The Association will construct the Housing Improvements in accordance with all local, state or federal energy-conservation laws or regulations, to the extent such laws or regulations apply to the Housing Improvements.

(e) The Association will cause the Construction Manager or Contractor to obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state and federal laws and regulations which must be obtained or met before the Housing Improvements and the Drainage Improvements may be lawfully constructed.

(f) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provisions of any corporate restriction or any evidences of indebtedness, agreement or instrument of whatever nature to which the Association is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(g) Whenever any Event of Default occurs and if the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement of performance or observance of any obligation or agreement on the part of the Association under this Agreement, the Association agrees that it shall, within ten days of written demand by the City pay to the City the reasonable fees of such attorneys and such other expenses so incurred by the City. The parties agree and understand that failure of any Housing Unit owner to pay any Fee is not an Event of Default by the Association.

### ARTICLE III

#### **Issuance of Bonds; Disbursement of Proceeds**

Section 3.1. Issuance of Bonds. (a) In order to provide funds to defray the costs of the Housing Improvements, the City will issue the Bonds in the maximum principal amount that is supported by the Fee Revenues and will produce total funds in the amount of \$1,595,336 (the "Net Project Amount"), including: (i) proceeds of the Bonds, net of costs of issuance, administrative costs, and capitalized interest; and (ii) all Fee Revenues prepaid by owners of Housing Units prior to issuance of the Bonds in accordance with the Fee Resolution.

At closing on issuance of the Bonds, proceeds will be applied as follows: into the Bond Fund will be deposited capitalized interest through August 1, 2010 together with accrued interest on the Bonds, if any; into the Administration Fund will be deposited costs of issuance; into the Contingency Fund will be deposited the amount specified in Section 3.5 hereof; and into the Project Fund will be deposited the balance of proceeds of the Bonds together with prepaid Fee Revenues. Moneys in the Project Fund will be disbursed from time to time to pay the costs of Housing Improvements in accordance with the Disbursing Agreement. None of the funds in the Project Fund shall be used for any purposes other than payment or reimbursement of such costs of the Housing Improvements. The City will sell the Bonds by September 1, 2009, subject to Unavoidable Delays and the City's ability to issue the Bonds under existing laws and market conditions.

(b) Under the Bond Resolution, all Fee Revenues (excluding Fee Revenues prepaid by owners of Housing Units prior to issuance of the Bonds in accordance with the Fee Resolution) in excess of the amount necessary to pay when due the principal, interest and redemption premium, if any, on the Bonds will be deposited into a separate revenue account to be established under the Bond Resolution and maintained by the City until the Maturity Date (referred to as the "Surplus Fund"). Subject to the prior pledge of Fee Revenues to payment of principal and interest on the Bonds, the City may at its sole discretion apply funds the Surplus Fund (i) to pay registrar and paying agent fees, if any, in connection with the Bonds; (ii) to pay other administrative costs in connection with the Bonds or the Housing Improvement Area; (iii) to pay costs in connection with enforcement by the City of the Association's obligations under this Agreement (provided that any such payment is subject to reimbursement by the Association pursuant to Section 2.2(h) hereof, and nothing in this Section 3.1(b) shall be construed to require the City to pay costs of enforcement in the first instance as provided herein); and (iv) in accordance with Section 3.4 hereof.

(c) The City and Association agree, and the Bond Resolution shall so provide, that interest earnings on funds in the Bond Fund, the Project Fund and the Contingency Fund will be credited to the respective fund from which the interest was derived. Interest earnings on all other funds and accounts will be credited to the surplus revenue account described in Section 3.1(b).

Section 3.2. Deposit of Funds by Association. If the City shall at any time in good faith determine that the amount of funds then on deposit in the Project Fund and the Contingency Fund, combined, together with expected earnings thereon, is less than the amount required to pay all costs and expenses of any kind which reasonably may be anticipated in connection with the completion of the Housing Improvements and shall thereupon send written notice thereof to the Association specifying the additional amount required to be deposited by the Association to provide sufficient

funds to complete the Housing Improvements, the Association agrees that it will, within ten (10) calendar days of receipt of any such notice, deposit with the City the amount of funds specified in the notice and shall authorize the City to disburse such funds prior to disbursement of any additional proceeds of the Bonds.

Section 3.3. Application of Project Fund Balance. Any amounts remaining in the Project Fund upon completion of the Housing Improvements shall be applied in accordance with Section 3.4 hereof.

Section 3.4. Application of Fee Revenues or Fund Balance. In the event that, (a) any balance remains in the Project Fund upon the final disbursement therefrom for costs of the Housing Improvements; (b) there is any balance in the Surplus Fund described in Section 3.1(b), or (c) at any time before the Maturity Date the City has available to it Fee Revenues (excluding the proceeds of any refunding Bonds), together with amounts on hand in any funds or accounts under the Bond Resolution, in the amount sufficient to redeem or defease the Bonds in advance of their maturity, as determined by the City's Financial Advisor, the City may, in its sole discretion:

(a) apply such excess Fee Revenues or fund balance to redeem or defease all or any portion of the Bonds; or

(b) by resolution of the Council, disburse all or any portion of such excess Fee Revenues or Project Fund balance, as the case may be, to the Association for deposit into the replacement fund maintained by the Association (the "Replacement Reserve Fund"). The Association shall establish and maintain a separate subaccount in the Replacement Reserve Fund (the "Excess Revenue Subaccount") in which excess Fee Revenues or any fund balance deposited hereunder, together with interest earnings thereon, shall be maintained. Amounts in the Excess Revenue Subaccount of the Replacement Reserve Fund shall be expended only for Housing Improvements (as defined in the Enabling Ordinance) that are selected by the Association; provided that before making any disbursement of funds from the Excess Revenue Subaccount, the Association shall submit written plans and cost estimates for such Housing Improvements to the City's Authorized Representative, which plans shall be deemed approved unless rejected in writing by the City's Authorized Representative within 30 days after receipt thereof; or

(c) any combination of paragraphs (a) and (b) above.

Any balance remaining after the Maturity Date in the Bond Fund or any other fund into which Fee Revenues have been deposited shall be transferred by the City to the Association for deposit into the Excess Revenue Subaccount of the Replacement Reserve Fund. Expenditures from the Excess Revenue Subaccount shall be subject to the conditions described in clause (b) above. All covenants and obligations of the Association under this Section shall survive the Maturity Date.

Section 3.5. Contingency Fund. Bond proceeds in the amount of \$265,889.36 shall be deposited in a special Contingency Fund maintained by the City. The Contingency Fund may be invested as directed by the City and will be disbursed in accordance with this Section. If amounts in the Project Fund are insufficient to pay all costs of the Housing Improvements, then amounts in the Contingency Fund shall be transferred to the Project Fund for disbursement therefrom in accordance with the Disbursing Agreement. Any balance remaining the Contingency Fund after issuance of the

Certificate of Completion for the Housing Improvements shall be promptly returned to the Association for refund to Housing Unit owners, based upon the amount of the Fee assessed against each Housing Unit and the allocation of costs for each item as provided on Attachment A to the Fee Resolution.

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## ARTICLE IV

### Construction of Housing Improvements

Section 4.1. Construction of Housing Improvements. The Association agrees that it will cause the Housing Improvements on the Property to be constructed in accordance with the Construction Management Contract and the Construction Contract, and that at all times prior to the Maturity Date the Association will operate and maintain, preserve and keep the Housing Improvements or cause the Housing Improvements to be maintained, preserved and kept with the appurtenances and every part and parcel thereof, in good repair and condition, all in accordance with Article VI hereof.

Section 4.2. Commencement and Completion of Construction. Subject to Unavoidable Delays, the Association shall complete the construction of the Housing Improvements by April 1, 2010. The Association agrees for itself, its successors and assigns, and every successor in interest to the Property, or any part thereof, that the Association, and such successors and assigns, shall promptly begin and diligently prosecute to completion the construction of the Housing Improvements thereon, and that such construction shall in any event be commenced and completed within the period specified in this Section 4.3 of this Agreement. Until construction of the Housing Improvements has been completed, the Association shall make reports, in such detail and at such times as may reasonably be requested by the City as to the actual progress of the Association with respect to such construction.

Section 4.3. Certificate of Completion. (a) Promptly after substantial completion of the Housing Improvements in accordance with those provisions of the Agreement relating solely to the obligations of the Association to construct the Housing Improvements (including the dates for beginning and completion thereof), the City will furnish the Association with an appropriate instrument so certifying. Such certification by the City shall be a conclusive determination of satisfaction and termination of the agreements and covenants in the Agreement with respect to the obligations of the Association, and its successors and assigns, to construct the Housing Improvements and the dates for the beginning and completion thereof. Such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Association under Article VI hereof.

(b) The certificate provided for in this Section 4.3 of this Agreement shall be in such form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Property. If the City shall refuse or fail to provide any certification in accordance with the provisions of this Section 4.3 of this Agreement, the City shall, within thirty (30) days after written request by the Association, provide the Association with a written statement, indicating in adequate detail in what respects the Association has failed to complete the Housing Improvements in accordance with the provisions of the Agreement, or is otherwise in default, and what measures or acts it will be necessary, in the opinion of the City, for the Association to take or perform in order to obtain such certification.

(c) The construction of the Housing Improvements shall be deemed to be substantially completed as determined by the City's Authorized Representative, who may execute the certificate of completion on behalf of the City.

## ARTICLE V

### Insurance

Section 5.1. Insurance. (a) The Association will provide and maintain or cause to be provided and maintained at all times during the process of constructing the Housing Improvements, and after completion through the Maturity Date, insurance regarding the Housing Improvements that complies with Minnesota Statutes, Chapter 515B.3-113 and Section 11 of the Associations common interest community declaration.

(b) The insurance required in Article V of this Agreement shall be taken out and maintained in responsible insurance companies selected by the Association which are authorized under the laws of the State to assume the risks covered thereby. Upon request, the Association will deposit annually with the City policies evidencing all such insurance, or a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article V of this Agreement each policy shall contain a provision that the insurer shall not cancel nor modify it in such a way as to reduce the coverage provided below the amounts required herein without giving written notice to the Association and the City at least thirty (30) days before the cancellation or modification becomes effective. In lieu of separate policies, the Association may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Association shall deposit with the City a certificate or certificates of the respective insurers as to the amount of coverage in force upon the Housing Improvements.

(c) The Association agrees to notify the City immediately in the case of damage exceeding \$100,000 in amount to, or destruction of, the Property, the Housing Improvements or any portion thereof resulting from fire or other casualty. In such event the Association will forthwith repair, reconstruct and restore the Housing Improvements to substantially the same or an improved condition or value as it existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction and restoration, the Association will apply the Net Proceeds of any insurance relating to such damage received by the Association to the payment or reimbursement of the costs thereof.

The Association shall complete the repair, reconstruction and restoration of the Housing Improvements and the Property, whether or not the Net Proceeds of insurance received by the Association for such purposes are sufficient to pay for the same. Any Net Proceeds remaining after completion of such repairs, construction and restoration shall be the property of the Association.

Nothing in this Section 5.1(b) will be construed to require the Association to repair, reconstruct or restore any portions of the Property that belong solely to owners of individual Housing Units and are not covered by the Association's master insurance policy.

(d) The Association and the City agree that all of the insurance provisions set forth in this Article V shall terminate upon the earlier of the Maturity Date or termination of this Agreement.

## ARTICLE VI

### Special Covenants

Section 6.1. No Warranty of Condition or Suitability, Indemnification. (a) The City does not make any warranty, either express or implied, as to the design or capacity of the Housing Improvements, as to the suitability for operation of the Housing Improvements or that they will be suitable for the Association's purposes or needs. The Association releases the City from, agrees that the City shall not be liable for, and agrees to hold the City, its Council and its respective officers and employees, harmless against, any claim, cause of action, suit or liability for any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Housing Improvements or the use thereof.

(b) The Association further agrees to indemnify and hold harmless the City its officers and employees, against any and all losses, claims, damages or liability to which the City its officers and employees, may become subject under any law arising out of any act, omission, representation or misrepresentation of the Association in connection with the issuance and sale of the Bonds and the carrying out of the transactions contemplated by this Agreement, and to reimburse the City, its officers and employees, for any out-of-pocket legal and other expenses (including reasonable counsel fees) incurred by the City, its officers and employees, in connection with investigating any such losses, claims, damages or liabilities or in connection with defending any actions relating thereto. The City agrees, at the request and expense of the Association, to cooperate in the making of any investigation in defense of any such claim and promptly to assert any or all of the rights and privileges and defenses which may be available to the City. The provisions of this Section shall survive the payment and redemption of the Bonds.

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

(d) The covenants of the City and the Association, respectively under this Agreement are intended solely for the benefit of the parties hereto, and no contractor, Housing Unit owner or occupant, or any other party shall have any rights or interests as a third party beneficiary under this Agreement.

Section 6.2. Financial Statements. The Association agrees to furnish to the City, by no later than the August 15 following the end of each Fiscal Year until the later of the Maturity Date and the date all excess Fee Revenues and Project Fund balance, if any, have been disbursed in accordance with Section 3.4 hereof, a copy of the annual audited financial statements of the Association for the preceding Fiscal Year, including a balance sheet and operating statements, audited by an Independent certified public accountant. Such financial statements shall be accompanied by a separate written statement from such Independent certified public accountant preparing such report that such Independent accountant has obtained no knowledge of any default by the Association in the fulfillment of any of the terms, covenants, provisions or conditions of this Agreement or if such accountant shall have obtained knowledge of any such default the accountant shall disclose in such statement the default and the nature thereof, but such accountant shall not be liable directly or

indirectly to any party for failure to obtain knowledge of any default. The Association and the City agree and understand that compliance with this Section constitutes compliance with Section 7(a) of the Enabling Ordinance.

Section 6.3. Financial Plan; Annual Reports. The Association agrees to furnish to the City, by no later than 120 days after the end of each Fiscal Year until the later of the Maturity Date and the date all excess Fee Revenues and Project Fund balance, if any, have been disbursed in accordance with Section 3.4 hereof, an updated Financial Plan for the Property prepared by a Reserve Specialist acceptable to the City, in substantially the form of the initial Financial Plan and providing plans for capital improvements to the Property through the Maturity Date.

Section 6.4. Records and Inspection. The Association shall maintain (i) copies of federal, state, municipal and other licenses and permits obtained by the Association relating to the operation of the Property, the Housing Improvements, (ii) financial books and records reflecting the operations of the Property, the Housing Improvements, and (iii) all other documents, instruments, reports and records required by any provision of this Agreement or the Financial Plan or by law relating to the Property or the affairs of the Association. The City shall have the right to inspect all such materials, except any materials made private or confidential by federal or state law or regulation, and the Property at all reasonable times and to make such copies and extracts as it may desire. At the request of the City the Association shall furnish to the City, at the Association's expense, a copy of any such materials which are required by the City in the performance of its duties under this Agreement, the Enabling Ordinance, the Fee Resolution or the Act.

Section 6.5. Maintenance of Property. The Association agrees that so long as the Bonds are outstanding, the Association will keep or cause to be kept the Housing Improvements in good repair and good operating condition at its own cost. The Association shall make all repairs, replacements and improvements to the Property specified in the Financial Plan, as such plan may be amended in accordance with Section 6.3 hereof.

Section 6.6. Covenant to Maintain Net Revenues Available for Debt Service. (a) In the event that, 10 business days before any Payment Date, the Net Revenues Available For Debt Service are less than 105 percent of the total principal and interest due on the Bonds on such Payment Date, the City will provide written notice to the Association of such fact and the amount of the deficiency. The City will use reasonable efforts to investigate the reason for the deficiency and will briefly describe the results of such investigation, if any, in the written notice. Within 10 days after receipt of such notice of deficiency in Net Revenues Available for Debt Service, the Association shall be liable for and shall pay the City such deficiency. Failure on the part of the City to provide the notice of the deficiency at the time specified herein shall not relieve the Association of its obligation to make the required payment 10 days after the actual notice of the deficiency is provided by the City to the Association. Failure on the part of the Association to make the required payment under this Section within 10 days after receipt of notice thereof shall entitle the City to exercise its remedies under this Agreement, notwithstanding any cure period provided in Article VII hereof.

(b) In the event that the Association makes any payment to the City under Section 6.6(a), and a balance of Fee Revenues remains in the Debt Service Fund on the Maturity Date, then on or promptly after the Maturity Date the City shall return to the Association the amount of the prior

payment, without interest thereon. Nothing in this Section 6.6(b) shall be construed to relieve the obligation of the Association to make any payment required under Section 6.6(a) hereof.

Section 6.7. Association to Maintain its Existence. The Association agrees that, so long as the Bonds are outstanding, it will maintain its existence as a nonprofit corporation under the laws of Minnesota; will not dissolve or otherwise dispose of all or substantially all of its assets; and will not consolidate with or merge into another corporation or permit one or more other corporations to consolidate with or merge into it.

Section 6.8. Prohibition Against Assignment of Agreement. The Association represents and agrees that prior to the Maturity Date the Association has not made or created and will not make or create or suffer to be made or created any total or partial sale, assignment, conveyance, or any trust or power, or transfer in any other mode or form of or with respect to the Association's rights, interests or obligations under this Agreement or any part thereof, or any contract or agreement to do any of the same, without the prior written approval of the City.

Section 6.9. Notice of Fee Upon Transfer of Housing Units. The Association agrees that it will use its best efforts to ensure that owners of each Housing Unit upon which a Fee is imposed under the Fee Resolution provide notice of the Fee to prospective buyers or transferees upon any sale or transfer of the Housing Unit. Such efforts by the Association shall include, but are not limited to ensuring that Housing Unit owners include a description of the Fee in each disclosure certificate provided to the purchaser as required under Minnesota Statutes, Section 515B.4-107 or any successor statute.

Section 6.10. Experienced Property Manager. So long as the Bonds are outstanding, the Association agrees to maintain “experienced professional property management” for the Property. For purposes of this subsection, “experienced professional management” shall mean either M&H Property Management, or another full time property manager selected by the Association that meets the following criteria:

- (i) has at least five years of executive property management experience, including experience with multi-unit residential housing;
- (ii) has experience working with boards and membership organizations;
- (iii) has demonstrated knowledge of maintenance and construction issues;
- (iv) has demonstrated knowledge of accounting, financial reporting, budgeting and related issues; and
- (v) does not have an ownership interest in any Housing Unit and is not the spouse, child, parent or sibling of anyone who has an ownership interest.

## ARTICLE VII

### Events of Default

Section 7.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean, whenever it is used in this Agreement (unless the context otherwise provides), any failure by any party to observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed hereunder.

Section 7.2. Remedies on Default. Whenever any Event of Default referred to in Section 7.1 of this Agreement occurs, the non-defaulting party may exercise its rights under this Section 7.2 after providing thirty days written notice to the defaulting party of the Event of Default, but only if the Event of Default has not been cured within said thirty days or, if the Event of Default is by its nature incurable within thirty days, the defaulting party does not provide assurances reasonably satisfactory to the non-defaulting party that the Event of Default will be cured and will be cured as soon as reasonably possible:

(a) Suspend its performance under the Agreement until it receives assurances that the defaulting party will cure its default and continue its performance under the Agreement.

(b) Take whatever action, including legal, equitable or administrative action, which may appear necessary or desirable to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant under this Agreement.

Section 7.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the City or Association is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the City to exercise any remedy reserved to it, it shall not be necessary to give notice, other than such notice as may be required in this Article VII.

Section 7.4. No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

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

## ARTICLE VIII

### Additional Provisions

Section 8.1. Conflict of Interests; City Representatives Not Individually Liable. The City and the Association, to the best of their respective knowledge, represent and agree that no member, official, or employee of the City shall have any personal interest, direct or indirect, in the Agreement, nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of the City shall be personally liable to the Association, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Association or successor or on any obligations under the terms of the Agreement.

Section 8.2. Equal Employment Opportunity. The Association, for itself and its successors and assigns, agrees that during the construction of the Housing Improvements provided for in the Agreement it will comply with all applicable federal, state and local equal employment and non-discrimination laws and regulations.

Section 8.3. Provisions Not Merged With Deed. None of the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring any interest in the Property and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 8.4. Titles of Articles and Sections. Any titles of the several parts, Articles, and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 8.5. Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand, or other communication under the Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally; and

(a) in the case of the Association, is addressed to or delivered personally to the Association at 2708 Mackubin Street, Roseville, Minnesota 55113, Attention: Project Manager; and

(b) in the case of the City, is addressed to or delivered personally to the City at 2660 Civic Center Drive, Roseville, Minnesota 55113, Attention: Community Development Director

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

Section 8.6. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 8.7. Recording. Either party may record this Agreement and any amendments thereto with the Ramsey County Recorder. The Association shall pay all costs for recording.

Section 8.8 Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the City and the Association and their respective successors, heirs and assigns.

Section 8.9. Amendment. This Agreement may be amended only by written agreement of the parties hereto.

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

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf and its seal to be hereunto duly affixed and the Association has caused this Agreement to be duly executed in its name and behalf on or as of the date first above written.

**CITY OF ROSEVILLE, MINNESOTA**

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

By \_\_\_\_\_  
Its City Manager

STATE OF MINNESOTA    )  
  ) SS.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009 by \_\_\_\_\_ and \_\_\_\_\_, the Mayor and City Manager, respectively, of the City of Roseville, Minnesota, a municipal corporation, on behalf of the City.

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

**WESTWOOD VILLAGE ASSOCIATION**

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

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

STATE OF MINNESOTA    )  
  )  
COUNTY OF \_\_\_\_\_  )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_ and \_\_\_\_\_, the \_\_\_\_\_ and \_\_\_\_\_ of Westwood Village Association, a Minnesota nonprofit corporation, on behalf of the corporation.

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

**SCHEDULE A**

**PROPERTY**

Lots 1 through 3, Block 1, Westwood Village Townhouses Plat 1  
Lots 1 through 8, Block 2, Westwood Village Townhouses Plat 1  
Lots 1 through 7, Block 3, Westwood Village Townhouses Plat 1  
Lots 1 through 4, Block 4, Westwood Village Townhouses Plat 1  
Lots 1 through 6, Block 5, Westwood Village Townhouses Plat 1  
Lots 1 through 5, Block 6, Westwood Village Townhouses Plat 1  
Lots 1 through 8, Block 7, Westwood Village Townhouses Plat 1  
Lots 1 through 6, Block 8, Westwood Village Townhouses Plat 1

## **SCHEDULE B**

### **HOUSING IMPROVEMENTS**

Replacement of roofs, siding, gutters and downspouts, and necessary and incidental related improvements and repairs to the Housing Units and garages within the Housing Improvement Area, including all incidental work and necessary repairs to finish the improvements to industry standards and comply with permit building codes and laws.

The Housing Improvements are described in detail in the contractor's estimate set forth in Attachment A to the Fee Resolution.

**DISBURSING AGREEMENT**  
(Owner Equity)

Project: Westwood Village, City of Roseville

THIS AGREEMENT is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2009, by and among Commercial Partners Title, LLC, a Minnesota limited liability company (hereinafter referred to as "Title") and the City of Roseville, a Minnesota municipal corporation (referred to as the "City") and Westwood Village Association, Inc., a Minnesota nonprofit corporation (the "Association").

RECITALS:

The City has established the Westwood Village I Housing Improvement Area (the "Housing Improvement Area") pursuant to Minnesota Statutes, Sections 428A.11 to 428A.21 (the "Housing Improvement Act"), which area comprises the property described on attached Exhibit A.

Pursuant to the Housing Improvement Act, the City will issue its Taxable General Obligation Housing Improvement Area Bonds (the "Bonds") in order to finance certain housing improvements (the "Housing Improvements") within the Housing Improvement Area.

The City has entered into a Development Agreement with the Association dated \_\_\_\_\_, 2009 (the "Development Agreement"), under which the City will issue the Bonds and the Association will construct the Housing Improvements financed by net proceeds of the Bonds.

The City desires that Title disburse the funds that City may advance from proceeds of the Bonds in connection with the construction of the Housing Improvements within the Housing Improvement Area, and Title is willing to do so on the terms and subject to the conditions hereinafter set forth.

For the purposes of this Agreement, all costs of the Housing Improvements (as defined in the Development Agreement) are referred to as "Project Costs." Capitalized terms not otherwise defined herein have the meaning provided in the Development Agreement.

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

1. Deposits with Title. City will deposit with Title from time to time funds in amounts to be determined and pursuant to the provisions of this Agreement.
  
2. Purposes of Disbursements. Subject to the terms of this Agreement, Title is authorized and directed to disburse the funds deposited hereunder to:

- a. Pay Project Costs incurred by the Association.
  - b. Obtain waivers, releases and satisfactions of liens and other encumbrances (all solely to the extent arising from the Housing Improvements), if any, pursuant to statements of amounts due which must be approved by the City.
3. [Intentionally omitted.]
4. Conditions of First Disbursement. Prior to the first disbursement of funds hereunder, Title shall be furnished:
- a. A copy of the construction budget or use of proceeds schedule executed by the City and the Association setting forth the amounts budgeted to be disbursed for all items which in the aggregate constitute Project Costs. Disbursements for such items listed as Project Costs shall not occur more often than once monthly.
  - b. An up-to-date sworn statement prepared by the Contractor and co-signed by the City and the Association disclosing the various subcontracts entered into by the Contractor and setting forth the names of all Subcontractors with whom the Contractor has contracted to date, their addresses, work or materials to be furnished, amounts of the contracts, amounts paid to date, and balance due.
  - c. Copies of the Construction Contract, and any other construction documents required by Title in its discretion.
5. Conditions of Each Disbursement. Prior to each disbursement of funds hereunder, Title shall be furnished:
- a. An up-to-date sworn statement of the Contractor and co-signed by the Association setting forth all Subcontractors with whom the Contractor has contracted to date, the amounts of the subcontracts, the amounts paid to date, the amounts being requested and the balance due.
  - b. The request for payment (“Request for Payment”) executed by the Association and the Contractor in connection with the requested disbursement.
  - c. Sufficient funds to cover the requested disbursements, and to pay for extras or change orders for which waivers have not been deposited and for which funds have not previously been deposited.
  - d. Sufficient funds to cover any unpaid title charges, tract search update charges and disbursing fees.

e. Mechanics lien waivers or releases from both the Contractor and all subcontractors with respect to amounts disbursed pursuant to the immediately preceding Request for Payment satisfactory to Title.

f. Resolution satisfactory to Title of all outstanding title issues arising from the Housing Improvements, including but not limited to, mechanic's liens or judgment liens served or filed of record. (Such resolution may include funds to be held by Title in escrow in excess of the claimed amount of the lien, or such other options as Title may determine.)

g. The City and Title have received a written statement from the Construction Manager certifying with respect to each payment: (i) that none of the items for which the payment is proposed to be made has formed the basis for any payment theretofore made under this Agreement; (ii) that each item for which the payment is proposed to be made is or was necessary in connection with the Housing Improvements; and (iii) that following such proposed payment sufficient moneys will remain on deposit in the Project Fund to provide for payment in full of all remaining costs estimated to be incurred in order to complete the Housing Improvements. In the case of any contract providing for the retention of a portion of the contract price, there shall be paid from the Project Fund only the net amount remaining after deduction of any such portion.

h. Written confirmation from the City that no Event of Default under the Development Agreement, or event which would constitute such an Event of Default but for the requirement that notice be given or that a period of grace or time elapse, has occurred and is continuing.

5A. Conditions Precedent to the Final Disbursement. The making of the final disbursement hereunder shall be subject to the condition precedent that the Association shall be in compliance with all conditions set forth in Sections 4 and 5 hereof and the following:

(a) The Housing Improvements have been substantially completed in accordance with Article IV of the Development Agreement, and the City shall have received a written statement from the Association, certifying that to the best of its knowledge (i) work on the Housing Improvements has been completed in accordance with the Article IV of the Development Agreement and all other labor, services, materials and supplies used in such work have been paid for; (ii) the completed Housing Improvements conform with all applicable building laws and regulations of the governmental authorities having jurisdiction over the Housing Improvements; and (iii) lien waivers submitted to Title hereunder cover all labor, services materials and supplies in connection with the Housing Improvements.

(b) The City shall have received satisfactory evidence that all work requiring inspection by municipal or other governmental authorities having jurisdiction has been duly inspected and approved by such authorities and by the bureau, corporation or office having jurisdiction, and that all requisite certificates of occupancy and other approvals have been issued.

(c) Notwithstanding anything to the contrary in this Section, the City shall be entitled to retain the five percent retainage specified under Section 6 below for up to 90 days after receipt of the

Association's written statement under Section 5A(a) hereof. Such amount will be released by the City to Title to disburse upon the Association's performance to the City's satisfaction of all the conditions of paragraphs (a) through (c) of this Section and review and approval by the City Building Inspector of punchlist work and any work needed to correct defects in completed work on the Housing Improvements. The City will have no obligation to issue the City's Certificate of Completion under Section 4.3 of the Development Agreement until all conditions are met for final the disbursement under this Agreement.

6. Title to Notify City; Transfer of Funds to Title's Account. Not later than five (5) business days following receipt of the documents or other performance delivered to it pursuant to Paragraph 5, Title will notify the City and the Association orally or in writing (i) whether the delivered documents and performance are satisfactory to it and (ii) whether it has received lien waivers from the Contractor and all subcontractors who should have been paid by it from the proceeds of the disbursement made in response to the previous Request for Payment. If waivers are missing, Title will promptly advise City and Association in reasonable detail, of the deficiency or missing lien waivers, as the case may be. If such deficiency is corrected to the satisfaction of Title, or if missing lien waivers are furnished to Title, or if the City is initially notified by Title that the documents delivered to it are satisfactory and that such lien waivers have been delivered to it, then City will (on the requested date of disbursement) transmit to Title the amount of the disbursement applied for the relevant Request for Payment, or so much thereof as City may approve, less a retainage of five percent, by transfer of such funds to Title for deposit in Title's bank Account No. **397 034 0253** maintained with **Wells Fargo Bank**.

7. Payments by Title. Upon receiving the funds transmitted by City pursuant to Paragraph 6, Title will pay the Contractor, each Subcontractor and all other persons identified in the relevant Request for Payment. If, for any reason any of said funds on deposit in Title's account are not disbursed by Title by the close of business on the fifth (5th) business day following credit of funds to its account, Title will forthwith remit to the City in immediately available funds, the amount of the funds in such account that were not disbursed. Title shall not be liable to City or the Association for interest on the funds deposited with it.

8. Books and Records Title will keep and maintain, at all times, full, true and accurate books and records, in sufficient detail to reflect the disbursements made by it hereunder. The City and the Association may, during normal business hours, examine all books and records of Title pertaining to the disbursements made by it hereunder and make extracts therefrom and copies thereof.

9. Disbursements to Subcontractors. All disbursements for construction items may be made to the Association's Contractor (who it is expected will thereafter promptly pay subcontractors for the work or amounts listed in the draw request) or may be made directly to the Subcontractors, in the discretion of Title.

10. Liability of Title. The functions and duties assumed by Title include only those

described in the Agreement, and Title is not obligated to act except in accordance with the terms and conditions of this Agreement. Title does not insure that the Improvements will be completed, nor does it insure that the Improvements when completed will be in accordance with the Plans and Specifications, nor that sufficient funds will be available for the completion, nor does it assume any liability for same other than procurement as one of the conditions precedent to each disbursement. Title has no liability for loss caused by an error in the certification furnished it hereunder as to work in place. Title shall not be responsible for any loss of documents or funds while such documents or funds are not in its custody. Documents or funds which are deposited in the United States mail shall not be construed as being in the custody of Title.

11. Indemnification of Title. The Association agrees to indemnify Title against all losses, claims, damages, liability and expenses, including without limitation costs and investigation and legal counsel fees which may be incurred or imposed upon Title in connection with Title's performance of its duties under this Agreement, including without limitation any litigation or other non-judicial proceedings arising from this Agreement or the subject matter thereof. Notwithstanding the foregoing or any other provision of this Agreement, the Association shall have no obligation to indemnify Title in connection with Title's negligent performance of its duties under this Agreement or breach of this Agreement.

12. Title and Escrow Charges. The Association shall pay to Title disbursing charges as they are determined, together with real estate search update charges. The Association shall pay to Title an administrative fee of not less than \$250.00 (or more in the event of a non-routine draw, which may be considered non-routine because of unresolved liens, insufficient project or lien waiver documentation, disputes between parties, etc.; provided that Title will agree to contact the City and the Association in the event a non-routine draw occurs and will seek further instruction from the City and the Association regarding the non-routine draw prior to imposing an additional fee)) per disbursement, which along with any title search update and endorsement fees, are due and payable at the time of funds disbursement. Title acknowledges receipt of the sum of \$1,000.00 from the Association as a deposit against such charges.

13. No IRS-1099 Reporting by Title. The parties acknowledge that the City shall be responsible for creating, furnishing or reporting any IRS 1099 notices for any payments disbursed under this Agreement.

14. Miscellaneous. This Agreement shall be binding upon the parties hereto and their respective successors and assigns; provided, however, that Title may not assign its duties hereunder without the prior written consent of the City and the Association. This Agreement can be amended or modified only by a writing signed by the parties hereto. This agreement shall be governed by the laws of the State of Minnesota.

15. Waiver. The City may, with notice to and written consent from the Association, waive any or all conditions for disbursement set forth in this Agreement. However, the making of any disbursement prior to fulfillment of any condition therefor shall not be construed as a waiver of such

condition, and the City and the Association shall have the right to require fulfillment of any and all such conditions prior to authorizing any subsequent disbursement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

COMMERCIAL PARTNERS TITLE, LLC

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

CITY OF ROSEVILLE, MINNESOTA

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

By \_\_\_\_\_  
Its City Manager

WESTWOOD VILLAGE ASSOCIATION

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