

COMPLIANCE AND INDEMNITY AGREEMENT (Scattered Sites II)

THIS COMPLIANCE AND INDEMNITY AGREEMENT (this “Agreement”) is entered into effective as of June 30, 2023 by and among The Housing Authority of the City of Milwaukee, a public body corporate and politic organized under the laws of the State of Wisconsin (the “Indemnitor”), Red Stone – Fund 9 Limited Partnership, a Delaware limited partnership (“Red Stone”), and Red Stone Equity Manager, LLC, a Delaware limited liability company (“RSEM” and, collectively with Red Stone, the “Indemnatee”).

RECITALS

A. Scattered Sites II Development, LLC, a Wisconsin limited liability company, an affiliate of Indemnitor, Indemnitor and Indemnatee executed that certain Assignment and Assumption of Membership Interests and Third Amendment to Amended and Restated Operating Agreement dated as of as of the date hereof (“Assignment, Assumption and Amendment Agreement”) for the conveyance of the investor membership interests in that certain multifamily residential project for rental to low-income households located in Milwaukee, Wisconsin, and known as Scattered Sites II (the “Project”) owned by Scattered Sites II LLC, a Wisconsin limited liability company (the “Company”). All capitalized terms not defined herein will have the meaning ascribed to them in the Assignment, Assumption and Amendment Agreement.

B. On or about the Effective Date (as defined in the Assignment, Assumption and Amendment Agreement), Indemnitor will acquire the Transferred Interest.

C. Indemnatee, as the only investor members of the Company, was allocated Tax Credits all or a portion of which are subject to shortfall, disallowance or recapture by the IRS for certain non-compliance under Section 42 of the Code (as hereinafter defined).

D. As a material inducement and condition to the assignment of the Transferred Interest prior to the expiration of the Compliance Period, Indemnitor has agreed to execute, deliver and perform this Agreement for the benefit of Indemnatee.

NOW THEREFORE, in consideration of the transactions contemplated by the Assignment, Assumption and Amendment Agreement, including the transfer of the Transferred Interest to Indemnitor, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned, intending to be legally bound, hereby agree as follows.

AGREEMENT

1. Defined Terms. As may be applicable, terms are defined herein in the first section of use. In addition, certain other terms used in this Agreement are defined as follows.

“Code” means the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder.

“Related Person” means, when used with respect to a person (a) any affiliate of such person, (b) any person who holds a direct or indirect ownership interest in such person, and (c) the respective officers, directors, trustees, managers, agents, employees and asset managers of such person, and (d) the respective successors and assigns of any Related Person.

“State” means the State of Wisconsin.

2. Tax Credit and Affordability Requirements. Indemnitor acknowledges that the Company acquired, developed, constructed, owned and operated the Project as a project intended to generate Tax Credits. In order to maintain and preserve the Tax Credits, the Project must be operated pursuant to the Tax Credit Obligations and the Project Documents. Indemnitor further acknowledges that the failure to operate the Project in compliance with the Tax Credit Obligations or the Project Documents may cause a recapture (and/or related liability) of all or a portion of such Tax Credits and result in significant damages and economic loss to Indemnitee and its Related Persons.

3. Indemnitor Covenants. The Indemnitor has reviewed the terms and provisions of the Assignment, Assumption and Amendment Agreement and hereby covenants and agrees that it shall comply with the terms and provisions of the Assignment, Assumption and Amendment Agreement, at Indemnitor's sole cost and expense, and shall take all commercially reasonable steps to satisfy and comply with all requirements of the Assignment, Assumption and Amendment Agreement, the Tax Credit Obligations and the Project Documents.

4. Assignment. The obligations of Indemnitor under this Agreement may not be assigned, transferred or delegated without the prior written consent of the Indemnitee which may be withheld in the Indemnitee's sole and absolute discretion.

5. Indemnification. As a material inducement for the conveyance of the Transferred Interest prior to the expiration of the Compliance Period, from and after the Effective Date, the Indemnitor hereby agrees to indemnify and hold Indemnitee and its respective Related Persons (collectively, the “Indemnified Parties”) free and harmless from (i) any Tax Credit Recapture

Amount; (ii) an amount sufficient to pay any tax liability owed by the Indemnitee resulting from the receipt of such amounts; and (iii) any other liability, claims, damages, penalties, costs, fees, charges, losses, causes of action, demands, expenses of any kind or nature (collectively, "Losses"), which Losses are related to, arise out of or are in any way connected with (A) the breach by Assignee, the Manager, or the Company of any representations, warranties and covenants set forth in the Assignment, Assumption and Amendment Agreement; (B) the breach by Indemnitor of any of the terms and conditions of this Agreement; or (C) the violation by Indemnitor, Manager and/or the Company of any terms and conditions in or under the Tax Credit Obligations or any Project Document. The Indemnitor's obligations for Losses under this Section 5 are (y) subject to the maximum aggregate liability of the "Manager" under Sections 8.09(c)(iii)-(iv) of the Amended and Restated Operating Agreement of the Company dated as of May 6, 2009 as amended by that certain (I) First Amendment to Amended and Restated Operating Agreement dated as of February 2, 2010; (II) Second Amendment to Amended and Restated Operating Agreement dated as of _____, 2018; and (III) Assignment, Assumption and Amendment Agreement, and (z) shall only apply to any Losses that accrue during the Compliance Period. Indemnitor shall have no liability or obligation for any Losses that accrue after the Compliance Period.

6. Representations. Indemnitor represents and warrants to Indemnitee the following:

(a) The Indemnitor (i) is validly existing under the laws of the State; (ii) has the power to enter into this Agreement and to perform its obligations under this Agreement; and (iii) has taken all action necessary to authorize the execution and delivery of this Agreement and the performance by it of its obligations under this Agreement.

(b) This Agreement has been duly executed and delivered by the Indemnitor and constitutes the Indemnitor's valid, binding and enforceable obligation, subject to bankruptcy and other debtor relief laws and principals of equity, whether applied in a court of law or a court of equity.

(c) Except for consents, approvals, authorizations and filings already obtained, if any, the Indemnitor is not required to obtain any consent, approval or authorization from, or to make any filing with, any person (including any governmental authority or lender to the Project or to Indemnitor) in connection with, or as a condition to, the execution and delivery of this Agreement or the performance by it of its obligations under this Agreement.

(d) Indemnitor has the means to and shall regularly keep itself informed of the performance of the Company and the Manager of their respective obligations under the Operating Agreement and the Assignment, Assumption and Amendment Agreement.

7. Net Worth and Liquidity Requirements. The Indemnitor represents and warrants that, until the expiration of the Compliance Period, it will have an aggregate minimum liquidity (cash and marketable securities) of \$1,000,000 and an aggregate minimum net worth (based on stockholder equity and determined in accordance with generally accepted accounting principles) of \$5,000,000. Until the expiration of the Compliance Period, the Indemnitor agrees that it will provide to the Indemnitee a copy of its annual published audited financial statements within thirty (30) days of the completion of same for each calendar year through and including the year in which the Compliance Period ends.

8. Default. If the Indemnitor or the Manager shall violate any of their respective obligations under the Assignment, Assumption and Amendment Agreement or this Agreement respectively, the Indemnitee shall provide the Indemnitor with ten (10) business days' notice thereof. If such violation default shall continue for thirty (30) days after written notice thereof shall have been given to Indemnitor (except that such thirty (30) day period shall be automatically extended for an additional period of time reasonably necessary to cure such default, not to exceed an additional thirty (30) days, if such default cannot be cured within such original thirty (30) day period and provided Indemnitor commences the process of curing such default within said original thirty (30) day period and continuously and diligently prosecutes such cure to completion), the Indemnitee shall have all rights and remedies available to it at law or in equity and such remedies shall be cumulative and not exclusive of any other right, power or remedy. Such remedies may be pursued singularly, concurrently or otherwise, at such time and in such order as Indemnitee may determine. No delay or omission to exercise any remedy, right or power shall impair any such remedy, right or power or shall be construed as a waiver thereof. A waiver of any single violation or default shall not be construed to be a waiver of any subsequent violation or default nor impair any of the Assignor's rights or remedies.

8. Notices. All notices shall be given in accordance with the terms of the Operating Agreement at the following addresses:

To Indemnitor:

The Housing Authority of the City of Milwaukee
809 North Broadway
Milwaukee, Wisconsin 53202
Attention: Willie Hines

To Indemnitee:

9. Miscellaneous.

(a) Syntax. When the context so requires in this Agreement, words of one gender include one or more other genders, singular words include the plural, and plural words include the singular. Use of the words “include” and “including” are intended as an introduction to illustrative matters and not as a limitation.

(b) Section References. References in this Agreement to “Sections” are to the numbered subdivisions of this Agreement unless another document is specifically referenced. The Section headings contained in this Agreement are for convenience of reference only and are not intended to delineate or limit the meaning of any provision of this Agreement or be considered in construing or interpreting the provisions of this Agreement.

(c) Binding; Enforcement. This Agreement will be binding upon and will inure to the benefit of the Indemnitor, the Indemnitee and their successors and permitted assigns.

(d) Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which, taken together, will constitute one instrument. The parties may execute different counterparts of this Agreement and, if they do so, the signature pages from the different counterparts may be combined to provide one integrated document.

(e) Severability. The determination that any provision of this Agreement is invalid or unenforceable will not affect the validity or enforceability of the remaining provisions or of that provision under other circumstances. Any invalid or unenforceable provision will be enforced to the maximum extent permitted by law.

(f) Governing Law. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Wisconsin.

(g) No Waiver. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

(h) Professional Fees. In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, agreements or provisions on the part of the other party arising out of this Agreement, then in that event the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including actual attorneys' fees, accounting and engineering fees, and any other professional fees resulting therefrom.

(i) Waiver of Jury Trial. TO THE EXTENT PERMITTED BY LAW, INDEMNITOR AND INDEMNITEE EACH WAIVE TRIAL BY JURY WITH RESPECT TO ANY ACTION, CLAIM, SUIT OR PROCEEDING IN RESPECT OF OR ARISING OUT OF THIS AGREEMENT AND/OR THE CONDUCT OF THE RELATIONSHIP BETWEEN INDEMNITEE AND INDEMNITOR. INDEMNITOR AND INDEMNITEE HAVE OBTAINED THE ADVICE OF THEIR RESPECTIVE LEGAL COUNSEL BEFORE SIGNING THIS AGREEMENT AND ACKNOWLEDGE THAT THEY VOLUNTARILY AGREED TO THE FOREGOING PROVISION WITH FULL KNOWLEDGE OF ITS SIGNIFICANCE AND LEGAL CONSEQUENCE.

[Signatures begin on the following page]

IN WITNESS WHEREOF, the parties hereto have acknowledged and executed this Agreement as of the date first set forth above.

INDEMNITOR:

HOUSING AUTHORITY OF THE CITY OF MILWAUKEE,
a public body corporate and politic organized under the laws
of the State of Wisconsin

By: _____
Name: Willie Hines
Title: Executive Director

INDEMNITEE:

RED STONE – FUND 9 LIMITED PARTNERSHIP,
a Delaware limited partnership

By: RSEP MM, LLC, a Delaware limited liability company, its managing member

By: _____
Name: _____
Title: _____

RED STONE EQUITY MANAGER, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____