

January 28, 2014

**COPY OF
DISBURSEMENT
LIST
IS AVAILABLE
IN THE
CITY CONTROLLER'S
OFFICE**

LOAN AGREEMENT

THIS LOAN AGREEMENT (this "**Agreement**") is made this ____ day of _____, 2014, by and between the City of Roseville, a Michigan municipal corporation, whose address is 29777 Gratiot, Roseville, MI 48066 (the "**City**") and the Recreation Authority of Roseville & Eastpointe, a Michigan municipal corporation, whose address is 18185 Sycamore, Roseville, MI 48066 (the "**Borrower**"), for the purpose of funding improvements and expanding the facilities at the property located at 18185 Sycamore, Roseville, MI 48066 (the "**Project**").

WHEREAS, the Michigan Constitution of 1963, Article VII, Section 28 and Public Act 35 of 1951, Intergovernmental Contracts between municipal corporations, being MCL 124.1, *et seq.*, permit a municipal corporation to join with other municipal corporations by contract for the performance of any service which each would have a part to perform separately;

WHEREAS, each party of this **Agreement** has the power, privilege, and authority to provide services relating to recreation within their respective communities;

WHEREAS, services provided by **Borrower**, based upon the establishment of **Borrower** by the respective communities of the City of Roseville and the City of Eastpointe, were made for purposes of significant budget cuts, reduced tax revenues, and resulting economies of scale so to economically provide for recreational services to the residents of the City of Roseville and the City of Eastpointe;

WHEREAS, the recreational building is in need of improvements and expansion to provide these services to the residents of the City of Roseville and the City of Eastpointe;

WHEREAS, the respective communities wish to assist financially in said expansion and improvements;

WHEREAS, pursuant to the Michigan Constitution and state law, the parties enter into this **Agreement** to memorialize their collaboration and cooperation toward the goals set forth above.

NOW, THEREFORE, the parties agree as follows:

1. LOAN COMMITMENT

1.1 Loan and Promissory Note. **Borrower** agrees to borrow and the **City** agrees to lend to **Borrower** up to the principal sum of Nine Hundred Thousand and 00/100 Dollars (\$900,000.00) (the "**Loan**") pursuant to the terms of this **Agreement** and of a certain Promissory Note of even date (the "**Note**"). Advances under the **Note**, interest charges and repayment of the **Note** shall be made according to the terms of the **Note** and of this **Agreement**. **Borrower** may request advances until _____, 20____ (the "**Completion Date**"), or the termination of the **City's** obligation to lend, if earlier.

1.2 Use of Proceeds. **Borrower** shall use the proceeds of the **Loan** solely for purposes described in the introductory paragraph.

1.3 Loan. After satisfaction of all conditions to making the final advance of the **Loan**, by the Completion Date, the **Borrower** may give an irrevocable written notice to the **City** that **Borrower** accepts a loan in an amount up to Nine Hundred Thousand and 00/100 Dollars (\$900,000.00) ("**Loan**"), provided that such election shall not be effective unless each of the terms and conditions below has been satisfied at that time. In the event any of the foregoing conditions is not satisfied to the satisfaction of **City**, or if **Borrower** fails to provide written notice of its election to accept the **Loan**, the **Note** shall be repaid in full at its maturity and the **City's** obligation to make the **Loan** shall terminate.

A. Conditions.

- (i) The **Project** shall have been completed to the satisfaction of **City** and a permanent certificate of occupancy, if available, shall have been issued for the **Project**. The **Borrower** shall have satisfied all conditions to the final advance of the **Loan** described in section 2.7 below.
- (ii) All of the **Borrower's** representations and warranties made in this **Agreement** and each related document shall remain true and correct in all respects.
- (iii) No Event of Default shall be continuing, unwaived or uncured.
- (iv) No adverse changes to 18185 Sycamore, Roseville, MI 48066 (the "**Premises**") or the **Borrower**.

2. ADVANCES

2.1 Frequency. Provided that all conditions set forth herein have been completed to the **City's** satisfaction, **Borrower** shall be entitled to advances of the **Loan**; provided, however, that **Borrower** shall not be entitled to more than one advance each calendar month and shall not receive such advance until five working days after the **City** has received a properly completed Request for Advance (as described below) and all of the other conditions set forth herein have been completed to the **City's** satisfaction. Advances shall alternate between each of the **Cities**.

2.2 Amount.

- A. Advances. Subject to the **City's** right to withhold reserves and other funds sufficient to complete construction of the **Project**, advances shall be limited to a total of Nine Hundred Thousand and 00/100 Dollars (\$900,000.00).
- B. Interest. Interest shall begin to accumulate upon any draw being received by **Borrower**. Interest shall begin as of the posting of the drawn amount to the **Borrower's** account at the rate per annum equal to 2.75% computed on the basis of the actual number of days elapsed and a year consisting of 360 days.

2.3 Other Conditions to First Advance. The obligation of the **City** to make the first advance of the **Loan** is subject to the receipt by the **City** of the following:

- A. Execution and delivery of the **Note** and this **Agreement** and recording or filing thereof, if required.

- B. Evidence satisfactory to the **City** that a proper notice of commencement has been recorded and that two (2) copies thereof have been posted in conspicuous places on the **Project** site and that no construction, demolition, or other “Actual Physical Improvements” as defined in P.A. 497 of 1980, as amended, (the “**Construction Lien Act**”), have taken place on the **Project** site prior to posting of the notice of commencement and recording of the notice of commencement and the **Loan**.

2.4 Conditions to Subsequent Advances. The obligation of the **City** to make any advance of the **Loan** after the first advance is subject to the satisfaction of the following conditions at the time of such advance:

- A. The **City** shall receive a Request for Advance in a form satisfactory to the **City** which has been signed by the **Borrower** and the general contractor and, if required by the **City**, the **City’s** architect or inspector, stating that the work has progressed to the point indicated in the Request for Advance, that the work is of satisfactory quality and conforms to the plans and specifications, and an estimate of the cost of completion of the **Project**.
- B. A final signed itemized statement of the total estimated cost to complete the **Project**, including reserves appropriate to the **Project's** size and scope, signed by **Borrower** and **Borrower's** general contractor (the “**Budget**”). The total cost to complete the **Project** shall in no event exceed the amount of the **Budget**.
- C. A copy of all of **Borrower's** contracts with its general contractor (which general contractor shall be satisfactory to the **City**) and, if requested, a copy of all subcontracts. **Borrower's** contract with the general contractor shall be at a “fixed cost” which may not exceed the amount budgeted for construction costs pursuant to the **Budget**.
- D. Evidence that all building permits and other authorizations necessary to construct the **Project** have been obtained and evidence that the **Project** will comply with all federal, state and local laws, regulations, zoning, building codes and other ordinances and restrictions affecting construction and use of the **Project**.
- E. Workmen's compensation insurance policies insuring **Borrower**, if required by law and in the amount required by such law, public liability insurance and a policy of builders' all-risk completed value, non-reporting form of fire, extended coverage, vandalism and malicious mischief hazard insurance covering the **Project** with insurance companies satisfactory to the **City** and in amounts satisfactory to the **City**. The builder's risk policy shall show the **City** as a second creditor and shall require thirty (30) days prior notice to the **City** before such policy may be cancelled or modified.
- F. Written confirmation in a form satisfactory to the **City** that the general contractor and, if required, any others contracting directly with **Borrower** for construction of the **Project** shall, in the event of default by **Borrower**, complete construction of the **Project** on behalf of the **City** at no increase in cost.

- G. **Borrower** shall not be in default under the terms of this **Agreement**, or the **Note**.
- H. The **Project** shall not have been materially damaged by fire or other casualty.
- I. The **City** shall have received evidence satisfactory to it that all work and improvements through the date of the current Request for Advance have been properly completed or installed in accordance with the plans and specifications and have been inspected and approved by any governmental authorities, if required.
- J. The **City** shall have received sworn statement indicating detail on current draw request including balance to complete; inspection report from **City's** inspector indicating percentage of completion and sufficiency of unfunded loan to complete project; waivers of lien for all hard cost line items previously funded.

2.5 Conditions to Final Advance. The obligation of the **City** to make the final advance of the **Loan** is subject to the following:

- A. Receipt by the **City** of a copy of a certificate of occupancy for the **Project** issued by the appropriate governmental authority.
- B. Evidence satisfactory to the **City** that the **Project** has been completed lien free in accordance with the plans and specifications.
- C. An affidavit satisfactory to the **City** signed by the general contractor stating that the general contractor has received payment of all sums owing to it by **Borrower**; waiving and releasing all claims which the general contractor may have against the **Borrower**; indemnifying the **Borrower** against all damages, costs, liens, or losses relating to any claim for compensation by any other party for work which was done for the contractor; and certifying that the general contractor has fully paid for all work, labor, services, materials, and equipment provided to it in connection with its work on the **Project**.
- D. A fully paid policy of permanent all-risk casualty insurance for the **Project** in an amount and with an insurance company satisfactory to the **City** which shall reflect the **City** as named insured and shall provide for thirty (30) days prior written notice to lender of cancellation or modification of the policy.

2.6 Waivers. Any of the conditions set forth in Section 2 may be waived by the **City** in whole or in part at any time without loss of the right to assert any such condition or conditions at a later time and any such waiver shall not release **Borrower** from any other provision of this **Agreement**.

2.7 Direct Payments. **Borrower** hereby grants to the **City** the right to make payments directly to the contractor, subcontractors, suppliers, and laborers on the **Project** in the same manner as the **Borrower** is authorized to do pursuant to the Construction Lien Act.

3. REPRESENTATIONS AND WARRANTIES

3.1 Validity and Enforceability of Documents. This **Agreement**, and the **Note** have been or will be duly executed and delivered and will be valid, binding and legally enforceable obligations of **Borrower** in accordance with their terms.

3.2 Effect of Agreement. This **Agreement** and the transactions contemplated hereby will not violate any other agreements or instruments to which **Borrower** is a party or which affect the **Premises**.

3.3 Financial Statements. The financial statements of **Borrower** previously or hereafter delivered to the **City** will fairly present the financial condition of **Borrower** as of the statement dates in accordance with generally accepted accounting principles, and there has been no material adverse change in **Borrower's** financial condition since the date of the most recent statements furnished the **City**.

3.4 Litigation. There are no actions, suits, or proceedings pending or to the knowledge of **Borrower** threatened against **Borrower** or the **Premises** nor is **Borrower** or the **Premises** subject to any order, writ, injunction or decree which has not been disclosed by **Borrower** to the **City**.

3.5 Title. **Borrower** possesses marketable title to the **Premises** in fee simple absolute, free from all encumbrances and liens other than encumbrances and liens disclosed to and permitted by the **City**.

3.6 Utilities and Roads. The **Premises** have or will have adequate rights of access to all necessary utilities and all roads necessary for full utilization of the **Project** have been completed or the necessary steps have been taken by **Borrower** and any governmental authorities to assure completion of such roads.

3.7 Use of Proceeds. **Borrower** will use the **Loan** proceeds solely for the purpose of refinancing and constructing the **Project**.

3.8 Plans. The plans and specifications are satisfactory to **Borrower** and do not violate any local governmental requirement or restrictive covenant, and the anticipated use of the **Project** complies with applicable zoning ordinances, regulations and restrictive covenants.

3.9 Approvals. **Borrower** has obtained all approvals, permits, licenses, authorizations and consents from each governmental authority or any other person necessary for the development, construction, leasing, sale, operation, or use of the **Project**, and the same remain in full force and effect.

3.10 Survival. All representations and warranties of **Borrower** contained herein shall survive the execution of this **Agreement** and all advances made under this **Agreement**.

4. COVENANTS

Until the **Note** has been repaid in full, **Borrower** agrees as follows:

4.1 Changes. **Borrower** will not cause, suffer or permit any material modification or amendment of, or deviation from, the plans and specifications or any of the contracts for construction of the **Project** (the "**Contracts**") without the **City's** prior written consent. Any modification(s) or amendment(s) to any of the **Contracts** changing the aggregate compensation payable by more than 5% of the original contract amount shall be deemed to be material.

4.2 Cost Over-Runs. The **City**, at any time, request from **Borrower's** architect and general contractor and from its own inspecting architect or inspector, an estimate of the total cost to complete the **Project**. If, in the **City's** reasonable opinion, the undisbursed portion of the **Loan** is insufficient to pay in full the remaining total cost to complete the **Project**, **Borrower** agrees to contribute to the **Project** an amount of funds equal to the difference between the total cost to complete and the undisbursed portion of the **Loan**. Notwithstanding any other provisions of this **Agreement**, the **City** shall not be obligated to make any advance of the **Loan** unless and until **Borrower** makes the cash contribution required by this paragraph.

4.3 Completion. **Borrower** shall cause all construction to be performed in a good and workmanlike manner using only new materials, shall require prompt correction of all defective or non-conforming work, and shall cause all damage to or casualty suffered by the **Project** to be promptly repaired and restored. **Borrower** shall cause construction of the **Project** to be completed in accordance with the plans and specifications on or before the Completion Date.

4.4 Trust Funds. **Borrower** shall receive all advances under this **Agreement** as trust funds for the purpose of paying the costs to complete the **Project**.

4.5 Discharge of Liens. Within thirty (30) days of the filing of any lien or claim against the **Premises**, **Borrower** will pay the lien or obtain a bond sufficient to discharge the lien or will otherwise cause the lien to be discharged, or will insure over such liens.

4.6 Inspection and Information. Upon providing notice, **Borrower** will permit representatives of the **City** to have free access to the **Project** and to inspect all work, materials, equipment, and personal property purchased or pledged in connection with the **Project** and to inspect and copy all books, records, and financial information of **Borrower** as well as contracts relating to the **Project**. **Borrower** will provide the **City** copies of all leases and other contracts relating to the **Project**. **Borrower** will promptly notify the **City** of any adverse event or condition affecting the **Project**, the progress of construction, or the performance of **Borrower's** obligations under this **Agreement**, or the **Note**.

4.7 Compliance With Construction Lien Act. **Borrower** shall comply in all respects with the provisions of the Construction Lien Act, including, but not limited to, the following:

- A. **Borrower** shall prepare and record a notice of commencement in the office of the Register of Deeds for the county in which the **Project** is located prior to the first Actual Physical Improvement.
- B. **Borrower** or its designee shall promptly provide a notice of commencement to any subcontractor, supplier or laborer requesting same.
- C. **Borrower** shall post and keep posted two copies of the notice of commencement on the **Project** Site at all times during the course of construction.
- D. Upon receipt of either a notice of furnishing or notice of lien, **Borrower** or its designee shall immediately provide the **City** and the Title Company with a copy thereof.

4.8 Indemnity. In addition to any indemnity of the **City** by **Borrower** set forth in the **Loan**, **Borrower** hereby agrees to indemnify the **City** from any claims arising from **Borrower's** failure to comply with the Construction Lien Act and from all claims made against the **City** by any persons who are injured while working on the **Project** or present on the **Premises** or who have claims with respect to labor or materials furnished with respect to the **Project** and against any claims arising by reason of the execution of this **Agreement** or consummation of the transactions contemplated hereby.

4.9 Encroachments. **Borrower** will not permit the **Project** to encroach upon any easements, rights of way, or lands of others.

4.10 Further Assistance. At the **City's** request, **Borrower** will execute any further documents or instruments and perform any other acts which are required by the **City** in order to effectuate the transactions contemplated by this **Agreement**.

4.11 Financial Reporting. Until all amounts due under the **Loan** is paid in full, **Borrower** will promptly furnish to the **City** such information regarding their business affairs and financial condition as the **City** may reasonably request from time to time.

4.12 Indebtedness; Encumbrances. **Borrower** shall not borrow money or act as guarantor of any loan or other obligation or make loans, advances or extensions of credit to any other person or entity without **City's** prior written consent. **Borrower** shall not permit any encumbrances on the Property or any of its real properties without the prior written consent of **City**.

4.13 Litigation; Event of Default. **Borrower** shall promptly inform **City** in writing of (i) all material adverse changes in **Borrower's** financial condition; and (ii) all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting **Borrower** or any assets pledged as collateral to secure payment of this **Note** that could materially affect the financial condition of **Borrower**; and (iii) the occurrence of any Event of Default or the occurrence of any event which might mature into such an Event of Default.

4.14 Financial Records. **Borrower** shall maintain books and records in accordance with sound accounting principles consistently applied and permit **City** to examine and audit **Borrower's** books and records at all reasonable times.

4.15 Additional Information. Furnish such financial reports, information and statements, list of assets and liabilities, tax returns and other reports with respect to the **Borrower's** financial condition as **City** may reasonably request from time to time.

4.16 Transfer of Assets. **Borrower** shall not sell, transfer or assign all or a substantial portion of its assets as long as this **Note** remains outstanding.

4.17 Name Change. **Borrower** shall not change its name, fiscal year, or method of accounting (except as required by sound accounting principles consistently applied), and except that **Borrower** may change its name **Borrower** has given **City** sixty (60) days prior written notice and taken such action as **City** deems necessary to continue the perfection of **City's** security interests and/or liens.

4.18 Change or Composition. There shall be no change in composition or control of **Borrower** without **City's** prior written consent.

4.19 Existence. **Borrower** shall maintain its entity existence in good standing in the State of Michigan, including any licenses which may be necessary in order for **Borrower** to conduct its business operations.

4.20 Property Taxes. **Borrower** shall promptly pay all taxes, levies and assessments due to local, state and federal taxing authorities covering the Property.

4.21 Distributions. So long as no Event of Default has occurred, **Borrower** shall be permitted to make dividends or distributions with respect to (whether by reduction of capital or otherwise) any shares of its stock or membership interests (as the case may be) without the prior written consent of **City**. **Borrower** will not purchase, redeem, retire or otherwise acquire any of its stock or membership interests (as the case may be), or make any commitment to do so without the prior written consent of **City**.

4.22 Liens. **Borrower** shall not permit any lien to exist on its assets for a period in excess of 30 days after written notice by **City** without bonding or indemnification satisfactory to **City** with respect to any such lien.

4.23 Payment of Taxes. **Borrower** shall pay when due all taxes, assessments and other governmental charges imposed upon it or its assets, franchises, business, income or profits before any penalty or interest accrues thereon, and all claims (including, without limitation, claims for labor, services, materials and supplies) for sums which by law might be a lien or charge upon any of its assets, provided that (unless any material item or property would be lost, forfeited or materially damaged as a result thereof) no such charge or claim need be paid if it is being diligently contested in good faith, if **City** is notified in advance of such contest and if **Borrower** establishes an adequate reserve or other appropriate provision required by generally accepted accounting principles and deposits with **City** cash or bond in an amount acceptable to **City**.

4.24 Compliance. **Borrower** shall comply with all federal, state and local laws, regulations and orders applicable to **Borrower** or its assets including but not limited to all environmental laws, in all respects material to **Borrower's** business, assets or prospects and shall immediately notify **City** of any violation of any rule, regulations, statute, ordinance, order or law relating to the public health or the environment and of any complaint or notifications received by **Borrower** regarding to any environmental or safety and health rule, regulation, statute, ordinance or law. **Borrower** shall obtain and maintain any and all licenses, permits, franchises, governmental authorizations, patents, trademarks, copyrights or other rights necessary for the ownership of its properties and the advantageous conduct of its business and as may be required from time to time by applicable law.

4.25 Failure to Pay Taxes. If **Borrower** fails to pay any tax, assessment, governmental charge or levy or to maintain insurance within the time permitted or required by this **Note**, or to discharge any lien prohibited hereby, or to comply with any other obligations hereunder, **City** may, but shall not be obligated to, pay, satisfy, discharge or bond the same for the account of **Borrower**, and to the extent permitted by law and at the option of **City**, all monies so paid by **City** on behalf of **Borrower** shall be deemed obligations hereunder.

4.26 Further Assurances. **Borrower** shall execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further assurances and other agreements or instruments, and take or cause to be taken all such other action, as shall be reasonably necessary from time to time to give full effect to the **Note** and the transactions contemplated thereby.

4.27 **Insurance.** At its own cost, **Borrower** shall obtain and maintain insurance against (i) loss, destruction or damage to its properties and business of the kinds and in the amounts reasonably acceptable to the **City** and, in any event, sufficient to fully protect **City's** interest in any collateral securing the **Loan** evidenced by this **Note**, and (ii) insurance against public liability and third party property damage of the kinds and in the amounts reasonably acceptable to the **City**. All such policies shall (i) be issued by insurers reasonably acceptable to the **City**, (ii) name **City** as an additional insured and, where applicable, as loss payee or _____ under a lender loss payable or _____ endorsement satisfactory to **City**, and (iii) shall provide for 30 days' written notice to **City** before such policy is altered or canceled. All of the insurance policies required hereby shall be evidenced by one or more certificates of insurance delivered to **City** by **Borrower** on or before the closing date and at such other times as **City** may request from time to time.

5. **DEFAULTS AND REMEDIES**

5.1 **Events of Default.** The following shall constitute "**Events of Default**" under this **Agreement**:

- A. **Nonpayment; Default in Other Documents.** **Borrower** shall default in the payment of principal or interest under the **Note**, or under any provisions of the **Note** or any document hereafter given in connection with the transactions contemplated by this **Agreement**, or any representations or warranties made by **Borrower** in such agreements, or otherwise, prove to be untrue in any material respect.
- B. **Failure to Perform.** **Borrower** shall breach or fail to perform any term, condition, covenant, representation, or warranty contained in this **Agreement** and such breach continues for a period of thirty (30) days after receipt of written notice by the **Borrower**.
- C. **Misrepresentation.** Any statement, representation or information made or furnished by or on behalf of **Borrower** to the **City** in connection with or to induce the **City** to make the **Loan** shall prove to be false or materially misleading when made or furnished.
- D. **Liens.** The recording of any lien against the **Property**, except as permitted by the **City**, which is not discharged of record within thirty (30) days of its filing.
- E. **Project Completion.** Construction on the **Project** is abandoned or discontinued for thirty (30) days or it becomes apparent in the **City's** reasonable judgment that the **Project** will not be completed by the Completion Date or failure to complete the **Project**, including all roads and utility service to the **Project**, on or before the Completion Date.
- F. **Judgments, etc.** Entry of a judgment or decree against **Borrower** which in the **City's** sole opinion would prevent completion of the **Project** or impair the **City's** security.

- G. Insolvency, etc. The insolvency of **Borrower** or the admission in writing of **Borrower's** inability to pay debts as they mature; or the institution of bankruptcy, reorganization, arrangement, insolvency or other similar proceedings by or against **Borrower**; or the issuance or filing of any attachment, levy, garnishment or the commencement of any related proceeding or the commencement of any other judicial process upon or in respect to **Borrower**.
- H. Destruction and Eminent Domain. If a material portion of the **Project** is destroyed or damaged, or condemned under power of eminent domain.

5.2 Remedies. Upon occurrence of an Event of Default, the **City**, at its option, may exercise any or all of the following rights and remedies:

- A. Termination of Advances. The **City** may terminate its obligation to make advances under this **Agreement**.
- B. Acceleration. The **City** may declare all sums owed by **Borrower** to the **City** under this **Agreement**, the **Note**, or any other documents to be immediately due and payable without further notice to or demand on **Borrower**.
- C. Advance Funds. The **City** may advance funds under this **Agreement** to pay: (i) the costs and expenses of performing the **Borrower's** obligations under this **Agreement** or curing a default by **Borrower**; (ii) claims or liens with priority over any interest of the **City**; (iii) any construction lien on the **Project** regardless of its priority; and (iv) any cost to protect the **Project** from hazards, damage, vandalism, waste, weather or other risks.
- D. Other Remedies. The **City** may exercise all remedies specified in the **Note**, or any other documents or instruments executed by **Borrower** for the benefit of the **City** and may avail itself of any other remedies available to it at law or in equity.
- E. Completion of Project. Upon occurrence of an Event of Default which results in **Borrower's** failure for any reason to continue with construction of the **Project** as required by this **Agreement**, the **City** may, but shall not be obligated (notwithstanding the provisions of any assignment or other document) to take over and complete construction of the **Project** in accordance with the Plans and Specifications and with such changes as the **City** may, in its discretion, deem appropriate, all at the risk, cost and expense of **Borrower**. The **City** may assume or reject any contracts entered into by the **Borrower** in connection with the **Project** and may enter into additional or different contracts which, in the **City's** judgment, are necessary to complete the **Project**, and may pay, compromise, and settle all claims in connection with the **Project**. All sums expended by the **City** in completing the **Project** shall be deemed advances made by the **City** to **Borrower** and **Borrower** shall be liable to the **City** for the repayment of such sums, together with interest thereon from the date of their expenditure. Nothing contained in this paragraph shall impose an obligation on the **City** to complete the **Project**. The **City** may abandon work on the **Project** at any time and may recommence work at any time. For the purpose of carrying out the provisions of this paragraph, **Borrower** irrevocably appoints the **City**, its attorney in fact with full power of substitution, to execute and deliver all documents, pay and receive

funds, enforce any contracts, and take such actions as may be necessary in the judgment of the **City** to complete the **Project**.

- F. Attorneys' Fees and Costs. **Borrower** agrees to pay any reasonable attorneys fees, expenses and court costs incurred by the **City** in the enforcement of this **Agreement**.

6. MISCELLANEOUS

6.1 Notices. All notices or demands by either party upon the other shall be in writing and shall be personally served or mailed by registered or certified mail, return receipt requested, or overnight courier, postage prepaid to the addresses set forth at the beginning of this **Agreement** or to such other address as either party may hereafter furnish to the other. Notices shall be deemed given upon personal delivery or as of the second business day after deposit in the United States mail, or brought by overnight courier.

6.2 Benefit and Assignment. This **Agreement** shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. **Borrower** may not assign any of its rights or duties under this **Agreement** without the prior written consent of the **City**. The **City** may sell, assign, transfer or convey, all or any portion of the **Loan** by participation or otherwise, without notice to **Borrower**.

6.3 Entire Agreement and Amendment. This **Agreement**, and the **Note** contain the entire agreement between the parties with respect to the matters described herein and are a complete and exclusive statement as to the terms thereof and supersede all previous agreements. The rights and remedies of the **City**, and the duties and obligations of **Borrower**, under all such documents shall be cumulative. In entering into this **Agreement**, the **Borrower** is not relying on any oral promise or representation from the **City** or any person purporting to represent the **City** in respect of any aspect of this **Agreement** or the **Loan**. This **Agreement** may not be altered or modified except by a writing signed by the party against whom such alteration or modification is sought.

6.4 Invalidity. The invalidity of any provision of this **Agreement** shall not affect the validity of the remainder of any such provision or the remaining provisions of this **Agreement**.

6.5 Interpretation. The paragraph headings included in this **Agreement** have been used solely for convenience and shall not be used in conjunction with the interpretation of this **Agreement**.

6.6 Waiver. The failure of the **City** at any time to require performance of **Borrower** under any provision of this **Agreement**, or the **Note** shall not be deemed a continuing waiver of that provision or a waiver of any other provision of such documents, and shall in no way affect the full right to require full performance from **Borrower** at any time thereafter.

6.7 Insurance. **Borrower** hereby irrevocably names and appoints the **City** as its agent and attorney in fact to make claim for the proceeds of any hazard insurance policies payable with respect to destruction or damage of the **Project**, to execute any instrument reasonable or necessary thereto in the name of **Borrower**, to receive and endorse the name of **Borrower** on any check, draft or other such instrument issued in payment and to collect the proceeds thereof and grant release and discharge therefore to the paying company.

6.8 Counterparts. This **Agreement** may be executed in any number of counterparts, all of which shall constitute a single agreement.

6.9 No Liability to Third Parties. This **Agreement** shall not be construed to make the **City** liable to, or to create any contractual relationship with, suppliers, contractors, craftsmen, laborers or others for labor, materials, supplies and/or services delivered by such parties, or for debts or claims accruing to such parties against the **Borrower**.

6.10 Designee. The **City** shall not act as the **Borrower's** "designee" under the Michigan Construction Lien Act, as amended. The **Borrower** and/or the **Borrower's** designee (which party shall be acceptable to the **City**) shall timely provide the **City** and all other parties entitled under the Michigan Construction Lien Act with copies of any notice of commencement, notice of furnishing, claim of lien, sworn statement, waiver of lien, and copies of all other documents or papers that relate to construction of improvements and to otherwise fully comply with the requirements of the Michigan Construction Lien Act.

6.11 Non-Liability of City. **BORROWER** ACKNOWLEDGES AND AGREES THAT: THE **CITY** IS NOT AN EXPERT IN THE CONSTRUCTION INDUSTRY; **BORROWER** WILL NOT RELY ON THE **CITY** OR ITS REPRESENTATIVES TO PROTECT ANY INTEREST OF **BORROWER** IN THE **PROJECT** OR OTHERWISE; THE **CITY** HAS THE OPTION NOT TO REQUIRE **BORROWER'S** COMPLIANCE WITH ANY OR ALL OF THE TERMS, CONDITIONS, AND REQUIREMENTS OF THIS **AGREEMENT** AND/OR NOT TO EXERCISE ITS RIGHTS TO INSPECT THE **PROJECT** AND/OR ANY DOCUMENTS RELATED TO THE **PROJECT**; AND THE **CITY** SHALL NOT BE LIABLE TO **BORROWER** FOR ANY LOSS, COST, DAMAGE, OR EXPENSE INCURRED BY **BORROWER** AS A RESULT OF ANY SUCH NON-ACTION OR OMISSION BY THE **CITY**.

6.12 Jury Trial. **BORROWER** AND THE **CITY** ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS **AGREEMENT** OR THE **LOAN**.

The parties have executed this **Agreement** on the day and year first set forth above.

City:

City of Roseville,
a Michigan municipal corporation

By: John Chirkun
Its: Mayor

By: Richard Steenland
Its: Clerk

Borrower:

Recreation Authority of Roseville & Eastpointe,
a Michigan municipal corporation

By:
Its: Chairman

By:
Its: Secretary

EXHIBIT A

LEGAL DESCRIPTION