

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

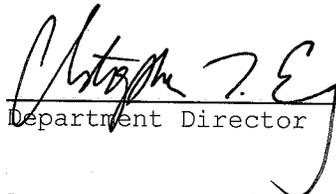
13-0110R

RESOLUTION APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE  
DULUTH ECONOMIC DEVELOPMENT AUTHORITY AND RAMSEY IV, LLC  
RELATING TO THE RAMSEY NEIGHBORHOOD TOWNHOME DEVELOPMENT

CITY PROPOSAL:

RESOLVED, that the city council of the city of Duluth does hereby approve the development agreement on file in the office of the city clerk as Public Document No. \_\_\_\_\_, between the Duluth economic development authority (DEDA) and Ramsey IV, LLC, related to the Ramsey Neighborhood Townhome Development in an amount not to exceed \$480,000.

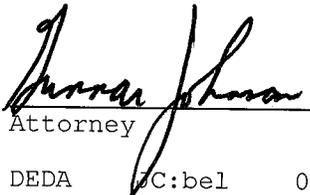
Approved:

  
Department Director

Approved for presentation to council:

  
Chief Administrative Officer

Approved as to form:

  
Attorney

Approved:

  
Auditor

DEDA JC:bel 02/25/2013

STATEMENT OF PURPOSE: The purpose of this resolution is to obtain the City Council's approval of the Development Agreement between DEDA and Ramsey IV, LLC ("Developer") as is required pursuant to Paragraph 19 of the amended DEDA Enabling Legislation, Resolution 09-0324. DEDA approved the Agreement at its February 27, 2013 meeting.

The Developer will be constructing twelve townhome units in the Ramsey neighborhood in West Duluth. DEDA will be providing an amount not to exceed \$480,000 payable from TIF District 3 funds to assist with TIF eligible expenses related to the redevelopment and new construction project known as Ramsey IV Townhomes. The site is at the intersection of Ramsey Street and N 54<sup>th</sup> Avenue West and is now occupied by a funeral home. The developer has

secured an option to purchase the funeral home site and is proposing to demolish it in order to redevelop the site to provide new workforce housing.

TAX BASE IMPACT STATEMENT: The redevelopment of this site into twelve townhome units in Ramsey IV will result in an annual net increase in taxes to the City of \$3,000.

**DEVELOPMENT AGREEMENT  
RAMSEY IV, LLC**

THIS AGREEMENT entered into this \_\_\_\_\_ day of February, 2013, by and between the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, whose address is 402 City Hall, 411 West First Street, Duluth, MN 55802 (hereinafter referred to as "DEDA") and RAMSEY IV, LLC, a Minnesota limited liability company, whose address is c/o Thies & Talle Enterprises, Inc., 470 W. 78<sup>th</sup> Street, Suite 260, Chanhassen, MN 55317 (hereinafter referred to as "Developer").

WHEREAS, Developer desires to acquire and demolish a funeral home at 5405 Ramsey Street and to construct eight townhomes units on the site to provide workforce housing (the "Project" as more specifically defined below); and

WHEREAS, Developer has requested assistance from DEDA for Eligible Project Costs related to the Project since without such assistance the acquisition and demolition of the funeral home and construction of the townhome units for workforce housing would not be economically viable; and

WHEREAS, DEDA has further determined that the interests of the citizens of the City of Duluth and the well being and quality of life in the City of Duluth would be enhanced by nurturing and encouraging the acquisition and demolition of the funeral home and construction of workforce housing by Developer; and

WHEREAS, after careful analysis of the projected costs of the project and of the financial resources available and economic feasibility to pay for the costs related to the project described herein DEDA has determined that:

- a. a "gap" exists between the cost to Developer of acquiring and demolishing the funeral home and constructing the townhome units and the funds presently available to or known to Developer and DEDA to finance those costs at rates that would be economically feasible. Based on the best estimates currently available to the parties, the amount of said "gap" equals \$480,000. In order to reduce this "gap", DEDA has committed to provide tax increment proceeds from Tax Increment Financing (TIF) District No. 3.

- b. without the assistance to be provided by DEDA hereunder, the cost of acquiring and demolishing the funeral home and constructing the townhome units would be more than can be justified to be charged to tenants as rent under the townhome leases, and that, therefore, the Project would not be economically feasible for Developer without DEDA assistance;
- c. there are no available and affordable sources of other governmental programs or funds to meet the needs addressed under this Agreement known to Developer or DEDA to fund the aforesaid "gap;"
- d. there is no private market financing known to Developer or DEDA available at rates which would eliminate said "gap" on terms which are economically feasible; and
- e. without the tax increment assistance to be provided pursuant to this Agreement, the available resources would be inadequate and not economically feasible to acquire and demolish the funeral home and construct the townhome units and that therefore, but for the tax increment assistance to be provided for hereunder, the Project could not reasonably be expected to be constructed in the foreseeable future; and

WHEREAS, the public purpose of the tax increment assistance to be provided pursuant to this Agreement is the construction of housing that will result in expanding workforce housing in the City, the enhancement of the quality of life of the residents of the City of Duluth by redeveloping blighted areas, and the increase in tax base; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

## ARTICLE I

### Definitions

For the purposes of this Agreement, the following terms shall have the meanings hereinafter ascribed to them unless a different meaning clearly appears from the context:

- A. Buildings shall mean eight townhome units to be constructed on the

Property.

- B. Eligible Project Costs shall mean those costs permitted to be reimbursed under Minnesota Statutes §469.174 et. seq. and the Tax Increment Financing Plan for TIF District No. 3.
- C. Executive Director shall be the Executive Director of DEDA or such person or persons designated in writing by said Executive Director.
- D. Project shall mean the acquisition and demolition of the funeral home and any outbuildings located at 5405 Ramsey Street and construction of twelve (12) townhome units of approximately 1,200 square feet average living area for a total of nearly 19,000 square feet, including garages, at a total Project cost of approximately \$2 million.
- E. Property shall mean that property located at 5405 Ramsey Street, in Duluth, St. Louis County, Minnesota, which Property is legally described as Lots 9 through 16, Block 5, First Division to West Duluth.

## ARTICLE II

### Developer Fee

In consideration of the financial assistance provided by DEDA to Developer pursuant to the terms of this Agreement, Developer has paid to DEDA an application fee of Three Thousand and No/100 Dollars (\$3,000.00). Additionally, Developer agrees to reimburse DEDA upon invoice for services of Ehlers & Associates to perform a "but for compliance" test for the Project in an amount up to One Thousand Five Hundred and No/100 Dollars (\$1,500.00).

## ARTICLE III

### Preconditions to Project Construction

Prior to the commencement of construction of the Project and as a precondition to the commencement thereof, Developer shall provide to DEDA the following items:

- A. Title  
Proof reasonably satisfactory to DEDA that Developer owns the Property in fee simple absolute.

- B. Construction Costs  
Approved plans, specifications and elevations for the construction of the Project.
- C. Construction Contracts  
A copy of executed contracts between Developer and a general contractor necessary to complete the construction of the Project in accordance with approved plans, specifications and elevations, certified by Developer to be a true and correct copy thereof.
- D. Contractor and Approval  
Developer agrees that the Executive Director shall have approval over the identity of the general contractors, which approval shall not be unreasonably withheld.
- E. Construction Bonds  
Copies of executed payment bond and an executed performance bond provided by the above general contractor in connection with the construction of the Project which bonds shall be in a the penal amount of not less than one hundred percent (100%) of the contract price under said contraction contracts written by a bonding company or bonding companies licensed to do business in the State of Minnesota, certified by Developer to be true and correct copies thereof which name DEDA as an additional beneficiary thereof, or other evidence satisfactory to the Executive Director of the ability of the Developer to complete the Project.
- F. Construction Financing  
Copies of loan commitments and other financing commitments in forms reasonably acceptable to DEDA to complete the Project (or other evidence of Developer's ability, without loan commitments, to complete the Project), the total of said commitments, equity participation and other evidence reasonably satisfactory of Developer's ability to complete the Project, accompanied by a personal indemnity of Developer's principal, Kenneth R. Talle, as to completion of the Project, to be in amount not less than the total contract price between Developer and its general contractor

as described in the contract described in Paragraph C above.

G. Traditional Neighborhood Design

Approval by City of Duluth Planning Staff that the Project complies with the Ramsey Traditional Neighborhood Design.

ARTICLE IV

Project Plans

A. Plans, Specifications and Elevations

No less than fifteen (15) days prior to the commencement of construction of the Project, or such lesser time as approved by the Executive Director, Developer shall submit working drawings, specifications and elevations for the Project together with detailed site grading, utility and landscaping plans and elevations to the Executive Director for approval. All such plans, specifications and elevations shall be in conformity with this Agreement, with the schematic design which shall consist of drawings and other documents illustrating scale and relationship of various Project components, and with all applicable laws, ordinances, rules, regulations and requirements of DEDA, the City, the State of Minnesota and the United States of America. The Executive Director shall review such plans, specifications and elevations within fifteen (15) days of submission of same by Developer. If the Executive Director rejects such plans, specifications and elevations in whole or in part as not being in compliance with the foregoing requirements, and upon notification to Developer of said rejection together with the reason or reasons therefor, Developer shall submit new or corrected plans, specifications and elevations meeting said objections within fifteen (15) days of said notice. The provisions of this Paragraph relating to approval, rejection and resubmission of corrected plans hereinafter provided for with respect to the originally submitted plans, specifications and elevations shall continue to apply until said plans, specifications and elevations have been approved by the Executive Director. The Executive Director's acceptance

of Developer's plans, specifications and elevations shall not constitute a waiver of building code or ordinance or other developmental duties imposed in the future upon Developer by law. Developer expressly agrees to be solely responsible for all costs, including architectural fees connected with said plans, specifications and elevations and any revisions thereto.

B. Changes After Initial Approval

Any changes made to plans by Developer after initial approval of the Executive Director shall be submitted to the Executive Director for acceptance in the same manner provided for in Paragraph A above, but the review and response time shall be five (5) business days..

## ARTICLE V

### Construction

A. Construction

On or before July 1, 2013, Developer shall cause the commencement of construction of the Project in conformance with the plans approved pursuant to this Agreement. Said construction work shall be completed not later than July 1, 2014. Notwithstanding the above, the construction period may be extended upon the prior written approval of the Executive Director.

B. Developer to Bear All Costs

Except for payments by DEDA provided for herein, Developer specifically guarantees and agrees to bear all costs related to the construction of the Project and any modifications thereto.

C. Progress Reports

Until construction of the entire Project has been completed, Developer shall make reports in such detail and at such times as may reasonably be requested by DEDA as to the actual progress of Developer with respect to the Project.

D. Certificate of Completion

Promptly upon completion by Developer of the rehabilitation of the Project, Developer shall submit to the Executive Director written evidence in a form satisfactory to the Executive Director of Project completion in accordance with this Agreement after which DEDA shall promptly furnish to Developer an appropriate certificate certifying completion of the Project ("Certificate of Completion"). No such certification shall be issued until all elements of the Project shall have been completed. Upon receipt, Developer agrees to file the Certificate of Completion in the Office of the St. Louis County Recorder and pay all costs associated therewith. Upon recordation, Developer shall immediately submit to DEDA an executed original of the Certificate of Completion showing the date and document numbers of record, or duly certified copies of the filed originals.

ARTICLE VI

Reimbursement to Developer

DEDA agrees to reimburse Developer for Eligible Project Costs incurred by it in accordance with this Agreement in an amount not to exceed Four Hundred Eighty Thousand and no/100ths (\$480,000) payable from Fund 865 Agency 860 Org 8603. Requests for reimbursement shall be made no more frequently than monthly and shall be accompanied by such documentation DEDA shall request including paid invoices or comparable evidence of payment. DEDA will not reimburse Developer for costs incurred more than ninety (90) days prior to the date of Developers request.

ARTICLE VII

Mortgage Lien

Developer agrees that there is hereby created and imposed on the Property a mortgage lien (the "Mortgage Lien"). The amount of the Mortgage Lien shall be the amount of Four Hundred Eighty Thousand and no/100ths ( \$480,000) Dollars. The Mortgage Lien shall be exercisable by DEDA upon a General Event of Default by the

Developer as defined herein. It is agreed between the parties that this Agreement and the Mortgage Lien imposed herein shall be deemed to run with the land and all of its provisions shall be enforceable by the parties' respective heirs and assigns. The Mortgage Lien shall be in force and effect during the term of this Agreement as set forth herein. Said Mortgage Lien shall be first in priority. DEDA may, in its sole discretion and through the written consent of the Executive Director, decide to subordinate the Mortgage Lien to liens of other parties, provided that such mortgage(s) does not exceed 75% of the value of the Project and that the sum of such mortgage(s) and the \$480,000 provided herein is less than 100% of the certified Project cost and that same is supported by an appraisal satisfactory to a mortgage lender, with a copy of same to be provided to DEDA.

Upon execution of this Agreement by all parties, DEDA shall record this Agreement in the office of the St. Louis County Recorder and shall pay all costs associated therewith. Upon recording, Developer shall immediately submit to DEDA an executed original of this Agreement showing the date and document numbers of record, or a duly certified copy of the filed original.

## ARTICLE VIII

### Term

The term of this Agreement shall commence on the date first shown above and shall continue until July 1, 2014, or unless this Agreement is terminated earlier or extended as provided for herein.

## ARTICLE IX

### Notice of Sale, Transfer or Change in Use

Developer agrees for itself and its successors and assigns that it will notify DEDA of any sale, transfer, or exchange the Property, the Buildings or the Project or any portion thereof or of any change in use of the Project at least thirty (30) days prior to any such sale, transfer, exchange or change in use.

## ARTICLE X

### Operating Covenants

Developer covenants and agrees that during the term of this Agreement, in its operations and use of the Buildings, the Property and the Project it shall:

A. Maintenance

At all times cause the Buildings, Property and Project to be maintained in a neat, orderly condition, to maintain and preserve and keep in good repair, working order and condition said Buildings, Property and Project and to perform all needed and proper repairs, renewals and replacements necessary to be made thereto.

C. Utilities

Pay or cause to be paid any and all charges for utilities furnished to the Buildings, the Property and the Project including but not limited to hook-up charges and assessments related to all utilities, including but not limited to steam, water, sewer, gas, telephone, cable TV, and electrical power.

D. Licenses and Permits

Preserve the existence and all of its licenses, permits and consents to the extent necessary and desirable to the operation of its business and affairs relating to the Buildings, the Property and the Project and to be qualified to do business in the State of Minnesota; provided.

E. Obey All Laws

Conduct its affairs and carry on its business and operations with respect to the Buildings, the Property and the Project in such a manner as to comply with any and all applicable laws of the United States and the State of Minnesota and duly observe and conform to all valid orders, regulations and requirements of any governmental authority related to the conduct of its business and the ownership of the Buildings, the Property and the Project; provided that nothing herein contained shall require it to comply with, observe and conform to any such law or regulation or requirement so long as the validity thereof shall be contested in good faith through proper legal action provided that such protest shall in no way affect Developer's

title to the Buildings and the Property.

F. Payment of Taxes

Promptly pay or cause to be paid all lawful taxes and governmental charges, including real estate taxes and assessments at any time levied upon or against it or the Buildings, the Property or the Project, subject to the right to contest in good faith in accordance with Minnesota law.

G. Assessment Fees and Charges

Pay or cause to be paid when due or payable all special assessments levied upon or with respect to the Building or the Property, or any part thereof, and to pay all fees, charges and rentals for utilities, service or extensions for the Buildings or the Property and all other charges lawfully made by any governmental body for public improvements.

H. Obligations and Claims

Promptly to pay or otherwise satisfy and discharge all of the obligations and indebtedness and all demands and claims against the Project and the Property as and when the same become due and payable other than any thereof whose validity, amount or collect ability is being contested in good faith by appropriate proceedings.

I. Wage Covenants

Abide by the requirements of Article XXVI of Chapter 2 of the Duluth City Code, 1959, as amended (the "Duluth Living Wage Ordinance") and to require those construction workers directly employed upon the Project worksite to pay Prevailing Wage Rates as that term is defined in Section 2-25 of the Duluth City Code.

## ARTICLE XI

### Provision Against Liens, Assignments and Transfers

A. Provision Against Liens

Developer shall not permit or allow any mechanics' or materialmen's liens to be filed or established or to remain against the Buildings, the Property or the Project any part thereof provided that if Developer shall first notify

DEDA of its intention to do so and post such security as the Executive Director reasonably deems necessary, Developer may, in good faith, contest any such mechanic's or other liens filed or established as long as DEDA does not deem its interest or rights in this Agreement to be subject to foreclosure by reason of such context; provided however, in the event a private lender also requests security with respect to such lien(s), DEDA agrees that it may be jointly protected with said lender by the same security, the amount of which shall be the greater of that security requested by the Lender or the Executive Director. Except liens or encumbrances allowed in writing by the Executive Director, Developer shall not create or permit any mortgage or encumbrance to be filed or established or to remain against the Buildings, the Property, or the Project or any part thereof which would materially or adversely affect DEDA's interest during the term of this Agreement.

B. Provision Against Assignments, Transfers or Change in Identity of Developer

The parties hereto acknowledge that DEDA is relying upon the qualifications and identity of Developer to construct, operate and maintain the Buildings, the Project and the Property. Therefore, except as may be approved in writing in advance by the Executive Director or as otherwise approved by this Agreement, Developer represents and agrees for itself, its successors and assigns that it 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, trust, lien or power of attorney, nor has it nor will it allow any change in the identity of the principals or their respective percentages of ownership or voting rights, if such change would result in a change of control, and has not or will not otherwise transfer in any other way all or any portion of the Buildings, the Property, the Project, Developer, this Agreement or any other contract or agreement entered into in connection with carrying out its obligations hereunder; and Developer will not make or create or suffer to be made any such transfer

of Developer's rights hereunder. Notwithstanding the above, Developer is authorized to lease any portion of the Buildings.

## ARTICLE XII

### Indemnification

#### A. Generally

Developer shall to the fullest extent permitted by law, protect, indemnify and save DEDA and its officers, agents, servants, employees and any person who controls DEDA within the meaning of Securities Act of 1933, harmless from and against all liabilities, losses, damages, costs, expenses, including attorneys' fees and expenses, causes of action, suits, claims including claims for contribution or indemnity, demands and judgments of any nature arising from:

1. Any injury to or death of any person or damage to property in or upon the Buildings, the Property or the Project, or growing out of or in connection with the use or non-use, condition or occupancy of the Buildings, the Property or the Project or any part thereof and also, without limitation, the construction or rehabilitation of the Project or any portion of the Buildings or the Property. The foregoing indemnification shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits payable by or for Developer, customers, suppliers or affiliated organizations under any Workers' Compensation Act, Disability Benefit Acts or any other Employee Benefit Acts.
2. Any violation by Developer of any provision of this Agreement.
3. Any violation of any contract, agreement or restriction related to the Project which shall have existed at the commencement of the term of this Agreement or shall have been approved by Developer; or
4. Any violation of any law, ordinance, court order or regulation affecting the Building, the Property or the Project, or the ownership, occupancy or use thereof.

B. Environmental Indemnification

In addition to the generality of the above, Developer hereby agrees that for itself, its successors and assigns that it will indemnify and save DEDA and its officers, agents, servants and employees and any person who controls DEDA within the meaning of the Securities Act of 1933 harmless from and against all liabilities, losses, damages, costs, expenses, including reasonable attorneys' fees and expenses, causes of action, suits, claims including claims for contribution or indemnity, demands and judgments arising out of any condition existing in the Buildings or on the Property, whether pre-existing or after-created, which constitutes a violation of any environmental law or laws with regard to pollutants or hazardous or dangerous substances promulgated by the government of the United States or of the State of Minnesota or of any such duly promulgated rules and regulations of the United States Environmental Protection Agency or the Minnesota Pollution Control Agency or the presence in the Building or on the Property, or the release or threatened release of any element, compound, pollutant, contaminant, or toxic or hazardous substance, material or waste, or any mixture thereof, which otherwise causes injury or death to persons or damage to property, and that indemnification granted hereby shall include all costs of clean-up and remediation and response costs, together with the costs incurred in proceedings before a court of law or administrative agency including attorneys' fees, expenses, the fees and expenses of persons providing technical expertise addressing such problems including expert witnesses, the costs of preparing and securing approval of Response Action Plans as may be necessary to meet the requirements of the aforesaid agencies and any other costs and expenses of any kind whatsoever arising out of such conditions existing on the Property or in the Buildings.

C. Indemnification Procedures

Promptly after receipt by DEDA of notice of the commencement of any action with respect to which Developer is required to indemnify DEDA

under this Article, DEDA shall notify Developer in writing of the commencement thereof, and, subject to the provisions as hereinafter stated, Developer shall assume the defense of such action, including the employment of legal counsel satisfactory to DEDA and the payment of expenses. In so far as such action shall relate to any alleged liability of DEDA with respect to which indemnity may be sought against Developer, DEDA shall have the right to employ separate counsel in any such action and to participate in the defense thereof, and the fees and expenses of such separate counsel shall be at the expense of Developer.

### ARTICLE XIII

#### Insurance

Developer shall provide for purchase and maintenance of such insurance as will protect Developer and DEDA against risk of loss or damage to the Project and any other property permanently located or exclusively used at the Project site and against claims which may arise or result from the maintenance and use of the Project, including operations conducted in connection with the rehabilitation or construction of improvements on the Property. Such coverages shall include but shall not necessarily be limited to the following:

A. Insurance During Construction

Developer, prior to entering on the Property for construction work, shall procure or cause to be procured and maintain or require all contractors to procure and maintain the following insurance at not less than the limits of coverage or liability indicated during the period of construction as follows:

1. Property Insurance

Developer shall provide "All Risk" builder's risk insurance under a completed value form on all work on the Project, including foundations, permanent fixtures and attachments, machinery and equipment included in or installed under the construction contract, debris removal, architects' and engineers' fees, temporary structures, materials, equipment and supplies of all kinds located

on the project, to the full replacement value thereof, except that such policy may provide for a deductible amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00) per occurrence. Said insurance shall be endorsed to provide consent for occupancy of the Project and shall be maintained in effect until permanent property coverage as provided for hereinafter is in force. Such insurance shall be written in the names of Developer, DEDA, to the extent it has an insurable interest in the Property, any subtenant and contractor, as their interest may appear. Contractor, all subcontractors, and suppliers and Developer shall waive all rights against DEDA for damages caused by fire or insured perils, except such rights as are set forth hereunder to the proceeds of such insurance payable in the event of such loss.

2. Public Liability Insurance

Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form with "Broad Form" property damage liability coverage, with XCU exclusion removed, in limits of not less than \$2,000,000 aggregate per occurrence for personal injury, bodily injury and death, and limits of \$2,000,000 for property damage liability. Contractor shall also require such liability coverage of his subcontractors unless they be insured under contractor's policies. Contractor's and subcontractors' liability coverages shall include:

- a. Contractors public liability--premises and operations;
- b. Independent contractors protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned, and hired vehicles;
- e. Contractual liability covering customary construction contract and subcontract indemnify provisions;
- f. Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement.

B. Permanent Insurance

Developer shall procure and continuously maintain, except as otherwise provided below, insurance covering all risks of injury to or death of persons or damage to property arising in any way out of or as a result of Developer's ownership of, occupancy of or use of the Buildings, the Property or the Project carried in the name of Developer, any subtenant and DEDA, to the extent it has an insurable interest as their respective interests may appear, as follows:

1. Property Insurance

Prior to expiration of the buildings' risk coverage specified above, the Buildings and Property, including all fixtures, equipment and machinery, shall be insured to the full replacement value thereof against all risk of Direct Physical Loss, except that such insurance may provide for a deductible amount not to exceed \$50,000 per occurrence. For the purposes hereof, "all risk" means insurance equivalent in scope to protect against all risks of direct physical loss ordinarily insured against in the region. Developer hereby waives any and all claims or causes of action against DEDA for damages caused by an insured peril hereunder, except such rights hereinafter set forth to an interest in the insurance proceeds payable in the event of such loss. In time of war in which the United States of America is a belligerent, Developer will procure and maintain continuously in effect such insurance as may be available from the United States of America to the extent of the full replacement value of the Project and insuring against loss thereof or damage thereto from the risks and hazards of war, provided that the cost of such insurance is economically reasonable.

2. Liability Insurance

During the construction period (unless covered under the policies required previously) and permanently thereafter for the balance of the term of this Agreement, Developer shall procure and maintain

continuously in force Public Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than \$2,000,000 aggregate per occurrence for personal bodily injury and death, and limits of \$2,000,000 for property damage liability. Insurance shall cover:

- a. Public liability, including premises and operations coverage;
- b. Independent contractors--protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned and hired vehicles;
- e. Contractual liability covering the indemnity obligations set forth herein;
- f. Products--completed operations.

3. Workers' Compensation

Workers' Compensation Coverage in statutory amounts with "all states" endorsement unless qualified as a self-insurer under Minnesota Law, and evidence of such qualification is furnished to DEDA.

C. Modification of Insurance Requirements

It is agreed between the parties that DEDA shall have the right to modify the forms of the insurance provided for in Paragraphs A and B above and the limits set forth with regard thereto provided that any such modification and policy forms or limits shall be of such a character and in such amounts as are reasonably necessary to provide DEDA with the types and amounts of protection provided for in this Agreement. In the event that DEDA shall desire to so modify said insurance requirements, DEDA shall notify Developer of the proposed modifications not less than sixty (60) days prior to the date set by DEDA for said modifications to go into effect. In the event that Developer believes said modifications to be unjustified under the standards set forth in this Paragraph, Developer shall promptly

so notify DEDA and the parties hereto agree to meet as soon as practical thereafter and to negotiate in good faith the character and amounts of any said modifications meeting the standards hereinbefore set forth.

D. Requirements for All Insurance

All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the United States and licensed to do business in Minnesota. DEDA shall be named as Additional Insured under the Public Liability and Automobile Liability Insurance required under Paragraphs A and B above. The use of an "Acord" form as a certificate of insurance shall be accompanied by two forms - 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by DEDA's attorney. Developer shall also provide evidence of statutory Minnesota Workers' Compensation Insurance.

E. Certifications

The form of each certificate of insurance shall contain an unconditional requirement that the insurer notify DEDA without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to DEDA will render any such change or changes in said policy or coverages ineffective as against DEDA.

F. Reconstruction Obligation and Uninsured Loss

In the event the Project or any portion thereof is destroyed by fire or other casualty, Developer shall forthwith repair, reconstruct, and restore the improvements to substantially the same scale and condition, quality, and value as existed prior to the event causing such damage or destruction, and to the extent necessary to accomplish such repair, reconstruction, and restoration, Developer shall apply the proceeds of any insurance received by Developer to the payment or reimbursement of the costs thereof. Developer shall, however, complete the repair, reconstruction and restoration of the improvements whether or not the proceeds of any insurance received by Developer are sufficient to pay for such repair,

restoration, and reconstruction.

## ARTICLE XIV

### Developer Defaults and Remedies Therefore

#### A. General Defaults and Remedies

##### 1. General Events of Default

The following shall be deemed to be general events of default by Developer under the terms and conditions of this Agreement to which the remedies set forth in Paragraph A(2) below shall be applicable.

- a. Developer shall fail to observe or perform any of the terms, conditions, covenants or agreements required to be observed or performed by it or any successor or assigns of Developer pursuant to this Agreement and such failure shall continue for a period of 30 calendar days after DEDA has, pursuant to the provisions of this Agreement, given written notice to Developer of such default or, in the event that such default shall be incapable of cure with reasonable diligence during said 30 day period, shall have failed to commence to cure said default within 30 days of the date of said notice and to diligently pursue the same to completion.
- b. Developer shall permit valid liens, not cured or contested within thirty 30 days, to be placed on the Buildings or the Property or Developer loses title to the Buildings or the Property or both.
- c. Developer makes an assignment for the benefit of its creditors or admits in writing its inability to pay its debts as they become due; or an adjudication of bankruptcy or insolvency is made as to Developer or its business; or Developer files a petition of bankruptcy or files a petition seeking any reorganization, dissolution, liquidation, or

rearrangement, composition, readjustment or similarly under any present or future bankruptcy or insolvency, statute, law or regulation; or Developer files an answer admitting to or not contesting to the material allegations of a petition filed against it in such proceeding or fails to have dismissed or vacated within sixty (60) days after its filing such a petition or seeks or consents or acquiesces in the appointment of any trustee, receiver or liquidator of a material part of Developer's properties or fails to have dismissed or vacated within sixty (60) days after the appointment without the consent or acquiescence of Developer of any trustee, receiver or liquidator of any material part of Developer's properties.

2. General Remedies

DEDA shall have the following remedies in the event of a default:

- a. Cease any payment due from DEDA and withhold the performance of any obligation owed by DEDA under this Agreement.
- b. Terminate this Agreement.
- c. Seek and be entitled to repayment from the Developer of all sums paid by DEDA which repayment obligation shall, from the date of default, bear interest at the rate of 8.5% per annum.
- d. Seek and be entitled to injunctive or declaratory relief as is necessary to prevent violation of the terms and conditions of this Agreement or compel Developer's performance of its obligations hereunder.
- d. Enforce or foreclosure on the Mortgage Lien described herein.
- d. Seek such other legal or equitable relief as a court of competent jurisdiction may determine is available to DEDA.

B. Non-Waiver

The waiver by DEDA of any default on the part of Developer or the failure of DEDA to declare default on the part of Developer of any of its obligations pursuant to this Agreement shall not be deemed to be a waiver of any subsequent event of default on the part of Developer of the same or of any other obligation of Developer hereunder. To be effective, any waiver of any default by Developer hereunder shall be in writing by DEDA.

C. Remedies Cumulative

Except as specifically set forth herein, the remedies provided under this Agreement shall be deemed to be cumulative and non-exclusive and the election of one remedy shall not be deemed to be the waiver of any other remedy with regard to any occasion of default hereunder.

D. Attorneys' Fees

In the event that Developer is in default of any of the terms and conditions of this Agreement and DEDA shall successfully take legal action to enforce said rights herein, in addition to the foregoing, DEDA shall be entitled to reimbursement for its reasonable attorneys' fees and costs and disbursements occasioned in enforcing its rights hereunder.

## ARTICLE XV

### Representations by DEDA

DEDA represents and warrants that as of the date hereof:

- A. It is a lawfully constituted economic development authority under the laws of the State of Minnesota, it is not in material violation of any provisions of State law and it has full power and authority to enter into this Agreement and perform its obligations hereunder.
- B. There are no actions, suits or proceedings pending, or to the knowledge of DEDA, threatened against DEDA or any property of DEDA in any court or before any Federal, State, municipal or governmental agency which, if decided adversely to DEDA, would have a material adverse effect upon DEDA or any business or property of DEDA and DEDA is not in default

with respect to any order of any court or government agency.

- C. DEDA has investigated and has no knowledge that a DEDA Director or other member, official, or employee of DEDA is directly or indirectly financially interested in this Agreement or in any transactions concluded in connection with this Agreement.
- D. DEDA shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement or otherwise delivered to any third parties under this Agreement to be true, correct and complete in all material respects.

## ARTICLE XVI

### Developer's Representations and Warranties

Developer represents and warrants for itself only that as of the date hereof:

- A. That Developer is a lawfully constituted limited liability company under the laws of the State of Minnesota, is not in material violation of any provisions of State law and that it has full power and authority to enter into this Agreement and to perform its obligations hereunder.
- B. That Developer is fully competent to acquire the Buildings and the Property and to construct the Project thereon under all laws, rulings, regulations and ordinances of any governmental authority having jurisdiction and that it agrees to comply with all applicable State, Federal acquisition and relocation laws, wages and hours laws, including Davis-Bacon and local versions thereof or similar laws at its own expense.
- C. That there are no actions, suits or proceedings pending or, to the knowledge of Developer, threatened against Developer or any property of Developer in any court or before any Federal, State or municipal or other governmental agency which, if decided adversely to Developer, would have a material adverse effect upon Developer or the Building, Property and Project, and that Developer is not in default of any order of any court or governmental agency which, if decided adversely to Developer, would have a material adverse effect upon the Buildings, the Property or the

Project.

- D. That Developer is not in default of the payment of principal of or interest on any indebtedness for borrowed money or in default under any instrument or agreement pursuant to which the indebtedness has been incurred.
- E. That Developer shall do such things as are necessary to cause any information, document, certificate, statement in writing, or report required under this Agreement delivered to any third party under this Agreement to be true, correct and complete in all material and respects.
- F. That if necessary, Developer agrees to perform any survey work prior to construction and all descriptions and exhibits hereto and definitions herein shall be subject to such revisions as are necessary after completion of any survey.
- G. That without the assistance to be provided by DEDA hereunder, Developer's cost of constructing the Project would be more than can be justified to be charged to tenants as rent under the townhome leases and that, therefore, without DEDA assistance, the Project would not be economically feasible for Developer; and Developer would not have developed the Project and operated the same in the reasonably foreseeable future.

## ARTICLE XVII

### Notices

Any notice, demand or other communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

In the case of DEDA:

DEDA  
Room 402 City Hall  
411 West First Street  
Duluth, MN 55802  
Attn: Executive Director

In the case of Developer:

Ramsey IV, LLC  
c/o Thies and Talle Enterprises, Inc.  
470 W. 78<sup>th</sup> Street, Suite 260  
Chanhassen, MN 55317  
Attn: Kenneth R. Talle  
Chief Manager and CEO

## ARTICLE XVIII

### Applicable Law

This Agreement together with all of its Articles, paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in St. Louis County, Minnesota. However, litigation in the federal courts involving the parties shall be in the appropriate federal court within the State of Minnesota, and the parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

## ARTICLE XIX

### Authorization to Execute Agreement

Developer represents to DEDA that the execution of this Agreement has been duly and fully authorized by its governing body or board, that the officers of Developer who executed this Agreement on its behalf are fully authorized to do so, and that this Agreement when thus executed by said officers on its behalf will constitute and be the binding obligation and agreement of Developer in accordance with the terms and conditions thereof.

## ARTICLE XX

### Independent Contractor

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting Developer as an agent, representative or employee of DEDA

for any purpose or in any manner whatsoever.

ARTICLE XXI

No Third Party Rights

This Agreement is to be construed and understood solely as an agreement between the parties and shall not be deemed to create any rights in any other person or entity. No person or entity shall have the right to make claim that he, she or it is a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between the parties, may be waived at any time by mutual agreement between the parties.

ARTICLE XXII

Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and date first above shown.

DULUTH ECONOMIC DEVELOPMENT AUTHORITY

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

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



This instrument was drafted by:

Joan M. Christensen  
Attorney for the Duluth Economic  
Development Authority  
410 City Hall  
Duluth, MN 55802  
(218) 730-5490