

**Participation Agreement**  
(Edina Affordable Housing Fund – Nolan Mains)

This Participation Agreement (the “Agreement”), is made and entered into this \_\_\_ day of \_\_\_\_\_, 2019, by and between the HOUSING AND REDEVELOPMENT AUTHORITY OF EDINA, MINNESOTA, a public body corporate and politic organized and existing under the laws of the State of Minnesota (the “Authority” or “Lead Lender”), and the EAST EDINA HOUSING FOUNDATION, a Minnesota nonprofit corporation (the “Foundation”).

Recitals:

A. The Authority has agreed to make a loan in the maximum, aggregate principal amount of \$1,500,000.00 (the “Loan”) to EDINA MARKET STREET LLC, a Minnesota limited liability company (the “Borrower”), the proceeds of which will be used by the Borrower to partially finance the construction of an approximately 100 unit apartment building (the “Project”) on the real property situated in the city of Edina, Minnesota (“City”), described on Exhibit A attached to the Mortgage (as defined below) (the “Property”).

B. The Authority, the City, and the Borrower have entered into a Redevelopment Agreement (the “Redevelopment Agreement”) dated June 27, 2017, as amended, which Redevelopment Agreement is intended to provide for the redevelopment of the Property by the Borrower with the cooperation and assistance of the Authority and the City.

C. Pursuant to the Redevelopment Agreement and in consideration for the Loan, the Borrower has agreed to impose restrictive covenants upon the Property to ensure that at least 10 percent of the residential units within the Project will remain affordable to certain low-income persons and households (“Affordability Covenants”), as more specifically set forth in the Redevelopment Agreement.

D. The Foundation is a nonprofit corporation whose purpose is to provide assistance to families and individuals looking for affordable home ownership options in the City.

E. The Foundation desires to participate in the Loan by providing 50% of the Loan funds, and the Lead Lender has agreed to such participation, all upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the agreements set forth herein, the parties hereto hereby agree as follows:

1. Definitions. For the purposes of this Agreement, each of the following terms shall have the meaning specified with respect thereto, unless a different meaning clearly appears from the context:

(a) “Lender” means the Lead Lender or a Participant, and “Lenders” means both the Lead Lender and the Participants.

(b) “Collateral” means any property, real or personal, tangible or intangible, on or in which the Lead Lender holds a lien or security interest as collateral security for the Loan.

(c) “Event of Default” means an event of default, or any default and the expiration of any cure period applicable thereto, under, pursuant to, or as defined in any of the Loan Documents, as determined by the Lead Lender.

(d) “Loan” means the Borrower’s obligations as described in this Agreement, the Loan Agreement, and the Note and includes, but is not limited to, all extensions, renewals, modifications, and refinancings or the Borrower’s obligation as well as all collateral and assurances of repayment taken in connection with the Loan.

(e) “Loan Agreement” means that certain Affordable Housing Loan Agreement between the Borrower and Lead Lender dated January 10, 2018.

(f) “Loan Documents” means those “Loan Documents” as that term is defined in the Loan Agreement, including without limitation the Loan Agreement, the Note, and the Mortgage.

(g) “Mortgage” means the Mortgage as defined in the Loan Agreement.

(h) “Note” means the Promissory Note dated January 10, 2018, executed and delivered by the Borrower to Lead Lender, in the maximum principal amount of \$1,500,000.00 to evidence the Loan.

(i) “Participant” means the Foundation and each other purchaser of a Participating Interest.

(j) “Participating Interest” means the undivided interest of each Participant in the Loan, in the Loan Documents and in the Collateral.

(k) “Participation Certificate” means a certificate in the form of Exhibit A attached hereto evidencing each Participant’s interest in the Note.

(l) “Participation Commitment” means the maximum dollar amount each Participant has committed to advance on the Note as designated on the Participation Certificate attached hereto as Exhibit A.

(m) “Percentage Interest” means each Participant’s and the Lead Lender’s respective undivided interest in the Loan, which shall be the Retained Interest for the Lead Lender and the Participating Interest for each Participant, as shown on such Participant’s Participation Certificate.

(n) “Pro Rata Share” means the proportion each Participant’s and the Lead Lender’s respective right and obligation bears to the total rights and obligations of all Participants and the Lead Lender.

(o) “Retained Interest” shall be deemed to mean an undivided interest in the Loan, in the Loan Documents, and in all rights, interest and obligations pertaining to such interest and all proceeds arising therefrom, from and after the date hereof, expressed as a percentage and calculated at any time by subtracting the aggregate Participating Interests from 100%.

## 2. Participation.

(a) Grant of Participation. The Lead Lender hereby sells, grants and assigns to each Participant, and each Participant hereby purchases and accepts from the Lead Lender, such Participant’s Participating Interest in: (i) the Lead Lender’s obligations under the Note and the other Loan Documents, (ii) the Lead Lender’s rights to obtain payment from the Borrower pursuant to the Note and the other Loan Documents (including without limitation payments of principal of and interest on the Note, late payment charges, and amounts realized as the result of enforcement under the Note and other Loan

Documents), (iii) any and all rights conferred upon the Lead Lender as security for the Borrower's obligation to make payment under the Note, and to comply with the other Loan Documents, including, without limitation, the Mortgage, and (iv) the risks, liabilities and expenses (including without limitation attorneys' fees) arising or incurred under or in connection with the Note or the other Loan Documents, including the risk of late performance or nonperformance by the Borrower of its obligations under the Note and the other Loan Documents and disputes or litigation relating to the Note or the other Loan documents.

(b) Payment. With regard to each request for an advance which the Lead Lender has approved, each Participant agrees to make payment of its Pro Rata Share of the requested advance to the Lead Lender on the date reasonably required by Lead Lender up to an aggregate principal amount for such Participant equal to its Participation Commitment. As soon as practicable after any payment by a Participant to the Lead Lender in accordance with this Section 2(b), the Lead Lender shall furnish to each Participant a Participation Certificate, in substantially the form of Exhibit A hereto, to evidence each Participant's Participating Interest in such advance as well as in the Loan. The most current Participation Certificate shall supersede all prior Participation Certificates.

(c) Defaulting Participants. Should any Participant fail to make available to the Lead Lender its Pro Rata Share of any advance each defaulting Participant shall be considered a defaulting Lender for its respective Pro Rata Share of such advance. A defaulting Participant will be further obligated to pay interest to the Lead Lender at the rate specified in the Note for the period of delinquency of its Pro Rata Share. So long as any Participant is a defaulting Participant hereunder, it shall not have the right to consent or object to any matter requiring Participants' consent. In addition to the remedies set forth in this Section 2(c), the Lead Lender shall be entitled to pursue all other remedies available at law or in equity against any defaulting Participant.

### 3. Distribution of Payments and Expenses.

(a) Loan Servicing by the Lead Lender. The Lead Lender shall service the Loan at no cost or expense to the Participants other than each Participant's share of the expenses referred to in Section 3(c). All amounts received by the Lead Lender from or on behalf of the Borrower in connection with the payment of principal, interest or any other amounts due under the Note and the other Loan Documents shall be held on behalf of the Lead Lender and the Participants for disbursement in accordance with and pursuant to this Agreement.

(b) Application of Monies. All monies collected or received by the Lead Lender in connection with the Loan shall be applied in the following order of priority: (i) to the repayment to the Lead Lender and the Participants, as the case may be, of any amounts permitted to be paid by the Lead Lender on behalf of the Borrower under the Loan Documents and actually paid by the Lead Lender, (ii) to the payment of any amounts payable by the Borrower pursuant to any Loan Document, other than the payment of interest on or principal of the Note, (iii) to the payment of interest due and payable on the Note, and (iv) to the payment of principal of the Note. Lead Lender shall keep records of each such remittance, which records shall be presumed to be accurate until the contrary is established.

(c) Allocation of Expenses. The Lead Lender and the Participants shall share, in accordance with their respective Percentage Interest, all reasonable expenses incurred by the Lead Lender which are necessary to (i) enforce any of the Loan Documents, including, without limitation, the Note, and/or (ii) protect the Collateral and/or the priority of the Collateral for the Loan.

(d) Distribution of Payments.

(i) Upon receipt by Lead Lender of a payment of principal, interest or any other amount in connection with the Loan with respect to which the Participants are entitled to receive a share, the Lead Lender shall pay to each Participant, within a reasonable time thereafter, the amount due to each Participant as determined pursuant to this Agreement.

(ii) Notwithstanding any other provision in this Agreement, before any distribution of any amount to any Participant is made, the amount of such distribution shall be adjusted, if necessary, to deduct any amount owed by such Participant hereunder and not paid when due.

#### 4. Rights of the Lead Lender and the Participants.

(a) Interest in Loan Documents. The respective interests of the Lead Lender and the Participants in the Loan Documents and in the rights and claims of the Lead Lender thereunder shall be in proportion to their respective Percentage Interests, shall be ratably concurrent, coordinate, and *pari passu*, and neither shall have any priority over the other.

(b) Powers Granted to the Lead Lender. The Participants appoint and authorize the Lead Lender as an independent contractor (and not as an agent, employee, partner, joint venturer, or fiduciary) acting on behalf of the Participants, subject to the limitations herein contained: (i) to negotiate, control, manage and service the Loan, (ii) to enforce or to refrain from enforcing the Note and the other Loan Documents, (iii) to give consents, approvals or waivers in connection with the Note and the other Loan Documents, (iv) to agree to any amendments to modifications of the Note and the other Loan Documents, (v) to acquire additional security for the Loan, (vi) to take or refrain from taking any action and to make any determination provided for herein or in the Note or the other Loan Documents, and (vii) to exercise all such powers as are incidental thereto.

(c) Limitations on the Lead Lender's Actions. The Lead Lender shall not, without the prior written consent, approval or concurrent action of those Lenders (i.e., both the Lead Lender and the Participants) holding 100% of the Percentage Interests, agree to any amendment, modification or waiver of any of the terms of the Note, the Loan Agreement or any other Loan Document, consent to any action or failure to act by the Borrower or any other party, or exercise any rights the Lead Lender may have in respect thereof, if, in any case, such amendment, modification, waiver, consent or exercise would: (i) increase the principal amount of the Note; (ii) reduce the principal amount of or rate of interest on the Loan; (iii) extend the maturity date of the Note; (iv) release any collateral except as otherwise provided in any Loan Document; or (v) modify the Affordability Covenants.

(d) Events of Default. In the event of the occurrence of an Event of Default of which Lead Lender shall have actual knowledge, Lead Lender may, on behalf of all Participants, enforce any remedies under the Loan Documents, or applicable law, on such terms and conditions as the Lead Lender in the exercise of its sole discretion shall deem advisable (herein generally "Enforcement Procedures"), and in furtherance thereof may select and retain counsel and other professionals of its choice to assist Lead Lender in such Enforcement Procedures.

(e) Allocation of Losses/Indemnification. The Lead Lender and the Participants shall also share, in accordance with their respective Percentage Interests, in any and all losses or liabilities incurred or experienced with respect to the Loan, the Loan Documents or the Collateral. Consistent with and not in contradiction of the terms of the preceding sentence, each Participant shall hold the Lead Lender harmless to the extent of such Participant's Percentage Interest, from and against any loss or liability incurred by the Lead Lender arising out of or in any way connected with the Loan, the Loan Documents or the Collateral, if and to the extent that such loss or liability of the Lead Lender exceeds the

Lead Lender's Pro Rata Share of the aggregate amount of such loss or liability, unless the same shall occur through the Lead Lender's gross negligence or willful misconduct.

(f) Reliance on the Lead Lender. Neither the Lead Lender, nor any of its directors, officers, agents or employees, shall be liable for any action taken or omitted to be taken by it or them under or in connection with this Agreement, the Note or the other Loan Documents, or the Collateral, and neither the Lead Lender, nor such directors, officers, agents or employees, shall be responsible to the Participants for the consequences of any oversight or error of judgment or be answerable to the Participants for any loss whatsoever unless the same shall occur through their own gross negligence or willful misconduct, except that the Lead Lender shall be liable to the Participants for the Lead Lender's breach of this Agreement.

(g) Independent Investigation and Credit Decision. Each Participant hereby acknowledges that copies of the final drafts of the Note, all other Loan Documents and all other documents necessary to make a credit decision have been made available to it if requested, and acknowledges its understanding and acceptance of the terms thereof. Each Participant further acknowledges that it has made its own factual, credit and legal analysis and decision whether to enter into this Agreement (including, without limitation, investigating the past performance of the Borrower generally), independently and without reliance upon the Lead Lender or counsel for the Lead Lender and based upon such documents and information as it has deemed appropriate.

(h) Representations and Warranties. The Lead Lender and each Participant each represents and warrants to the other that it is duly authorized and empowered to enter into this Agreement and to comply with the terms hereof, that this Agreement has been duly executed and delivered by it and constitutes its legal, valid and binding obligation, and that the execution and delivery of this Agreement and the performance of the agreements set forth herein are in accordance with all laws and regulations affecting or otherwise applicable to it. Except as specifically set forth in this Agreement, neither the Lead Lender nor any Participant makes any representation or warranty of any kind or nature, express or implied. In addition, notwithstanding anything to the contrary contained in this Agreement.

(i) No Recourse. The sale of the Participating Interests by the Lead Lender to the Participants pursuant to this Agreement shall be, except for any recourse of the Participants against the Lead Lender arising out of a default hereunder by the Lead Lender, without recourse against the Lead Lender.

(j) Inspection of Records by the Participants. The Lead Lender shall maintain with respect to the Loan its customary records, for inspection by the Participants at the address established for notice under Section 5(c), at all reasonable times during the normal business hours of the Lead Lender.

## 5. Miscellaneous.

(a) Extension of Affordability Covenants and Loan. Pursuant to the Redevelopment Agreement, prior to the maturity date of the Loan and the expiration of the Affordability Covenants, the Borrower has agreed to participate in good faith discussions with the Authority regarding an extension of the Affordability Covenants and the terms and conditions of any such extension. In connection with such discussions with the Borrower, at such time, each of the parties to the Agreement agree to participate in good faith discussions regarding an extension or other modification to the Loan and Loan Documents in order to extend the Affordability Covenants and preserve affordable housing within the Project.

(b) Transfer. Neither Lead Lender nor any Participant shall sell, assign, pledge, transfer, subparticipate or otherwise divide its Retained Interest or Participating Interest, as applicable or

any of its rights in this Agreement or the Loan Documents without the prior written notice to and consent of each of the other parties to this Agreement.

(c) Notices. Unless otherwise specified herein, all notices, requests and other communications to any party provided for hereunder shall be in writing and shall be sent by certified mail, by a reputable overnight courier, or by manual delivery to the Lead Lender at its address set forth below and to each Participant at its address set forth in its most current Participation Certificate, or at such other address as shall be designated by such party.

Lead Lender: Housing and Redevelopment Authority of Edina, Minnesota  
Attention: Executive Director  
4801 West 50th Street  
Edina, MN 55424

(d) No Waiver. The delay or failure to enforce any provision of this Agreement shall not constitute a waiver or modification thereof. Any waiver of any breach of any provision hereof shall not constitute a waiver of any succeeding breach of such provision or any other provision.

(e) Severability of Provisions. The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of the remaining terms of provisions hereof, which shall remain in full force and effect.

(f) Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the parties as of the date hereof with respect to the subject matter hereof, supersedes any prior understandings, letters, agreements or representations by or between the parties, oral or written, and may be modified, amended or terminated only by a written instrument duly executed on behalf of each party hereto.

(g) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute the same agreement. Handwritten signatures to this Agreement transmitted by telecopy or electronic transmission (for example, via email through use of a Portable Document Format or "PDF" file) shall be valid and effective to bind the party so signing.

(h) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota without regard to its choice of law provisions.

(i) Successors and Assigns. Except as other provided herein, all of the terms of this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto.

(j) No Third Party Beneficiary. This Agreement is made for the sole benefit of the Lead Lender and the Participants and their respective permitted successors and assigns, and no other person or persons shall have any rights or remedies under or by reason of this Agreement.

[Remainder of page intentionally left blank; signatures on following page(s)]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first set forth above.

**LEAD LENDER:**

HOUSING AND REDEVELOPMENT AUTHORITY  
OF EDINA, MINNESOTA

By: \_\_\_\_\_  
James B. Hovland, Chair

By: \_\_\_\_\_  
Michael Fischer, Secretary

**FOUNDATION:**

EAST EDINA HOUSING FOUNDATION,  
a Minnesota nonprofit corporation

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

Name: \_\_\_\_\_

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

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

Name: \_\_\_\_\_

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

**EXHIBIT A**

**PARTICIPATION CERTIFICATE NO. \_\_\_\_\_**

Date: \_\_\_\_\_

To: East Edina Housing Foundation  
4801 West 50th Street  
Edina, MN 55424  
Attention: Jeff Huggett

The undersigned hereby acknowledges receipt from the above-named entity (hereinafter referred to as "Participant"), under and pursuant to that certain Participation Agreement dated \_\_\_\_\_, 2019 (the "Participation Agreement"), the aggregate sum of \$750,000.00, which represents payment by you of your Participation Commitment as set forth below:

Participation Commitment: \$750,000.00

Participation Interest 50%

Borrower: EDINA MARKET STREET LLC

Aggregate Principal Amount of Loans: \$1,500,000.00

Reference is hereby made to the Participation Agreement for the terms and conditions of the sale and purchase of the participating ownership interest represented by this Participation Certificate, and to the Loan Documents evidencing such Loan for a complete statement of the terms and conditions of, and security for, such Loan.

Dated as of the \_\_\_\_ day of \_\_\_\_\_, 2019.

HOUSING AND REDEVELOPMENT AUTHORITY  
OF EDINA, MINNESOTA

By \_\_\_\_\_

Scott Neal, Executive Director