

RESOLUTION 15D-13

**RESOLUTION AUTHORIZING A DEVELOPMENT AGREEMENT WITH ONE ROOF
COMMUNITY HOUSING IN AN AMOUNT NOT TO EXCEED \$70,000**

RESOLVED, by the Duluth Economic Development Authority ("DEDA") that the proper DEDA officials are hereby authorized to enter into a development agreement, substantially in the form of that attached hereto (Contract No. _____), with One Roof Community Housing relating to the rehabilitation of two homes in TIF District No. 7, in an amount not to exceed \$70,000, payable from TIF District 7, Fund 865, Agency 860, Org 8607.

Approved by the Duluth Economic Development Authority this 22nd day of April, 2015.

ATTEST:

Executive Director



STATEMENT OF PURPOSE: This resolution authorizes a development agreement with One Roof Community Housing, a Minnesota non-profit corporation. One Roof proposes to acquire and rehabilitate two homes in Tax Increment Financing District No. 7 in order to provide work force housing for households earning up to 115% of the state median income. DEDA will provide an amount up to \$35,000 per home in acquisition costs.

**DEVELOPMENT AGREEMENT
ONE ROOF COMMUNITY HOUSING**

THIS AGREEMENT entered into this _____ day of April, 2015, 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 ONE ROOF COMMUNITY HOUSING, a Minnesota nonprofit corporation, whose address is 12 East Fourth Street, Duluth, MN 55805 (hereinafter referred to as "Developer").

WHEREAS, Developer operates a program in the City of Duluth, the goal of which is to increase homeownership in the City; and

WHEREAS, Developer desires to acquire and rehabilitate two homes in Tax Increment Financing ("TIF") District No. 7 in order to provide work force housing for households earning up 115% of state median income; and

WHEREAS, Developer has requested assistance from DEDA for certain eligible project costs related to the project since without such assistance the acquisition and rehabilitation of the homes 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 rehabilitation of the homes by Developer for workforce housing; 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 rehabilitating the homes 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 \$70,000. In order to reduce this "gap", DEDA has committed to provide tax increment proceeds from TIF District No. 7.

- b. 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 rehabilitate the homes and 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 additionally
- c. without the assistance to be provided by DEDA hereunder, the cost of acquiring and rehabilitating the homes would be more than the appraised value, and therefore, the Project would not be economically feasible for Developer without DEDA assistance.

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. Homes shall mean two single family homes to be rehabilitated on the Properties.
- B. Eligible Project Costs shall mean the cost of acquisition of the Homes to the extent consistent with Minnesota Statutes §469.174 et. seq. and the Tax Increment Financing Plan for TIF District No. 7.
- C. Executive Director shall be the Executive Director of DEDA or such person or persons designated in writing by said Executive Director.
- D. Phase of the Project shall be the acquisition of either of the Properties and rehabilitation of the Homes thereon.

- E. Project shall mean the acquisition and rehabilitation of two Homes which are blighted, vacant and/or foreclosed and which are located on Properties in TIF District No. 7.
- F. Properties shall mean those properties in TIF District No. 7 upon which the Homes are located.
- G. TIF District No. 7 is a redevelopment tax increment financing district created to provide scattered-site housing. TIF District No. 7 is located in the western part of the City of Duluth.

ARTICLE II

Application Fee

Developer is a Minnesota non-profit corporation, and DEDA's application fee is hereby waived.

ARTICLE III

Preconditions to Project Construction

Prior to the commencement of rehabilitation of either Phase 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 for that Phase of the Project in fee simple absolute. The particular Properties to be acquired by Developer shall require the prior written approval of the Executive Director, which approval shall not be unreasonably withheld. DEDA further agrees to advance funds to a closing at which a purchase is occurring in lieu of requiring ownership prior to advancing funds.
- B. Construction Costs
Approved plans, specifications and elevations for the rehabilitation for that Phase of the Project.

C. Construction Contracts

A copy of executed contracts between Developer and its wholly owned subsidiary, Common Ground Construction, necessary to complete the rehabilitation of that Phase of the Project in accordance with approved plans, specifications and elevations, certified by Developer to be a true and correct copy thereof.

D. Contractor Approval

The Executive Director hereby approves Common Ground Construction as the general contractor for the Project.

E. Costs of the Project

Copies of loan, grant, equity or other commitments reasonably acceptable to DEDA to complete that Phase of the Project, the total of such funds evidencing Developer's ability to complete that Phase of the Project.

ARTICLE IV

Project Plans

A. Plans, Specifications and Elevations

No less than fifteen (15) days prior to the commencement of rehabilitation of either Phase of the Project, or such lesser time as approved by the Executive Director, Developer shall submit, as applicable in the reasonable discretion of the Executive Director, working drawings, specifications and elevations for that Phase of 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 September 1, 2015, Developer shall have acquired both of the Properties and caused the commencement of rehabilitation of at least one Phase of the Project in conformance with the plans approved pursuant to this Agreement. The entire Project shall be completed not later than September 1, 2016. Notwithstanding the above, this Agreement

may be extended by the Executive Director in writing for a period not to exceed six (6) months.

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 acquisition and rehabilitation of the Project.

C. Progress Reports

Until 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 each Phase of the Project, Developer shall submit to the Executive Director written evidence in a form satisfactory to the Executive Director of completion of that Phase of the Project in accordance with this Agreement after which DEDA shall promptly furnish to Developer an appropriate certificate certifying completion of that Phase of the Project ("Certificate of Completion"). No such Certificate of Completion shall be issued until all elements of that Phase 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 for that Phase of the Project showing the date and document numbers of record, or duly certified copies of the filed originals.

ARTICLE VI

Reimbursement to Developer

At closing of the sale of each of the Properties, DEDA agrees to provide to a closing agent an amount up to Thirty-five Thousand Five Hundred and no/100ths Dollars (\$35,000) per Property for Eligible Project Costs incurred by it in accordance

with this Agreement, for a total amount not to exceed Seventy Thousand and no/100ths Dollars (\$70,000), payable from Fund 865 Agency 860 Org 8607. DEDA shall be provided copies of the closing statements evidencing the acquisition of the Properties and such other documentation as DEDA the Executive Director shall reasonably request.

ARTICLE VII

Mortgage Lien

Developer agrees to execute a mortgage lien in favor of DEDA on the Properties at the time of closing in the form of that attached hereto as Exhibit A (the "Mortgage Lien"). The amount of the Mortgage Lien on each Property shall be the amount provided by DEDA to Developer at closing up to the amount Thirty-five Thousand and no/100ths Dollars (\$35,000) per Property. The Mortgage Lien shall be exercisable by DEDA upon a General Event of Default by the Developer as defined herein or as provided for in the Mortgage Lien. 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 on each Property shall be in force and effect until the issuance of a Certificate of Completion for that Property whereupon the Executive Director will deliver a mortgage satisfaction to Developer. Upon purchase of each Property by Developer, Developer shall record the respective Mortgage Lien 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 the Mortgage Lien 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 March 31, 2016, 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 Properties, the Homes 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 Homes, the Properties and the Project it shall:

A. Maintenance

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

B. Utilities

Pay or cause to be paid any and all charges for utilities furnished to the Homes, the Properties 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.

C. 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 Homes, the Properties and the Project and be qualified to do business in the State of Minnesota; provided.

D. Obey All Laws

Conduct its affairs and carry on its business and operations with respect to the Homes, the Properties 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 Homes, the Properties 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 Homes and the Properties.

E. 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 Homes, the Properties or the Project, subject to the right to contest in good faith in accordance with Minnesota law.

F. Assessment Fees and Charges

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

G. Obligations and Claims

Promptly to pay or otherwise satisfy and discharge all of the obligations and indebtedness and all demands and claims against the Homes, the Project and the Properties 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.

H. 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 be paid 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 Homes, the Properties 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 Homes, the Properties, 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 acquire and rehabilitate the Homes, the Project and the Properties. 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 Homes, the Properties, 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 sell the Homes upon the issuance of a Certificate of Completion therefor.

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 Homes, the Properties or the Project, or growing out of or in connection with the use or non-use, condition or occupancy of the Homes, the Properties or the Project or any part thereof and also, without limitation, the construction or rehabilitation of the Project or any portion of the Homes or the Properties. 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 Homes, the Properties 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 Homes or on the Properties, 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 Homes or on the Properties, 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 Properties or in the Homes.

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 sites 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 Properties. Such coverages shall include but shall not necessarily be limited to the following:

A. Insurance During Rehabilitation

Developer, prior to entering on either Property for rehabilitation 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 Two Thousand Five Hundred and No/100 Dollars (\$5,500.00) 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 its 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 Homes, the Properties 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 Homes and Properties, 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 \$2,500 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 rehabilitation 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. 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.

D. 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.

E. 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 Homes or the Properties or Developer loses title to the Homes or the Properties 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 or 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.
- e. Enforce or foreclosure on the Mortgage Liens described herein.
- f. 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 nonprofit corporation 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 Homes and the Properties 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 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 Homes, Properties 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 Homes, the Properties 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 rehabilitation 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 rehabilitating the Project would be more than can be justified to be sold to purchasers 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:

One Roof Community Housing
12 East Fourth Street
Duluth, MN 55805
Attn: Community Land Trust Director

with copies to:

Hanft Fride, A Professional Association
100 US Bank Place
130 W. Superior Street
Duluth, MN 55802
Attn: William M. Burns, Esq.

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

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Nancy Norr and Emily Larson, the President and Secretary, respectively, of the Duluth Economic Development Authority of Duluth, an economic development authority created and existing under Minnesota Statutes, on behalf of the Authority.

Notary Public

ONE ROOF COMMUNITY HOUSING

By _____
 Its _____

STATE OF MINNESOTA)
) ss.
COUNTY OF ST. LOUIS)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, the _____, of One Roof Community Housing, a nonprofit corporation under the laws of the State of Minnesota, on behalf of the corporation.

Notary Public

This instrument was drafted by:

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

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EXHIBIT A
MORTGAGE BY CORPORATION

MORTGAGE REGISTRY TAX DUE: \$ _____

THIS INDENTURE, made this _____ day of _____, 2015, between ONE ROOF COMMUNITY HOUSING, a non-profit corporation under the laws of the State of Minnesota, Mortgagor, and the DULUTH ECONOMIC DEVELOPMENT AUTHORITY, an economic development authority created and existing under Minnesota Statutes (1989) Chapter 469, Mortgagee.

WITNESSETH, that Mortgagor, in consideration of the sum of _____ and no/100 Dollars (\$ _____), to Mortgagor in hand paid by Mortgagee, the receipt whereof is hereby acknowledged, and other good and valuable consideration, does hereby convey unto Mortgagee, forever, real property in St. Louis County, Minnesota, described as follows:

See attached Exhibit A

together with all hereditaments and appurtenances belonging thereto (the Property).

TO HAVE AND TO HOLD THE SAME, to Mortgagee forever. Mortgagor covenants with Mortgagee as follows: That Mortgagor is lawfully seized of the Property and has good right to convey the same; that the Property is free from all encumbrances, except

_____ ; that Mortgagee shall quietly enjoy and possess the same; and that Mortgagor will warrant and defend the title to the same against all lawful claims not hereinbefore specifically excepted.

PROVIDED, NEVERTHELESS, that if Mortgagor shall comply with the terms of that certain Development Agreement dated _____, 2015, and shall keep and perform all the covenants and agreements herein contained, then this Mortgage shall be null and void, and shall be released at Mortgagor's expense.

AND Mortgagor covenants with Mortgagee as follows:

1. to pay the principal sum of money and interest on terms specified in the Development Agreement;
2. to pay all taxes and assessments now due or that may hereafter become liens against the Property before penalty attaches thereto;
3. to keep all buildings, improvements and fixtures now or later located on or a part of the Property insured against loss by fire, extended coverage perils, vandalism, malicious mischief and, if applicable, steam boiler explosion, for at least the amount of full insurable value at all times while any amount remains unpaid under this Mortgage. If any of the buildings, improvements or fixtures are located in a federally designated flood plain area, and if flood insurance is available for that area, Mortgagor shall procure and maintain flood insurance in amounts reasonably satisfactory to Mortgagee. Each insurance policy shall contain a loss payable clause in favor of Mortgagee affording all rights and privileges customarily provided under the so-called standard mortgage clause. In the event of damage to the Property by fire or other casualty, Mortgagor shall promptly give notice of such damage to Mortgagee and the insurance company. The insurance shall be issued by an insurance company or companies licensed to do business in the State of Minnesota and acceptable to Mortgagee. The insurance policies shall provide for not less than ten days' written notice to Mortgagee before cancellation, non-renewal, termination, or change in coverage, and Mortgagor shall deliver to Mortgagee a duplicate original or certificate of such insurance policies;
4. to pay, when due, both principal and interest of all prior liens or encumbrances, if any, and to keep the Property free and clear of all other prior liens or encumbrances;
5. to commit or permit no waste on the Property and to keep it in good repair;
6. to complete forthwith any improvements which may hereafter be under course of construction on the Property; and
7. to pay any other expenses and attorney's fees incurred by Mortgagee by reason of litigation with any third party for the protection of the lien of this Mortgage; and

In case of failure to pay said taxes and assessments, prior liens or encumbrances, expenses and attorneys' fees as above specified, or to insure said buildings, improvements and fixtures and deliver the policies as aforesaid, Mortgagee may pay such taxes, assessments, prior liens, expenses and attorneys' fees and interest thereon, or obtain such insurance, and the sums so paid shall bear interest from the date of such payment at the same rate set forth in the Grant Agreement, and shall be impressed as an additional lien upon the Property and be immediately due and payable from Mortgagor to Mortgagee, and this Mortgage shall from date thereof secure the repayment of such advances with interest.

THIS INSTRUMENT WAS DRAFTED BY:

Joan M. Christensen
Attorney for DEDA
410 City Hall
411 West First Street
Duluth, MN 55802