

**Development Agreement**

**By And Between**

**Housing and Redevelopment Authority  
of the City of Saint Paul, Minnesota,**

**And**

**Frogtown Meadows, LLC.**

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## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** is made effective this \_\_\_\_ day of \_\_\_\_\_, 2019 (“Effective Date”), by and between the **Housing and Redevelopment Authority of the City of Saint Paul, Minnesota**, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the “Authority”) and **Frogtown Meadows, LLC**, a Minnesota corporation (the “Developer”).

### RECITALS

**WHEREAS**, the Authority has identified the Developer as a capable and qualified developer to construct an assisted living facility and commercial building on parcels of land currently owned by the Authority; and

**WHEREAS**, in order to achieve the objectives of the Authority’s redevelopment goals, the Authority has agreed to sell and convey certain real property legally described on Exhibit A attached hereto (the “Development Property”) to the Developer pursuant to the terms of this Agreement; and

**WHEREAS**, the Developer intends to construct a new assisted living facility and commercial building on the Development Property (the “Minimum Improvements”); and

**WHEREAS**, the Authority believes that the development of the Development Property, as more fully set forth in this Agreement, is in the best interests of the residents of the City and will redevelop an underutilized vacant lot through this redevelopment project, in accordance with the public purpose and provisions of the applicable State and local laws and requirements under Chapter 469 of Minnesota Statutes; and

**WHEREAS**, this Agreement sets forth the agreement of the parties with respect to the Minimum Improvements.

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual promises and obligations of the parties hereto, the parties agree as follows:

### ARTICLE I DEFINITIONS

Section 1.1 Definitions. All capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

“Act” means the Municipal Housing and Redevelopment Act, Minnesota Statutes, “469.001-469.047 *et seq.*”, as amended.

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

*“Authority”* means the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota.

*“Authority Documents”* means the documents to be executed and/or delivered by the Authority at the Closing pursuant to Section 3.5(b) of this Agreement.

*“Authority Representative”* means the Executive Director of the Authority or his or her designee.

*“Board”* means the Board of Commissioners of the Authority.

*“Certificate of Completion”* means the certificate in the form attached hereto as Exhibit J signed by the Authority Representative certifying completion of the Minimum Improvements.

*“City”* means the City of Saint Paul, Minnesota.

*“Closing”* means the conveyance and transfer of the Development Property by the Authority to the Developer occurs under the terms and conditions of this Agreement.

*“Closing Date”* means [REDACTED], 2019 or such other date as agreed to by the Authority, and Developer, or as extended as provided herein.

*“Completion Date”* means the date the Certificate of Completion with respect to the Minimum Improvements is executed by the Authority Representative.

*“Construction Costs”* means the capital costs of the construction of the Minimum Improvements, including the costs of labor and materials; construction management and supervision expenses; insurance and payment or performance bond premiums; architectural and engineering fees and expenses; property taxes; usual and customary fees or costs payable to the Authority, the City, or any other public body with regulatory authority over construction of the Development (e.g. building permits and inspection fees); the developer fee; and all other costs chargeable to the capital account of the Development under generally accepted accounting principles.

*“Construction Documents”* shall mean the following documents, all of which shall be in form and substance acceptable to Authority: (a) Evidence satisfactory to Authority showing that the Development conforms to applicable zoning, subdivision and building code laws and ordinances, including a copy of the building permit for the Minimum Improvements; (b) A copy of the executed standard form of agreement between owner and architect for architectural services for the Development, if any, and (c) A copy of the

executed general contractor's contract for the Development, if any.

*"Construction Plans"* means the plans, specifications, drawings and related documents for the construction of the Minimum Improvements which shall be as detailed as the plans, specifications, drawings and related documents which are submitted to the building inspector of the City.

*"County"* means the County of Ramsey, Minnesota.

*"Deed"* means the Quit Claim Deed in the form attached hereto as Exhibit H, to be executed by the Authority conveying the Development Property to the Developer.

*"Design Drawings"* means the drawings for the construction of the Minimum Improvements including the exterior elevations and building finish materials, in the form attached hereto as Exhibit G.

*"Developer"* means Frogtown Meadows, LLC, its successors or assigns.

*"Developer's Documents"* means the documents to be delivered pursuant to Section 3.5(c) of this Agreement.

*"Developer Event of Default"* means the occurrence of an Event of Default set forth in Section 10.2 hereof.

*"Development"* means the Development Property and the Minimum Improvements.

*"Development Property"* means the real property described on Exhibit A attached hereto.

*"Event of Default"* means any of the events described in Sections 10.2 or 10.3.

*"General Contractor"* shall mean [REDACTED]

*"Limited Warranty Deed"* means the limited warranty deed in the form attached hereto as Exhibit I to be executed by the Developer to the Authority conveying the Development Property.

*"Minimum Improvements"* means the development consisting of an 50-unit assisted living facility and a separate two-story commercial building by the Developer on the Development Property.

*"Organizational Documents"* shall mean the following which shall be in form and substance acceptable to Authority: (a) Articles of Incorporation of the Developer, accompanied by a Certificate of Good Standing from the Minnesota Secretary of State dated no earlier than ten (10) days prior to the date of this Agreement. (b) An opinion of counsel for Developer stating that the Developer is a Minnesota corporation duly

- (a) The Authority is a public body corporate and politic and a governmental subdivision of the State, duly organized and existing under the Act and the Authority has the authority to enter into this Agreement and carry out its obligations hereunder.
- (b) The Authority has taken all action necessary to authorize the execution, delivery and performance of this Agreement, and any other documents or instruments required to be executed and delivered by the Authority pursuant to this Agreement.
- (c) The execution, delivery and performance of this Agreement, and any other documents or instruments required pursuant to this Agreement by the Authority do not,

and consummation of the transactions contemplated therein and the fulfillment of the terms thereof will not, conflict with or constitute on the part of the Authority a breach of or default under any existing (i) indenture, mortgage, deed of trust or other agreement or instrument to which the Authority is a party or by which the Authority or any of its property is or may be bound, or (ii) legislative act, constitution or other proceeding establishing or relating to the establishment of the Authority or its officers or its resolutions.

(d) There is not pending, nor to the best of the Authority's knowledge is there threatened, any suit, action or proceeding against the Authority before any court, arbitrator, administrative agency or other governmental authority that materially and adversely affects the validity of any of the transactions contemplated hereby, the ability of the Authority to perform its obligations hereunder, or as contemplated hereby or thereby, or the validity or enforceability of this Agreement.

(e) No member of the Board of the Authority or officer of the Authority has either a direct or indirect financial interest in this Agreement, nor will any Commissioner of the Authority or officer of the Authority benefit financially from this Agreement within the meaning of Minnesota Statutes, Sections 412.311 and 471.87.

(f) The Authority will reasonably cooperate with the Developer and the City with respect to any litigation commenced by third parties with respect to the Development, and the Authority agrees to deliver to the Developer upon the Developer's request copies of any environmental reports or studies relating to the Development Property in its possession or control.

(g) The execution and delivery of this Agreement will not create a conflict of interest prohibited by Minnesota Statutes, Section 469.009, as amended.

(h) The Authority will perform its obligations pursuant to Sections 3.10 and 3.11, below.

Section 2.2 Representations, Agreements and Warranties by the Developer. The Developer represents, agrees and warrants that:

(a) The Developer is a Minnesota corporation organized and in good standing under the laws of the State of Minnesota and authorized to do business in the State of Minnesota, is not in violation of any provisions of its articles of incorporation or other Organizational Documents or the laws of said State, has power to enter into this Agreement, and all exhibits attached hereto and has duly authorized the execution, delivery and performance of this Agreement by proper action of its Board of Directors.

(b) In the event the Development Property is conveyed to the Developer, the Developer will construct, operate and maintain the Minimum Improvements in

accordance with the terms of this Agreement, any redevelopment plan and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations), and obtain any variances and conditional use permits necessary to construct or operate the Minimum Improvements contemplated in the Construction Plans approved by the Authority and the City.

(c) The Developer will obtain, in a timely manner, all required permits, licenses and approvals, and will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must be obtained or met before the Minimum Improvements may be lawfully constructed.

(d) The execution and delivery of this Agreement, the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions thereof do not and will not conflict with or result in a breach of any of the terms or conditions of the Developer's Organizational Documents, any restriction or any agreement or instrument to which the Developer is now a party or by which it is bound or to which any property of the Developer is subject, and do not and will not constitute a default under any of the foregoing or a violation of any order, decree, statute, rule or regulation of any court or of any state or federal regulatory body having jurisdiction over Developer or its properties, including its interest in the Development, and do not and will not result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of Developer contrary to the terms of any instrument or agreement to which Developer is a party or by which it is bound.

(e) The execution and delivery of this Agreement will not create a conflict of interest prohibited by Minnesota Statutes, Section 469.009, as amended.

(f) Developer will reasonably cooperate with the City and Authority with respect to any litigation commenced by third parties with respect to the Minimum Improvements and the transactions contemplated by this Agreement.

(g) There are no pending or threatened legal proceedings, of which the Developer has notice, contemplating the liquidation or dissolution of the Developer or threatening its existence, or seeking to restrain or enjoin the transactions contemplated by the Agreement, or questioning the authority of the Developer to execute and deliver the closing documents.

(h) The Developer represents that the total development costs of the Minimum Improvements are set forth in the Sources and Uses.

(i) The financing commitments which the Developer has obtained to finance construction of the Minimum Improvements and any other public or private funds obtained by the Developer will be sufficient to enable the Developer to successfully complete the Minimum Improvements in conformance with the Construction Plans.

(j) The Developer will cooperate with the Authority and the City in resolution of any traffic, parking, trash removal or public safety problems which may rise in connection with the construction and operation of the Minimum Improvements.

(k) The Developer agrees that, barring Unavoidable Delays, the Minimum Improvements will be substantially completed on the assisted living facility (Phase I) by September 30, 2022 and on the commercial building (Phase II) by September 30, 2023.

(l) The Developer agrees to pay all sewer service connection charges with respect to the Development Property.

### ARTICLE III ACQUISITION AND CONVEYANCE OF DEVELOPMENT PROPERTY

Section 3.1 Purchase and Sale of Development Property; Purchase Price. Subject to the terms of this Agreement, the Authority agrees to sell to the Developer, and Developer agrees to purchase from the Authority, the Development Property for a purchase price in the amount of One and no/100 Dollars (\$1.00) (the "Purchase Price") and to pay the Purchase Price as provided in Section 3.3 hereof.

Section 3.2 As Is Conveyance. In recognition of the Authority's role as land assembler, and the significant economic contributions which the Authority has made to redevelop the Development Property, the Developer shall take the conveyance of Development Property on an "AS IS" "WHERE IS" basis, with all faults and defects, without any warranties, express or implied, except such representations and warranties as specifically set forth in this Agreement, and the Developer waives any claims against the Authority, the City and their respective members and boards, for indemnification, contribution, reimbursement or other payments arising under federal and state law and the common law relating to environmental or any other condition of Development Property. The Authority has no obligation to produce any evidence of title. The Developer will obtain its own title evidence from the Title Company.

Section 3.3 Payment of Purchase Price. The Purchase Price for the Development Property shall be paid by Developer to the Authority at Closing in cash or certified funds or by wire transfer. The Developer shall assume or pay all taxes, special assessments and similar governmental impositions due and payable after the Closing Date and all future years.

Section 3.4 Contingencies to Closing on Development Property.

(a) Developer's Contingencies. The Developer's obligation to close on the purchase of the Development Property is expressly conditioned upon each of the following contingencies being satisfied or waived:

(i) the Authority having performed all of the obligations required to be performed by Authority under this Agreement as of the Closing Date, including but not limited to, delivery of all of the Authority's Documents described in Section 3.5(b) hereof; and

(ii) the Developer has received or determines it will receive all necessary rezoning, variances, conditional use permits and other permits, site plan and other approvals needed to permit the construction of the Minimum Improvements; and

(iii) the Developer shall have completed such environmental investigation (including soil conditions) with respect to the Development Property as it deems prudent and shall be satisfied with the results thereof; and

(iv) the Developer shall have obtained financing acceptable to the Developer for development of the Minimum Improvements; and

(v) on the Closing Date, the Title Company shall be irrevocably committed to issue to Developer an owner's policy of title insurance with respect to the Development Property in form and substance approved by Developer.

If the Developer determines that any of the foregoing contingencies have not been satisfied on or before the Closing Date, the Developer may, at the option of the Developer, extend the Closing date for a period of up to 90 days by giving written notice to the Authority.

(b) Authority's Contingencies. The Authority's obligation to close on the sale of the Development Property is expressly conditioned upon each of the following contingencies being satisfied or waived:

(i) Developer shall have performed all of the obligations required to be performed by Developer under this Agreement as of the Closing Date; and

(ii) Developer shall have delivered to the Authority all of the Developer's Documents described in Section 3.5(c); and

(iii) Developer shall have received or the Authority shall have determined that the Developer will receive all necessary rezoning, variances, conditional use permits and other permits, site plan and other approvals needed to permit the construction of the Minimum Improvements including without limitation any needed variances; and

(iv) Developer shall have obtained all necessary financing for development of the Minimum Improvements; and

(v) Authority has received the \$5,000.00 non-refundable application fee, pursuant to the Authority's Land Disposition Policy.

(vi) Authority's Board of Commissioners, after a public hearing, approves of this Agreement and sale of Development Property to Developer.

(c) Authority's and Developer's Options. In the event that any of the foregoing contingencies fail to be satisfied on or before the Closing Date, the Developer or the Authority, as the case may be, may:

(i) terminate this Agreement; or

(ii) waive such failure and proceed to close; or the Developer and Authority may mutually agree to extend the Closing Date.

### Section 3.5 Closing.

(a) Time and Place. Subject to the terms and conditions of this Agreement, the Closing on the purchase and sale of the Development Property shall take place on the Closing Date and shall take place at such place which is mutually acceptable to the parties. The Authority shall deliver possession of the Development Property on the Closing Date.

(b) Authority's Documents. At the Closing, the Authority shall execute, where appropriate, and deliver all of the following Authority's Documents:

(i) The Deed properly executed on behalf of the Authority conveying the Development Property to the Developer, together with any other documents reasonably required to be delivered by the Authority.

(ii) Abstracts of title, if any, in the Authority's possession to any portion of the Development Property which is abstract property, and any owner's duplicate certificate of title to any portion thereof which is registered property. The Authority has no obligation to have any abstracts updated.

(iii) An affidavit of Authority regarding liens, judgments, tax liens, bankruptcies, parties in possession, survey and mechanics' or materialmen's liens and other matters affecting title to the Development Property and/or as may be reasonably required by Title Company to delete the so-called "standard exceptions" from the title insurance policy.

(iv) A transferor's certification stating that Authority is not a "foreign person", "foreign partnership", "foreign trust" or "foreign estate" as those terms are defined in Section 1445 of the Internal Revenue Code, and containing such additional information as may be required thereunder.

- (v) Any appropriate required Federal Income Tax reporting form.
- (vi) A settlement statement consistent with this Agreement.
- (vii) A quit claim deed of from the City to the Authority of the Development Property.
- (viii) Such other documents as shall be required to carry out the intent of this Agreement.

(c) Developer's Documents. At the Closing, the Developer shall execute, where appropriate, and deliver all of the following Developer's Documents:

- (i) A sworn construction cost statement executed by the Developer and the general contractor setting forth total Construction Costs of the Minimum Improvements.
- (ii) The Developer shall have submitted the Construction Plans to the Authority, and the Authority shall have approved the Construction Plans pursuant to Section 4.2 hereof.
- (iii) Proof of insurance required by this Agreement.
- (iv) To the extent required and obtainable as of the Closing Date, environmental clearances, subdivision approvals, permits, and any other required governmental approvals for the Minimum Improvements.
- (v) An affidavit from Developer indicating on the Closing Date that there are no outstanding, unsatisfied judgments, tax liens or bankruptcies against or involving the Developer; that there has been no skill, labor or material furnished to the Development Property for which payment has not been made or for which mechanic's liens could be filed.
- (vi) Funds sufficient for payment by the Developer at Closing of the recording charges or fees for all documents which are to be placed on record, the fee or charge imposed by any closing agent designated by the Title Company, and any other incidental or related closing costs.
- (vii) A certificate of good standing for Developer from the Secretary of State of the state of incorporation.
- (viii) The Limited Warranty Deed properly executed on behalf of the Developer to be held and not recorded by the Authority, except under specific provisions hereof in Section 10.5 below.

(ix) The Organizational Documents and Construction Documents.

(x) Such other documents as shall be required to carry out the intent of this Agreement.

Section 3.6 Closing Costs. The Developer shall pay, among other things, all costs of the Closing including any and all deed taxes, filing fees, and fees for title insurance commitments, the premium for the Developer's owner's policy of title insurance, filing and recording fees, and any costs of the Title Company to conduct and insure the Closing.

Section 3.7 Title. The Developer has obtained a commitment for an owner's title insurance policy issued by the Title Company naming Developer as the proposed owner-insured of the Development Property (the "Commitment") together with copies of all documents referred to in the Commitment. The Developer agrees to take title to the Development Property subject only to the Permitted Encumbrances set forth in Exhibit B.

Section 3.8 Environmental Remediation. Neither the City nor the Authority makes any representations concerning nor shall have any responsibility or obligation to undertake any cleanup or remediation on the Development Property. Following delivery of the Deed, the Developer agrees to remediate any environmental contamination or pollution on the Development Property that may be required by law.

Section 3.9 Developer's Right to Inspect. The Developer is hereby granted the right to enter upon and inspect, analyze and test the Development Property for all reasonable purposes, including conducting soil tests. The Developer shall pay for the cost of all investigations of the Development Property which are ordered by Developer for purposes of conducting its own investigations of the Development Property. Developer hereby agrees to indemnify and hold the Authority and City harmless from any claims, damages, costs and liability, including without limitation reasonable attorneys' fees, resulting from entering upon the Development Property or the performing of the analysis, tests or inspections referred to in this section.

### ARTICLE III A FINANCING

Section 3A.1 Financing. Financing for the Construction Costs related to the development of the Minimum Improvements shall come from sources outside the City and Authority.

### ARTICLE IV CONSTRUCTION OF MINIMUM IMPROVEMENTS

Section 4.1 Design Drawings. The Developer has delivered to the Authority and obtained approval from the Authority of the Design Drawings for the Minimum Improvements, subject to the ability of the Authority staff to approve changes thereof which do not substantially change the site plan, elevations and the exterior materials. If such approval is not obtained then the Authority may terminate this Agreement.

Section 4.2 Construction Plans.

(a) The Developer will deliver the Construction Plans for the Minimum Improvements to the Authority at least thirty (30) days prior to the Closing Date. The Construction Plans shall be consistent with the Design Drawings. The Authority shall review the Construction Plans and deliver to the Developer a written statement approving the Construction Plans or a written statement rejecting the Construction Plans and specifying the deficiencies in the Construction Plans. The Authority shall approve the Construction Plans if:

- (i) the Construction Plans substantially conform to the terms and conditions of this Agreement;
- (ii) the Construction Plans are consistent with the goals and objectives of the Authority's applicable redevelopment plan;
- (iii) the Construction Plans comply with the Design Drawings; and
- (iv) the Construction Plans do not violate any applicable federal, State or local laws, ordinances, rules or regulations. If the Construction Plans are not approved by the Authority, then the Developer shall make such changes as the Authority may reasonably require.

(b) The approval of the Construction Plans, or any proposed amendment to the Construction Plans, by the Authority does not constitute a representation or warranty by the Authority that the Construction Plans or the Minimum Improvements comply with any applicable building code, health or safety regulation, zoning regulation, environmental law or other law or regulation, or that the Minimum Improvements will meet the qualifications for issuance of a certificate of occupancy, or that the Minimum Improvements will meet the requirements of the Developer or any other users of the Minimum Improvements. Approval of the Construction Plans, or any proposed amendment to the Construction Plans, by the Authority will not constitute a waiver of an Event of Default.

Section 4.3 Construction of Minimum Improvements. Subject to the terms and conditions of this Agreement, the Developer agrees to construct the Minimum Improvements on the Development Property in substantial conformance with the Design Drawings and approved Construction Plans for the Minimum Improvements and to pay

all Construction Costs. No changes shall be made to the Construction Plans for the Minimum Improvements without the Authority's Executive Director's prior written approval, unless the aggregate of such changes do not alter the total amount set forth in the sworn construction cost statement delivered pursuant to Section 3.5(c)(i) hereof by an increase or decrease of more than 10%. The Authority agrees that its approval will not be unreasonably withheld or delayed..

Section 4.4 Commencement and Completion of Construction. Subject to the terms and conditions of this Agreement, the Developer will commence construction of the Minimum Improvements promptly after the day of Closing and subject to Unavoidable Delays, the Developer shall cause the Minimum Improvements to be substantially completed on the assisted living facility (Phase I) by September 30, 2022 and on the commercial building (Phase II) by September 30, 2023. The Minimum Improvements will be constructed by the Developer in substantial conformity with the Construction Plans approved by the Authority. Prior to delivery of the Certificate of Completion to the Developer, upon the request of the Authority, the Developer will provide the Authority reasonable access to the Development Property. "Reasonable access" means at least one site inspection per week during regular business hours. During construction of the Minimum Improvements, the Developer will deliver progress reports to the Authority from time to time as mutually agreed upon by the Authority and the Developer.

Section 4.5 Compliance with Environmental Requirements. The Developer shall comply with all applicable local, State, and federal environmental laws and regulations, and will obtain, and maintain compliance under, any and all necessary environmental permits, licenses, approvals or reviews.

Section 4.6 Additional Responsibilities of the Developer.

(a) The Developer will construct and operate and maintain, or cause to be operated and maintained, the Minimum Improvements in substantial accordance with the terms of this Agreement, and all local, State, and Federal laws and regulations (including, but not limited to zoning, building code, public health laws and regulations, except for variances necessary to construct the Minimum Improvements contemplated in the Construction Plans approved by the Authority).

(b) The Developer will obtain, in a timely manner, all required permits, licenses, and approvals, and will meet, in a timely manner, all requirements of all applicable local, State, and federal laws and regulations, which must be obtained or met before the Minimum Improvements may be lawfully constructed.

(c) The Developer will not construct any building or other structures on, over, or within the boundary lines of any public utility easement unless such construction is provided for in such easement or has been approved by the utility involved.

(d) The Developer, at its own expense, will replace any public facilities and

public utilities damaged during the construction of the Minimum Improvements, in accordance with the technical specifications, standards and practices of the owner thereof.

(e) The Developer will comply with all applicable local, state and federal environmental laws and regulations, as they relate to the Minimum Improvements.

Section 4.7 Certificate of Completion and Release of Forfeiture. The Developer shall notify the Authority when construction of the Minimum Improvements has been substantially completed. The Authority shall promptly inspect the Minimum Improvements in order to determine whether the Minimum Improvements have been constructed in substantial conformity with the approved Construction Plans. If the Authority determines that the Minimum Improvements have not been constructed in substantial conformity with the approved Construction Plans, the Authority shall deliver a written statement to the Developer indicating in adequate detail the specific respects in which the Minimum Improvements have not been constructed in substantial conformity with the approved Construction Plans and Developer shall promptly remedy such deficiencies. Promptly upon determining that the Minimum Improvements have been constructed in substantial conformity with the approved Construction Plans, the Authority will furnish to the Developer a Certificate of Completion and Release of Forfeiture in the form attached hereto as Exhibit J certifying the completion of the Minimum Improvements. The Certificate of Completion and Release of Forfeiture issued for the Minimum Improvements shall conclusively satisfy and terminate the agreements and covenants of the Developer in this Agreement and the Deed to construct the Minimum Improvements. The Developer may cause the Certificate of Completion and Release of Forfeiture to be recorded in the proper office for recordation of deeds and other instruments pertaining to the Development Property.

## ARTICLE V ENCUMBRANCE OF THE DEVELOPMENT PROPERTY

Section 5.1 Encumbrance of the Development Property. Until the Completion Date, neither the Developer nor any successor in interest to the Developer will engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Development Property, or portion thereof, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Development Property except only on the Development Property and only for the purpose of obtaining funds only to the extent necessary for making the Minimum Improvements (including, but not limited to, land and building acquisition, labor and materials, professional fees, real estate taxes, construction interest, organization and other indirect costs of development, costs of constructing the Minimum Improvements, and an allowance for contingencies).

Section 5.2 Copy of Notice of Default to Mortgagee. If the Authority delivers any notice or demand to the Developer with respect to any Event of Default under this

Agreement, the Authority will also deliver a copy of such notice or demand to the mortgagee of any permitted mortgage at the address of such mortgagee provided to the Authority in a written notice from the Developer or the mortgagee; provided that failure to give notice to the mortgagee shall not be a condition precedent to the exercise of any remedy by the Authority and shall not effect the validity of the Authority's actions.

Section 5.3 Mortgagee's Option to Cure Events of Default. Upon the occurrence of an Event of Default, the mortgagee of any permitted mortgage will have the right, at its option, to cure or remedy such Event of Default.

Section 5.4 Defaults Under Mortgage. The Developer will use its best efforts to obtain an agreement from any mortgagee under a permitted mortgage, but failure to do so shall not constitute an Event of Default hereunder that, in the event the Developer is in default under any mortgage the mortgagee, within ten (10) days after it becomes aware of any default and prior to exercising any remedy available to it due to such default, will notify the Authority in writing of (i) the fact of default; (ii) the elements of default; and (iii) the actions required to cure the default. If, within the time period required by the mortgage, the Authority cures any default under the mortgage, the mortgagee will pursue none of its remedies under the mortgage based on such default.

## ARTICLE VI REAL PROPERTY TAXES AND ASSESSMENTS

Section 6.1 Real Property Taxes and Assessments. Any real estate taxes and assessments payable with respect to the Development Property in the year of the Closing shall be prorated to the Closing Date by the Developer and the Authority. The Developer shall pay all real estate taxes and assessments due and payable with respect to the Development Property in the year following the year in which the Development Property is conveyed or otherwise transferred to the Developer and each year thereafter.

## ARTICLE VII INSURANCE AND CONDEMNATION

Section 7.1 Insurance.

(a) Subject to the terms of any permitted mortgage, the Developer will obtain and continuously maintain insurance on the Development Property during the term of this Agreement and, from time to time at the request of the Authority, furnish proof to the Authority that the premiums for such insurance have been paid and the insurance is in effect. The insurance coverage described below is the minimum insurance coverage that the Developer must obtain and continuously maintain, provided that the Developer must obtain the insurance described in clause (i) below prior to the commencement of construction of the Minimum Improvements:

- (i) Builder's risk insurance, written on the so-called "Builder's Risk-

Completed Value Basis,” in an amount equal to one hundred percent (100%) of the insurable value of the Minimum Improvements at the date of completion, and with coverage available in non-reporting form on the so-called “all risk” form of policy.

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

(iii) Workers compensation insurance, with statutory coverage.

(b) Subject to the terms of any permitted mortgage, all insurance required in this Article shall be obtained and continuously maintained in responsible insurance companies selected by the Developer or its successor that are authorized under the laws of the State to assume the risks covered by such policies. The Developer shall deposit annually with the Authority a certificate or certificates or binders of the respective insurers stating that such insurance is in force and effect. Unless otherwise provided in this Article, each policy must contain a provision that the insurer will not cancel nor modify the policy without giving written notice to the insured and the Authority before the cancellation or modification becomes effective. Not less than fifteen (15) days prior to the expiration of any policy, the Developer or its successor must furnish the Authority evidence satisfactory to the Authority that the policy has been renewed or replaced by another policy conforming to the provisions of this Article, or that there is no necessity for the policy under the terms of this Agreement. In lieu of separate policies, the Developer or its successor may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein, in which event the Developer or its successor will deposit with the Authority a certificate or certificates of the respective insurers as to the amount of coverage in force.

(c) The Developer agrees to notify the Authority promptly in the case of damage to, or destruction of, the Minimum Improvements or any portion thereof resulting from fire or other casualty. Unless the terms of any permitted mortgage require otherwise, if any such damage does not exceed \$100,000, the Developer will forthwith repair, reconstruct and restore the Minimum 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 Developer or its successor will apply the net proceeds of any insurance relating to such damage received by the Developer or its successor to the payment or reimbursement of the costs thereof.

In the event the Minimum Improvements or any portion thereof is destroyed by fire or other casualty prior to the Completion Date, and the damage or destruction is estimated to equal or exceed \$100,000, then provided the insurance

proceeds have been received by the Developer, the Developer, within one hundred fifty (150) days after such damage or destruction, subject to the terms of any Mortgage, will proceed forthwith to repair, reconstruct and restore the damaged Minimum Improvements to substantially the same condition or utility value as it existed prior to the event causing such damage or destruction and, to the extent necessary to accomplish such repair, reconstruction and restoration, the Developer will apply the net proceeds of any insurance relating to such damage or destruction received by the Developer to the payment or reimbursement of the costs thereof. Developer shall pay the entire cost of repair, reconstruction and restoration if the net proceeds of the insurance are insufficient.

Section 7.2 Condemnation. Subject to the terms of any permitted mortgage, if title to and/or possession of the Development Property and Minimum Improvements, or any material part thereof, is threatened with a taking through the exercise of the power of eminent domain, the Developer will notify the Authority of the threatened taking with reasonable promptness.

## ARTICLE VIII DEVELOPER COVENANTS/CONTRACT REQUIREMENTS

Section 8.1 Maintenance and Operation of the Minimum Improvements. Developer will at all times during the term of this Agreement, maintain and operate the Minimum Improvements in a safe and secure way and in compliance with this Agreement and all Federal, State and local laws, regulations, rulings and ordinances applicable thereto. Developer shall pay all of the reasonable and necessary expenses of the operation and maintenance of the Minimum Improvements, including all premiums for insurance insuring against loss or damage thereto and insurance against liability for injury to persons or property arising from the Minimum Improvements as required pursuant to this Agreement. Developer shall not knowingly cause any person working in or attending the Minimum Improvements for any purpose, or any tenant of the Minimum Improvements, to be exposed to any hazardous or unsafe condition; provided that Developer shall not be in default hereunder if it has required the contractors employed by Developer to perform work on the Minimum Improvements to take such precautions as may be available to protect the persons in and around the Minimum Improvements from hazards arising from the work, and has further required each such contractor to obtain and maintain liability insurance protecting against liability to persons for injury arising from the work. The expenses of operation and maintenance of the Minimum Improvements shall be borne solely by Developer.

Section 8.2 Employment, Contracting and Wage Requirements. With respect to the construction of the Minimum Improvements, and as to Affirmative Action for a period of two (2) years thereafter, the Developer agrees to comply with the following requirements:

(a) Affirmative Action/Equal Opportunity Program. Developer agrees to be bound by and comply with and to cause its contractors and subcontractors to comply with the requirements of Section 183.04 of the Saint Paul Legislative Code and the Rules

Governing Affirmative Requirements in Employment adopted by the Saint Paul Human Rights Commission. Developer, its contractors, and affected subcontractors shall meet the requirements of this subsection by compliance with the statement of affirmative action/equal opportunity requirements attached hereto as Exhibit K and incorporated herein.

(b) Vendor Outreach Program. With respect to the Development, Developer agrees to comply with and shall cause its contractors and subcontractors to comply with the City's Vendor Outreach Program as required by Chapter 84 of the St. Paul Administrative Code. In entering into contracts and subcontracts for the Project, and this includes all soft costs, professional services, hard construction costs and other Project costs, Developer and its contractors and subcontractors shall meet the requirements set forth in Exhibit L attached hereto and incorporated herein.

(c) Pre Bid and Preconstruction Compliance Conferences. Developer, its contractors and all subcontractors shall attend a pre-bid and preconstruction compliance conference conducted by the Authority staff. These conferences are held for the benefit and information of all participating contractors and attendance is required. Each area of compliance is reviewed by the appropriate Authority staff member and forms are distributed for documentation and reporting. Authority staff will explain the documentation at this time and will provide on-going technical assistance in an effort to keep the report requirements up to date. Any subcontractors identified after the initial conferences shall arrange to attend a subsequent conference unless such attendance is waived by the Authority.

(d) Contract Documents. Developer shall incorporate in all construction contracts for the Minimum Improvements to which it is a party the requirements of this Section and to cause its contractor or subcontractors for the Minimum Improvements to incorporate the requirements of this Section in all subcontracts, including contracts for purchase of materials, for the Minimum Improvements.

(e) LCPtracker. This Agreement is subject to contract compliance tracking, and the Developer, general/prime contractor and any subcontractors are required to provide any noted and/or requested contract compliance-related data electronically using the LCPtracker system. The Developer, general/prime contractor and all subcontractors are responsible for responding by any noted response date or due date to any instructions or request for information and for checking the LCPtracker system on a regular basis to manage contact information and contract records. The Developer is responsible for ensuring all general/prime contractors, and subcontractors have completed all requested items and that their contact information is accurate and up-to-date. The Authority may require additional information related to the contract to be provided electronically through the LCPtracker system at any time before, during, or after execution of this Agreement. Information related to contractor access of the LCPtracker system will be

provided to a designated point of contact with each Developer, general/prime contractor and any subcontractors upon execution of this Agreement. The LCPtracker system is web-based and can be accessed at the City's Internet address.

Section 8.3 Timeline for Performance. The Authority and the Developer agree that the Developer's activities set forth on the Timeline shall be completed not later than the dates set forth within the Timeline.

Section 8.4 Cost Overruns. The Developer agrees to pay any cost overruns in excess of those in the budget of the Sources and Uses.

Section 8.5 Signage - Credit, Acknowledgments and Notices, Publicity. If construction signage is used for the Development, the Developer shall, prior to the commencement of construction, at its own expense, erect a sign of reasonable size in a prominent position on the Development indicating to the general public the name of the Development and acknowledging the participation of the City and the Authority. The design of any signage shall comply with the sign specifications and the requirements that can be obtained by the Authority. The Developer shall also give reasonable notice to the Authority of groundbreaking, opening ceremonies and like events so the Authority may obtain publicity of and participation in such events. The Developer agrees to assist and cooperate in and with such publicity and participation. The Developer further agrees that the Authority shall also have the right to issue press releases concerning the Development.

Section 8.6 Project Description. The Developer agrees to construct the Development as described in the Project Description, Exhibit C.

Section 8.7 Union Labor. The Developer agrees to use its best efforts to hire and utilize union labor in the construction of the Minimum Improvements.

## ARTICLE IX TRANSFER LIMITATIONS AND INDEMNIFICATION

Section 9.1 Representation as to Development. The Developer represents to the Authority that its purchase of the Development Property, and its other undertakings under this Agreement, are for the purpose of constructing retail grocery store, and not for the purpose of speculation in land holding. The Developer acknowledges that, in view of the importance of the development of the Development Property to the general welfare of the Authority and the City, the qualifications and identity of the Developer are of particular concern to the Authority. The Developer further acknowledges that the Authority is willing to enter into this Agreement with the Developer because of the qualifications and identity of the Developer.

Section 9.2 Limitations on Transfer. The Authority acknowledges and agrees that the

Developer may sell, assign, mortgage or encumber, convey or transfer in any other mode or manner, all or a portion of this Agreement, the Development Property or the Minimum Improvements to a lender providing financing for the Minimum Improvements.

Except as provided above and in Section 5.1, until the Authority has delivered the Certificate of Completion to the Developer, the Developer will not sell, assign, convey, lease or transfer in any other mode or manner this Agreement, the Development Property or the Minimum Improvements, or any interest therein, without the express written approval of the Authority. The Authority shall be entitled to require, as conditions to any approval of any sale, assignment, conveyance, use or transfer of this Development Agreement or the Minimum Improvements that:

- (a) Any proposed transferee shall have the qualifications and financial responsibility, as determined by the Authority, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer;
- (b) Any proposed transferee, by instrument in writing satisfactory to the Authority and the City and in form recordable among the land records shall, for itself and its successors and assigns, and expressly for the benefit of the City and Authority have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject;
- (c) There shall be submitted to the Authority for review all instruments and other legal documents involved in effecting transfer, and if approved by Authority, its approval shall be indicated to the Developer in writing;
- (d) The Developer and its transferee shall comply with such other conditions as the Authority may find desirable in order to achieve and safeguard the purposes of the Act and the Developer Documents; and
- (e) In the absence of specific written agreement by the Authority and the City to the contrary, no such transfer or approval by the Authority and the City thereof shall be deemed to relieve the Developer or any other party bound in any way by this Agreement or otherwise with respect to the construction of the Minimum Improvements, from any of its obligations with respect thereto.

### Section 9.3 Indemnification.

- (a) The Developer releases from and covenants and agrees that the Authority and the City, their governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the “Indemnified Parties”) shall not be liable for and agrees to indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or

resulting from any defect in the Development, the construction of the Minimum Improvements and any Hazardous Substances on or in the vicinity of the Development Property.

(b) The Developer agrees to indemnify the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claims, demands, suits, costs, expenses (including reasonable attorneys' fees) actions or other proceedings whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Developer (or if other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Development; except when such claims, demands, suits, costs, expenses, action, or proceedings are the direct result of the intentional misconduct of the Authority and provided that this indemnification shall not apply to the warranties made or obligations undertaken by the Authority or City under this Agreement.

(c) The Authority makes no warranties or representations regarding, nor does it indemnify the Developer with respect to, the existence or nonexistence on or in the vicinity of the Development Property of any toxic or hazardous substances or wastes, pollutants or contaminants (including, without limitation, asbestos, urea formaldehyde, the group of organic compounds known as polychlorinated biphenyls, petroleum products including gasoline, fuel oil, crude oil and various constituents of such products, or any hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. "961-9657, as amended) (collectively, the "Hazardous Substances"). The foregoing disclaimer relates to any Hazardous Substance allegedly generated, treated, stored, released or disposed of, or otherwise placed, deposited in or located on or in the vicinity of the Development Property, as well as any activity claimed to have been undertaken on or in the vicinity of the Development Property that would cause or contribute to causing (1) the Development Property to become a treatment, storage or disposal facility within the meaning of, or otherwise bring the Development Property within the ambit of, the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. '691 *et seq.*, or any similar state law or local ordinance, (2) a release or threatened release of toxic or hazardous wastes or substances, pollutants or contaminants, from the Development Property within the meaning of, or otherwise bring any Development Property within the ambit of, CERCLA, or any similar state law or local ordinance, or (3) the discharge of pollutants or effluents into any water source or system, the dredging or filling of any waters or the discharge into the air of any emissions, that would require a permit under the Federal Water Pollution Control Act, 33 U.S.C. '1251 *et seq.*, or any similar state law or local ordinance. Further, the Authority makes no warranties or representations regarding, nor does the Authority indemnify the Developer with respect to, the existence or nonexistence on or in the vicinity of the Development Project of any substances or conditions in or on the Development Property that may support a claim or cause of action under RCRA, CERCLA or any other federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements, including

without limitation, the Minnesota Environmental Response and Liability Act, Minnesota Statutes, Chapter 115C. The Authority makes no representations or warranties regarding the existence of any above ground or underground tanks in or about the Development Property, or whether any above or underground tanks have been located under, in or about the Development Property and have subsequently been removed or filled.

(d) The Developer waives any claims against the Authority and the City, and their respective members and boards, for indemnification, contribution, reimbursement or other payments arising under federal and state law and the common law or relating to the environmental condition of the land comprising the Development Property except where such claims are the result of the intentional misconduct of the Authority.

Section 9.4 Limitation. All covenants, stipulations, promises, agreements and obligations of the Authority, the City or the Developer contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Authority, the City or the Developer, respectively, and not of any governing body member, officer, agent, servant or employee of the Authority, the City or the Developer in the individual capacity thereof.

## ARTICLE X EVENTS OF DEFAULT AND DAMAGES

Section 10.1 Events of Default Defined. Subject to applicable cure periods, the following shall be “Events of Default” under this Agreement and the term “Event of Default” shall mean whenever it is used in this Agreement any one or more of the following events:

Section 10.2 Developer Events of Default. The following shall be Developer Events of Default:

(a) The Developer fails to comply with the terms of any applicable statute, law or regulation in the construction of the Minimum Improvements;

(b) The Developer fails to close on the acquisition of the Development Property in accordance with the provisions of Section 3.5 hereof;

(c) Subject to Unavoidable Delays, the Developer shall fail to begin construction of the Minimum Improvements promptly following the day of closing and, to proceed with due diligence to complete the Minimum Improvements on the assisted living facility (Phase I) by September 30, 2022 and on the commercial building (Phase II) by September 30, 2023, all in conformity with this Agreement, and such failure to begin, or proceed with due diligence to complete, the construction of the Minimum Improvements shall not be cured within 30 days after written notice to do so. Notwithstanding the foregoing, if the default reasonably requires more than thirty (30) days to cure, such default shall not constitute an Event of Default, provided that the

curing of the default is promptly commenced upon receipt by the Developer of the notice of the default, and with due diligence is thereafter continuously prosecuted to completion and is completed within a reasonable period of time, and provided that Developer keeps the Authority well informed at all times of its progress in curing the default; provided in no event shall such additional cure period extend beyond 180 days;

(d) subject to Unavoidable Delays, the Developer shall default in or violate its obligations with respect to the construction of the Minimum Improvements (including the nature and the date for the completion thereof), or shall abandon or substantially suspend construction work, and any such default, violation, abandonment or suspension is not cured, ended or remedied within 30 days after written demand by the Authority so to do. Notwithstanding the foregoing, if the default reasonably requires more than thirty (30) days to cure, such default shall not constitute an Event of Default, provided that the curing of the default is promptly commenced upon receipt by the Developer of the notice of the default, and with due diligence is thereafter continuously prosecuted to completion and is completed within a reasonable period of time, and provided that Developer keeps the Authority well informed at all times of its progress in curing the default; provided in no event shall such additional cure period extend beyond 180 days;

(e) there is, in violation of this Agreement, any conveyance or other transfer of the Development Property or any part thereof, and such violation is not cured within 30 days after written demand by the Authority to the Developer;

(f) subject to Unavoidable Delays, failure by Developer to observe or perform any other material covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement, and the continuation of such failure for a period of thirty (30) days after written notice of such failure from the Authority. Notwithstanding the foregoing, if the default reasonably requires more than thirty (30) days to cure, such default shall not constitute an Event of Default, provided that the curing of the default is promptly commenced upon receipt by the Developer of the notice of the default, and with due diligence is thereafter continuously prosecuted to completion and is completed within a reasonable period of time, and provided that Developer keeps the Authority well informed at all times of its progress in curing the default; provided in no event shall such additional cure period extend beyond 120 days; or

(g) the Developer shall (i) file any petition in bankruptcy or for any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the United States Bankruptcy Act of 1978, as amended or under any similar Federal or State law; or (ii) make an assignment for the benefit of its creditors; or (iii) become insolvent or adjudicated a bankrupt; or if a petition or answer proposing the adjudication of Developer, as a bankrupt or its reorganization under any present or future Federal bankruptcy act or any similar Federal or State law shall be filed in any court and such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof; or a receiver, trustee or liquidator of Developer, or of the Development, or part thereof, shall be appointed in any proceeding brought against Developer, and shall

not be discharged within ninety (90) days after such appointed, or if Developer shall consent to or acquiesce in such appointment.

Section 10.3 Authority Events of Default. Subject to Unavoidable Delays, the failure of the Authority to observe or perform any material covenant, representation, warranty, condition, obligation or agreement on its part to be observed or performed under this Agreement, and the continuation of such failure for a period of thirty (30) days after written notice of such failure from the Developer shall be an Event of Default for the Authority. Notwithstanding the foregoing, if the default reasonably requires more than thirty (30) days to cure, such default shall not constitute an Event of Default, provided that the curing of the default is promptly commenced upon receipt by the Authority of the notice of the default, and with due diligence is thereafter continuously prosecuted to completion and is completed within a reasonable period of time, and provided that the Authority keeps the Developer well informed at all times of its progress in curing the default; provided in no event shall such additional cure period extend beyond 120 days.

Section 10.4 Authority Remedies on Default. Whenever any Developer Event of Default occurs, the Authority may take any one or more of the following actions:

- (a) Suspend performance under this Agreement until it receives assurances from the Developer, deemed adequate by the Authority, that the Developer will cure its default and continue its performance under this Agreement.
- (b) Withhold the Certificate of Completion for the Minimum Improvements.
- (c) The Authority may cancel and terminate the Agreement and terminate the Developer's rights to acquire the Development Property pursuant to Minnesota Statutes, Section 559.21.
- (d) Take whatever action at law or in equity may appear necessary or desirable to the Authority or City to collect any payments due under this Agreement, or to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement or to recover damages.
- (e) Exercise Authority's right to revest title to the Authority as set forth in Section 10.5 below.

Section 10.5 Re-vesting Title in the Authority. If, subsequent to conveyance of the Development Property to the Developer, and before issuance of the Certificate of Completion and Release of Forfeiture pursuant to Section 4.7, a Developer Event of Default occurs and is not cured within the cure period allowed, then the Authority shall have the right to re-enter and take possession of the Development Property and to terminate and re-vest in the Authority the estate conveyed by the Deed to the Developer, and the Authority has the right to record or file the Limited Warranty Deed to be provided to the Authority by the Developer at Closing. The Developer agrees that

complete and unconditional delivery of the Limited Warranty Deed shall have been accomplished upon the recording or filing thereof free of any claim to title or interest therein by Developer. It is the intent of this Agreement that the conveyance or transfer of the Development Property to the Developer shall be conditioned on the Developer's performance hereunder, and that upon the occurrence of an Event of Default by the Developer, and the filing or recording of the Limited Warranty Deed, all the rights and interest in and to the Development Property conveyed to the Developer, and that all rights and interests of the Developer, and any assigns or successors in interest to and in the Development Property shall revert to the Authority. If no Developer Event of Default has occurred hereunder, then the Authority shall return the Limited Warranty Deed to Developer concurrently with the delivery of the Certificate of Completion and Release of Forfeiture pursuant to Section 4.7. The Authority agrees to subordinate this right of re-vesting to the lien of the first mortgage against the Development Property.

Section 10.6 Developer Limited Remedies on Default. Whenever any Event of Default occurs by the Authority, the Developer has the limited right to take whatever action at law or in equity may appear necessary or desirable to the Developer to enforce performance and observance of any obligation, agreement, representation, warranty, or covenant of the Authority under this Agreement. The Developer has no right to any monetary damages, including without limitation consequential or incidental damages, against the Authority

Section 10.7 No Remedy of Authority Exclusive. No remedy herein conferred upon or reserved to the Authority or City is intended to be exclusive of any other available remedy or remedies unless otherwise expressly stated, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or 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 Agreement.

Section 10.8 No Additional Waiver Implied by One Waiver. If 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.

Section 10.9 Reimbursement of Attorneys' Fees. If the Developer shall default under any of the provisions of this Agreement, and the Authority shall employ attorneys or incur other reasonable expenses for the collection of payments due hereunder, or for the enforcement of performance or observance of any obligation or agreement on the part of either party contained in this Agreement, the Authority in such action or enforcement shall be entitled to payment of its reasonable attorneys' fees and costs incurred therein.

ARTICLE XI  
ADDITIONAL PROVISIONS

Section 11.1 Conflicts of Interest. No member of the Board or other official of the Authority shall have any financial interest, direct or indirect, in this Agreement, the Development Property or the Minimum Improvements, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the Authority shall be personally liable to the Authority in the event of any default or breach by Developer or successor or on any obligations under the terms of this Agreement.

Section 11.2 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 11.3 Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered three (3) days after if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, to the addresses below:

(a) Developer:  
Frogtown Meadows, LLC.

Saint Paul, MN 55

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Authority:

Housing and Redevelopment Authority of the  
City of Saint Paul, Minnesota  
1300 City Hall Annex  
25 West Fourth Street  
Saint Paul, Minnesota 55102  
Attention: Executive Director

With a copy to:

Assistant City Attorney  
400 City Hall  
15 West Kellogg Boulevard  
St. Paul, MN 55102  
Attention: HRA Attorney

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

Section 11.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 11.5 Law Governing. This Agreement will be governed and construed in accordance with the laws of the State of Minnesota.

Section 11.6 Legal Opinions. Upon execution of this Agreement, each party shall, upon request of the other party, supply the other party with an opinion of its legal counsel to the effect that this Agreement is legally issued or executed by, and valid and binding upon, such party, and enforceable in accordance with its terms, subject to customary qualifications and assumptions.

Section 11.7 Consents and Approvals. In all cases where consents or approvals are required hereunder, such consents or approvals shall not be unreasonably conditioned, delayed or withheld. All consents or approvals shall be in writing in order to be effective.

Section 11.8 Representatives. Except as otherwise provided herein, all approvals and other actions required of or taken by the Authority shall be effective upon action by the Authority Representative, and all actions required of or taken by Developer shall be effective upon action by the Developer's Representative.

Section 11.9 Superseding Effect. This Agreement reflects the entire agreement of the parties with respect to the development of the Development, and supersedes in all respects all prior agreements of the parties, whether written or otherwise, with respect to the Development.

Section 11.10 Relationship of Parties. Nothing in this Agreement is intended, or shall be construed, to create a partnership or joint venture between the parties hereto, and the rights and remedies of the parties hereto shall be strictly as set forth in this Agreement.

Section 11.11 Term; Termination. Except otherwise provided in Section 11.14 of this Agreement, the term of this Agreement shall be effective from the day and year first above written and shall continue in effect until the entire completion of the Minimum Improvements as determined under Section 4.7 and then shall automatically cease and terminate. Provided that if the Closing has not occurred within twelve months following by the Effective Date unless extended as herein provided, then this Agreement shall

automatically terminate and neither party shall have any further obligations or duties hereunder except as provided in Section 11.14 of this Agreement.

Section 11.12 Mediation. All claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof, shall be referred to non-binding mediation before, and as a condition precedent to, the initiation of any legal action hereof, provided for herein. Each party agrees to participate in up to two hours of mediation. The mediator shall be selected by the parties, or if the parties are unable to agree on a mediator then any party can request the administrator of the Ramsey County District Court Civil ADR Program and/or similar person, to select a person from its list of qualified neutrals. The mediation shall be attended by employees or agents of each party having authority to settle the dispute. All expenses related to the mediation shall be borne by each party, including without limitation, the costs of any experts or legal counsel. All applicable statutes of limitations and all defenses based on the passage of time are tolled while the mediation procedures are pending, and for a period of 30 days thereafter.

Section 11.13 Venue. All matters, whether sounding in tort or in contract, relating to the validity, construction, performance, or enforcement of this Agreement shall be controlled by and determined in accordance with the laws of the State of Minnesota, and the Developer agrees that all legal actions initiated by the Developer or Authority with respect to or arising from any provision contained in this Agreement shall be initiated, filed and venued exclusively in the State of Minnesota, Ramsey County, District Court and shall not be removed therefrom to any other federal or state court.

Section 11.14 Provisions Surviving Rescission or Expiration. Sections 3.9, 9.3, 10.5 and 10.9 and any other indemnification provision given by Developer to the Authority shall survive any rescission, termination or expiration of this Agreement with respect to or arising out of any event, occurrence or circumstance existing prior to the date thereof.

Section 11.15 No Third Party Benefit. Other than as explicitly stated in this agreement, the obligations, covenants, representations, and agreements of Developer hereunder are for the exclusive benefit of the Authority and shall not be construed to create rights or convey benefits to any other third party not a party to this Agreement.

Section 11.16 Data Practices Act. Developer acknowledge that all of the data created, collected, received, stored, used, maintained or disseminated by Developer with regard to the performance of its duties under this Agreement are subject to the requirements of Chapter 13, Minnesota Statutes (commonly known as the "Minnesota Governmental Data Practices Act") (the "Act").

**IN WITNESS WHEREOF**, the Authority and Developer have caused this Agreement to be duly executed in their names and on their behalf, all on or as of the date first above written.

**DEVELOPER:**

Frogtown Meadows, LLC.  
a Minnesota corporation

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

Its: \_\_\_\_\_

**AUTHORITY:**

Housing and redevelopment Authority of the  
City of Saint Paul, Minnesota

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

Its: Chair or Commissioner

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

Its: Executive Director

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

Its: Director, Office of Financial Services

Approved as to form:

\_\_\_\_\_  
Assistant City Attorney

**Exhibit A**  
**Legal Description of Development Property**

All that certain parcel or parcels of land in the City of Saint Paul, County of Ramsey, State of Minnesota, more particularly described as:

*[insert legal description]*

DRAFT

**Exhibit B**  
**Permitted Encumbrances**

DRAFT

**Exhibit C**  
**Project Description**

The construction of an approximately 50-unit assisted living facility and separate two-story commercial building consistent with the Design Drawings and Construction Plans.

Total Development Costs:                      \$                     

DRAFT

**Exhibit D**  
**Project Boundary Map**

(Survey)

DRAFT

**Exhibit E**  
**Timeline**

Closing on sale of land and construction financing \_\_\_\_\_, 201\_

Commencement of construction \_\_\_\_\_, 201\_

Completion of construction \_\_\_\_\_, 201\_

**Exhibit F**  
**Sources and Uses**

**SOURCES**

[insert]

**USES**

[insert]

DRAFT

**Exhibit G**  
**Design Drawings**

DRAFT

**Exhibit H**  
**Quit Claim Deed**

QUIT CLAIM DEED

Corporation Partnership or Limited Liability Company to Corporation, Partnership or Limited Liability Company	
No delinquent taxes and transfer entered; Certificate of Real Estate Value (    ) filed (    ) not required Certificate of Real Estate Value No.  County Auditor  by  Deputy	
STATE DEED TAX DUE HEREON: \$  Date: _____, 2018	
	(Reserved for recording data)

FOR VALUABLE CONSIDERATION, the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota a public body corporate and politic (the “Grantor”) hereby conveys and quitclaims to Paster Properties, LLC, a corporation organized under the laws of the State of Minnesota, the real property in Ramsey County, Minnesota, described as follows:

*(Insert Legal Description)*

together with all hereditaments and appurtenances belonging thereto.

Grantor’s delivery of this Deed and conveyance of title, and Grantee’s acceptance of this Deed and title to the Property, are expressly subject to: (1) the terms and conditions and the rights of

the Grantor and the obligations of the Grantee under that certain Development Agreement by and between Grantor, and Grantee dated \_\_\_\_\_, 2018 (the "Development Agreement"), including without limitation the forfeiture provisions of Section 10.5; (2) minerals and mineral rights reserved by the State of Minnesota; and (3) real estate taxes and special assessments due and payable in 2016 and subsequent years, and (4) applicable zoning laws, ordinances and all other local, state, regional and federal laws and regulations. Promptly after the conditions set forth in the Development Agreement have been satisfied, the Grantor will furnish the Grantee with a Certificate of Completion and Release of Forfeiture.

In the event that, prior to the execution and delivery of the Certificate of Completion and Release of Forfeiture, the Grantee herein shall default under Section 10.2 of the Development Agreement and fail to cure such default within the period and in the manner stated in Section 10.2, then the Grantor shall have the right to re-enter and take possession of the Property and to terminate and revert in the Grantor the estate conveyed by this Deed to the Grantee, its assigns or successors in interest, in accordance with the terms of the Development Agreement.

It is intended and agreed that the above and foregoing agreement and covenants shall be covenants running with the land, and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Deed, be binding, to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by, the Grantor, its successors and assigns, and any successor in interest to the Property, or any part thereof against the Grantee, its successors and assigns, and every successor in interest to the Property, or any part thereof or any interest therein, and any party in possession or occupancy of the Property or any part thereof.

The Grantor does not know of any wells located on the Property.

HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF SAINT PAUL,  
MINNESOTA

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

[illegible]

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_, by \_\_\_\_\_, the Chair of the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota, a public body corporate and politic, on behalf of said body.

NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK)	SIGNATURE OF PERSON TAKING ACKNOWLEDGMENT  _____  Tax statements for the real property described in this instrument should be sent to (include name and address of Grantee)
THIS INSTRUMENT WAS DRAFTED BY: Office of the City Attorney 400 City Hall 15 West Kellogg Boulevard Saint Paul, Minnesota 55102	Frogtown Meadows, LLC

**Exhibit I**  
**Limited Warranty Deed**

LIMITED WARRANTY DEED

Corporation Partnership or Limited Liability Company to Corporation, Partnership or Limited Liability Company	
No delinquent taxes and transfer entered; Certificate of Real Estate Value (    ) filed (    ) not required Certificate of Real Estate Value No.  County Auditor  by  Deputy	
STATE DEED TAX DUE HEREON: \$  Date: _____, 201_	
	(Reserved for recording data)

FOR VALUABLE CONSIDERATION, Paster Properties, LLC, a corporation organized under the laws of the State of Minnesota (the “Grantor”) hereby conveys, warrants and transfers to the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota a public body corporate and politic (the “Grantee”), the real property in Ramsey County, Minnesota, described as follows:

*(Insert Legal Descriptions)*

together with all hereditaments and appurtenances belonging thereto. This conveyance includes after acquired property.

Grantor’s delivery of this Deed and conveyance of title, and Grantee’s acceptance of this Deed and title to the Property, are expressly subject to: (1) minerals and mineral rights reserved by the State of Minnesota; and (2) real estate taxes and special assessments due and payable in 2016 and subsequent years, and (3) applicable zoning laws, ordinances and all other local, state, regional and federal laws and regulations.

Grantor warrants that Grantor has not done or suffered anything to encumber the Property, and warrants the title to the Property from all claims and liens EXCEPT: \_\_\_\_\_ [insert permitted encumbrances]

The Grantor does not know of any wells located on the Property.

Frogtown Meadows, LLC

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

STATE OF MINNESOTA    )  
  ) ss.  
COUNTY OF RAMSEY    )

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_, by \_\_\_\_\_, the \_\_\_\_\_ of Frogtown Meadows, LLC, a Minnesota corporation, on behalf of the corporation.

\_\_\_\_\_  
NOTARIAL STAMP OR SEAL (OR OTHER TITLE OR RANK) SIGNATURE OF PERSON  
TAKING ACKNOWLEDGMENT

Tax statements for the real property described in this instrument should be sent to :

Housing and Redevelopment Authority of the City of Saint Paul, Minnesota  
25 West 4<sup>th</sup> Street  
Suite 1300  
St Paul, Mn 55102

THIS INSTRUMENT WAS DRAFTED BY:  
Office of the City Attorney  
400 City Hall  
15 West Kellogg Boulevard  
Saint Paul, Minnesota 55102

DRAFT

**Exhibit J**  
**Certification of Completion and Release of Forfeiture**

**CERTIFICATE OF COMPLETION**  
**OF IMPROVEMENTS**

THIS CERTIFICATE, made this \_\_\_\_ day of \_\_\_\_\_, 201\_\_ between the HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF SAINT PAUL, MINNESOTA, a public body corporate and politic, organized and existing under the laws of the State of Minnesota (the “HRA”), and Frogtown Meadows, LLC, a Minnesota corporation (the “Redeveloper”).

WHEREAS, the HRA entered into a Development Agreement (the “Contract”), dated \_\_\_\_\_, 2018, with the Redeveloper for the purchase of the herein described lands setting forth the terms, conditions and restrictions upon which said land was conditioned, which Contract is on file and available for public inspection in the office of the Department of Planning and Economic Development, City Hall Annex, 25 West Fourth Street, St. Paul, Minnesota; and

WHEREAS, by a Quit-Claim Deed dated \_\_\_\_\_, 201\_, and filed on \_\_\_\_\_ as Document No. \_\_\_\_\_ the HRA did convey the following described property to the Redeveloper subject to the covenants in the above-referred to Contract:

*[insert legal description]*

NOW THEREFORE, the HRA does hereby certify that the Redeveloper has satisfactorily completed all Improvements and terms and conditions as recited in the above-referred-to Contract, and has no further obligation to the HRA under said Contract, except:

1. To satisfy the non-discrimination clause contained in the Deed above referred to.

The HRA does now, therefore, release all its reversionary rights to said property, and has, as of the date and year first above written, set its hand and seal hereon.

HOUSING AND REDEVELOPMENT AUTHORITY  
OF THE CITY OF SAINT PAUL, MINNESOTA

By \_\_\_\_\_

Its      Executive Director

STATE OF MINNESOTA    )  
  ) ss  
COUNTY OF RAMSEY    )

On this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, before me a Notary Public within and for said County, personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that she/he is the Executive Director of the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota, the corporation named in the foregoing instrument, , and said instrument was signed in behalf of said corporation by authority of its Board of Commissioners, and said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said corporation.

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

THIS INSTRUMENT WAS DRAFTED BY:  
OFFICE OF THE CITY ATTORNEY  
15 WEST KELLOGG BOULEVARD  
400 CITY HALL  
ST. PAUL, MINNESOTA 55102

**Exhibit K**  
**Affirmative Action Requirements**

DRAFT

**Exhibit L**  
**Vendor Outreach Program**

DRAFT