

MEMORANDUM OF UNDERSTANDING

(Project Name:_____)

This MEMORANDUM OF UNDERSTANDING (the "Memorandum") is made and entered into this ____ the day of _____, 20____, by and between the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota, a public body corporate and politic organized under the laws of the State of Minnesota (the "HRA"), and _____ (the "Applicant").

WHEREAS, the Applicant has submitted an application for financing to the HRA, attached hereto as Attachment A, Application for Revenue Bond Financing (including the Exhibits listed in the Addendum for housing projects) dated the date hereof (the "Proposal"), and has requested that the HRA undertake a financing program to finance, refinance or provide subordinate or other financing identified in the Proposal (the "Program"), to finance or to assist in the financing of the project identified in the Proposal (the "Project") pursuant to Minnesota Statutes, Chapter 462C as amended (the "Act") and to other applicable federal, state and local laws, regulations, and requirements (together, the "Requirements"), by the issuance of tax-exempt multi-family revenue bonds in the amount of approximately \$ _____ (the "Bonds"); and

WHEREAS, the Act may require the City of Saint Paul, Minnesota (the "City") to conduct a public hearing on the Program; and

WHEREAS, pursuant to the Requirements and Chapter 72, Saint Paul, Minnesota, Administrative Code, the HRA has been designated to exercise on behalf of the City, certain powers conferred by the Requirements; and

WHEREAS, the HRA will provide final approval of the Program and issuance of the Bonds; and

WHEREAS, the Applicant and HRA desire to enter into this Memorandum containing their agreement as to certain matters:

NOW, THEREFORE, in consideration of the mutual promises and agreements herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Applicant and HRA agree as follows:

A. PROPOSAL AND PROGRAM APPROVAL

1. The City and the HRA hereby reserve to themselves the right to rescind any action heretofore taken or to be taken with respect to the Program and Project and the issuance of the Bonds. Nothing in this Memorandum shall be construed to require the City or the HRA to approve the Program or Project or issuance of the Bonds, nor shall this Memorandum be construed as vesting in the Applicant any cause of action against the City or the HRA arising from any failure or refusal by the City or the HRA to approve the Program or Project or issuance of the Bonds.
2. The Applicant shall provide the HRA with all information necessary to evaluate the Proposal and Project and prepare the Program.
3. The Applicant acknowledges that the adoption of a preliminary or inducement resolution, approval of the Program, or execution of this Memorandum, does not constitute a commitment by the HRA to issue Bonds, as described in the Act, to finance the Project. The Bonds shall only be issued pursuant to final approval by the HRA, or its delegate, of the terms and conditions of the Bonds, which approval may be granted or withheld in the HRA's sole discretion.
4. The HRA understands and agrees that the Applicant may form a partnership or other entity, which new entity will be the owner of the Project. The HRA hereby agrees that the Applicant may assign and transfer all of its rights, duties and obligations hereunder to such new entity, and the HRA hereby agrees to such assignment or transfer; provided that the HRA's agreement extends only to a new entity in which the Applicant or its partners or principals are general partners or principals. The Applicant understands and agrees that this Memorandum shall be null and void from and after the date of transfer or conveyance if the Applicant transfers or conveys the Project, or the Applicant's right to develop the Project, to an entity in which the Applicant or its partners or principals are not general partners or principals.
5. The Applicant agrees that the HRA may, in its discretion, delegate its power to issue the Bonds and to implement the financing Program under the Act. The Applicant and HRA further agree that in the event the Project may be financed under the provisions of any law other than the Act, the HRA may, in its sole discretion, elect to proceed under such other provisions of law. In that event, the HRA shall notify the Applicant of such election in writing, and thereafter, this Memorandum shall automatically be amended to the extent necessary to conform to the requirements of such other provisions of law.

B. FINANCING TEAM

1. The Applicant, if applicable, shall submit to the HRA its written proposal for selection of one or more investment bankers or underwriters to assist the Applicant and HRA in the structuring, implementation and sale of the Bonds. Such proposed selection shall not become effective, nor shall the Applicant enter into any binding agreement or commitment with respect thereto, until and unless the HRA approves such selection; and the HRA may disapprove such selection in its sole discretion. If the Applicant proposes that the Bonds shall be structured as a single debt instrument privately placed with a financial institution, the Applicant may propose that no investment bankers or underwriters will be selected.
2. If a trustee is required to administer the Bonds, the Applicant agrees that the HRA has the right to approve such trustee as the Applicant will select.
3. The Applicant acknowledges that the City Attorney will appoint _____, as bond counsel in connection with the issuance of the Bonds.

C. COMPLIANCE WITH CITY/HRA REQUIREMENTS

1. The Applicant, if applicable, hereby agrees to comply with, perform, carry out, undertake and be bound by all the provisions of the requirements of the City and the HRA related to (a) the displacement and relocation of existing residential and nonresidential occupants of existing buildings within the Project; and (b) the loss of low income housing units resulting from Project activities and the need for the replacement of lost low income housing units. The Applicant acknowledges the provisions of these requirements may require additional expenses as part of the Project's total development costs.
2. The Applicant agrees to comply with, perform, carry out, undertake and be bound by all the provisions of the application and policy adopted by the HRA as set forth in Resolution No. 83-6/8-9, attached hereto as part of Attachment C, Compliance Requirements, and hereby are made a part hereof.
3. In accordance with City of Saint Paul Council Resolution Number 278233 and HRA Resolution Number 82-2/25-4, the Applicant, if applicable, agrees when total development costs exceed \$10,000, which are supported by Bond proceeds, and the Project has eight (8) or more units, to include the prevailing wage rate provisions of Section 82.07 of the Saint

Paul Administrative Code, which, together with applicable wage rates and other documents, are to be included in any bid specification as set forth in Labor Standards, attached hereto as part of Attachment C, Compliance Requirements, and hereby are made a part hereof. Applicant further agrees, if applicable, when federal funds are used to assist in the financing of the Project to comply with Federal Davis-Bacon Labor Standards requirements.

4. In accordance with City of Saint Paul Council Resolution Number 86-693, the Applicant, if applicable, agrees to:
 - (a) demonstrate compliance with the City's affirmative action requirements as set forth in Affirmative Action/Equal Employment Opportunity Requirements, attached hereto as part of Attachment C, Compliance Requirements, and hereby are made a part hereof; and
 - (b) comply with the City's Targeted Business Program as set forth in Vendor Outreach Programs, attached hereto as part of Attachment C, Compliance Requirements, and hereby is made a part hereof, by allocating to set-aside businesses a negotiated percentage of the face amount of the Bonds, if the Project is a new construction project; or a negotiated percentage of the face amount of the Bonds, less acquisition cost, if the Project involves acquisition and rehabilitation of an existing structure, for work to be performed under contracts. The required percentages will be set at the pre-construction conference referenced in paragraph C.4.(d) below. The set-aside requirement will be monitored by the City's Joint Purchasing Office, which maintains a list of eligible contractors (set-aside businesses) and which will provide appropriate reporting forms at the pre-construction conference; and
 - (c) comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, by providing opportunities for training and employment to lower income persons residing in the city of Saint Paul and by entering into contracts for work to be contracted with firms which are located in or owned in substantial part by persons residing in the Minneapolis/Saint Paul seven county metropolitan area; and
 - (d) attend with Project contractors and subcontractors a pre-construction conference at which enforcement of and compliance with the above requirements, including reporting requirements, will

be presented by appropriate City staff.

5. The Applicant hereby acknowledges and agrees to comply with the policy of the HRA to issue only rated or ratable Bonds for public sale. If the Applicant determines that an unrated public sale of Bonds is necessary to insure the financial viability of the Project, such sale must be evaluated and approved in writing by the HRA and the City's Director of the Department of Finance and Management Services, and only if the Applicant submits a detailed written request for such approval and provides such information as the HRA and Director of the Department of Finance and Management Services will request in order to perform such evaluation.

D. COSTS AND EXPENSES, INDEMNIFICATION

1. The HRA hereby acknowledges receipt from the Applicant the sum of \$5,000, which sum is herewith paid to the HRA as a non-refundable Application Fee to defray, in part, the HRA's initial costs and expenses in connection with the Proposal, Project and Program. The Applicant and HRA hereby agree that (a) the non-refundable Application Fee paid by the Applicant shall not be credited toward the fees required to be paid at closing of the Bonds to be issued to refinance the Project; (b) the non-refundable Application Fee paid by the Applicant shall be payment for HRA's application fee only; (c) the fees and expenses of bond counsel, the Office of the City Attorney and others shall remain the separate obligation of the Applicant as provided herein; (d) the HRA's acceptance of the non-refundable Application Fee specified above shall not prejudice or reduce the HRA's right to collect or enforce such other fees or reimbursements as may be permitted by the Requirements; and (e) the applicant shall not be entitled to any refund or rebate of any amount of the non-refundable Application Fee under any and all circumstances.
2. The Applicant agrees that it will pay any and all costs heretofore incurred or to be incurred by the City, the HRA, bond counsel or others retained by the Applicant or retained by the HRA with the prior agreement of the Applicant, in connection with and reasonably related to the Proposal, Project or Program, including but not limited to, all staff charges, advertising and notifications, and all out of pocket expenses and legal fees, whether or not the HRA, or the City, if applicable, gives preliminary approval to the Program and issuance of the Bonds; whether or not the Program and issuance of the Bonds is given final approval by the HRA; whether or not the Bonds are issued; and whether or not the Project and

Program are carried to completion. The Applicant further understands and agrees that bond counsel will continue to owe a fiduciary obligation solely to the City and the HRA with respect to services rendered in connection with the Project and the Program, even though the bond counsel's fees and expenses shall be the liability of the Applicant.

3. Upon closing of the Bonds, the HRA shall be paid an initial Service Fee equal to one percent (1.00%) of the initial principal amount of the Bonds issued, payable on the date of closing the Bonds. On the first anniversary date of the Bonds, and on each anniversary date thereafter, the HRA shall be paid a continuing Service Fee equal to one-tenth of one percent (0.10%) of the outstanding bonds. The Service Fee amounts payable as set forth above will be reduced only if and to the extent necessary to assure compliance with Section 148 of the federal Internal Revenue Code of 1986, as amended, relating to arbitrage and any determinations needed for reduction shall be made by the HRA and bond counsel. Appropriate provisions will be prepared and included in the bond documents, which provisions will set forth all fees to be paid by the Applicant during the term of the Bonds. The Applicant and its partner(s), jointly and severally, agree to pay when due the Service Fees provided for in this paragraph.
4. The Applicant further agrees to pay the Office of the City Attorney of the City of Saint Paul, on the date of closing of the Bonds, a fee for all services rendered by the Office of the City Attorney with respect to the Proposal, Project and Program at a rate of one hundred dollars (\$150.00) per hour.
5. The Applicant further understands and agrees that the HRA shall have no obligation for any expenses of the Applicant or its partners heretofore or hereafter incurred with respect to the Proposal, Project or Program in the event Bonds are not authorized and issued for any reason; and that in the event such Bonds are issued, the inclusion of such expenditures in the development cost of the Project financed from Bond proceeds will be dependent upon the Requirements and the financial feasibility of the Project.
6. (a) The Applicant agrees to indemnify and hold the HRA and City, their officers, employees or agents, harmless against any and all losses, claims, damages, expenses or liabilities, including attorneys' fees incurred in their defense, to which the HRA or City, their officers, employees and agents may become subject in connection with the City's and HRA's consideration of the Proposal, the Program, issuance or sale of the Bonds for the Project or the carrying out of

any of the transactions contemplated by this Memorandum and any resolution adopted, or agreement or memorandum executed, by the HRA in connection with the issuance of its Bonds for the Project.

- (b) Additionally, the Applicant hereby releases the HRA and City, their officers, employees and agents from any claims, causes of action, losses, damages or liabilities which the Applicant may have against the HRA or City, their officers, agents or employees or which the Applicant may incur in connection with (1) the HRA and City's consideration of the Proposal, Project and Program, (2) the failure of the HRA in its sole discretion to issue Bonds for the Project for any reason (including lack of authority under State or Federal law), (3) the issuance and sale of the Bonds, (4) the construction of the Project, or (5) any other matter or thing of any type or nature which may arise in connection with the foregoing.

- 7. This Memorandum, and the approval of the Program by the City, if any, and the HRA, shall automatically terminate and be of no further effect if the Bonds are not issued within one (1) year after the date of this Memorandum. The Applicant shall not be entitled to any refund or rebate of the amount paid pursuant to paragraph D of this Memorandum as a result of such automatic termination. The Applicant may request an extension of this Memorandum, but such an extension shall be effective only if,
 - (a) approved by the HRA in its discretion; (b) payment is made to the HRA of an additional non-refundable Application Fee of \$ 5,000.00; and (c) the City gives, if applicable, in its discretion, new approval to the Project and the Program and issuance of refunding bonds.

This MEMORANDUM OF UNDERSTANDING is dated as of the day and year first above written.

"HRA"

Approved as to form:

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

Assistant City Attorney

Its Executive Director

"APPLICANT"

By _____

Its _____

Signature page to the Memorandum of Understanding between the Housing and
Redevelopment Authority of the City of Saint Paul, Minnesota, as HRA, and St. Paul
Leased Housing Associates I, Limited Partnership

ATTACHMENTS MEMORANDUM OF UNDERSTANDING

ATTACHMENT A, APPLICATION FOR REVENUE BOND FINANCING including Exhibits listed in the addendum for housing projects.

- EXHIBIT 1: PROJECT DESCRIPTION
- EXHIBIT 2: DEVELOPMENT AND FINANCING TEAM
- EXHIBIT 3: PROJECT SCHEDULE
- EXHIBIT 4: PERSONAL FINANCIAL STATEMENTS OF THE PRINCIPALS/GENERAL PARTNERS OF THE PROJECT
- EXHIBIT 5: PROPOSED FINANCIAL STRUCTURE OF THE REHABILITATION LOAN
- EXHIBIT 6: FINANCIAL ANALYSIS/UNDERWRITING REPORT
- EXHIBIT 7: FINANCIAL STATEMENTS
- EXHIBIT 8: DETAILED PROJECT BUDGET
- EXHIBIT 9: SOURCES AND USES OF FUNDS STATEMENT
- EXHIBIT 10: TERMS AND CONDITIONS OF SOURCES OF FUNDS
- EXHIBIT 11: BOND TERM SHEET
- EXHIBIT 12: MARKET FEASIBILITY ANALYSIS/PLAN
- EXHIBIT 13: OPERATING EXPENSE PROJECTIONS
- EXHIBIT 14: TEN YEAR PRO FORMA PROJECTIONS
- EXHIBIT 15: DETAILED UNIT BREAKDOWN
- EXHIBIT 16: ARCHITECTURAL DRAWINGS, SWORN CONSTRUCTION COST STATEMENT, BIDS AND SPECIFICATIONS, SITE IMPROVEMENT PLANS, SCOPE OF WORK
- EXHIBIT 17: OCCUPANCY/FILL PROJECTIONS
- EXHIBIT 18: TENANT DATA
- EXHIBIT 19: NEIGHBORHOOD SUPPORT
- EXHIBIT 20: SUPPORT SERVICES
- EXHIBIT 21: STATEMENT OF RESIDENT PARTICIPATION; COOPERATIVE HOUSING

ATTACHMENT B, RELOCATION AND HOUSING REPLACEMENT NOTIFICATION.

ATTACHMENT C, COMPLIANCE REQUIREMENTS.

ATTACHMENT C COMPLIANCE REQUIREMENTS

HRA RESOLUTION NO. 83-6/8-9.

LABOR STANDARDS including:

- Little Davis Bacon Standards Requirements, dated _____, 2002; and
- Prevailing wage rate data dated _____, 200__; (The wage rate is subject to change. The final wage standard will be the one in effect at the time a contract is signed between the applicant and general contractor); and
- Ratio of Apprentices to Journeyworkers on Locally and Federally Funded Projects dated _____; and
- Bona-fide Self-Employed/Independent Subcontractor Status Demonstration dated _____.

AFFIRMATIVE ACTION/EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

VENDOR OUTREACH PROGRAMS

SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT dated
Revised May 21,1991.