

**EXHIBIT****“A”****PAYMENT IN LIEU OF TAX AGREEMENT**

This Payment in Lieu of Tax Agreement (the “Agreement”), is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between RGC Ventures, LLC (“Owner”) and the City of Round Rock, a political subdivision of the State of Texas (the “City”).

**WITNESSETH**

WHEREAS, Owner has contracted to acquire land located at 150 Mays Crossing, Round Rock, Texas, and further identified by Williamson County Central Appraisal District as property number R468283 (the “Property”); and

WHEREAS, the City is considering approving a Resolution expressing no objection to the creation of affordable, low-income multi-family housing at the Property; and

WHEREAS, this Agreement constitutes an agreement between Owner and City for the payment of a fee in lieu of property taxes for the term of the Agreement; and

WHEREAS, this Agreement is non-assignable; and

WHEREAS, Owner has informed the City that Owner intends to pursue project financing for affordable housing including Low Income Housing Tax Credits (“Tax Credits”) from the Texas Department of Housing and Community Affairs (the “TDHCA”).

WHEREAS, Owner seeks to enter into this Agreement in order to establish general stability and predictability for its real property tax exposure; and

WHEREAS, the City shall only enter into this Agreement with Owner and accept payments as stated herein in lieu of the City of Round Rock real property taxes, provided that Owner, its successors and assigns (if approved by the City), at all times conducts its operations in accordance with the requirements of this Agreement and the TDHCA requirements regarding Tax Credits.

NOW THEREFORE, in consideration of the above premises, which are incorporated as part of the Agreement, and of the mutual covenants, terms and agreements hereof, and pursuant to the authority granted by the State of Texas, the parties agree as follows:

1. Recitals. The recitals set forth above shall be deemed to be a part of this Agreement.

2. Term. This Agreement shall become effective as of \_\_\_\_\_, 2020 (the “Effective Date”), and shall remain effective until December 31, 2037 (the “Expiration Date”), unless terminated earlier as provided for in this Agreement. (the “Term”).

(a) In no event shall the Term extend beyond such time as the Property fails or ceases (i) to be used for housing of low-income persons; (ii) to comply in all respects with the requirements of the TDHCA pertaining to Tax Credits; or (iii) to comply with all obligations under this Agreement.

4. Payment in Lieu of Taxes.

(a) On or before January 31 of each year during the term of this Agreement, beginning in the first year after the City has issued a Certificate of Occupancy for any building within the property, Owner shall make a Payment in Lieu of Taxes (“PILOT”) to the City in lieu of the respective real property taxes due to the City. Owner’s PILOT obligation for each year of this Agreement shall be \$200 per approved unit constructed on the Property (the “Annual Payment”). The Annual Payment will increase each consecutive year by 3.5% until the Expiration Date. Prior to the City’s issuance of a Certificate of Occupancy for any building within the Property and after this Agreement has expired or been terminated, the Property will be taxed in accordance with municipal, state and local laws in effect at that time.

(b) Owner or its assigns shall make separate annual payments directly to the City.

(c) The payment to be made by Owner to the City provided for herein with respect to the Property shall be in lieu of the otherwise full amount of City real property ad valorem tax that would be due to the City. All other City fees and charges, including but not limited to impact fee charges, remain due and owing to the City. The payment in lieu of real property taxes provided for herein is not in lieu of any other applicable state, county or school district taxes or charges of any kind related to real property taxes for which Owner shall also continue to be responsible, nor is the payment in lieu of taxes provided for herein in lieu of any permitting costs associated with construction of the Project.

5. Taxes Upon Expiration or Termination. Upon expiration or termination otherwise of this Agreement, full City real property taxes shall be paid from the point of expiration or termination forward, based on the assessed value of the Property and the applicable real property tax rate in effect at such time.

6. Requirements For Continued PILOT. The continued right of Owner to enjoy the benefits of this Agreement and to make the payments calculated in accordance with Paragraph 4 above is expressly conditioned upon compliance at all times during the Term of this Agreement with the following conditions, the failure to comply with any of which shall effect an immediate termination of this Agreement without further notice being required to be given to Owner.

(a) The Project shall be substantially completed within two years after the Effective Date.

(b) Owner shall comply in all respects with the requirements of the TDHCA pertaining to Tax Credits as they relate to the Property.

(c) Within one hundred and twenty (120) days after December 31 of the year in which this Agreement is entered into, and within 120 days of each subsequent December 31 thereafter, or otherwise upon fifteen (15) days of request, Owner shall provide to the City an

annual financial report audited by an independent Certified Public Accountant in accordance with Generally Accepted Accounting Principles. Furthermore, the City shall have the ability upon reasonable notice to Owner, to examine Owner's books and records. Such books and records shall be sufficient to verify that the housing units have been rented exclusively to low-income persons.

(d) Owner shall certify in writing to the City, on or before December 31 of each year during the Term of this Agreement or otherwise upon request of the City, the continued compliance with the terms and conditions of this Agreement and the applicable provisions of the TDHCA Tax Credit requirements

(e) PILOT payments shall be paid as required hereunder, said payments being delinquent thirty (30) days after being due. Interest on overdue payments, in the same amount as charged to other delinquent City taxpayers, shall be added to the amount due and collected by the City in the same manner as real property taxes are collected. All other remedies available to the City under the Texas Tax Code regarding the collection of delinquent taxes, including foreclosure, may be utilized by the City

(f) Owner, its successors and assigns, agree to develop the Property pursuant to all the requirements of Ordinance No. O-2018-5966, also known as PUD No. 9. In addition, Owner, its successors and assigns agree that any exterior finish of any portion of an open parking deck structure shall consist of masonry, stone, simulated stone or brick. The façade shall be screened from view by landscaping, including but not limited to berms and plant materials.

(g) Owner, its successors and assigns, agree that up to 224 individual units may be constructed on the Property, consisting of 64 studio units measuring up to and no more than 600 square feet in size, 110 one bedroom units measuring up to and no more than 825 square feet in size, and 50 two bedroom units measuring up to and no more than 1,035 in size. No three

bedrooms units will be allowed. Any deviations from the above-cited square footage numbers must be approved by the City prior to construction.

7. Tax Implications for Noncompliance. If the Property, or any portion of the Property, no longer meets the requirements of TDHCA regarding Tax Credits or other provisions of this Agreement, then the City shall give notice of default to the Owner, who shall have 60 days to cure said default. If Owner fails to remedy the default within the 60-day cure period, then this Agreement may be terminated by the City and all future City real property ad valorem taxes and City real property ad valorem taxes that would have been imposed from the initial Effective Date of the Agreement for the Property, less any already paid PILOT payments, will be due and payable to the City.

8. Non-Assignability. This Agreement shall not be assignable by Owner without the prior written consent of the City. The granting or withholding of consent to assign shall be absolutely within the discretion of the City, but shall not be unreasonably withheld.

9. Amendment. This Agreement may not be amended, altered or modified except by a written amendment executed by the parties.

10. Governing Law and Dispute Resolution. This Agreement and the rights and obligations of the parties hereto and any claims or disputes thereto shall be governed by and construed in accordance with the laws of the State of Texas. The exclusive venue for litigation shall be Williamson County. If parties are not able to resolve disputes directly with each other, the parties, prior to litigation, shall first attempt to resolve any disputes that arise out of this Agreement through mediation before a mutually acceptable mediator.

11. Other Taxes and Fees. Nothing herein shall be deemed or construed to be a reduction or waiver by the City of any tax or fee of any kind whatsoever, including but not limited to any impact fee, or other fees or charges of the City.

12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties shall not have signed the same counterpart.

13. Notices. All notices shall be in writing and either hand delivered or sent by United States certified or registered mail, postage prepaid, return receipt requested. Notices shall be given to the parties as follows:

If to Owner, then to:	RGC Ventures, LLC Attn: Dan Rigney 4003 Crest Cove Round Rock, Texas 78681
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If to City, then to:	Round Rock City Hall  Attention: Laurie Hadley City Manager 221 East Main St. Round Rock, TX 78664
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With a copy to:	City Attorney Steve Sheets 309 East Main St. Round Rock, TX 78664
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Any party may modify the address to which notice to it shall be sent, by delivery of notice to the other parties in accordance with the foregoing. Each notice that is sent in accordance with the foregoing shall be presumed to have been received on the business day it is personally delivered or three (3) business days after the date of mailing, as applicable.

14. Entire Agreement; Headings. This Agreement contains the entire agreement of the parties with respect to the matters herein set forth. All other agreements and understandings of the parties relating to the subject matter of this Agreement, written or oral, if any, are merged into this Agreement. The headings set forth at the beginning of each section or subsection of this

Agreement are for convenience of reference only and do not have any independent legal significance.

IN WITNESS WHEREOF, the City of Round Rock and RGC Ventures, LLC have caused this Agreement to be signed by duly authorized individuals, as of the day and year first hereinabove written.

*(signatures on the following page)*

**CITY:**

ROUND ROCK, TEXAS

By: \_\_\_\_\_  
Laurie Hadley, City Manager

**ATTEST:**

\_\_\_\_\_  
Sara White, City Clerk

**OWNER:**

RGC Ventures, LLC

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

STATE OF TEXAS                   §  
   §  
COUNTY OF WILLIAMSON       §

On this \_\_\_\_ day of \_\_\_\_\_, 2020, before me, the undersigned notary public, personally appeared Laurie Hadley, City Manager for the City of Round Rock, Texas, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes therein contained.

\_\_\_\_\_  
Notary Public, State of Texas



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Notary Public, State of Texas