RESOLUTION NO. R- 63-2009

WHEREAS, pursuant to the provisions of Ch. 348A of Nevada Revised Statutes and Ch. 348A of the Nevada Administrative Code ("NAC"), there has been allocated to the City of Las Vegas, Nevada (the "City"), $29,611,027.54 in tax-exempt private activity bond volume cap for calendar year 2009; and

WHEREAS, the City, by resolution adopted on August 6, 2008 (the "2008 Resolution"), requested that a portion of the volume cap in the amount of $6,379,716 allocated to the City in the year 2008 (the "Undesignated 2008 Volume Cap") be transferred to the Housing Division (the "Division") of the Department of Business and Industry (the "Department") to be used for multifamily rental projects located in the City to be designated by the City in the future; and

WHEREAS, the City, by the adoption of this Resolution (the "2009 Resolution"), requests that all of the volume cap allocated to the City in the year 2009 (the "Undesignated 2009 Volume Cap") be transferred to the Housing Division (the "Division") of the Department of Business and Industry (the "Department") of the State of Nevada (the "State") to be used for the purposes of the Division's Single Family Mortgage Revenue Bond Program (the "Single Family Program"), the Nevada H.A.N.D. Project and multifamily rental projects located in the City to be designated by the City in the future (however, to the extent that the 2009 Volume Cap has not been so used by December 31, 2011, the City requests that the Division utilize the 2009 Volume Cap for any projects for which it can legally be used located in the City or elsewhere in the State of Nevada); and

WHEREAS, the City has received a request for volume cap in the amount of $3,450,000 from Nevada H.A.N.D., Incorporated for the construction of Westcliff Heights Senior Apartments at 8206 and 8238 Silver Sky Drive (the "Nevada H.A.N.D. Project"); and

WHEREAS, the City desires to allocate the Undesignated 2008 Volume Cap and the Undesignated 2009 Volume Cap (collectively the "City Volume Cap") in the amounts and for the projects described below; and

WHEREAS, the City desires with this Resolution to prevent the 2009 Volume Cap from reverting to the State.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAS VEGAS, NEVADA:

Section 1. The City hereby transfers all of its Undesignated 2009 Volume Cap to the Director of the Department with a request that the Director transfer the Undesignated 2009 Volume Cap to the Division, and hereby requests that the Division use the Undesignated 2009 Volume Cap so transferred and the Undesignated 2008 Volume Cap in the amount and for project as follows:

A. $3,450,000 of the City Volume Cap for the Nevada H.A.N.D. Project.

B. $25,000,000 of the City Volume Cap for the Single Family Program.

C. $7,540,743.54 of the City Volume Cap for future multifamily rental projects in the City designated by the City.

The Division is authorized to determine whether the City Volume Cap used for a particular Project is derived from the Undesignated 2008 Volume Cap or Undesignated 2009 Volume Cap in a manner consistent with the Internal Revenue Code of 1986, as amended and the regulations promulgated thereunder, to maximize use of private activity volume cap in the State that might otherwise expire. Further, the Division may exchange the City Volume Cap allocated in this Resolution for other private activity volume cap in a like amount to optimize the use of private activity volume cap that might otherwise expire under federal law.

Section 2. The designations and allocations made in Sections 1A and 1C are subject to the condition that the project sponsor execute an agreement in substantially the form attached hereto as Exhibit A.

Section 3. In the event the condition listed in Section 2 is not met, or in the event that the condition is met but bonds issued for any of the projects described in Sections 1A and 1C do not fully use the allocation made to those projects, the Division is requested to use that allocation, or the remaining part thereof for one or more other affordable rental housing projects located in the City which is approved by the City Council by December 31, 2011, or for any projects for which the City Volume Cap can legally be used in the City, or elsewhere in the State of Nevada, if such use of the City Volume Cap for one or more affordable rental housing projects has not been approved by the aforementioned deadline.

Section 4. Pursuant to Section 348A.220 of NAC, the City hereby certifies that it has used $-0- of its allocation for calendar year 2009, and that it intends to use (by the transfers as herein provided) all of the Undesignated 2009 Volume Cap.

Section 5. The Mayor and City Clerk are hereby authorized to execute and deliver on behalf of the City, an agreement with the applicable sponsor of the project specified in Sections 1A and 1C hereof substantially in the form attached hereto as Exhibit A.

Section 6. Pursuant to Ch. 348A of NRS, the Director of the Department may communicate regarding this Resolution with Leonard Dixon of the City by telephone at (702) 229-2120, e-mail at LDixon@LasVegasNevada.gov, or by mail at Leonard Dixon, Department of Neighborhood Services, City of Las Vegas, 400 Stewart, LasVegas, NV 89101. Mr. Dixon shall inform the Director in writing as soon as possible after the occurrence or non-occurrence of the terms and conditions specified in Section 2.

Section 7. Nothing in this Resolution obligates the City to issue bonds for any particular project or to grant approvals for a project or constitutes a representation that such bonds will be issued, that such projects will be approved, that any of the City Volume Cap other than the amounts outlined in Section 1 will be made available for any particular project.

Section 8. Allocation of the City Volume Cap to any project does not guarantee that the Division will be able to market and/or sell these bonds. In the event that the bonds are not sold, the City is not responsible for reimbursing the project sponsor for expenses incurred in the project sponsor's preparation and submission of an application to the State. Additionally, allocation of the City Volume Cap to any project does not guarantee an award of federal funds by the City as each federal program has different application submission criteria.

Section 9. This Resolution may be amended or repealed at any time by the City at its sole discretion before bonds are issued for the use the City Volume Cap described herein. After such bonds are issued, this Resolution may not be amended or repealed in such a manner as to change the allocation of the City Volume Cap to the bonds which have been issued.

Section 10. This Resolution shall be effective upon its passage and approval.

PASSED, ADOPTED AND APPROVED this 5th day of August, 2009.

(SEAL)

~~Oscar B. Goodman, Mayor~~ Date
Gary Reese, Mayor Pro-Tem

Attest:

Beverly K. Bridges, CMC Date
City Clerk

Approved as to form:

Robert S. Sylvain 7-22-09
Deputy City Attorney Date

EXHIBIT A

AGREEMENT

This Agreement is entered into on this ____ day of ___________, _____ between the City of Las Vegas, Nevada (the City) and ________________________________ (the Sponsor), of that certain affordable rental housing project known as the _________________________(the Project):

RECITALS

WHEREAS, the Sponsor has submitted an application to the City for allocation of a part of the City's private activity bond volume cap (the "Volume Cap") in order for the Sponsor to finance the Project; and

WHEREAS, the City desires to allocate a portion of its Volume Cap to the Project; and

WHEREAS, in so allocating all or a portion of its Volume Cap, the City is relying on representations made by the Sponsor in its application to the City with respect to the nature of the Project and other matters.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND AGREEMENTS CONTAINED HEREIN, IT IS HEREBY AGREED AS FOLLOWS:

Section 1. The City will, as provided in the resolution adopted by the City Council of the City (the "Resolution"), allocate a portion of the Volume Cap to the Project under the conditions and for the term provided in the Resolution. Such allocation of the Volume Cap is based on the representations contained in the Sponsor's application as to the nature of the Project and other matters stated in that application.

Section 2. The Sponsor agrees to provide incremental progress reports, at six-week intervals if the Project is a rehabilitation Project and at three-month intervals if the Project is a new construction project.

Section 3. The Sponsor agrees not to make any change in the Project or in any other of the items described in its application without obtaining consent of the Director of the Neighborhood Services Department of the City or his designee.

Section 4. This Agreement shall be effective on the date of its execution and remain in effect until the bonds which use the Volume Cap allocation described herein have been paid in full.

Section 5. This Agreement does not provide any City endorsement of the Project or any City representation as to the Project or the issuance of bonds for the Project, other than an allocation of the Volume Cap as provided in the Resolution. It is understood that the Volume Cap will be transferred to the State of Nevada, and that the State of Nevada in its sole discretion will determine whether to finance the Project with the issuance of bonds. Other than the allocation of the Volume Cap mentioned above, this Agreement in no way binds the City to the Project, and prior to the issuance of bonds which use this Volume Cap, the City may, in its sole discretion, amend or repeal the Resolution; but after the issuance of bonds which provide for this Volume Cap, the City will not amend the Resolution in a manner which changes the allocation of Volume Cap to the bonds which have been issued.

Section 6. Allocation of City bonds to any project does not guarantee that the Nevada State Housing Division will be able to market and/or sell these bonds. In the event that the bonds are not sold, the City is not responsible for reimbursing applicant for expenses incurred in the application's preparation and submission to the State. Additionally, allocation of City bonds to any project does not guarantee an award of federal funds by the City as each federal program has different application submission criteria.

Section 7. In the event the Sponsor breaches this Agreement, the City may sue for specific performance hereof by the Sponsor, may pursue legal action against the Sponsor, may use whatever other remedies may be available to it at law or in equity or may pursue any combination thereof. The Sponsor agrees to pay any of the City's attorney fees incurred in enforcing the terms of this Agreement. If bonds have been issued which rely on the allocation of the Volume Cap made by the Resolution, a breach of this Agreement will not result in forfeiture of the Volume Cap which has been used for those bonds, but may, at the option of the City, result in forfeiture of any part of the Volume Cap described herein which has not been used by the issuance of bonds.

Section 8. No person is a third party beneficiary of this Agreement and nothing herein requires that the City enforce the provisions hereof; however, any failure to enforce or delay in enforcing the provisions hereof does not constitute a waiver of the City's right to enforce this Agreement. Any single or partial enforcement of any provision hereof does not preclude any other enforcement or the exercise of any other right, power or remedy the City may have.

Section 9. The persons signing this Agreement represent that they have the power to do so on behalf of the party for which they are signing.

Section 10. Disclosure of Principals: Pursuant to Resolution R-105-99 adopted by the Las Vegas City Council effective October 1, 1999, Sponsor warrants that it has disclosed, on the form attached hereto as Exhibit A, all principals, including partners or directors of Sponsor, as well as all persons and entities holding more than a one percent (1%) interest in Sponsor, or any principal of Sponsor. Throughout the term of the Agreement, Sponsor shall notify City in writing of any material change in the above disclosure within fifteen (15) days of any such change.

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IN WITNESS WHEREOF, the City and the Sponsor have caused this Agreement to be signed as of the day and year mentioned above.

CITY OF LAS VEGAS, NEVADA

(SEAL)

By: ______________________________
Oscar B. Goodman, Mayor

____
City Clerk

____
Sponsor

By: ______________________________

Approved as to form:

____
Deputy City Attorney Date

EXHIBIT A
DISCLOSURES OF PRINCIPALS

Pursuant to Resolution 79-99 adopted by the City Council effective October 1, 1999, ________________________________ warrants that it has disclosed, all principals, including partners of ______________________________, as well as all persons and entities holding more than a 1% interest in __________________________, or any principal of ______________________________. Throughout the term hereof, ______________________________ shall notify City in writing of any material change in the above disclosure within 15 days of any such change.

All persons and entities holding more than 1% interest in ______________________________ or any principal of ______________________________ are the following:

FULL NAME	BUSINESS ADDRESS	BUSINESS PHONE

1. ____
2. ____
3. ____
4. ____
5. ____
6. ____
7. ____
8. ____

Continue list until full and complete disclosure is made.

I certify under penalty of perjury, that the foregoing list is full and complete.

____

By: ______________________________________
"Sponsor"

Subscribed and sworn to before me this

_______ Day of ________________, 20__

____
Notary Public