

**Minnesota Housing Finance Agency**

**WORKING CAPITAL RESERVE AND ESCROW ACCOUNT AGREEMENT**

**THIS AGREEMENT** is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_, a Minnesota \_\_\_\_\_ (“Owner”) and the Minnesota Housing Finance Agency, a public body corporate and politic of the State of Minnesota (“MHFA”).

**WITNESSETH:**

**WHEREAS**, Owner is the holder of legal title to certain real property in the State of Minnesota described in **Exhibit A** attached hereto, upon which improvements have been or are to be constructed for a housing development intended for persons and families of low or moderate income, pursuant to contract documents approved by MHFA (the “Development”); and

**WHEREAS**, Owner has requested that MHFA lend to it the sum of \_\_\_\_\_ and No/100 Dollars (\$ \_\_\_\_\_) (the “\_\_\_\_\_ Loan”) for the financing of the Development; and

**WHEREAS**, the \_\_\_\_\_ Loan is evidenced by that certain Minnesota Housing Finance Agency \_\_\_\_\_ Mortgage Note (the “\_\_\_\_\_ Note”) made by Owner of even date herewith; and

**WHEREAS**, the \_\_\_\_\_ Loan is to be disbursed according to that certain Minnesota Housing Finance Agency \_\_\_\_\_ Building Loan Agreement (the “\_\_\_\_\_ Building Loan Agreement”) between the parties hereto of even date herewith; and

**WHEREAS**, the parties hereto have also entered into and executed that certain Minnesota Housing Finance Agency \_\_\_\_\_ Regulatory Agreement (the “\_\_\_\_\_ Regulatory Agreement”) of even date herewith and of which this Agreement forms a part; and

**WHEREAS**, many contingencies can arise during the construction and the initial period subsequent to the acquisition and/or completion of the Development requiring a ready source of funds.

**NOW, THEREFORE**, in consideration of the mutual promises and undertakings set forth herein and for the purpose of inducing MHFA to enter into the \_\_\_\_\_ Building Loan Agreement and to make advances of mortgage proceeds thereunder, it is agreed as follows:

Owner agrees at the time of closing of the \_\_\_\_\_ Loan and before commencement of construction on or rehabilitation of the Development either:

A. To deposit with MHFA cash in the amount of \_\_\_\_\_ and No/100 Dollars (\$ \_\_\_\_\_), constituting an amount equal to three percent (3%) of the initial principal amount of the \_\_\_\_\_ Loan, which funds shall be held by MHFA in a “Working Capital Reserve and Escrow Account” as provided in the \_\_\_\_\_ Regulatory Agreement. Said funds shall not be derived from the proceeds of the Loan and shall be held by MHFA from the time of deposit until the date that is three (3) years after the final closing of the \_\_\_\_\_ Loan (the “Terminal Date”), unless sooner disbursed as

herein provided. Said funds shall be invested and reinvested by MHFA and the proceeds thereof added to such account, and said funds may be applied by MHFA, in its sole discretion, to the payment of the current and delinquent "Operating Expenses" (as defined in the \_\_\_\_\_ Regulatory Agreement) of the Development, to maintain the "Replacement Cost Reserves" (as defined in the \_\_\_\_\_ Regulatory Agreement), to pay delinquent principal and interest and Annual Fee, if applicable, payments required to be paid to MHFA under the \_\_\_\_\_ Note, or otherwise to cure any breaches of the obligations of Owner under the \_\_\_\_\_ Building Loan Agreement, the \_\_\_\_\_ Regulatory Agreement, or any other agreement between Owner and MHFA. Owner shall have forty-eight (48) hours to cure any default after written notice prior to disbursement by MHFA from this fund. At the end of one (1) year following the final closing of the \_\_\_\_\_ Loan, MHFA will return to Owner the amount, if any, by which the then-remaining balance of said account exceeds two-thirds (2/3) of the sum originally deposited therein. At the end of two (2) years after the final closing, MHFA will return to Owner the amount, if any, by which the then-remaining balance of said account exceeds one-third (1/3) of the sum originally deposited therein. At the end of the third year after the final closing, the balance of said account, if any, shall be returned to Owner; or

B. To deliver to MHFA an unconditional and irrevocable letter of credit (the "Letter of Credit") in a form and from a financial institution acceptable to MHFA, in favor of MHFA in the amount of \_\_\_\_\_ and No/100 Dollars (\$ \_\_\_\_\_), constituting an amount equal to three percent (3%) of the initial principal amount of the Loan. MHFA may, in its sole discretion, draw against the Letter of Credit and receive funds up to the total amount thereof, as set forth above, for the payment of the current and delinquent "Operating Expenses" (as defined in the \_\_\_\_\_ Regulatory Agreement) of the Development, to maintain the "Replacement Cost Reserves" (as defined in the \_\_\_\_\_ Regulatory Agreement), to pay delinquent payments required to be paid to MHFA under the \_\_\_\_\_ Note, or otherwise to cure any breaches of the obligations of Owner under the \_\_\_\_\_ Building Loan Agreement, the \_\_\_\_\_ Regulatory Agreement, or any other agreement between Owner and MHFA. Owner shall have forty-eight (48) hours to cure any default after written notice prior to MHFA's application for funds to the financial institution. The Letter of Credit shall be effective on the date of closing of the \_\_\_\_\_ Loan and shall expire on the Terminal Date. If Owner is unable to obtain a Letter of Credit for said period of time, MHFA will consent to the delivery by Owner of successive unconditional and irrevocable Letters of Credit, each of which must have a term of not less than one (1) year, to be in force and effect without interruption through and including the Terminal Date. Each individual Letter of Credit must be in a form and from a financial institution acceptable to MHFA, in its sole discretion, and the first of the Letters of Credit must be in the amount set forth above and delivered at closing of the \_\_\_\_\_ Loan, and each succeeding Letter of Credit must be in the amount set forth above. In addition, Owner shall, and by this Agreement hereby does, unconditionally consent to MHFA's right and privilege, in its sole discretion, and without notice to Owner, to draw and

receive funds up to the full amount of each Letter of Credit at any time during the last three (3) business days for which each Letter of Credit is effective, unless, prior to the three (3) business day period, Owner shall deliver to MHFA a renewal of said Letter of Credit for an additional period of not less than one (1) year or unless the Terminal Date shall occur during the effective term of the then-outstanding Letter of Credit. It is the intent of this Agreement that if Owner delivers successive Letters of Credit as provided herein, MHFA shall at all times prior to the Terminal Date have in its possession an unexpired Letter of Credit, subject to the provisions for drawing thereon by MHFA and renewal by Owner as set forth above, in the amount set forth above.

Upon the date that is one (1) year after the date of final closing of the \_\_\_\_\_ Loan, the amount of the Letter of Credit shall be reduced from the amount of the original Letter of Credit to the lesser of two-thirds (2/3) of the amount of the original Letter of Credit or the then-remaining balance of the original Letter of Credit. At the end of two (2) years from the date of the final closing of the \_\_\_\_\_ Loan, the Letter of Credit shall be reduced to the lesser of one-third (1/3) of the amount of the original Letter of Credit or the then-remaining balance of the original Letter of Credit. If Owner has fully complied with the terms of this Agreement, then at the end of three (3) years from the date of the final closing of the \_\_\_\_\_ Loan, the then-outstanding Letter of Credit shall be returned to Owner. If MHFA draws the balance of any Letter of Credit as a result of Owner's failure to renew the Letter of Credit in accordance with the terms for renewal set forth above, MHFA shall hold the funds in the Working Capital Reserve and Escrow Account established in the \_\_\_\_\_ Regulatory Agreement. MHFA shall invest and reinvest the funds for the benefit of the Working Capital Reserve and Escrow Account and apply the funds in accordance with the terms of this Agreement. If MHFA does not disburse the funds, MHFA shall return them to Owner, together with accrued interest, upon the Terminal Date as provided above.

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**IN WITNESS WHEREOF**, the parties hereto made and entered into this Agreement on the day and year first above written.

**OWNER:**

\_\_\_\_\_  
a \_\_\_\_\_

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

**MHFA:**

**MINNESOTA HOUSING FINANCE AGENCY**

By: \_\_\_\_\_  
Wesley J. Butler  
Assistant Commissioner, Multifamily

**EXHIBIT A**  
**LEGAL DESCRIPTION**