DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF SPRING VALLEY

AND

_____

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DEVELOPMENT AGREEMENT

THIS AGREEMENT, made as of the ____ day of _____, 20__, by and between the City of Spring Valley, Minnesota (the "City"), a municipal corporation organized and existing under the laws of the State of Minnesota and _____ (the "Developer"), a _____.

WITNESSETH:

WHEREAS, pursuant to Minnesota Statutes, Sections 469.001 through 469.047, the City has formed Municipal Development District No. 1 (the "Development District") and has adopted a Development Program therefor (the "Development Program"); and

WHEREAS, pursuant to the provisions of Minnesota Statutes, Section 469.174 through 469.1799, as amended (hereinafter, the "Tax Increment Act"), the City has created, within the Development District, Tax Increment Financing District No. 1-16 (the "Tax Increment District"), and has adopted a tax increment financing plan (the "Tax Increment Plan") which provides for the use of tax increment financing in connection with certain development within the Development District; and

WHEREAS, in order to achieve the objectives of the Development Program and particularly to make the land in the Development District available for development by private enterprise in conformance with the Development Program, the City has determined to assist the Developer with the financing of certain costs of a Project (as hereinafter defined) to be constructed within the Tax Increment District as more particularly set forth in this Agreement; and

WHEREAS, the City believes that the development and construction of the Project, and fulfillment of this Agreement are vital and are in the best interests of the City, the health, safety, morals and welfare of residents of the City, and in accordance with the public purpose and provisions of the applicable state and local laws and requirements under which the Project has been undertaken and is being assisted.

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

ARTICLE I

DEFINITIONS

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

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

Business Day means any day except a Saturday, Sunday or a legal holiday or a day on which banking institutions in the City are authorized by law or executive order to close;

City means the City of Spring Valley, Minnesota;

Compliance Certificate means the Compliance Certificate in substantially the form attached hereto as Exhibit D;

Developer means _____, a _____, its successors and assigns;

Development District means the real property described in the Development Program;

Development Program means the Development Program approved in connection with the Development District;

Development Property means the real property legally described in Exhibit A attached to this Agreement;

Event of Default means any of the events described in Section 4.1 hereof;

Prime Rate means the rate of interest from time to time publicly announced by U.S. Bank National Association in St. Paul, Minnesota, as its "prime rate" or "reference rate" or any successor rate, which rate shall change as and when that rate or successor rate changes;

Project means the construction of _____ single-family owner-occupied house(s) located on the Development Property;

Purchaser's Application means the Purchaser's Application in substantially the form attached hereto as Exhibit B.

Site Improvements: means the site improvements to be undertaken on the Development Property as identified on Exhibit C attached hereto;

State means the State of Minnesota;

Substantially Complete: means the date when construction is sufficiently completed and a certificate of occupancy can be obtained so that the owner can occupy or use the Unit for the

intended purpose. In the case of completing the Unit, this will also include having seeded or sodded the lawn surrounding the Unit.

Tax Increment Act means Minnesota Statutes, Sections 469.174 through 469.1794, as amended;

Tax Increment District means Tax Increment Financing District No. 1-16 located within the Development District, the legal description of which is set forth in the Tax Increment Financing Plan, which was qualified as a housing district under the Tax Increment Act;

Tax Increment Financing Plan means the tax increment financing plan approved for the Tax Increment District by the City Council on June 8, 2020;

Unavoidable Delays means delays, outside the control of the party claiming its occurrence, which are the direct result of strikes, other labor troubles, unusually severe or prolonged bad weather, acts of God, fire or other casualty to the Project, litigation commenced by third parties which, by injunction or other similar judicial action or by the exercise of reasonable discretion, directly results in delays, or acts of any federal, state or local governmental unit (other than the City) which directly result in delays.

Unit means each of the single-family owner-occupied homes to be constructed consistent with the terms of this Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Section 2.1.   Representations and Warranties of the City. The City makes the following representations and warranties:

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

(2)   The Tax Increment District is a "housing district" within the meaning of Minnesota Statutes, Section 469.174, Subdivision 11, and was created, adopted and approved in accordance with the terms of the Tax Increment Act.

(3)   The development contemplated by this Agreement is in conformance with the development objectives set forth in the Development Program.

(4)   The City makes no representation or warranty, either express or implied, as to the Development Property or its condition or the soil conditions thereon, or that the Development Property shall be suitable for the Developer's purposes or needs.

Section 2.2.   Representations and Warranties of the Developer. The Developer makes the following representations and warranties:

(1)   The Developer is a _____, has power to enter into this Agreement and to perform its obligations hereunder and, by doing so, is not in violation of any provisions of its organizational documents or the laws of the State.

(2)   The Developer shall cause the Project to be constructed in accordance with the terms of this Agreement, the Development Program, and all local, state and federal laws and regulations (including, but not limited to, environmental, zoning, energy conservation, building code and public health laws and regulations).

(3)   The construction of the Project would not be undertaken by the Developer, and in the opinion of the Developer would not be economically feasible within the reasonably foreseeable future, without the assistance and benefit to the Developer provided for in this Agreement.

(4)   The Developer will use its best efforts to obtain, or cause to be obtained in a timely manner, all required permits, licenses and approvals, and has met or will meet, in a timely manner, all requirements of all applicable local, state, and federal laws and regulations which must have been obtained or met before the Project may be lawfully constructed.

(5)   Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in a breach of, the terms, conditions or provision of any contractual restriction, evidence of indebtedness,

agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

(6)   The Developer will cooperate with the City with respect to any litigation commenced with respect to the Project.

(7)   The Developer will cooperate with the City in resolution of any traffic, parking, trash removal or public safety problems which may arise in connection with the construction of the Project.

(8)   The construction of one single family house on the Development Property shall commence no later than _____and, barring Unavoidable Delays, shall be substantially completed by _____.

ARTICLE III

UNDERTAKINGS BY DEVELOPER AND CITY

Section 3.1.   Land Acquisition and Site Improvements.   The parties agree that the acquisition of the Development Property and the installation of the Site Improvements is essential to the successful completion of the Project. The costs of the Site Improvements and the Development Property shall be paid by the Developer.

Section 3.2.   Compliance with Low and Moderate Income Requirements. The City and the Developer understand and agree that the Tax Increment District will constitute a "housing district" under Section 469.174, Subd. 11 of the Tax Increment Act. Accordingly, in compliance with Section 469.1761, Subd. 2 of the Tax Increment Act, the Developer agrees that at least 95% of the owner-occupied units constituting the Project must be initially purchased and occupied by individuals and families whose family income does not exceed the income requirements for qualified mortgage bond projects under Section 143(f) of the Internal Revenue Code, being generally equal to or less than 115% of the applicable median family income for households of 3 or more persons and 100% of that median income for 1 and 2 person households (a "Qualifying Purchaser"). For these purposes, the applicable median family income is the higher of (1) the area median gross income for the area in which the housing is located (being, in 2020, $$75,900 for Fillmore County) and (2) the statewide median gross income (being, in 2020, $91,800 for Minnesota). Therefore, the applicable income limits for 2020 would be $91,800 for a 1 or 2 person household and $105,570 for a household of 3 or more persons. These limits will change accordingly with the annual revisions of the underlying applicable median gross income figures. The Developer covenants to abide by the aforesaid restrictions and agrees not to take or suffer to be taken any actions with respect to the Project which individually or in the aggregate would cause the Tax Increment District not to qualify as a "housing" district under the Tax Increment Act.

Section 3.3.   Real Property Taxes.   The Developer shall pay all real property taxes payable with respect to all and any parts of the Development Property acquired and owned by it and any statutory or contractual duty that shall accrue subsequent to the date of its acquisition of title to the Development Property (or part thereof) and until the Developer's obligations have been assumed by any other person pursuant to the provisions of this Agreement or title to the property is vested in another person.

The Developer agrees that so long as it owns all or any portion of the Development Property that prior to the Termination Date:

> (a)   It will not seek administrative review or judicial review of the applicability or constitutionality of any tax statute relating to the taxation of real property contained on the Development Property determined by any tax official to be applicable to the Project or the Developer or raise the inapplicability or constitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings; provided, however, that "tax statute" does not include any local ordinance or resolution levying a tax; and

(b)   It will not seek any tax exemption, tax deferral or abatement, either presently or prospectively authorized under Minnesota Statutes, Section 469.181, or any other State or federal law, of the taxation of real property contained in the Development Property between the date of execution of this Agreement and the Termination Date.

Section 3.4.   Transfer of Project. Other than the sales of individual units to occupants, the Developer shall transfer the Project only with the prior written consent of the City or upon delivery to the City of a purchase agreement between the Developer and a contractor in which the contractor agrees to assist the Developer in complying with the requirements of Section 3.3 of this Agreement with respect to the portion of the Development Property to be purchased and a certificate of the Developer acknowledging that it shall remain liable to perform its obligations under this agreement. If the consent of the City is not obtained and the Developer transfers all or a portion of the Development Property, such shall constitute an Event of Default.

Section 3.5.   No Business Subsidy. This Agreement does not constitute a business subsidy within the meaning of Minnesota Statutes, Sections 116J.993 to 116J.995 by reason of the exception for assistance for housing.

ARTICLE IV

EVENTS OF DEFAULT

Section 4.1. Events of Default Defined. The following shall be "Events of Default" under this Agreement and the term "Event of Default" shall mean whenever it is used in this Agreement any one or more of the following events:

(a) Failure by the Developer to timely pay any ad valorem real property taxes or special assessments assessed with respect to any portion of the Development Property while it is owned by the Developer.

(b) Failure by the Developer to cause the construction of the Project to be completed pursuant to the terms, conditions and limitations of this Agreement.

(c) Failure of the Developer to observe or perform any other covenant, condition, obligation or agreement on its part to be observed or performed under this Agreement.

(d) The holder of any mortgage on that portion of the Development Property owned by the Developer or any improvements thereon, or any portion thereof, commences foreclosure proceedings as a result of any default under the applicable mortgage documents.

(e) If the Developer shall

(A) file any petition in bankruptcy or for any similar relief under the United States Bankruptcy Act of 1978, as amended or under any similar federal or state law; or

(B) make an assignment for the benefit of its creditors; or

(C) admit in writing its inability to pay its debts generally as they become due; or

(D) be adjudicated a bankrupt or insolvent; or if a petition or answer proposing the adjudication of the Developer, as a bankrupt under any present or future federal bankruptcy act or any similar federal or state law shall be filed in any court and such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof; or a receiver, trustee or liquidator of the Developer, or of the Project, or part thereof, shall be appointed in any proceeding brought against the Developer, and shall not be discharged within sixty (60) days after such appointment, or if the Developer, shall consent to or acquiesce in such appointment.

Section 4.2. Remedies on Default. Whenever any Event of Default referred to in Section 4.1 occurs and is continuing, the City, as specified below, may take any one or more of the following actions after the giving of thirty (30) days' written notice to the Developer citing

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with specificity the item or items of default and notifying the Developer that it has thirty (30) days within which to cure said Event of Default. If the Event of Default has not been cured within said thirty (30) days:

(a)   The City may suspend its performance under this Agreement until it receives assurances from the Developer, deemed adequate by the City, that the Developer will cure its default and continue its performance under this Agreement.

(b)   The City may cancel and rescind the Agreement.

(c)   The City may take any action, including legal or administrative action, in law or equity, which may appear necessary or desirable to enforce performance and observance of any obligation, agreement, or covenant of the Developer under this Agreement.

(d)   If construction of the Project is not commenced within six months of Developer's purchase of the Development Property, ownership of the Development Property may revert back to City. City shall give written notice to Developer of this demand. City will refund the purchase price of the Property, despite ay improvements made to the Property. Alternatively, City may also choose to assess the Development Property ten thousand dollars ($10,000.00) pursuant to the Petition Developer will sign with this Agreement.

(e) If construction of the Project is not substantially completed within eighteen months of Developer's purchase of the Development Property, the Development Property will be assessed thirty thousand dollars ($30,000.00). If income compliance information is not timely provided to City, Developer agrees that the Development Property shall be assessed thirty thousand dollars. Both these remedies are to be petitioned for by Developer pursuant to the attached Assessment Petition and the Assessments will be binding on future owners of the Development Property.

Section 4.3.   No Remedy Exclusive. No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 4.4.   No Implied Waiver. In the event any agreement contained in this Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

Section 4.5.   Agreement to Pay Attorney's Fees and Expenses. Whenever any Event of Default occurs and the City shall employ attorneys or incur other expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the Developer herein contained, the Developer agrees that it shall, on demand therefor, pay to the City the reasonable fees of such attorneys and such other expenses so incurred by the City.

Section 4.6.   Indemnification of City.

(1)   The Developer releases from and covenants and agrees that the City, its governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof (hereinafter, for purposes of this Section, collectively the "Indemnified Parties") shall not be liable for and agrees to indemnify and hold harmless the Indemnified Parties against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any defect in the Project, provided that the foregoing indemnification shall not be effective for any actions of the Indemnified Parties that are not contemplated by this Agreement.

(2)   Except for any willful misrepresentation or any willful or wanton misconduct of the Indemnified Parties, the Developer agrees to protect and defend the Indemnified Parties, now and forever, and further agrees to hold the aforesaid harmless from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from the actions or inactions of the Developer (or if other persons acting on its behalf or under its direction or control) under this Agreement, or the transactions contemplated hereby or the acquisition, construction, installation, ownership, and operation of the Project; provided, that this indemnification shall not apply to the warranties made or obligations undertaken by the City in this Agreement or to any actions undertaken by the City which are not contemplated by this Agreement but shall, in any event and without regard to any fault on the part of the City, apply to any pecuniary loss or penalty (including interest thereon from the date the loss is incurred or penalty is paid by the City at a rate equal to the Prime Rate) as a result of the Project causing the Tax Increment District to not qualify or cease to qualify as a "housing district" under Section 469.174, Subdivision 11, of the Act or to violate limitations as to the use of Tax Increments as set forth in Section 469.176, Subdivision 4d.

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

ARTICLE V

ADDITIONAL PROVISIONS

Section 5.1.   Restrictions on Use. The Developer agrees for itself, its heirs and assigns and every successor in interest to the Development Property, or any part thereof, that the Developer and such heirs and assigns shall operate, or cause to be operated, the Project as a low and moderate income housing development that complies with the provisions of Section 3.3 and shall devote the Development Property to, and in accordance with, the uses specified in this Agreement.

Section 5.2.   Conflicts of Interest. No member of the governing body or other official of the City shall have any financial interest, direct or indirect, in this Agreement, the Development Property or the Project, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, nor shall any such member of the governing body or other official participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which he or she is directly or indirectly interested. No member, official or employee of the City shall be personally liable to the City in the event of any default or breach by the Developer or successors or on any obligations under the terms of this Agreement.

Section 5.3.   Titles of Articles and Sections. Any titles of the several parts, articles and sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 5.4.   Notices and Demands. Except as otherwise expressly provided in this Agreement, a notice, demand or other communication under this Agreement by any party to any other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

      (a)   in the case of the Developer is addressed to or delivered personally to:

_____

_____

      (b)   in the case of the City is addressed to or delivered personally to the City at:

City of Spring Valley
201 South Broadway
Spring Valley, MN 55975

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

Section 5.5.   Counterparts.   This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same instrument.

Section 5.6.   Law Governing.   This Agreement will be governed and construed in accordance with the laws of the State.

Section 5.7.   Expiration.   This Agreement shall expire on February 1, _____, unless earlier terminated or rescinded in accordance with its terms.

Section 5.8.   Provisions Surviving Rescission or Expiration.   Sections 4.5 and 4.6 shall survive any rescission, termination or expiration of this Agreement with respect to or arising out of any event, occurrence or circumstance existing prior to the date thereof.

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

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CITY OF SPRING VALLEY,
MINNESOTA

By_____
  Its Mayor

By_____
  Its Administrator-Clerk-Treasurer

_____

By: _____

Its: _____

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