



**SPECIAL HOUSING AND REDEVELOPMENT AUTHORITY MEETING
RICHFIELD MUNICIPAL CENTER, BARTHOLOMEW ROOM
JUNE 5, 2023
7:00 PM**

Call to Order

Open Forum

Each speaker is to keep their comment period to three minutes to allow sufficient time for others. Comments are to be an opportunity to address the HRA. Please refer to the HRA agenda and minutes web page for additional ways to submit comments. You may also call 612-861-9764 or email ldubois@richfieldmn.gov with questions. Call into the open forum by dialing 1-415-655-0001 Use webinar access code: 2452 800 6454 and password: 1234.

AGENDA APPROVAL

1. Approval of the Agenda

PUBLIC HEARINGS

2. Consider a resolution authorizing the issuance of \$10 million in multifamily housing revenue bonds for the benefit of the Upper Post Flats housing development and related Post-Issuance Compliance Policy.

Staff Report No. 9

HRA DISCUSSION ITEMS

3. Executive Director Poehlman will provide an update on discussions and actions related to the request by Best Buy to terminate the Minimum Assessment Agreement for the Corporate Campus property at 7601 Penn Avenue South.

Staff Report No. 10

4. Adjournment

Auxiliary aids for individuals with disabilities are available upon request. Requests must be made at least 96 hours in advance to the City Clerk at 612-861-9739.



STAFF REPORT NO. 9
HOUSING AND REDEVELOPMENT AUTHORITY
MEETING
6/5/2023

REPORT PREPARED BY: Melissa Poehlman, Executive Director

EXECUTIVE DIRECTOR REVIEW: Melissa Poehlman, Executive Director
5/31/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider a resolution authorizing the issuance of \$10 million in multifamily housing revenue bonds for the benefit of the Upper Post Flats housing development and related Post-Issuance Compliance Policy.

EXECUTIVE SUMMARY:

The Upper Post Flats housing development is an extensive redevelopment and historic preservation project of 26 buildings within Historic Fort Snelling. The development includes approximately 190 units ranging from studios to five-bedroom units and will house hundreds of residents; likely adding more than 200 students to the Richfield School District once it is complete.

The development project is partially complete, with some units available and occupied today. To help manage increased costs of the project, and remain eligible for Low Income Housing Tax Credits (LIHTC), Dominion, dba Fort Snelling Leased Housing Associates I, LLLP, (Developer) has approached the HRA to request the issuance of \$10 million in Conduit Bonds (Bonds). The issuance of these Bonds would not impact the City's ability to issue their own bank-qualified bonds and would not impact the City or Housing and Redevelopment Authority (HRA) financially. It does; however, offer the HRA the opportunity to influence the project. HRA staff have worked with the Developer on the following stipulations:

Minimum:

- Increased affordability: Minimum 20 units at 40% Area Median Income (AMI) for 25 years;
- Acceptance of Richfield Kids @ Home families; and
- 1.5% upfront fee (\$150,000).

Additional Requirements if Developer is able to take advantage of 4% floor under the Internal Revenue Code:

- Additional 60-80 units at 50% Area Median Income (AMI) or 20-35 units at 40% AMI for a period of 25 years; and
- Limit on rent increases (no more than 7% annually).

The Upper Post Flats project is a development that already exists and is part of our community through its location within the Richfield School District. Through the issuance of conduit debt, the HRA is able to increase the affordability of the project for Richfield families, receive a fee that will help to do additional work within the borders of the City, and also formalize a relationship with the Developer. This is possible without any financial risk to the HRA or any cost to Richfield taxpayers.

Should the HRA approve the issuance, it should also approve the attached Post-Issuance Compliance Policy

which provides guidance on the use of proceeds of tax-exempt bonds such as the Obligations to ensure that the interest on such tax-exempt bonds does not become taxable.

RECOMMENDED ACTION:

Conduct and close a public hearing and by motion:

- 1) Approve the attached resolution authorizing the issuance, sale, and delivery of multifamily housing revenue obligations for the benefit of Fort Snelling Leased Housing Associates I, LLLP, and authorizing the execution and delivery of documents related thereto; and**
- 2) Approve the attached Post-Issuance Compliance Policy.**

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

- The buildings that comprise Historic Fort Snelling were constructed in the late 1800s and early 1900s. The structures had been largely empty since the early 1970s and were in a significant state of disrepair.
- The property is owned by the Minnesota Department of Natural Resources and is considered Unorganized Territory, outside any particular city's jurisdiction. The area is within the Richfield School District boundary, however.
- In 2015, the Developer was selected to restore the property. An extensive list of approvals have been granted and significant funds allocated to the project, including the issuance of an \$88,000,000 Multifamily Housing Revenue Note by the Hennepin County HRA; the proceeds of which were loaned to the Developer to finance the project.
- Current funding sets affordability requirements at 60% AMI.
- In December 2022, the HRA authorized Bond Council to request a housing allocation from Minnesota Management and Budget; this allocation has been received.
- Following a public hearing, the Board of Commissioners of Hennepin County adopted a resolution consenting to the issuance of multifamily housing revenue obligations by the Richfield HRA on April 11, 2023.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

- The HRA must conduct a public hearing as required by Section 147(f) of the Internal Revenue Code of 1986, as amended.
- Consent to the issuance of the Bonds and authority to hold this public hearing was delegated to the Richfield HRA by the City Council on April 25, 2023.

C. CRITICAL TIMING ISSUES:

- The project is underway and the Developer is hoping to close on this final piece of financing as soon as possible.

D. FINANCIAL IMPACT:

- Issuance of Bonds will not directly impact the City or HRA financially. The principal and interest on the Bonds will be paid by the project and does not constitute a debt to the City or HRA.
- The Developer will pay all costs associated with the request as well as a 1.5% fee (approximately \$150,000) to the HRA.

E. LEGAL CONSIDERATION:

- Kennedy & Graven serve as the Bond Counsel for the issuance. The attached documents and resolution have been prepared by HRA Attorney Julie Eddington.

ALTERNATIVE RECOMMENDATION(S):

Deny the attached resolution authorizing the issuance of \$10 million in Bonds for the benefit of the Upper Post Flats housing development.

PRINCIPAL PARTIES EXPECTED AT MEETING:

Owen Metz, Dominion/Fort Snelling Leased Housing Associates I, LLLP; and Julie Eddington, HRA Attorney

ATTACHMENTS:

Description	Type
▣ Resolution	Resolution Letter
▣ Post-Issuance Compliance Policy	Contract/Agreement
▣ HRA Attorney - Letter of Explanation	Cover Memo
▣ Cooperative Agreement - Richfield HRA & Hennepin County	Contract/Agreement
▣ Loan Agreement - HRA & Ft. Snelling Leased Hsg	Contract/Agreement
▣ Indenture - HRA & US Bank	Contract/Agreement
▣ Regulatory Agreement - HRA, Ft. Snelling Leased Hsg, US Bank	Contract/Agreement
▣ Map	Exhibit
▣ Response to April 25 Council Open Forum Comments	Exhibit

**HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE
CITY OF RICHFIELD, MINNESOTA**

RESOLUTION NO. _____

**RESOLUTION AUTHORIZING THE ISSUANCE, SALE, AND DELIVERY OF
MULTIFAMILY HOUSING REVENUE OBLIGATIONS FOR THE BENEFIT OF
FORT SNELLING LEASED HOUSING ASSOCIATES I, LLLP; AUTHORIZING
THE EXECUTION AND DELIVERY OF DOCUMENTS RELATED THERETO;
AND TAKING OTHER ACTIONS IN CONNECTION THEREWITH**

BE IT RESOLVED by the Board of Commissioners (the “Board”) of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the “Authority”), as follows:

Section 1. Recitals.

1.01. Pursuant to the Constitution and laws of the State of Minnesota, particularly Minnesota Statutes, Chapter 462C (the “Act”), as amended, a municipality is authorized to issue revenue bonds to finance multifamily housing developments.

1.02. Minnesota Statutes, Section 471.656, as amended, authorizes a municipality to issue obligations to finance the acquisition or improvement of property located outside of the corporate boundaries of such municipality if (i) the obligations are issued under a joint powers agreement between the municipality issuing the obligations and the municipality in which the property to be acquired or improved is located; or (ii) the governing body of the county in which the property is located consents, by resolution, to the issuance of the obligations.

1.03. Pursuant to Minnesota Statutes, Section 471.59, as amended, by the terms of a joint powers agreement entered into through action of their governing bodies, two or more municipalities may jointly or cooperatively exercise any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised and the joint powers agreement may provide for the exercise of such powers by one or more of the participating governmental units on behalf of the other participating units; and

1.04. On November 25, 2020, the Hennepin County Housing and Redevelopment Authority (the “County HRA”) issued its Multifamily Housing Revenue Note (Fort Snelling Upper Post Project), Series 2020, in the original aggregate principal amount of \$88,000,000 and loaned the proceeds thereof to Fort Snelling Leased Housing Associates I, LLLP, a Minnesota limited liability limited partnership (the “Borrower”), to finance all or a portion of the costs of the leasehold acquisition, rehabilitation and/or construction, and equipping of an approximately 192-unit multifamily housing rental facility and facilities functionally related and subordinate thereto located at 58 Taylor Avenue, Unorganized Territory of Fort Snelling, Minnesota 55111, known as the Fort Snelling Upper Post Project (the “2020 Project”), of which at least forty percent (40%) of the units are available to individuals and families with incomes at or below (60%) of the area median income.

1.05. The Borrower has proposed that the Authority issue one or more series of taxable or tax-exempt revenue obligations (the “Obligations”) in the approximate aggregate principal amount of \$10,000,000 to complete the construction and/or rehabilitation of the 2020

Project (the “2023 Project”). The Borrower has also proposed to use the proceeds of the Obligations to finance capitalized interest, if necessary, any required reserves, and costs of issuance of the Obligations.

1.06. On December 19, 2022, the Board adopted a resolution authorizing the submission of an application to the office of Minnesota Management and Budget for an allocation of bonding authority with respect to the Obligations to finance the 2023 Project in accordance with the requirements of Minnesota Statutes, Chapter 474A, as amended, and providing preliminary approval for the sale and issuance of the Obligations. Pursuant to Certificate No. 450, dated January 10, 2023, the Obligations received an allocation of bonding authority from the State of Minnesota in the principal amount of \$10,000,000.

1.07. On February 28, 2023, the Administration, Operations, and Budget Committee of Hennepin County, Minnesota (the “County”) conducted a public hearing at which a reasonable opportunity was provided for interested individuals to express their views, both orally and in writing, on providing consent to the issuance of the Obligations by the Authority pursuant to the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations promulgated thereunder.

1.08. On April 11, 2023, the Board of Commissioners of the County adopted a resolution consenting to the issuance of the Obligations by the Authority to finance the 2023 Project, all in accordance with Section 147(f) of the Code and Minnesota Statutes, Sections 471.59 and 471.656, as amended. The Board of Commissioners of the County also approved the execution and delivery of a Cooperative Agreement (the “Cooperative Agreement”) with the Authority to satisfy the requirements of Minnesota Statutes, Sections 471.59 and 471.656, as amended.

1.09. Section 147(f) of the Code and regulations promulgated thereunder require that, because the Authority’s governing body is appointed and not elected, prior to the issuance of the Obligations, the City Council of the City of Richfield, Minnesota (the “City”) must consent to the issuance of the Obligations by the Authority after conducting a public hearing thereon preceded by publication of a notice of public hearing (in the form required by Section 147(f) of the Code and applicable regulations) in a newspaper of general circulation in the City at least seven (7) days prior to the public hearing date.

1.10. Pursuant to Section 1.147(f)-1(d)(3) of the Treasury Regulations, the City is authorized to delegate authority to the Board to conduct the public hearing as required by Section 147(f) of the Code and the regulations promulgated thereunder.

1.11. On April 25, 2023, the City Council of the City approved a resolution delegating authority to the Board to conduct the required public hearing under Section 147(f) of the Code and consenting to the issuance of the Obligations by the Authority.

1.12. In accordance with the Act, the Authority has prepared a housing program (the “Housing Program”) to authorize the Authority’s issuance of the Obligations to finance the 2023 Project. The Housing Program was prepared and submitted to the Metropolitan Council for its review and comment.

1.13. A notice of public hearing (the “Public Notice”) was published in the *Sun Current*, the official newspaper of the Authority and a newspaper of general circulation in the City, with

respect to the required public hearing under Section 147(f) of the Code and Section 462C.04, subdivision 2 of the Act.

1.14. The Public Notice was published at least fifteen (15) days before the regularly scheduled meeting of the Board, and on the date hereof, the Board conducted a public hearing at which a reasonable opportunity was provided for interested individuals to express their views, both orally and in writing.

Section 2. Housing Program. The Housing Program, in the form substantially on file with the Authority, is hereby approved.

Section 3. The Obligations.

3.01. The Borrower has requested that the Authority issue, sell, and deliver the Obligations in an estimated principal amount not to exceed \$10,000,000. The Obligations are proposed to be sold publicly and underwritten by Colliers Securities LLC, a Delaware limited liability company (the "Underwriter").

3.02. The Obligations are proposed to be issued pursuant to this resolution, the Act, and an Indenture of Trust (the "Indenture") between the Authority and U.S. Bank Trust Company, National Association, a national banking association (the "Trustee").

3.03. The proceeds derived from the sale of the Obligations will be loaned by the Authority to the Borrower (the "Loan") pursuant to the terms of a Loan Agreement (the "Loan Agreement") between the Authority and the Borrower.

3.04. The Obligations and the interest on the Obligations (i) shall be payable solely from the revenues pledged therefor under the Loan Agreement and additional sources of revenue provided by or on behalf of the Borrower; (ii) shall not constitute a debt of the Authority or the City within the meaning of any constitutional or statutory limitation; (iii) shall not constitute or give rise to a pecuniary liability of the Authority or the City or a charge against their general credit or taxing powers; (iv) shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the Authority or the City other than the Authority's interest in the Loan Agreement; and (v) shall not constitute a general or moral obligation of the Authority or the City.

3.05. The loan repayments to be made by the Borrower under the Loan Agreement will be fixed so as to produce revenue sufficient to pay the principal of, premium, if any, and interest on the Obligations when due. Such loan repayments will be assigned to the Trustee under the terms of the Indenture.

3.06. The Borrower's repayment obligations in respect of the Loan will be secured by one or more guaranties, an assignment of capital contributions and partnership interests of the Borrower, assignments of developer's fee and contractor's fee, and other security agreed upon by the Borrower, the Underwriter, and the Trustee.

3.07. The Authority acknowledges, finds, determines, and declares that the issuance of the Obligations is authorized by the Act and is consistent with the purposes of the Act and that the issuance of the Obligations, and the other actions of the Authority under the Indenture, the Loan Agreement, and this resolution constitute a public purpose and are in the interests of the City and the County as a whole. In authorizing the issuance of the Obligations to finance the

2023 Project and the related costs, the Authority's purpose is and the effect thereof will be to promote the public welfare of the City, the County, and their residents by providing multifamily housing developments for low or moderate income residents of the City and the County and otherwise furthering the purposes and policies of the Act.

3.08. For the purposes set forth above, there is hereby authorized the issuance, sale, and delivery of the Obligations in the estimated principal amount not to exceed \$10,000,000. The Obligations shall bear interest at the rates, shall be designated, shall be numbered, shall be dated, shall mature, shall be in the aggregate principal amount, shall be subject to redemption prior to maturity, shall be in such form, and shall have such other terms, details, and provisions as are prescribed in the Indenture, substantially in the form now on file with the Authority, with the amendments referenced herein. The Authority hereby authorizes all or a portion of the Obligations to be issued as "tax-exempt Obligations," the interest on which is not includable in gross income for federal and State of Minnesota income tax purposes.

All of the provisions of the Obligations, when executed as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Obligations shall be substantially in the form of the Indenture on file with the Authority, which form is hereby approved, with such necessary and appropriate variations, omissions, and insertions (including changes to the aggregate principal amount of the Obligations, the stated maturities of the Obligations, the interest rates on the Obligations and the terms of redemption of the Obligations) as the Chair and the Executive Director, in their discretion, shall determine. The execution of the Obligations with the manual or facsimile signatures of the Chair and the Executive Director and the delivery of the Obligations by the Authority shall be conclusive evidence of such determination.

3.09. The Obligations shall be special, limited obligations of the Authority payable solely from the revenues provided by the Borrower pursuant to the Loan Agreement and other funds pledged pursuant to the Indenture. The Board hereby authorizes and directs the Chair and the Executive Director to execute the Obligations in accordance with the terms thereof.

3.10. All of the provisions of the Indenture, when executed as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Indenture shall be substantially in the form on file with the Authority, which is hereby approved, with such necessary and appropriate variations, omissions and insertions as do not materially change the substance thereof, and as the Chair and the Executive Director, in their discretion, shall determine, and the execution thereof by the Chair and the Executive Director shall be conclusive evidence of such determination. The Chair and the Executive Director are hereby authorized and directed to execute the Indenture, and to deliver the Indenture to the Trustee, and hereby authorizes and directs the execution of the Obligations in accordance with the terms of the Indenture, and hereby provides that the Indenture shall provide the terms and conditions, covenants, rights, obligations, duties, and agreements of the owners of the Obligations, the Authority, and the Trustee as set forth therein.

3.11. The Chair and the Executive Director are hereby authorized and directed to execute and deliver the Loan Agreement, the Cooperative Agreement, a Bond Purchase Agreement between the Authority, the Borrower, and the Underwriter, and all other documents and assignments related to the Loan required to be executed by the Authority. All of the provisions of such documents, when executed and delivered as authorized herein, shall be

deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The aforementioned documents shall be substantially in the forms on file with the Authority which are hereby approved, with such omissions and insertions as do not materially change the substance thereof, and as the Chair and the Executive Director, in their discretion, shall determine, and the execution thereof by the Chair and the Executive Director shall be conclusive evidence of such determinations.

3.12. To ensure compliance with certain rental and occupancy restrictions imposed by the Act and Section 142(d) of the Code, and to ensure compliance with certain restrictions imposed by the Authority, the Chair and Executive Director are also hereby authorized and directed to execute and deliver a Regulatory Agreement (the "Regulatory Agreement") between the Authority, the Borrower, Fort Snelling Leased Housing Associates Master Tenant I, LLLP, a Minnesota limited liability limited partnership and the master tenant, and the Trustee. All of the provisions of the Regulatory Agreement, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Regulatory Agreement shall be substantially in the form on file with the Authority which is hereby approved, with such omissions and insertions as do not materially change the substance thereof, or as the Chair and the Executive Director, in their discretion, shall determine, and the execution thereof by the Chair and the Executive Director shall be conclusive evidence of such determination.

3.13. The Authority will not participate in the preparation of the Preliminary Official Statement or the Official Statement (together, the "Official Statement") relating to the offer and sale of the Obligations and will make no independent investigation with respect to the information contained therein, including the appendices thereto, except for the information set forth in the Official Statement regarding the Authority and certain matters relating to litigation, and the Authority assumes no responsibility for the sufficiency, accuracy, or completeness of such information. Subject to the foregoing, the Authority hereby consents to the distribution and the use by the Underwriter of the Official Statement in connection with the offer and sale of the Obligations. The Official Statement is the sole material consented to by the Authority for use in connection with the offer and sale of the Obligations.

3.14. The Authority hereby authorizes the Borrower to provide such security for payment of its obligations under the Obligation Loan Agreement and for payment of the Obligations, including but not limited to the security described herein, and the Authority hereby approves the execution and delivery of such security. The Chair and the Executive Director are authorized and directed to execute one or more subordination or intercreditor agreements as required by the Underwriter and the Trustee so long as Authority staff and Bond Counsel approve the forms thereof.

Section 4. Additional Findings and Certifications.

4.01. The Obligations are authorized to be issued in the estimated principal amount not to exceed \$10,000,000.

4.02. The Chair and the Executive Director are authorized and directed to execute any additional documents deemed necessary to carry out the intentions of this resolution and to complete the financing described herein, so long as Authority staff and legal counsel approve such documents.

4.03. The Chair and the Executive Director are hereby authorized to execute and deliver, on behalf of the Authority, such other documents and certificates as are necessary or appropriate in connection with the issuance, sale, and delivery of the Obligations, including various certificates of the Authority, an Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038, an endorsement of the Authority to the tax certificate of the Borrower, and similar documents, and all other documents and certificates as shall be necessary and appropriate in connection with the issuance, sale, and delivery of the Obligations. The Authority hereby authorizes Kennedy & Graven, Chartered, as bond counsel ("Bond Counsel"), to prepare, execute, and deliver its approving legal opinions with respect to the Obligations.

4.04. Except as otherwise provided in this resolution, all rights, powers, and privileges conferred and duties and liabilities imposed upon the Authority or the Board by the provisions of this resolution or of the aforementioned documents shall be exercised or performed by the Authority or by such members of the Board, or such officers, board, body or agency thereof as may be required or authorized by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the aforementioned documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member of the Board, or any officer, agent or employee of the Authority in that person's individual capacity, and neither the Board nor any officer or employee executing the Obligations shall be personally liable on the Obligations or be subject to any personal liability or accountability by reason of the issuance thereof.

No provision, covenant or agreement contained in the aforementioned documents, the Obligations, or in any other document relating to the Obligations, and no obligation therein or herein imposed upon the Authority or the breach thereof, shall constitute or give rise to a general or moral obligation of the Authority or the City or any pecuniary liability of the Authority or the City or any charge upon their general credit or taxing powers. In making the agreements, provisions, covenants, and representations set forth in such documents, the Authority has not obligated itself to pay or remit any funds or revenues, other than funds and revenues as described herein which are to be applied to the payment of the Obligations, as provided therein.

4.05. Except as herein otherwise expressly provided, nothing in this resolution or in the aforementioned documents expressed or implied is intended or shall be construed to confer upon any person or firm or corporation, other than the Authority, any holder of the Obligations issued under the provisions of this resolution, any right, remedy or claim, legal or equitable, under and by reason of this resolution or any provisions hereof, this resolution, the aforementioned documents, and all of their provisions being intended to be and being for the sole and exclusive benefit of the Authority, and any holder from time to time of the Obligations issued under the provisions of this resolution.

4.06. In case any one or more of the provisions of this resolution, other than the provisions contained in the first sentence of Section 3.09 hereof, or of the aforementioned documents, or of the Obligations issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this resolution, or of the aforementioned documents, or of the Obligations, but this resolution, the aforementioned documents, and the Obligations shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein.

4.07. The Obligations, when executed and delivered, shall contain a recital that they are issued pursuant to the Act, and such recital shall be conclusive evidence of the validity of the Obligations and the regularity of the issuance thereof, and that all acts, conditions, and things required by the laws of the State of Minnesota relating to the adoption of this resolution, to the issuance of the Obligations, and to the execution of the aforementioned documents to happen, exist, and be performed precedent to the execution of the aforementioned documents have happened, exist, and have been performed as so required by law.

4.08. The officers of the Authority, Bond Counsel, other attorneys, engineers, and other agents or employees of the Authority are hereby authorized to do all acts and things required of them by or in connection with this resolution, the aforementioned documents, and the Obligations, for the full, punctual, and complete performance of all the terms, covenants, and agreements contained in the Obligations, the aforementioned documents, and this resolution. If for any reason the Chair or the Executive Director is unable to execute and deliver the documents referred to in this resolution, such documents may be executed by any member of the Board or any officer of the Authority delegated the duties of the Chair or the Executive Director with the same force and effect as if such documents were executed and delivered by the Chair or the Executive Director.

4.09. The Borrower shall pay the administrative fee of the Authority on the date of issuance of the Obligations as provided in the Loan Agreement. The Borrower will also pay, or, upon demand, reimburse the Authority for payment of, any and all costs incurred by the Authority in connection with the 2023 Project and the issuance of the Obligations, whether or not the Obligations are issued, including any costs for attorneys' fees.

Section 5. Post-Issuance Compliance Policy. Under Sections 103 and 140 to 150 of the Code and related regulations, the Authority is required to take certain actions after the issuance of such bonds to ensure that interest on those bonds remains tax exempt. There has been presented before the Board a Post-Issuance Compliance Procedure and Policy for Tax-Exempt Governmental Bonds (the "Policy"), which constitutes the Authority's written procedures regarding how the Authority will carry out its bond compliance responsibilities with respect to the Obligations and other obligations that may be issued by the Authority on a tax-exempt basis. For all conduit bonds issued by the Authority, the Authority shall rely on the conduit bond borrower to perform or cause to be performed the duties laid out in this policy. The Board hereby approves the Policy in substantially the form on file with the Authority.

Section 6. Effective Date. This resolution shall be in full force and effect from and after its approval. The approvals contained in the resolution are effective for one year after the date hereof.

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Adopted by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota this 5th day of June, 2023.

Erin Vrieze Daniels, Chair

ATTEST:

Gordon Hanson, Secretary

RC125-394(JAE)
874541v2

**Housing and Redevelopment Authority in and for the
City of Richfield, Minnesota**

**POST-ISSUANCE COMPLIANCE PROCEDURE AND POLICY
FOR TAX-EXEMPT GOVERNMENTAL BONDS**

June 5, 2023

Post-Issuance Compliance Procedure and Policy for Tax-Exempt Governmental Bonds

The Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the “Authority”) issues tax-exempt governmental bonds to finance capital improvements. As an issuer of tax-exempt governmental bonds, the Authority is required by the terms of Sections 103 and 141-150 of the Internal Revenue Code of 1986, as amended (the “Code”), and the Treasury Regulations promulgated thereunder (the “Treasury Regulations”), to take certain actions subsequent to the issuance of such bonds to ensure the continuing tax-exempt status of such bonds. In addition, Section 6001 of the Code and Section 1.6001-1(a) of the Treasury Regulations, impose record retention requirements on the Authority with respect to its tax-exempt governmental bonds. This Post-Issuance Compliance Procedure and Policy for Tax-Exempt Governmental Bonds (the “Policy”) has been approved and adopted by the Authority to ensure that the Authority complies with its post-issuance compliance obligations under applicable provisions of the Code and Treasury Regulations.

1. Effective Date and Term. The effective date of this Policy is June 5, 2023, and shall remain in effect until superseded or terminated by the Authority.

2. Responsible Parties. The Executive Director of the Authority shall be the party primarily responsible for ensuring that the Authority successfully carries out its post-issuance compliance requirements under applicable provisions of the Code and Treasury Regulations. The Executive Director will be assisted by Authority staff and officials when appropriate. The Executive Director of the Authority will also be assisted in carrying out post-issuance compliance requirements by the following organizations:

(a) Bond Counsel (the law firm primarily responsible for providing bond counsel services for the Authority);

(b) Municipal Advisor (the organization utilized from time to time for providing financial advisor services to the Authority);

(c) Paying Agent (the person, organization, or Authority officer primarily responsible for providing paying agent services for the Authority); and

(d) Rebate Analyst (the organization primarily responsible for providing rebate analyst services for the Authority).

The Executive Director shall be responsible for assigning post-issuance compliance responsibilities to staff of the Authority, Bond Counsel, Municipal Advisor, Paying Agent, and Rebate Analyst. The Executive Director shall utilize such other professional service organizations as are necessary to ensure compliance with the post-issuance compliance requirements of the Authority. The Executive Director shall provide training and educational resources to Authority staff who are responsible for ensuring compliance with any portion of the post-issuance compliance requirements of this Policy.

3. Post-Issuance Compliance Actions. The Executive Director shall take the following post-issuance compliance actions or shall verify that the following post-issuance compliance actions have been taken on behalf of the Authority with respect to each issue of tax-exempt governmental bonds issued by the Authority:

(a) The Executive Director shall prepare a transcript of principal documents (this action will be the primary responsibility of Bond Counsel).

(b) The Executive Director shall file with the Internal Revenue Service (the “IRS”), within the time limit imposed by Section 149(e) of the Code and applicable Treasury Regulations, an Information Return for Tax-Exempt Governmental Obligations, Form 8038-G (this action will be the primary responsibility of Bond Counsel).

(c) The Executive Director shall prepare an “allocation memorandum” for each issue of tax-exempt governmental bonds in accordance with the provisions of Treasury Regulations, Section 1.148-6(d)(1), that accounts for the allocation of the proceeds of the tax-exempt bonds to expenditures not later than the earlier of:

(i) eighteen (18) months after the later of (A) the date the expenditure is paid, or (B) the date the project, if any, that is financed by the tax-exempt bond issue is placed in service; or

(ii) the date sixty (60) days after the earlier of (A) the fifth anniversary of the issue date of the tax-exempt bond issue, or (B) the date sixty (60) days after the retirement of the tax-exempt bond issue.

Preparation of the allocation memorandum will be the primary responsibility of the Executive Director (in consultation with Bond Counsel, and, if employed with respect to the tax-exempt issue, the Municipal Advisor).

(d) The Executive Director, in consultation with Bond Counsel, shall identify proceeds of tax-exempt governmental bonds that must be yield-restricted and shall monitor the investments of any yield-restricted funds to ensure that the yield on such investments does not exceed the yield to which such investments are restricted.

(e) In consultation with Bond Counsel, the Executive Director shall determine whether the Authority is subject to the rebate requirements of Section 148(f) of the Code with respect to each issue of tax-exempt governmental bonds. In consultation with Bond Counsel, the Executive Director shall determine, with respect to each issue of tax-exempt governmental bonds of the Authority, whether the Authority is eligible for any of the temporary periods for unrestricted investments and is eligible for any of the spending exceptions to the rebate requirements. The Executive Director shall contact the Rebate Analyst (and, if appropriate, Bond Counsel) prior to the fifth anniversary of the date of issuance of each issue of tax-exempt governmental bonds of the Authority and each fifth anniversary thereafter to arrange for calculations of the rebate requirements with respect to such tax-exempt governmental bonds. If a rebate payment is required to be paid by the Authority, the Executive Director shall prepare or cause to be prepared the Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate, Form 8038-T, and submit such Form 8038-T to the IRS with the required rebate payment. If the Authority is authorized to recover a rebate payment previously paid, the Executive Director shall prepare or cause to be prepared the Request for Recovery of Overpayments Under Arbitrage Rebate Provisions, Form 8038-R, with respect to such rebate recovery, and submit such Form 8038-R to the IRS.

4. Procedures for Monitoring, Verification, and Inspections. The Executive Director shall institute such procedures as the Executive Director shall deem necessary and appropriate to monitor the use of the proceeds of tax-exempt governmental bonds issued by the Authority, to verify that certain

post-issuance compliance actions have been taken by the Authority, and to provide for the inspection of the facilities financed with the proceeds of such bonds. At a minimum, the Executive Director shall establish the following procedures:

(a) The Executive Director shall monitor the use of the proceeds of tax-exempt governmental bonds to: (i) ensure compliance with the expenditure and investment requirements under the temporary period provisions set forth in Treasury Regulations, Section 1.148-2(e); (ii) ensure compliance with the safe harbor restrictions on the acquisition of investments set forth in Treasury Regulations, Section 1.148-5(d); (iii) ensure that the investments of any yield-restricted funds do not exceed the yield to which such investments are restricted; and (iv) determine whether there has been compliance with the spend-down requirements under the spending exceptions to the rebate requirements set forth in Treasury Regulations, Section 1.148-7.

(b) The Executive Director shall monitor the use of all bond-financed facilities in order to: (i) determine whether private business uses of bond-financed facilities have exceeded the *de minimus* limits set forth in Section 141(b) of the Code as a result of leases and subleases, licenses, management contracts, research contracts, naming rights agreements, or other arrangements that provide special legal entitlements to nongovernmental persons; and (ii) determine whether private security or payments that exceed the *de minimus* limits set forth in Section 141(b) of the Code have been provided by nongovernmental persons with respect to such bond-financed facilities. The Executive Director shall provide training and educational resources to any Authority staff who have the primary responsibility for the operation, maintenance, or inspection of bond-financed facilities with regard to the limitations on the private business use of bond-financed facilities and as to the limitations on the private security or payments with respect to bond-financed facilities.

(c) The Executive Director shall undertake the following with respect to each outstanding issue of tax-exempt governmental bonds of the Authority: (i) an annual review of the books and records maintained by the Authority with respect to such bonds; and (ii) an annual physical inspection of the facilities financed with the proceeds of such bonds, conducted by the Executive Director with the assistance of any Authority staff who have the primary responsibility for the operation, maintenance, or inspection of such bond-financed facilities.

5. Record Retention Requirements. The Executive Director shall collect and retain the following records with respect to each issue of tax-exempt governmental bonds of the Authority and with respect to the facilities financed with the proceeds of such bonds: (i) audited financial statements of the Authority; (ii) appraisals, demand surveys, or feasibility studies with respect to the facilities to be financed with the proceeds of such bonds; (iii) publications, brochures, and newspaper articles related to the bond financing; (iv) trustee or paying agent statements; (v) records of all investments and the gains (or losses) from such investments; (vi) paying agent or trustee statements regarding investments and investment earnings; (vii) reimbursement resolutions and expenditures reimbursed with the proceeds of such bonds; (viii) allocations of proceeds to expenditures (including costs of issuance) and the dates and amounts of such expenditures (including requisitions, draw schedules, draw requests, invoices, bills, and cancelled checks with respect to such expenditures); (ix) contracts entered into for the construction, renovation, or purchase of bond-financed facilities; (x) an asset list or schedule of all bond-financed depreciable property and any depreciation schedules with respect to such assets or property; (xi) records of the purchases and sales of bond-financed assets; (xii) private business uses of bond-financed facilities that arise subsequent to the date of issue through leases and subleases, licenses, management contracts, research contracts, naming rights agreements, or other arrangements that provide special legal entitlements to nongovernmental persons and copies of any such agreements or instruments;

(xiii) arbitrage rebate reports and records of rebate and yield reduction payments; (xiv) resolutions or other actions taken by the governing body subsequent to the date of issue with respect to such bonds; (xv) formal elections authorized by the Code or Treasury Regulations that are taken with respect to such bonds; (xvi) relevant correspondence, including letters, faxes or emails, relating to such bonds; (xvii) documents related to guaranteed investment contracts or certificates of deposit, credit enhancement transactions, and financial derivatives entered into subsequent to the date of issue; (xviii) bidding of financial products for investment securities; (xix) copies of all Form 8038-Ts, Form 8038-Rs, and Form 8038-CPs filed with the IRS and any other forms or documents filed with the IRS; (xx) the transcript prepared with respect to such tax-exempt governmental bonds, including but not limited to (a) official statements, private placement documents, or other offering documents, (b) minutes and resolutions, orders, or ordinances or other similar authorization for the issuance of such bonds, and (c) certification of the issue price of such bonds; and (xxi) documents related to government grants associated with the construction, renovation, or purchase of bond-financed facilities.

The records collected by the Executive Director shall be stored in any format deemed appropriate by the Executive Director and shall be retained for a period equal to the life of the tax-exempt governmental bonds with respect to which the records are collected (which shall include the life of any bonds issued to refund any portion of such tax-exempt governmental bonds or to refund any refunding bonds) plus three (3) years. The Executive Director shall also collect and retain reports of any IRS examination of the Authority or any of its bond financings.

6. Remedies. In consultation with Bond Counsel, the Executive Director shall become acquainted with the remedial actions (including redemption or defeasance) under Treasury Regulations, Section 1.141-12, to be utilized in the event that private business use of bond-financed facilities exceeds the *de minimus* limits under Section 141(b)(1) of the Code. In consultation with Bond Counsel, the Executive Director shall become acquainted with the Tax Exempt Bonds Voluntary Closing Agreement Program described in Notice 2008-31, 2008-11 I.R.B. 592, to be utilized as a means for an issuer to correct any post-issuance infractions of the Code and Treasury Regulations with respect to outstanding tax-exempt bonds.

7. Continuing Disclosure Obligations. In addition to its post-issuance compliance requirements under applicable provisions of the Code and Treasury Regulations, the Authority has agreed to provide continuing disclosure, such as annual financial information and material event notices, pursuant to a continuing disclosure certificate or similar document (the "Continuing Disclosure Document") prepared by Bond Counsel and made a part of the transcript with respect to each issue of bonds of the Authority that is subject to such continuing disclosure requirements. The Continuing Disclosure Documents are executed by the Authority to assist the underwriters of the Authority's bonds in meeting their obligations under Securities and Exchange Commission Regulation, 17 C.F.R. Section 240.15c2-12, as in effect and interpreted from time to time ("Rule 15c2-12"). The continuing disclosure obligations of the Authority are governed by the Continuing Disclosure Documents and by the terms of Rule 15c2-12. The Executive Director is primarily responsible for undertaking such continuing disclosure obligations and to monitor compliance with such obligations.

8. Other Post-Issuance Actions. If, in consultation with Bond Counsel, Municipal Advisor, Paying Agent, Rebate Analyst, the Executive Director, the Authority Attorney, or the Board of Commissioners, the Executive Director determines that any additional action not identified in this Policy must be taken by the Executive Director to ensure the continuing tax-exempt status of any issue of governmental bonds of the Authority, the Executive Director shall take such action if the Executive Director has the authority to do so. If, after consultation with Bond Counsel, Municipal Advisor, Paying Agent, Rebate Analyst, the Executive Director, the Authority Attorney, or the Board of Commissioners, the Executive Director and the Executive Director determine that this Policy must be amended or

supplemented to ensure the continuing tax-exempt status of any issue of governmental bonds of the Authority, the Executive Director shall recommend to the Board of Commissioners that this Policy be so amended or supplemented.

9. Taxable Governmental Bonds. Most of the provisions of this Policy, other than the provisions of Section 7, are not applicable to governmental bonds the interest on which is includable in gross income for federal income tax purposes. However, if an issue of taxable governmental bonds is later refunded with the proceeds of an issue of tax-exempt governmental refunding bonds, then the uses of the proceeds of the taxable governmental bonds and the uses of the facilities financed with the proceeds of the taxable governmental bonds will be relevant to the tax-exempt status of the governmental refunding bonds. Therefore, if there is any reasonable possibility that an issue of taxable governmental bonds may be refunded, in whole or in part, with the proceeds of an issue of tax-exempt governmental bonds, for purposes of this Policy, the Executive Director shall treat the issue of taxable governmental bonds as if such issue were an issue of tax-exempt governmental bonds and shall carry out and comply with the requirements of this Policy with respect to such taxable governmental bonds. The Executive Director shall seek the advice of Bond Counsel as to whether there is any reasonable possibility of issuing tax-exempt governmental bonds to refund an issue of taxable governmental bonds.

10. Qualified 501(c)(3) Bonds. If the Authority issues bonds to finance a facility to be owned by the Authority but which may be used, in whole or in substantial part, by a nongovernmental organization that is exempt from federal income taxation under Section 501(a) of the Code as a result of the application of Section 501(c)(3) of the Code (a “501(c)(3) Organization”), the Authority may elect to issue the bonds as “qualified 501(c)(3) bonds” the interest on which is exempt from federal income taxation under Sections 103 and 145 of the Code and applicable Treasury Regulations. Although such qualified 501(c)(3) bonds are not governmental bonds, at the election of the Executive Director, for purposes of this Policy, the Executive Director shall treat such issue of qualified 501(c)(3) bonds as if such issue were an issue of tax-exempt governmental bonds and shall carry out and comply with the requirements of this Policy with respect to such qualified 501(c)(3) bonds.

11. Conduit Bonds. For all conduit bonds issued by the Authority, the Authority shall rely on the conduit bond borrower to perform or cause to be performed the duties laid out in this policy.



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May 30, 2023

Melissa Poehlman, Community Development Director
City of Richfield
6700 Portland Avenue
Richfield, MN 55423

Re: Resolution approving the issuance of conduit revenue obligations by the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota for the benefit of Fort Snelling Leased Housing Associates I, LLLP

Dear Melissa,

On November 25, 2020, the Hennepin County Housing and Redevelopment Authority (the "County HRA") issued its Multifamily Housing Revenue Note (Fort Snelling Upper Post Project), Series 2020, in the original aggregate principal amount of \$88,000,000, and loaned the proceeds thereof to Fort Snelling Leased Housing Associates I, LLLP, a Minnesota limited liability limited partnership (the "Borrower"), to finance a portion of the costs of the leasehold acquisition, rehabilitation and/or construction, and equipping of an approximately 192-unit multifamily housing rental facility and facilities functionally related and subordinate thereto located at 58 Taylor Avenue, Unorganized Territory of Fort Snelling, Minnesota 55111, known as the Fort Snelling Upper Post Project (the "2020 Project"), of which at least forty percent (40%) of the units are available to individuals and families with incomes at or below (60%) of the area median income. As you know, the Borrower is requesting that the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the "Authority") issue one or more series of taxable or tax-exempt revenue obligations (the "Obligations") in the estimated maximum principal amount of \$10,000,000 and loan the proceeds thereof to the Borrower to provide additional financing for the 2020 Project (the "2023 Project").

The Obligations will be issued in accordance with Minnesota Statutes, Chapters 462C and 474A, as amended (the "Act"), and Minnesota Statutes, Sections 471.59 and 471.656, as amended (the "Joint Powers Act"). In order to issue the Obligations, the Authority is required to conduct a public hearing in accordance with Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), and Section 462C.04, subdivision 2 of the Act. The public hearing will be held during the Board of Commissioner's meeting on June 5, 2023. Following the public hearing, the Board of Commissioners will be asked to consider the enclosed resolution, which provides approval for the housing program prepared in accordance with the Act, the issuance of the Obligations, and the execution of loan documents and related documents, including a Cooperative Agreement with Hennepin County, Minnesota (the "County"). On April 11, 2023, the County, as the general jurisdiction in which the project is located, authorized the execution of the Cooperative Agreement with the Authority and consented to the issuance of the Obligations by the Authority to finance the 2023 Project, in accordance with the requirements of the Joint Powers Act.

As an issuer of tax-exempt obligations, the Authority is required to execute and deliver an Information Return for Tax-Exempt Private Activity Bond Issues, IRS Form 8038. I have prepared a post-issuance compliance policy for consideration by the Board of Commissioners at their meeting. This policy provides guidance on the use of proceeds of tax-exempt bonds such as the Obligations to ensure that the interest on such tax-exempt bonds does not become taxable.

The Obligations will be payable from the revenues pledged under the terms of the various financing documents, including but not limited to a loan agreement (the “Loan Agreement”) between the Authority and the Borrower. The Obligations will not constitute a general or moral obligation of the Authority or the City of Richfield, Minnesota (the “City”) and will not be secured by or payable from any property or assets of the Authority or the City (other than the interests of the Authority in the Loan Agreement) and will not be secured by any taxing power of the Authority or the City. The Obligations will not be subject to any debt limitation imposed on the Authority or the City, and the issuance of the Obligations will not have any adverse impact on the credit rating of the Authority or the City, even in the event that the Borrower encounters financial difficulties with respect to the facilities to be financed with the proceeds of the Obligations.

The Obligations will be “private activity bonds” within the meaning of Section 141(a) of the Code but will be “exempt facility bonds” the net proceeds of which are to be used to provide a “qualified residential rental project” within the meaning of Sections 142(a)(7) and 143(d) of the Code and will not affect the ability of the Authority or the City to issue and designate up to \$10,000,000 in tax-exempt bonds as “qualified tax-exempt obligations” (or “bank-qualified bonds”) for calendar year 2023.

The Borrower will pay the out-of-pocket expenses of the Authority with respect to this transaction as well as the Authority’s administrative fee.

I will attend the Board of Commissioners meeting on June 5, 2023 and can answer any questions that may arise during the meeting. Please contact me with any questions you may have prior to the Board of Commissioners meeting.

KENNEDY & GRAVEN, CHARTERED

Julie Eddington

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT, dated as of June 1, 2023 (the “Cooperative Agreement”), is made and entered into between the HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD, MINNESOTA, a public body and political subdivision duly organized and existing under the Constitution and laws of the State of Minnesota (the “Issuer”), and HENNEPIN COUNTY, MINNESOTA, a public body and political subdivision duly organized and existing under the Constitution and laws of the State of Minnesota (the “County”).

RECITALS

WHEREAS, Minnesota Statutes, Section 471.656, as amended, authorizes a municipality to issue obligations to finance the acquisition or improvement of property located outside of the corporate boundaries of such municipality if (i) the obligations are issued under a joint powers agreement between the municipality issuing the obligations and the municipality in which the property to be acquired or improved is located; or (ii) the governing body of the county in which the property is located consents, by resolution, to the issuance of the obligations; and

WHEREAS, pursuant to Minnesota Statutes, Section 471.59, as amended, by the terms of a joint powers agreement entered into through action of their governing bodies, two or more municipalities may jointly or cooperatively exercise any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised, and the joint powers agreement may provide for the exercise of such powers by one or more of the participating municipalities on behalf of the other participating municipalities; and

WHEREAS, the County and the Issuer are authorized by Minnesota Statutes, Chapter 462C, as amended (the “Act”), to issue revenue obligations to finance multifamily rental housing developments; and

WHEREAS, on November 25, 2020, the Hennepin County Housing and Redevelopment Authority (the “County HRA”) issued its Multifamily Housing Revenue Note (Fort Snelling Upper Post Project), Series 2020 (the “Series 2020 Note”), in the original aggregate principal amount of \$88,000,000 and loaned the proceeds thereof to Fort Snelling Leased Housing Associates I, LLLP, a Minnesota limited liability limited partnership (the “Borrower”), to finance all or a portion of the costs of the leasehold acquisition, rehabilitation and/or construction, and equipping of an approximately 192-unit multifamily housing rental facility and facilities functionally related and subordinate thereto located at 58 Taylor Avenue, Unorganized Territory of Fort Snelling, Minnesota 55111, known as the Fort Snelling Upper Post Project (the “2020 Project”), of which at least forty percent (40%) of the units are available to individuals and families with incomes at or below (60%) of the area median income; and

WHEREAS, the Borrower has proposed to finance additional costs to complete the construction and/or rehabilitation of the 2020 Project (the “2023 Project”); and

WHEREAS, the County and the Issuer are proposing to enter into this Cooperative Agreement pursuant to which the County will consent to the issuance of such revenue obligations and the financing of the 2023 Project by the Issuer, and the Issuer will agree to issue such revenue obligations to finance the 2023 Project; and

WHEREAS, the revenue obligations (and any refunding obligations) proposed to be issued by the Issuer for the benefit of the Borrower shall not constitute general or moral obligations of, or pledge the full faith and credit or taxing powers of, the County, the County HRA, the Issuer, the State of Minnesota, or any other agency or political subdivision thereof, but shall be payable solely from the revenues pledged and assigned thereto pursuant to one or more loan agreements between the Issuer and the Borrower; and

WHEREAS, the governing bodies of the County and the Issuer have authorized the execution and delivery of this Cooperative Agreement; and

NOW, THEREFORE, the County and the Issuer hereby agree as follows:

1. The Issuer will issue its Multifamily Housing Revenue Bonds (Fort Snelling Upper Post Project), Series 2023 (the “Bonds”), in the original aggregate principal amount of \$10,000,000. The proceeds of the Bonds will be used to finance the 2023 Project, fund any required reserves, finance capitalized interest during the construction and/or rehabilitation of the 2023 Project (together, the “Project”), if necessary, and pay the costs of issuing the Bonds.

2. The governing bodies of the County and the Issuer have conducted public hearings with respect to the financing of the 2023 Project.

3. The governing bodies of the County and the Issuer have each adopted a resolution approving this Cooperative Agreement and authorizing its execution and delivery.

4. Pursuant to Resolution 23-0137, adopted by the Board of Commissioners of the County on April 11, 2023, the County consented to and approved (a) the issuance of the Bonds by the Issuer; and (b) the financing of the 2023 Project by the Issuer with the proceeds of the Bonds.

5. The County and the Issuer understand and agree that the Issuer will be the responsible party for the housing plan prepared for the Bonds in accordance with Section 462C.03 of the Act. The County and the Issuer acknowledge that the Borrower and the 2020 Project remain subject to an existing Regulatory Agreement with respect to the Series 2020 Note and that the Issuer has required that the Borrower enter into a separate Regulatory Agreement with respect to the Bonds, wherein the Issuer will require the Borrower to comply with additional affordability requirements.

6. Except to the extent specifically provided herein, the County and the Issuer shall not incur any obligations or liabilities to each other as a result of the issuance of the Bonds. The Bonds shall be special, limited obligations of the Issuer payable solely from proceeds, revenues, and other amounts specifically pledged to the payment of the Bonds. The Bonds and the interest thereon shall not constitute or give rise to a pecuniary liability, general or moral obligation, or a pledge of the full faith and credit or taxing powers of the County, the County HRA, the Issuer, the State of Minnesota, or any political subdivision of the above, within the meaning of any constitutional or statutory provisions.

7. All costs incurred by the County, the County HRA, and the Issuer in the authorization, execution, delivery, and performance of this Cooperative Agreement and all related transactions shall be paid by the Borrower.

8. This Cooperative Agreement may not be terminated by any party so long as the Bonds are outstanding.

9. This Cooperative Agreement may be amended by the County and the Issuer at any time with the consent of all parties to this Cooperative Agreement. No amendment may impair the rights of the Borrower or the holders of the Bonds.

10. This Cooperative Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement.

11. The parties agree that the electronic signature of a party to this Cooperative Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Cooperative Agreement. For purposes hereof: (i) "electronic signature" means a manually signed original signature that is then transmitted by electronic means, or a digital signature provided by DocuSign or other digital signature provider; and (ii) "transmitted by electronic means" means sent in the form of a facsimile or sent via the internet as a portable document format ("pdf") or other replicating image attached to an electronic mail or internet message.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, duly authorized officers of the County and the Issuer have executed this Cooperative Agreement as of the date and year first written above.

Reviewed by the County
Attorney's Office

By: _____

Date: _____

**COUNTY OF HENNEPIN
STATE OF MINNESOTA**

By: _____
Chair

Date: _____

ATTEST: _____
Deputy/Clerk of County Board

Date: _____

By: _____
County Administrator

Date: _____

Recommended for Approval:

By: _____
Chief Housing and Economic Development Officer

Date: _____

Execution page of the Issuer to the Cooperative Agreement, dated as of the date and year first written above.

**HOUSING AND REDEVELOPMENT
AUTHORITY IN AND FOR THE CITY OF
RICHFIELD, MINNESOTA**

By _____
Its Chair

By _____
Its Executive Director

**Second Draft
May 27, 2023**

LOAN AGREEMENT

between

**HOUSING AND REDEVELOPMENT AUTHORITY
IN AND FOR THE
CITY OF RICHFIELD, MINNESOTA,
as Issuer**

and

**FORT SNELLING LEASED HOUSING ASSOCIATES I, LLLP,
as Borrower**

Dated as of June 1, 2023

Relating to:

**\$10,000,000
Housing and Redevelopment Authority
in and for the
City of Richfield, Minnesota
Multifamily Housing Revenue Bonds
(Fort Snelling Upper Post Project)
Series 2023**

With the exception of certain reserved rights, the interest of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota in this Loan Agreement has been assigned to U.S. Bank Trust Company, National Association, as trustee for the above-referenced bonds.

This instrument was drafted by:
Kennedy & Graven, Chartered (JAE)
150 South Fifth Street, Suite 700
Minneapolis, MN 55402-1299

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LOAN AGREEMENT

THIS LOAN AGREEMENT, dated as of June 1, 2023 (the “Loan agreement”), is between the HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Issuer”), and FORT SNELLING LEASED HOUSING ASSOCIATES I, LLLP, a Minnesota limited liability limited partnership (the “Borrower”).

RECITALS

Reference is hereby made to the Indenture of Trust, dated as of June 1, 2023 (the “Indenture”), between the Issuer and U.S. Bank Trust Company, National Association, a national banking association (the “Trustee”), for the recitals and the definitions of various terms used herein.

In consideration of the premises, the respective representations and agreements contained herein, and for other good and valuable consideration, the receipt whereof is hereby acknowledged, and in order to secure the payments to be made by the Borrower pursuant to Article 2 hereof and the performance of all the covenants of the Borrower contained herein, the parties hereto agree as follows:

(The remainder of this page is intentionally left blank.)

ARTICLE 1

DEFINITIONS, EXHIBITS AND MISCELLANEOUS

Section 1.1. Definitions. For all purposes of this Loan Agreement, the terms defined in Section 1.1 of the Indenture, when used in this Loan Agreement, shall have the meanings specified in that Section.

Section 1.2. Exhibits. The following exhibits are attached to and by reference made a part of this Loan Agreement:

- (1) EXHIBIT A: legal description of the property on which the Project is located.
- (2) EXHIBIT B: form of Disbursement Request.

Section 1.3. Borrower's Acts. Where the Borrower is permitted or required to do or accomplish any act or thing hereunder, the Borrower may cause the same to be done or accomplished by a third party selected by the Borrower with the same force and effect as if done or accomplished by the Borrower.

Section 1.4. Rules of Interpretation.

(1) This Loan Agreement shall be interpreted in accordance with and governed by the laws of the State.

(2) The words "herein," "hereof" and "hereunder" and words of similar import, without reference to any particular section or subdivision, refer to this Loan Agreement as a whole rather than to any particular section or subdivision of this Loan Agreement.

(3) References in this instrument to any particular article, section or subdivision hereof are to the designated article, section or subdivision of this instrument as originally executed.

(4) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles; and all computations provided for herein shall be made in accordance with generally accepted accounting principles consistently applied and applied on the same basis as in prior years.

(5) The Table of Contents and titles of articles and sections herein are for convenience of reference only and are not a part of this Loan Agreement, and shall not define or limit the provisions hereof.

(6) Unless the context hereof clearly requires otherwise, the singular shall include the plural and vice versa and the masculine shall include the feminine and vice versa.

(7) Articles, sections, subsections and clauses mentioned by number only are those so numbered which are contained in this Loan Agreement.

(8) For purposes of this Loan Agreement and the Indenture, an Act of Bankruptcy shall be deemed no longer in effect if either (a) the petition initiating the Act of Bankruptcy is dismissed by order of a court of competent jurisdiction and no further appeal rights exist from such order; or (b) the Borrower notifies the Trustee that such a dismissal has occurred.

(9) Any opinion of counsel required hereunder shall be a written opinion of such counsel.

(10) References to the Bonds as “tax exempt” or to the “tax-exempt status of the Bonds” are to the exclusion of interest on the Bonds from gross income pursuant to Section 103(a) of the Code, irrespective of such forms of taxation as the alternative minimum tax or branch profits tax on foreign corporations, as is consistent with the approach taken in Section 59(i) of the Code.

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ARTICLE 2

REPRESENTATIONS OF ISSUER AND BORROWER

Section 2.1. Representations of Issuer. The Issuer makes the following representations and warranties as the basis for its covenants herein:

(1) The Issuer is a public body corporate and politic under the laws of the State of Minnesota and is authorized to issue the Bonds to finance the Project pursuant to the Act and Minnesota Statutes, Sections 471.59 and 471.656, as amended.

(2) To the undersigned's actual knowledge there is no pending or, without inquiry or investigation, threatened suit, action, or proceeding against the Issuer before any court, arbitrator, administrative agency, or other governmental authority that challenges the Issuer's execution and delivery of the Issuer Documents.

(3) To the actual knowledge of the undersigned, without inquiry or investigation, the execution and delivery of the Issuer Documents will not constitute a breach of or default under any existing (a) provision of any special legislative act relating to the establishment of the Issuer; or (b) agreement, indenture, mortgage, lease, or other instrument to which the Issuer is a party or by which it is bound.

(4) No proceeding of the Issuer for the issuance, execution, or delivery of the Issuer Documents has been repealed, rescinded, amended or revoked.

Section 2.2. Representations of Borrower. The Borrower makes the following representations and warranties as the basis for its covenants herein:

(1) The Borrower is a limited liability limited partnership duly organized under the laws of the State, is duly authorized to conduct its business in the State, has power to enter into this Loan Agreement and the other Related Documents to which it is a party, and to use the Project for the purpose set forth in this Loan Agreement and by proper action has authorized the execution and delivery of this Loan Agreement and the other Related Documents to which it is a party, and has approved the Indenture.

(2) The execution and delivery of this Loan Agreement and the other Related Documents to which it is a party, and the consummation of the transactions contemplated thereby, and the fulfillment of the terms and conditions thereof do not and will not conflict with or result in a breach of any of the terms or conditions of the Partnership Agreement of the Borrower, any restriction or any agreement or instrument to which the Borrower is now a party or by which it is bound or to which any property of the Borrower is subject, and do not and will not constitute a default under any of the foregoing, or cause the Borrower to be in violation of any order, decree, statute, rule or regulation of any court or any state or federal regulatory body having jurisdiction over the Borrower or its properties, including the Project, and do not and will not result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Borrower contrary to the terms of any instrument or agreement to which the Borrower is a party or by which it is bound.

(3) The design and plan of the Project comprise a multifamily rental housing development as contemplated by the Act; subject to the other provisions of this Loan Agreement,

it is presently intended and reasonably expected that the equipment purchased from the proceeds of the Bonds will be permanently located and exclusively used on the Project and that the Borrower will own and operate the Project on the Project throughout the Term of Loan Agreement in the normal conduct of the Borrower's business.

(4) There is public access to the Project. As of the Date of Loan Agreement, the use of the Project complies, in all material respects, with all presently applicable development, pollution control, water conservation and other laws, regulations, rules and ordinances of the federal government and the State and the respective agencies thereof and the political subdivisions in which the Project is located. As of the Date of Loan Agreement, the Borrower has obtained or will obtain all necessary and material approvals of and licenses, permits, consents and franchises from federal, state, county, municipal or other governmental authorities having jurisdiction over the Project to acquire, rehabilitate, renovate, construct and equip the Project and to enter into, execute and perform its obligations under this Loan Agreement and the other Related Documents to which it is a party.

(5) The proceeds of the Bonds, together with any other funds to be contributed to the Project by the Borrower or otherwise in accordance with this Loan Agreement, will be sufficient to pay the cost of acquiring, rehabilitating, renovating, constructing and equipping the Project in a manner suitable for operation as a multifamily housing development as required in Article 3 hereof.

(6) The Bonds are issued within the exemption provided under Section 142(d) of the Code with respect to residential rental property; "substantially all" of the proceeds of the Bonds will be used for expenditures chargeable to the capital account of the Project.

(7) A major inducement to the Borrower to acquire, rehabilitate, renovate, construct and equip the Project was the source of financing provided under the Act and the assurance the Borrower received from the Issuer that such financing would be made available to the Borrower. All Project Costs heretofore incurred by the Borrower for which the Borrower will seek reimbursement from the proceeds of the Bonds were incurred in anticipation of reimbursement from the proceeds of the Bonds of the Issuer if such proceeds should become available on terms acceptable to the Borrower. The Borrower investigated the possibility of such financing prior to incurring such Project Costs. With respect to the 2020 Project, the Borrower did not commence acquisition, rehabilitation, renovation, construction or equipping of the Project prior to August 14, 2018, which is sixty (60) days prior to the date on which the Board of Commissioners of the County HRA first gave preliminary approval of the 2020 Project and the financing thereof in whole or part through the Series 2020 Note. With respect to the 2023 Project, the Borrower did not commence acquisition, rehabilitation, renovation, construction or equipping of the Project prior to December 19, 2022, which is sixty (60) days prior to the date on which the Issuer gave preliminary approval of the 2023 Project and the financing thereof in whole or part through the Bonds.

(8) The Borrower is not in the trade or business of selling properties such as the Project; the Borrower is acquiring the Project for investment purposes only or otherwise for use by the Borrower in its trade or business, and therefore the Borrower has no intention, now or in the foreseeable future to voluntarily sell, surrender or otherwise transfer, in whole or part, its interest in the Project.

(9) There are no actions, suits, or proceedings pending or, to the knowledge of the Borrower, threatened against the Borrower or any property of the Borrower in any court or before any federal, state, municipal or other governmental agency, which, if decided adversely to the

Borrower, would have a material adverse effect upon the Borrower or upon the business or properties of the Borrower or upon the validity or enforceability of the instruments referred to in subsection (1) above, or the ability of the Borrower to perform its obligations thereunder; and the Borrower is not in default with respect to any order of any court or governmental agency.

(10) The Borrower is not in default in the payment of the principal of or interest on any indebtedness for borrowed money nor in default under any instrument or agreement under and subject to which any indebtedness for borrowed money has been issued.

(11) The Borrower has filed all federal and state income tax returns which, to the knowledge of the Borrower, are required to be filed and has paid all taxes shown on said returns and all assessments and governmental charges received by it to the extent that they have become due.

(12) To the best of the Borrower's knowledge, no public official of the Issuer has either a direct or indirect financial interest in this Loan Agreement nor will any public official either directly or indirectly benefit financially from this Loan Agreement within the meaning of Minnesota Statutes, Sections 412.311 and 471.87, as amended.

(13) No other obligations have been or will be issued under Section 103 of the Code which are sold at substantially the same time as the Bonds, pursuant to the same plan of financing, which are reasonably expected to be paid out of substantially the same source of funds as the Bonds.

(14) The Project is expected to be eligible for low-income housing tax credits under Section 42 of the Code.

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ARTICLE 3

COMPLETION OF PROJECT

Section 3.1. Acquisition, Rehabilitation, Renovation, Construction and Equipping of Project by Borrower. In connection with the acquisition, rehabilitation, renovation, construction, equipping and completion of the Project, the Borrower represents and covenants as follows:

(1) Installation and Construction. The Borrower will acquire, rehabilitate, renovate, construct and equip the Project within the boundary lines of the Project and will provide all other improvements, access roads, utilities, parking facilities, and other items required for a facility fully operable for use as a multifamily residential rental property.

(2) Completion. The Borrower will acquire, rehabilitate, renovate, construct and equip the Project as promptly as practicable with all reasonable dispatch and in any event no later than December 31, 2024, except only as completion may be delayed by strikes, riots or acts of God or the public enemy, shortages of materials or supplies or any other reason beyond the reasonable control of the Borrower for which a reasonable extension of the time of completion shall be granted as determined by the Issuer, provided that if the Project is not completed by that date there shall be no resulting liability on the part of the Issuer and no abatement or diminution in the payments required to be made by the Borrower under Article 4 hereof.

Section 3.2. Payment of Costs by Borrower. The Borrower agrees that it will provide any and all money required for the prompt and full payment of all sums required to complete the Project, including all of the following items which the Issuer agrees will be reimbursable from Bond proceeds from and to the extent and in the manner provided in Sections 3.5 and 3.6 hereof and subject to the applicable provisions of the Act and the Code:

(1) all expenses incurred and to be incurred in connection with the acquisition, rehabilitation, renovation, construction and equipping of the Project, including but not limited to the cost of acquiring the Project, the contract price of all labor, services, materials, supplies and equipment furnished under any contract for rehabilitation, construction and renovation of the Project, any developer fee or construction management fee or other amounts incurred in connection therewith, provided that such fee is not paid to the Borrower or an affiliate thereof, including the cost of all Project Equipment and all appurtenances thereto, and of all rights-of-way for access and utility connections to and from the Project, and all fees required for recording all financing statements and any real estate documents;

(2) the expense of preparation of the plans and specifications for the Project, including utilities, and all other facilities necessary or desirable in connection therewith, and all other architectural, engineering and supervisory services incurred and to be incurred in the planning, rehabilitation, construction and completion of the Project;

(3) all fees, costs, and expenses related to legal services (including Bond Counsel and counsel to the Issuer, Borrower, Original Purchaser, and Trustee), abstractors', financial and accounting services, administrative and rating agency services (if any), expenses of any Rebate Consultant (as defined in Section 7.7(12) hereof), printing and engraving costs and other expenses incurred and to be incurred on or before or in connection with the Completion Date with respect to (a) the establishment of title to the Project; (b) the authorization, sale and issuance of the Bonds; (c) the preparation of the Indenture, the Related Documents, and all other documents necessary for

the issuance of the Bonds or required by this Loan Agreement or the Indenture; (d) the establishment of the Completion Date, including compliance with any governmental or administrative rules or regulations on or before such date; or (e) the administrative charges imposed by the Issuer pursuant to Section 4.4(2) hereof in connection with the issuance of the Bonds;

(4) premiums on all insurance (including any title insurance) required to be taken out and maintained during the period before the Completion Date;

(5) all expenses incurred in seeking to enforce any remedy against any contractor, or any subcontractor or any supplier in respect of any default under any contract with such Person;

(6) all deed taxes, mortgage registry taxes, recording fees and other taxes, charges and assessments and license and registration fees of every nature whatsoever incurred and to be incurred in connection with acquisition or completion of the Project including the financing thereof;

(7) the cost of all other labor, services, materials, supplies and equipment necessary to complete the acquisition, rehabilitation, renovation, construction and equipping of the Project, including but not limited to the Project Equipment;

(8) all fees and expenses of the Trustee and Paying Agent under the Indenture that become due on or before the Completion Date or in connection with the establishment of the Completion Date; and

(9) without limitation by the foregoing, all other expenses which under accepted accounting practice constitute necessary capital expenditures for the completion of the Project or issuance of the Bonds, not including Working Capital Expenses (all of which, in excess of three percent (3%) of the Net Bond Proceeds, are nevertheless to be supplied by the Borrower from its own funds without reimbursement).

All Project Costs may be paid or reimbursed from available money in the Project Fund to the extent and in the manner permitted in Sections 3.5 and 3.6 hereof. If, however, such money is insufficient to pay in full Project Costs payable therefrom or are otherwise unavailable to pay any Project Costs, the Borrower shall nevertheless promptly pay so much of such Project Costs as may be in excess of such available money in the Project Fund or shall, at the request of the Trustee, forthwith pay over to the Trustee such money as is necessary to pay such Project Costs. The Borrower shall not by reason of the payment of such excess Project Costs be entitled to any reimbursement from the Issuer in excess of any money available therefor in the Project Fund or for any abatement or diminution of the Basic Payments or Additional Charges.

Section 3.3. Authorization by Issuer. In accordance with the Act, the Borrower is authorized by the Issuer, and the Borrower, pursuant to such authorization, agrees:

(1) to acquire, rehabilitate, renovate, construct and equip the Project and install the Project Equipment as provided in Section 3.1 hereof;

(2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, with any other Persons, and in general to do all things which may be requisite or proper for acquiring, rehabilitating, renovating, constructing and installing the Project;

(3) pursuant to the provisions of this Loan Agreement, to pay all fees, costs and expenses incurred in the acquisition, rehabilitation, renovation, construction and equipping of the

Project from funds made available therefor in accordance with this Loan Agreement or otherwise subject to the right to contest such fees, costs and expenses; and

(4) so long as the Borrower is not in default under any of the provisions of this Loan Agreement to exercise all authority hereby conferred, which is granted and conferred irrevocably to the Completion Date and thereafter until all activities in connection with the acquisition, rehabilitation, renovation, construction and equipping of the Project shall have been completed.

Neither the authorization granted in this section nor any other provision of this Loan Agreement shall be construed as making the Borrower an agent or joint venturer with the Issuer.

Section 3.4. Issuance of Bonds. The Issuer and Borrower have contracted for the sale of the Bonds authorized by the Indenture, and the Borrower has approved and does approve the terms of the Indenture. Forthwith upon execution of this Loan Agreement, the Bond Purchase Agreement, the Indenture, the Cooperative Agreement, the Regulatory Agreement and all other documents required to be executed by the aforementioned documents, or as soon thereafter as practicable, the Issuer will execute the Bonds and cause them to be authenticated by the Trustee and delivered to the Original Purchaser upon payment of the purchase price of the Bonds and filing with the Trustee of the opinion of Bond Counsel as to the legality of the Bonds and the furnishing of all other documents required by this Loan Agreement, the Disbursing Agreement, the Bond Purchase Agreement, the Security Documents and the Indenture to be furnished before delivery. The Issuer will cause the proceeds of the Bonds to be transmitted to the Trustee, who is required by the Indenture to deposit the same in the following trust funds in the following amounts:

(1) to the Capitalized Interest Fund, proceeds of the Bonds in the amount of \$_____ and equity of the Borrower in the amount of \$_____; and

(2) to the Project Fund, proceeds of the Bonds in the amount of \$_____ and equity of the Borrower in the amount of \$_____.

If for any reason such documents are not furnished and the approving opinion of Bond Counsel in customary form cannot be obtained, then this Loan Agreement shall be terminated and be void and of no effect and the Borrower shall be obligated to pay all costs and expenses enumerated in Section 3.2 and incurred on or before the date of such termination.

Section 3.5. Disbursements from Project Fund.

(1) The Issuer has in the Indenture authorized and directed the Trustee in writing to disburse money from the Project Fund, subject to the Disbursing Agreement (except the disbursement of Issuance Expenses of the Bonds shall not be subject to the provisions of the Disbursing Agreement), to or upon the order of the Borrower, in payment or reimbursement of Project Costs enumerated in Section 3.2 hereof and certified, in writing by the Borrower Representative, provided, however, that:

(a) in no event shall any Net Bond Proceeds be used to pay or reimburse for the payment of the acquisition of any property other than land (or an interest therein) unless the first use of such property is pursuant to such acquisition;

(b) in no event shall twenty-five percent (25%) or more of Net Bond Proceeds be used to pay or reimburse for the payment of the acquisition of land; and

(c) in no event shall any Net Bond Proceeds, including earnings thereon, be used to pay or reimburse for the payment of any Working Capital Expenses in excess of three percent (3%) of the Net Bond Proceeds.

(2) The cost of acquiring the Project Premises and the Project Costs described in Section 3.2(3), (4), (5), (6) and (8) hereof may be paid or reimbursed in full upon receipt by the Trustee of any statement of the payee covering such expenses endorsed by the payee and approved by a Representative of the Borrower or, with respect to fees of Bond Counsel, counsel to the Issuer or other fees of the Trustee or Issuer or printing expenses, of the Issuer. With respect to all other Project Costs, each Disbursement Request shall be in substantially the form attached hereto as EXHIBIT B and shall constitute a representation by the Borrower that:

(a) All items for which disbursement is requested thereunder either (i) are presently due and payable, constitute Project Costs properly incurred by the Borrower in connection with the Project being financed with the proceeds of the Loan, or are reimbursable Project Costs properly chargeable against the Loan; or (ii) are to be deposited to an escrow fund to be disbursed therefrom solely for Project Costs properly incurred by the Borrower in connection with the Project; in each case none of the items for which disbursement is requested has formed the basis for any disbursement heretofore made from the Project Fund.

(b) Each such item is or was necessary in connection with the acquisition, rehabilitation, renovation, construction and equipping of the Dwelling Units (as defined in the Regulatory Agreement) of the Project.

(c) The costs specified in the Disbursement Schedule, when added to all previous disbursements, will result in at least ninety-five percent (95%) of the aggregate amount of all disbursements having been used to pay or reimburse the Borrower for amounts which are Qualified Project Costs (as defined in the Regulatory Agreement).

(d) To the knowledge of the Borrower, there is no current or existing event of default pursuant to the terms of this Loan Agreement or the Regulatory Agreement and no event exists which by notice or passage of time or both would constitute an event of default under any of the foregoing documents.

(e) No representation or warranty of the Borrower contained in this Loan Agreement or the Regulatory Agreement is materially incorrect or inaccurate, except as the Borrower has set forth in writing, and there has been no event of default under the terms of any of those documents and which is continuing and no event shall exist which by notice, passage of time or both would constitute an event of default under any of those documents.

(f) Each item for which payment or reimbursement is requested is or was necessary in connection with the Project, qualifies as a Project Cost under this Loan Agreement and, if for the rehabilitation, construction or equipping of the Project, was made or incurred in accordance with the plans and specifications for the Project and that none of such items has formed the basis for any previous payment from the Project Fund.

(g) There is no outstanding indebtedness known, after due inquiry, for labor, wages, materials or supplies which, if unpaid, might become the basis of a vendor's lien, or a mechanics' materialmen's, statutory or other similar lien upon the Project or any part thereof, other than indebtedness then certified for payment or diligently being contested in

good faith by the Borrower and that each contractor, subcontractor and materialman has filed with the Borrower receipts or waivers of liens for all amounts theretofore certified for payment, or any amount therein certified for reimbursement to the Borrower for payment, for work, materials and equipment furnished by him, her, or them or that there is on file with the construction manager a cancelled check endorsed by the contractor, subcontractor or materialman evidencing such payment.

(h) All payments made from the Project Fund shall be presumed by the Trustee to be made for the purposes certified in said written requests, and the Trustee shall not be required to see to the application of any payments made from the Project Fund or to inquire into the purposes for which withdrawals are being made from the Project Fund. The Trustee shall not be bound to make an investigation into the facts or matters stated in any written request. The Trustee shall not be responsible for determining whether the funds on hand in the Project Fund are sufficient to complete the Project. The Trustee shall have no responsibility whatsoever to disburse or transfer funds absent written instructions from the Borrower.

Section 3.6. Establishment of Completion Date. On the Completion Date, any balance remaining in the Project Fund in excess of the amount retained therein pursuant to the Disbursing Agreement shall be disbursed by the Trustee to the Borrower or its order in such amount as may be necessary (and all thereof shall be disbursed if necessary) to pay, or to reimburse to the Borrower for the payment of, any part of the Project Costs which have not theretofore been paid by the Borrower or has not theretofore been reimbursed to the Borrower, as the case may be, in accordance with the provisions of Section 3.5 hereof. Any balance remaining in the Project Fund in excess of any amount retained therein to secure completion by any contractor shall be transferred by the Trustee to the Bond Fund and used to redeem the Bonds in accordance with Section 3.1(2) of the Indenture.

Section 3.7. Payment and Performance Bond. The requirement for any payment and performance bond is hereby waived.

Section 3.8. Enforcement of Contract. In the event of default of any contractor or subcontractor under any construction contract or in the event of a breach of warranty with respect to any materials, workmanship or performance, the Borrower will promptly proceed, either separately or in conjunction with others, to exhaust its remedies against the contractor, subcontractor or vendor in default and against any surety on a bond securing the performance of such contract; provided, however, that the Borrower may on the advice of its counsel and with the Trustee's consent refrain from exhausting such remedies if determined by the Borrower not to be in its best interests and not necessary to complete the Project. The Borrower will promptly advise the Trustee in writing of the steps it intends to take in connection with any such default. Any amounts recovered pursuant to any bond or by way of damages, refunds, adjustments or otherwise in connection with the foregoing, after deduction of expenses incurred in such recovery, other than any amounts resulting from the loss of income, shall be paid into the Project Fund if received before the Completion Date, and otherwise shall be paid into the Bond Fund, provided that the Borrower may obtain reimbursement for any payments made by the Borrower in connection with such action as an item of Project Cost as provided in Section 3.5 hereof.

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ARTICLE 4

THE LOAN, BASIC PAYMENTS, ADDITIONAL CHARGES AND ADDITIONAL FINANCING

Section 4.1. The Loan. The Issuer agrees, upon the terms and conditions herein specified, to lend to the Borrower the proceeds received by the Issuer from the sale of the Bonds, by causing such proceeds to be deposited with the Trustee for disposition as provided herein and in the Indenture. The amount of the Loan shall be deemed to include any “discount” or any other amount by which the aggregate price at which the Issuer sells the Bonds to the Underwriter is less than the aggregate principal amount of the Bonds; and the obligation of the Issuer to make the Loan shall be deemed fully discharged upon so depositing the proceeds of the Bonds with the Trustee.

Section 4.2. Basic Payments. Subject to the Borrower’s right of prepayment granted in Section 8.2 hereof, the Borrower agrees to repay the Loan in installments of Basic Payments as follows:

(1) During the Term of Loan Agreement, the Borrower shall make Basic Payments in immediately available funds as follows:

(a) On or before each Interest Payment Date, an amount which, together with any balance on hand in the Bond Fund or the Capitalized Interest Fund and available for that purpose, will equal the total interest due on all Outstanding Bonds on such Interest Payment Date.

(b) On July 1, 2027, an amount which is not less than the principal amount due on the Outstanding Bonds on such date.

(c) The Borrower will promptly deposit the proceeds of the Assigned Capital Contributions, when and if received, with the Trustee with written instructions to deposit the amounts in the Bond Fund for application to the mandatory redemption of the Bonds pursuant to Section 3.1(3) of the Indenture. The Borrower represents that the aggregate proceeds of the Assigned Capital Contributions are expected to exceed the amount necessary to redeem the Bonds in full, but only the amount necessary to redeem the then Outstanding Bonds in full shall be deposited with the Trustee. The Investor Limited Partner has agreed with the General Partner in the Partnership Agreement to deposit the Assigned Capital Contributions (but only the amount necessary to redeem the Outstanding Bonds in full) directly to the Title Company for deposit to the Trustee on behalf of the Borrower, to be disbursed pursuant to the terms of the Indenture; provided, however, that notwithstanding anything contained herein to the contrary, the obligations of the Investor Limited Partner to make any equity contributions to the Borrower are governed solely by, and subject to the conditions, terms and provisions of, the Partnership Agreement.

(d) On the Mandatory Tender Date, the Borrower shall cause the Outstanding Bonds to be purchased at the Mandatory Purchase Price, in accordance with Section 3.7 of the Indenture.

(e) In any event the sum of the Basic Payments payable under this Section shall be sufficient to pay all principal, interest and premium, if any, on the Bonds as such principal, interest and premiums become due, at maturity, upon redemption, acceleration or otherwise.

(2) All payments of Basic Payments shall be made directly to the Trustee at its designated corporate trust office, for the account of the Issuer and shall be deposited by the Trustee in the Bond Fund. In the event the Borrower should fail to make any of the payments required in this Section 4.2, the item so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay the same with interest thereon (including to the extent permitted by law, interest on overdue installments of interest) at the rate borne by the respective Bonds as to which such default exists.

(3) As provided in Internal Revenue Service Revenue Procedure 79-5, Revenue Procedure 81-22 and 26 CFR 601.201 (and any subsequent amendments, modifications or replacements thereof), Restricted Project Funds in the Bond Fund shall be used only to prepay Bonds which are subject to redemption at their earliest call date without penalty or premium or to pay a pro rata portion of the principal of the Bonds as provided in Section 5.3(2) of the Indenture.

(4) Except during the continuance of an Event of Default, all available remaining sums on deposit in the Bond Fund not credited against currently payable installments of Basic Payments or applied as provided in Section 7.8 or 8.2 hereof shall be credited against the last installments of Basic Payments.

(5) In no event shall any purchase of any Bonds made by or on behalf of the Borrower result in the discharge of (a) the Bonds so purchased, (b) the obligations under this Section 4.2 to make Basic Payments relating to the Bonds so purchased, or (c) the Loan made hereunder to the extent of the Bonds so purchased, unless and to the extent the Bonds so purchased are surrendered to the Trustee and canceled.

(6) So long as the Series 2020 Note is outstanding, the Borrower shall repay the Loan solely from the Assigned Capital Contributions and certain other property that may be received by the Trustee pursuant to the Security Documents.

Section 4.3. [Reserved].

Section 4.4. Additional Charges. The Borrower agrees to pay, when due, each and all of the following:

(1) to or upon the order of the Trustee, when due, all reasonable fees of the Trustee for services rendered under the Indenture and all reasonable fees and charges of the Paying Agent, registrars, legal counsel, accountants, engineers, public agencies and others incurred in the performance on request of the Trustee of services required under the Indenture for which the Trustee and such other Persons are entitled to payment or reimbursement, provided that the Borrower may, without creating a default hereunder, contest in good faith the necessity or reasonableness of any such services, fees or expenses;

(2) to the Issuer in immediately available funds an administrative fee equal to [_____ of the principal amount of the Bonds] [\$_____], which administrative fee is not pledged to payment of the Bonds and may be used by the Issuer for any proper purpose of the Issuer;

(3) to the Trustee, the amount of all advances made by the Trustee, with interest thereon, as provided in Section 5.4 hereof;

(4) to the Issuer or Trustee, as the case may be, interest at the rate equal to one percent (1%) over the prime rate on each payment commencing on the date when due and required in this Section to be made to the Issuer or Trustee, if not made when due and if not advanced by the Trustee under the Indenture;

(5) any costs incurred by the Trustee or Original Purchaser in the preparation of printed bonds;

(6) all sums required under Section 3.8 of the Indenture in order to revise or extend the Mandatory Tender Date or remarket the Bonds, and the Borrower further agrees to execute any and all certificates required by the Issuer, the Trustee or the Remarketing Agent in order to effectuate such revision, extension or remarketing; and

(7) to the Remarketing Agent, the Remarketing Agent's Fee and any Remarketing Expenses.

Section 4.5. Borrower's Obligations Unconditional. All Basic Payments and Additional Charges and all other payments required of the Borrower hereunder shall be paid without notice or demand and without setoff, counterclaim, or defense for any reason and without abatement or deduction or defense (except as provided in Sections 8.2 and 9.13 hereof). The Borrower will not suspend or discontinue any such payments, and will perform and observe all of its other agreements in this Loan Agreement, and, except as expressly permitted in Sections 7.8 and 8.2, will not terminate this Loan Agreement for any cause, including but not limited to any acts or circumstances that may constitute failure of consideration, destruction or damage to the Project or the Borrower's business, the taking of the Project or the Borrower's business by Condemnation or otherwise, the lawful prohibition of the Borrower's use of the Project or the Borrower's business, the interference with such use by any Person, the invalidity or unenforceability or lack of due authorization or other infirmity of this Loan Agreement, the lack of right, power or authority of the Issuer to enter into this Loan Agreement, eviction by paramount title, commercial frustration of purpose, bankruptcy or insolvency of the Issuer or Trustee, change in the tax or other laws or administrative rulings or actions of the United States of America or of the State or any political subdivision thereof, or failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with this Loan Agreement, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Basic Payments and other amounts payable by the Borrower hereunder shall be paid in full when due without any delay or diminution whatever.

Section 4.6. Assignment of Issuer's Rights. As security for the payment of the Bonds, the Issuer will pledge the amounts payable hereunder and assign, without recourse or liability, to the Trustee, the Issuer's rights under this Loan Agreement (except for the Unassigned Issuer's Rights), including the right to receive payments hereunder (except the right to receive payments, if any, under Sections 3.2, 4.4, 7.4, 9.5, 10.8, 10.11, 10.12, and 10.13 hereof) and hereby directs the Borrower to make said payments directly to the Trustee. The Borrower herewith assents to such assignment and will make payments under this Loan Agreement directly to the Trustee without defense or setoff by reason of any dispute between the Borrower and the Trustee.

Section 4.7. Borrower's Remedies. Nothing contained in this Article shall be construed to release the Issuer from the performance of any of its agreements herein, and if the Issuer should fail to perform any such agreements, the Borrower may institute such action against the Issuer as the Borrower may deem necessary to compel such performance so long as such action shall not violate the Borrower's agreements in Section 4.4 hereof or diminish or delay the amounts required to be paid by the Borrower pursuant to Section 4.2 hereof. The Borrower acknowledges, however, and agrees that any pecuniary

obligation of the Issuer created by or arising out of this Loan Agreement shall be payable solely out of the proceeds derived from this Loan Agreement and the sale of the Bonds.

Section 4.8. Borrower's Obligations Upon Tender of Bonds. If any Bond tendered for purchase is not remarketed on any Mandatory Tender Date and a sufficient amount is not available under the Indenture for the purpose of paying the purchase price of such Bond, the Borrower will cause to be paid to the Trustee by the applicable times provided in the Indenture, an amount equal to the amount by which the principal amount of all Bonds tendered and not remarketed, together with interest accrued to the Mandatory Tender Date, exceeds the amount otherwise available pursuant to the Indenture.

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ARTICLE 5

PROJECT COVENANTS

Section 5.1. Project Operation and Maintenance. The Borrower shall pay all expenses of the operation and maintenance of the Project, including without limitation adequate insurance thereon and insurance against all liability for injury to Persons or property arising from the operation thereof, and all taxes and special assessments levied upon or with respect to the Project and payable during the Term of Loan Agreement and further described in this Article 5.

Section 5.2. Sale or Lease of Project. So long as any Bonds are Outstanding, the Borrower will not lease the Project (except leases in the normal course of business), in whole or in part, nor sell, mortgage or otherwise encumber its interests in the Project, in whole or in part, except as otherwise provided in Sections 8.1 and 7.5 hereof, provided that in no event shall such lease, assignment or sale be permitted if (1) the effect thereof would be to impair the validity or the exclusion from gross income under Section 103 of the Code of the interest on the Bonds, as applicable; or (2) if any such transaction should release the Borrower of any of its obligations under this Loan Agreement (except as otherwise provided in Section 8.1 hereof). Before any such lease, sale or assignment, the Borrower shall deliver to the Trustee an opinion of Bond Counsel, addressed to the Trustee, stating in effect that such lease, sale or assignment is authorized under this Loan Agreement and will not cause interest on the Bonds to be included in gross income for purposes of federal income taxation. The Borrower shall give at least thirty (30) days' notice to the Trustee and Issuer of any such sale, assignment or lease, unless such thirty (30) day notice is waived by the Trustee and the Issuer.

Section 5.3. Security Documents. In consideration of the Loan, and as security for the Basic Payments to be made by the Borrower for the payment of the Bonds, and as security for the performance of all of the other obligations, agreements and covenants of the Borrower to be performed and observed hereunder, the Borrower shall execute and cause the Security Documents to be delivered and, to the extent applicable, recorded and shall keep, perform and observe each of its obligations thereunder and shall cause the Security Documents and all supplements thereto, to be kept, recorded and filed in such manner and in such places as may be required by law in order to preserve and protect fully the security of the Holders of the Bonds and the rights of the Trustee under the Indenture and under any other instruments aforesaid. The Borrower acknowledges and agrees that the Trustee will not know and is not responsible for the legality, effectiveness or sufficiency of any security document.

Section 5.4. Advances. The Borrower acknowledges and agrees that under the Indenture the Trustee may take certain action and make certain advances relating to the Project or to certain other matters as expressly provided therein, and the Borrower shall be obligated to repay all such advances on demand, with interest from the date of each such advance, at the rate and under the conditions set forth in the Indenture.

Section 5.5. Alterations to Project and Removal of Project Equipment. The Borrower shall have the right from time to time, at its cost and expense, to remodel and make such additions, modifications, alterations, improvements and changes (collectively referred to as "alterations") in or to the Project or to remove any equipment therefrom as the Borrower, in its discretion, may deem to be desirable for its uses and purposes, provided such alterations or removal do not impair the character of the Project as a "project" within the meaning of the Act or otherwise impair the exclusion from gross income under Section 103 of the Code of the interest on the Bonds.

Section 5.6. Insurance. The Borrower shall maintain, or cause to be maintained, at its cost and expense, insurance as follows:

(1) Insurance against loss and/or damage to the Project under a policy or policies covering such risks as are ordinarily insured against by similar businesses, including (without limiting the generality of the foregoing) fire and extended coverage in an amount not less than one hundred percent (100%) of the full insurable replacement cost of the Project but any such policy may have a deductible amount of not more than \$100,000. No policy of insurance shall be so written that the proceeds thereof will produce less than the minimum coverage required by the preceding sentence, by reason of co-insurance provisions or otherwise, without the prior consent thereto in writing by the Trustee. The term “full insurable replacement cost” shall mean the actual replacement cost of the Project (excluding foundation and excavation costs and costs of underground flues, pipes, drains and other uninsurable items) and equipment. All policies evidencing insurance required by this subsection (1) with respect to the Project shall be carried in the names of the Borrower and the Trustee as their respective interests may appear and shall contain standard mortgage clauses which provide for Net Proceeds of insurance resulting from claims per casualty thereunder to the Project which are less than \$100,000 for loss or damage covered thereby to be made payable directly to the Borrower, and Net Proceeds from such claims which are equal to or in excess of \$100,000 to be made payable directly to the Trustee. The Net Proceeds of such insurance required by this subsection (1) with respect to the Project shall be applied as provided in Sections 5.7 and 5.8 hereof.

(2) Comprehensive general public liability insurance, including personal injury liability, and, if the Borrower owns or leases any automobiles, automobile insurance, including owned, non-owned and hired automobiles, against liability for injuries to persons and/or property, in the minimum amount for each occurrence and for each year of \$1,000,000, for public liability not arising from ownership or operation of automobiles (or other motor vehicles), and in the minimum amount of \$500,000 for each occurrence and for each year for liability arising out of ownership or operation of automobiles (or other motor vehicles) and shall be endorsed to show the Trustee and Issuer as an additional insured.

(3) Business interruption insurance or rental loss insurance covering actual losses in gross operating earnings of the Borrower resulting directly from necessary interruption of business caused by damage to or destruction (resulting from fire and lightning; accident to a fired-pressure vessel or machinery; and other perils, including windstorm and hail, explosion, civil commotion, aircraft and vehicles, sprinkler leakage, smoke, vandalism and malicious mischief, and accident) to real or personal property constituting part of the Project, less charges and expenses which do not necessarily continue during the interruption of business, for such length of time as may be required with the exercise of due diligence and dispatch to rebuild, repair or replace such properties as have been damaged or destroyed, with limits equal to at least the sum of twelve (12) months’ operating expenses of the Project, plus the maximum amount of principal of (other than the principal amount due on the maturity date of the Bonds) and interest payable on the Outstanding Bonds in the current or any future calendar year.

(4) Such other insurance, including workers’ compensation insurance respecting all employees of the Borrower, in such amount as is customarily carried by like organizations engaged in like activities of comparable size and liability exposure, provided that the Borrower may be self-insured with respect to all or any part of its liability for workers’ compensation.

All insurance required in this Section shall be taken out and maintained in responsible insurance companies selected by the Borrower which are authorized under the laws of the State to assume the risks covered

thereby. The Borrower will provide annually to the Trustee a certificate stating that the insurance required by this section is in full force and effect upon which the Trustee shall conclusively rely. Each policy shall contain a provision that the insurer shall not cancel nor modify it without giving written notice to the Borrower and the Trustee at least thirty (30) days before the cancellation or modification becomes effective. Not less than thirty (30) days prior to the expiration of any policy, upon request, the Borrower shall furnish the Trustee evidence satisfactory to the Trustee that the policy has been renewed or replaced by another policy conforming to the provisions of this Section, or that there is no necessity therefor under the terms hereof. In lieu of separate policies, the Borrower may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverage required herein.

Section 5.7. Damage or Destruction. The Borrower agrees to notify the Trustee in writing immediately in the case of damage exceeding \$100,000 in amount to, or destruction of, the Project or any portion thereof resulting from fire or other casualty. In the event that any such damage or destruction does not exceed \$100,000, the Borrower shall forthwith repair, reconstruct and restore the Project to substantially the same or an improved condition or value as existed prior to the event causing such damage and, to the extent necessary to accomplish such repair, reconstruction and restoration, the Borrower will apply the Net Proceeds of any insurance relating to such damage received by the Borrower to the payment or reimbursement of the costs thereof. Net Proceeds of any insurance relating to such damage up to \$100,000 shall be paid directly to the Borrower.

In the event the Project or any portion thereof is destroyed by fire or other casualty and the damage or destruction is estimated to exceed \$100,000, then the Borrower shall within one hundred twenty (120) days after such damage or destruction elect one (1) of the following two (2) options by written notice of such election to the Trustee:

(1) Option A - Repair and Restoration. The Borrower may elect to repair, reconstruct and restore the damaged Project. In such event, the Borrower shall proceed forthwith to repair, reconstruct and restore the damaged or destroyed Project to substantially the same condition or value as existed prior to the event causing such damage or destruction and, to the extent necessary to accomplish such repair, reconstruction and restoration, the Borrower will apply the Net Proceeds of any insurance relating to such damage or destruction received by the Borrower from the Trustee to the payment or reimbursement of the costs thereof. So long as no Event of Default exists, any Net Proceeds of insurance relating to such damage or destruction received by the Trustee shall be released from time to time by the Trustee to the Borrower upon the receipt of:

(a) a Certificate of the Borrower Representative specifying the expenditures made or to be made or the indebtedness incurred in connection with such repair, reconstruction and restoration and stating that such Net Proceeds, together with any other money legally available for such purposes, will be sufficient to complete such repair, reconstruction and restoration; and

(b) the written approval of such certificate by an Independent Engineer.

In the event the Borrower shall elect this Option A, the Borrower shall complete the repair, reconstruction and restoration of the Project, whether or not the Net Proceeds of insurance received by the Borrower for such purposes are sufficient to pay for the same. Net Proceeds not required for the repair, reconstruction and restoration of the Project shall be applied to the prepayment of the Bonds or used for such other purpose as the Trustee, based upon an opinion of Bond Counsel, determines will not cause interest on the Bonds to be included in gross income for purposes of federal income taxation.

(2) Option B - Redemption of the Bonds. In the event that the Borrower shall determine that it is not practical or desirable to rebuild, repair or restore the Project, or, in case the Borrower is unable to deliver the certificates or reports necessary under Option A above, the Bonds shall be redeemed on the earliest date for which notice may be given for redemption in accordance with Section 3.1(1) of the Indenture. If the Net Proceeds of insurance, together with all amounts then held by the Trustee under the Indenture available to redeem or retire the Bonds, shall be insufficient to so redeem the Bonds (including the expenses of redemption), the Borrower shall pay such deficiency to the Trustee as a Basic Payment and the Net Proceeds of insurance, together with such Basic Payment and amounts held by the Trustee under the Indenture, shall be applied to such redemption of the Bonds in accordance with Section 8.2 hereof and Section 3.1 of the Indenture. If the Bonds have been fully paid and all obligations of the Borrower hereunder have been paid or provided for, all Net Proceeds shall be paid to the Borrower.

Section 5.8. Condemnation. If the Project or any material portion thereof is condemned or taken for any public or quasi-public use and title thereto vests in the party condemning or taking the same, the Borrower hereby irrevocably assigns to the Trustee all its right, title and interest in and to any Net Proceeds of any award, compensation or damages (hereinafter referred to as an “award”), payable in connection with any such condemnation or taking. The Trustee shall cooperate fully with the Borrower in the handling and conduct of any prospective or pending condemnation proceedings with respect to the Project or any material part thereof.

In the event of any condemnation or taking where title shall have been taken to all or substantially all of the Project or Project, the Borrower shall, within one hundred twenty (120) days after the date on which the Net Proceeds are finally determined, elect one (1) of the following two (2) options by written notice of such election to the Trustee.

(1) Option A - Repairs and Improvements. The Borrower may elect to use the Net Proceeds of the award made in connection with such condemnation or taking for additions, repairs and improvements to the Project. In such event, so long as no Event of Default exists, the Borrower shall have the right to receive such Net Proceeds from the Trustee from time to time upon receipt by the Trustee of:

(a) a Certificate of the Borrower Representative specifying the expenditures made or to be made or the indebtedness incurred in connection with such repairs and improvements and stating that such Net Proceeds, together with any of the money legally available for such purposes, will be sufficient to complete such repairs and improvements; and

(b) if such Net Proceeds equal or exceed \$500,000 in amount, the written approval of such Certificate by an Independent Engineer.

The Borrower agrees to apply any such Net Proceeds so received solely to the purposes specified in such Certificate. Net Proceeds not required for the repairs and improvements shall be applied to the prepayment of the Bonds or in such other manner as the Trustee, based upon an opinion of Bond Counsel, determines will not cause interest on the Bonds to be included in gross income for purposes of federal income taxation.

(2) Option B - Redemption of the Bonds. In the event that any material part of the Project is condemned, or such use or control thereof is taken by eminent domain, to the extent described above, or, in case the Borrower is unable to deliver the certificates or reports necessary under Option A above, and, in the reasonable judgment of the Borrower the Project cannot be

restored within twelve (12) months following completion of the proceedings by which such title is taken to a condition permitting conduct of the normal operations of the Borrower and at a cost not exceeding the Net Proceeds of the award in such condemnation proceedings the Bonds shall be redeemed on the earliest date for which notice may be given for redemption in accordance with Section 3.1(1) of the Indenture. If the Net Proceeds of condemnation, together with the amount then held by the Trustee under the Indenture available to redeem the Bonds shall be insufficient to redeem the Bonds (including principal, accrued interest, and expenses of redemption), the Borrower shall pay such deficiency to the Trustee as a Basic Payment, and the Net Proceeds of condemnation, together with such Basic Payment and amounts held by the Trustee under the Indenture shall be applied to such redemption of the Bonds in accordance with Section 8.2 hereof and Section 3.1 of the Indenture. If the Bonds have been duly paid and all other obligations of the Borrower hereunder have been paid or provided for, any remaining Net Proceeds shall be paid to the Borrower.

Section 5.9. [Reserved].

Section 5.10. Hazardous Materials. The Borrower shall not use the Project in any manner so as to violate in any material respect any applicable law, rule, regulation or ordinance of any governmental body or in such manner as to vitiate insurance upon the Project. The Borrower shall not commit or permit any waste upon the Project which would materially decrease the value of the Project. The Borrower shall comply in all material respects with all regulations concerning the environment, health and safety relating to the generation, use, handling, production, disposal, discharge and storage of Hazardous Materials, as defined herein, in, on, under, or about the Project. The Borrower shall promptly take any and all necessary action in response to the presence, storage, use, disposal, transportation or discharge of any Hazardous Materials in, on, under or about the Project by the Borrower or Persons acting on behalf of or at the direction of the Borrower as all applicable laws, rules, regulations, or ordinances may require; provided, however, that the Borrower shall not take any remedial action in response to the presence of any Hazardous Materials in, on, under or about the Project, nor enter into any settlement agreement, consent decree, or other compromise in respect to any claims, proceedings, lawsuits or actions, completed or threatened pursuant to any Hazardous Materials laws or in connection with any third party, if such remedial action, settlement, consent or compromise might impair the value of the Project; in the event that the presence of Hazardous Materials in, on, under, or about the Project either (1) poses an immediate threat to the health, safety, welfare or property right of any individual; or (2) is of such a nature that an immediate remedial response is necessary under applicable laws, rules, regulations, or ordinances, the Borrower shall promptly take necessary action. In the event the Borrower undertakes any remedial action with respect to any Hazardous Materials on, under or about the Project, the Borrower shall immediately notify the Trustee and the Issuer in writing of any such remedial action, and shall conduct and complete such remedial action (a) in compliance with all applicable federal, state and local laws, regulations, rules, ordinances and policies; and (b) in accordance with the orders and directives of all federal, state and local governmental authorities. As used herein, the term “Hazardous Materials” shall mean (unless, and only to the extent that, being used in compliance with all applicable federal, state and local laws, regulations, rules, ordinances and policies): (i) oil, flammable substances, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other substances, materials or pollutants which (A) pose a hazard to the Project, to adjacent premises or to Persons on or about the Project or adjacent premises, (B) cause the Project to be in violation of any local, state or federal law, rule, regulation, ordinance, or policy, or (C) are defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” or “toxic substances” or words of similar import under any applicable local, state or federal law or under the regulations, policy guidelines or other publications adopted or promulgated pursuant thereto, including, but not limited to: (1) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; (2) the Hazardous Materials Transportation Act, as amended, 49 U.S.C. § 1601, et seq.; (3) the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, et seq.; (4) the Clean Air Act, 42 U.S.C. § 7412; (5) the Toxic Substance Control Act, 15 U.S.C. § 2601 et

seq.; (6) the Clean Water Act, 33 U.S.C. § 1317 and 1321(b)(2)A; and (7) rules, regulations, ordinances and other publications adopted or promulgated pursuant to the aforesaid laws; (ii) asbestos in any form which is or could become friable; (iii) urea formaldehyde foam insulation; and (iv) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety or property interests of the Borrower or its employees, the occupants of the Project or the owners or occupants of property adjacent to or surrounding the Project.

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ARTICLE 6

[RESERVED]

ARTICLE 7

BORROWER'S COVENANTS

Section 7.1. Covenant for the Benefit of Trustee and Bondholders. The Borrower recognizes the authority of the Issuer to assign its interest in and pledge money receivable under this Loan Agreement (other than certain payments required to be made to the Issuer under Sections 3.2, 4.4, 7.4, 9.5, 10.8, 10.11, 10.12, and 10.13 hereof) to the Trustee as security for the payment of the principal and purchase price of and interest and redemption premiums, if any, on the Bonds, and the payment of all fees and expenses of the Trustee; and hereby agrees to be bound by, and joins with the Issuer in the grant of, a security interest to the Trustee in any right and interest the Borrower may have in sums held in the Funds described in Article 5 of the Indenture, pursuant to the terms and conditions thereof, to secure payment of the Bonds. Each of the terms and provisions of this Loan Agreement is a covenant for the use and benefit of the Trustee and Holders of the Bonds, so long as any thereof shall remain Outstanding; but upon payment in full of the Bonds in accordance with Article 7 of the Indenture and of all fees and charges of the Trustee and Paying Agent, all references in this Loan Agreement to the Bonds, the Holders thereof and the Trustee shall be ineffective, and neither the Trustee nor the Holders of any of the Bonds shall thereafter have any rights hereunder, save and except those that shall have theretofore vested or that arise from provisions hereunder which survive termination of this Loan Agreement.

Section 7.2. Inspection and Access. The Borrower agrees that the Trustee and its duly authorized agents shall have the right at all reasonable times to examine and inspect, and for that purpose to enter upon, the Project, and shall also have such right of access thereto as may be reasonably necessary to cause the Project to be properly maintained in accordance with Article 5 in the event of failure by the Borrower to perform these obligations.

Section 7.3. Annual Statement, Audit, Certificate of Compliance and Other Reports.

(1) Upon request, commencing in 2023 for the fiscal year ending December 31, 2023, the Borrower shall furnish to the Trustee and the Original Purchaser by no later than one hundred twenty (120) days after the close of each fiscal year of the Borrower during the term hereof, a copy of annual audited financial statements of the Borrower for the preceding fiscal year, including a balance sheet and operating statements, audited by an Independent Accountant. The Borrower also agrees to furnish to the Trustee (upon request), the Issuer and the Original Purchaser of the Bonds by no later than thirty (30) days after the close of each of its fiscal quarters commencing with the fiscal quarter ending June 30, 2023 a report prepared by the Borrower summarizing the status of rehabilitation and providing an estimated completion date, as well as physical and economic occupancy statistics for such quarter. The Trustee is authorized to provide, at the Borrower's expense, such information to any holder upon request.

(2) At the time the Borrower causes to be furnished the annual financial statements, the Borrower shall also furnish the Trustee a certificate executed by the Borrower Representative, declaring that during the same fiscal year covered by the statements and continuing to the date of execution of the certificate, the Borrower has fully complied with the terms and conditions of this Loan Agreement.

(3) The Borrower will furnish the Issuer and the Trustee, upon request, all reports required pursuant to law and regulations of the Act.

(4) The Borrower will, and at the request of the Issuer or Trustee at the Borrower's expense, furnish to the Trustee and Issuer at such times and in such form as the Issuer and Trustee, may reasonably require (a) a copy of such other reports containing such information as is necessary to comply with any lawful reporting or continuing registration requirements imposed by any agency of the State under the Act, the Minnesota Blue Sky Laws or any other applicable state law as it now exists or may hereafter be amended or by any agency of any other state in which the Bonds have been sold; or (b) such information as is necessary to comply with federal securities law.

The Trustee shall have no duty to review or analyze any such financial statements or reports. The Trustee shall not be deemed to have notice of any information contained therein or event or event of default which may be disclosed in any manner therein.

Section 7.4. Indemnity by Borrower. The Borrower releases the Issuer and the Trustee from, agrees that the Issuer and the Trustee shall not be liable for, and indemnifies, defends and holds the Issuer and the Trustee harmless from and against, all liabilities, claims, costs and expenses and attorneys' fees imposed upon, incurred or asserted against the Issuer or the Trustee on account of: (1) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquisition, financing, rehabilitation, renovation, construction, occupation, possession, management, equipping, furnishing, maintenance, operation and use of the Project or from any work or thing done in or about the Project site, or any sidewalks, passageways, driveways, curbs, vaults and vault space, streets or parking areas on the Project site or adjacent thereto; (2) any breach or default on the part of the Borrower in the performance of any covenant or agreement of the Borrower under this Loan Agreement, the Tax Certificate, the Regulatory Agreement, the Security Documents, or any related document, or arising from any act or failure to act by the Borrower, or any of its agents, contractors, servants, employees or licensees; (3) the Borrower's failure to comply with any requirement of this Loan Agreement including the covenant in Section 5.4 hereof; (4) any action taken or omitted to be taken by the Issuer or the Trustee under this Loan Agreement, the Indenture or the Regulatory Agreement; (5) the issuance of the Bonds; and (6) any claim, action or proceeding brought with respect to any matter set forth in subsections (1) through (5) above, provided, however, that the indemnification provided in this Section shall not apply to any matter arising or resulting from the gross negligence or willful misconduct of the party proposed to be indemnified hereunder.

The Borrower agrees to indemnify the Trustee for and to hold it harmless against all liabilities, claims, costs and expenses incurred without negligence or willful misconduct on the part of the Trustee, on account of any action taken or omitted to be taken by the Trustee in accordance with the terms of this Loan Agreement, the Bonds, the Regulatory Agreement, the Security Documents, the Tax Certificate, or the Indenture or any action taken at the request of or with the consent of the Borrower, including the costs and expenses of the Trustee in defending itself against any such claim, action or proceeding brought in connection with the exercise or performance of any of its powers or duties under this Loan Agreement, the Bonds, the Indenture, or the Regulatory Agreement.

In case any action or proceeding is brought against the Issuer or the Trustee in respect of which indemnity may be sought hereunder, the party seeking indemnity promptly shall give notice of that action or proceeding to the Borrower, and the Borrower upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding, provided that failure of a party to give that notice shall not relieve the Borrower from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Borrower. The indemnified party shall have the right to employ separate counsel in any such action or proceedings and to participate in the defense thereof, but, unless such separate counsel is employed with the approval and consent of the Borrower, or because the indemnified party has been advised by counsel that there may be a conflict of interest between the Borrower and the indemnified party, the Borrower shall not be required to pay the fees and expenses of

such separate counsel. The Borrower shall not be liable for any settlement made without its consent, which consent shall not be unreasonably withheld, conditioned or delayed.

The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, officers, agents, representatives and employees of the Issuer and the Trustee, respectively. That indemnification is intended to and shall be enforceable by the Issuer and the Trustee, respectively, to the full extent permitted by law.

The provisions of this Section 7.4 shall survive the payment and discharge of the Bonds.

Section 7.5. Status of Borrower. Throughout the Term of Loan Agreement, the Borrower will maintain its existence as a limited liability limited partnership organized under the laws of the State and a Single Purpose Entity and will not wind up or otherwise dispose of all or substantially all of its assets; provided that subject to the sale restrictions in Section 5.2 hereof and the assignment and transfer conditions in Section 8.1 hereof, the Borrower may, sell or otherwise transfer to another Person all or substantially all of its assets in its entirety and thereafter wind up if the transferee Person assumes all of the obligations of the Borrower under this Loan Agreement, the Security Documents and the Regulatory Agreement by written instrument delivered to the Issuer and the Trustee. Every such transferee shall be bound by all of the covenants and agreements of the Borrower herein with respect to any further sale or transfer.

Upon any change in the identity of its general partner by way of substitution, sale or otherwise of the Borrower, the Trustee shall be promptly informed and, if requested, each and every general partner of the Borrower as newly constituted shall deliver to the Trustee for the benefit of the Issuer and Bondholders an instrument in form satisfactory to the Trustee affirming the joint and several liability of all then existing general partners for the obligations of the Borrower hereunder for which the general partners are liable (subject, in all instances, to Section 9.13 hereof).

The Issuer and Borrower agree that, upon any change in the status of the Borrower, including a change in the identity of its general partner, so long as the requirements, restrictions and conditions of Sections 5.2 and 8.1 hereof and the Regulatory Agreement with respect to such change have been satisfied as provided therein, the general partner involved shall be discharged from liability hereunder. The Trustee by execution of the Indenture shall be deemed to have agreed to execute such documents as may be necessary or desirable to indicate such discharge upon receipt of evidence satisfactory to said parties that the requirements for this Section, Sections 5.2 and 8.1 hereof and the Regulatory Agreement have been satisfied, and provided that no Event of Default under this Loan Agreement shall have happened and be continuing on the date of the discharge.

The Borrower shall not effect such transfer or change if the result thereof would be to violate any sale restrictions set forth in Section 5.2 hereof, or to subject the interest payable on the Bonds (in the hands of any Person who is not a “substantial user” of the Project or a “related person”) to federal income taxes under Section 103 of the Code.

Notwithstanding anything to the contrary contained herein or in any other loan document none of the following shall be deemed an Event of Default hereunder or under any other loan document and shall not require the consent of the Issuer or the Trustee: (1) the Assignment of Partnership Interest and Capital Contributions, whereby the General Partner and Borrower pledge all of their respective right, title and interest in the Borrower and to certain capital contributions to the Borrower as security for the Bonds, and the Trustee’s foreclosure on such right, title and interest following an Event of Default hereunder; (2) the removal of the general partner pursuant to the terms of the Partnership Agreement; (3) the transfer of the interest of the Investor Limited Partner in the Borrower to a third party; or (4) the transfer of the interest of the Investor Limited Partner in the Borrower to the Borrower’s general partner or affiliate.

Section 7.6. Filing of Financing Statements. The Borrower agrees that it will, at its sole expense, file or cause to be filed any financing statements and continuation statements required to perfect the security interest granted to the Trustee under the Security Documents and under the Indenture in this Loan Agreement and the payments to be made hereunder.

Section 7.7. Assurance of Tax Exemption. In order to assure that the interest on the Bonds shall at all times be excluded from gross income for the purposes of federal income taxation, the Borrower represents and covenants with the Issuer, Trustee and all Holders of the Bonds as follows:

(1) The Borrower will fulfill all continuing conditions specified in Section 142 of the Code and Section 1.103-8(b) of the Treasury Regulations promulgated thereunder, to qualify the Bonds as residential rental property bonds thereunder, and the Borrower shall fulfill its obligations under the Regulatory Agreement.

(2) The Borrower will not use (or permit to be used) the Project or use or invest (or permit to be used or invested) the proceeds of the Bonds or any other sums treated as “bond proceeds” under Section 148 of the Code and applicable federal income tax regulations, including “investment proceeds,” “invested sinking funds” and “replacement proceeds,” in such a manner as to cause the Bonds to be classified “arbitrage bonds” under Section 148 of the Code or “federally guaranteed obligations” under Section 149(b) of the Code.

(3) At least ninety-five percent (95%) of net proceeds of the Bonds will be used to finance costs properly chargeable to the capital account of a qualified residential rental project within the meaning of Section 142(d) and functionally related and subordinate property thereto.

(4) The Borrower has not permitted and will not permit any obligation or obligations other than the Bonds to be issued within the meaning of Section 103(b) of the Code so as to cause such obligations to become part of the same “issue of obligations” as the Bonds.

(5) No portion of the proceeds of the Bonds shall be used to provide any airplanes, skybox, or other private luxury box, health club facility, facility primarily used for gambling or liquor store;

(6) No portion of the proceeds of the Bonds will be used to acquire (a) property to be leased to the government of the United States of America or to any department, agency or instrumentality of the government of the United States of America; (b) any property not part of the residential rental housing portion of the Project; or (c) any private or commercial golf course, country club, massage parlor, tennis club, skating facility (including roller skating, skateboard and ice skating), racquet sports facility (including any handball or racquetball court), hot tub facility, suntan facility or racetrack.

(7) No portion of the proceeds of the Bonds (including investment earnings thereon) shall be used (directly or indirectly) for the acquisition of land (or an interest therein) to be used for farming purposes, and less than twenty-five percent (25%) of the proceeds of the Bonds (including investment earnings thereon) shall be used (directly or indirectly) for the acquisition of land to be used for purposes other than farming purposes.

(8) The Borrower understands that the Code imposes a penalty for failure to file with the Secretary of the Treasury an annual certification of compliance with low income occupancy requirements, and if the requirements for a “qualified residential rental project” are not met, does

not allow deduction for interest paid on the Bonds which accrues during the period beginning on the first day of the taxable year in which the Project ceases to meet such requirements and ending on the date the Project again meets such requirements.

(9) The average maturity of the Bonds does not and will not exceed one hundred twenty percent (120%) of the average reasonably expected economic life of the Project financed with the proceeds of the Bonds within the meaning of Section 147(b) of the Code.

(10) The Borrower shall provide the Issuer on or prior to the Issue Date with all information required to satisfy the informational requirements set forth in Section 149(e) of the Code, including the information necessary to complete IRS Form 8038.

(11) No money in the Bond Fund, the Capitalized Interest Fund or the Project Fund shall be invested in investments which cause the Bonds to be federally guaranteed within the meaning of Section 149(b) of the Code. If at any time the money in such funds exceeds, within the meaning of Section 149(b), (a) amounts invested for an initial temporary period until the money is needed for the purpose for which the Bonds were issued, (b) investments of a bona fide debt service fund, and (c) investments of a reserve which meet the requirement of Section 148(c) and (d) of the Code, such excess money shall be invested in only those Permitted Investments or Government Obligations, as otherwise appropriate, which are (i) obligations issued by the United States Treasury, (ii) other investments permitted under regulations, or (iii) obligations which are (A) not issued by, or guaranteed by, or insured by, the United States or any agency or instrumentality thereof or (B) not federally insured deposits or accounts, all within the meaning of Section 149(b)(3)(B) of the Code.

(12) The Borrower on behalf of the Issuer shall pay to the United States, as a rebate, an amount equal to the sum of (a) the excess of (i) the aggregate amount earned on all nonpurpose investments (other than investments attributable to an excess described in this clause), over (ii) the amount which would have been earned if all nonpurpose investments were invested at a rate equal to the yield on the Bonds, plus (b) any income attributable to the excess described in clause (a) above, at the times and in the amounts required by Section 148(f) of the Code, all within the meaning of Section 148(f) of the Code. The Borrower and the Trustee shall maintain detailed records of the interest rate borne by the Bonds and the investments of the Project Fund, the Capitalized Interest Fund and the Bond Fund (and any other fund created under the Indenture with respect to the Bonds) and earnings thereon. The Borrower shall engage a qualified firm selected by the Borrower (the "Rebate Consultant") to calculate the amount of any rebate required to be made to the United States at times and in installments which satisfy Section 148(f) of the Code and the Regulations, at least once every five (5) years and within sixty (60) days after the day on which the last of the Bonds is redeemed, and the Trustee shall be immediately furnished with such calculations. Such calculations shall be retained until six (6) years after the retirement of the last Bond. The rebate shall be calculated as provided in Section 148(f) of the Code and Sections 1.148-0 through 1.148-9 of the Treasury Regulations, including taking into account the gain or loss on the disposition of nonpurpose investments but not gross earnings of up to \$100,000 on the portion, if any, of the Bond Fund constituting a bona fide debt service fund. The Borrower shall acquire, and shall cause the Trustee to acquire all nonpurpose investments at their fair market value in arm's-length transactions. The Trustee may conclusively rely upon the calculation made by the Rebate Consultant and shall not be liable or responsible therefor.

(13) The Borrower shall not permit more than two percent (2%) of the proceeds of the Bonds to be expended (or to be used to reimburse any person for an expenditure) to pay Issuance Expenses as provided by Section 147(g) of the Code.

(14) In order to qualify the Bonds and this Loan Agreement under the “program investment” provisions of Section 1.148-2(d)(2)(iii) of the Treasury Regulations, the Borrower (and any “related person” thereto) will take no action the effect of which would be to disqualify this Loan Agreement as a “program investment” as defined in Section 1.148-1(b) of the Treasury Regulations, including but not limited to entering into any arrangement, formal or informal, for the Borrower to purchase bonds or notes of the Issuer in an amount related to the amount of the Bonds.

(15) The Borrower will not otherwise use proceeds of the Bonds, including expenses, earnings thereon, or take, or permit or cause to be taken, any action that would adversely affect the exclusion from gross income of the interest on the Bonds, nor otherwise omit to take or cause to be taken any action necessary to maintain such exclusion from gross income; if it should take or permit, or omit to take or cause to be taken, as appropriate, any such action, the Borrower shall take all lawful actions necessary to rescind or correct such actions or omissions promptly upon having knowledge thereof.

Section 7.8. Determination of Taxability.

(1) Promptly after the occurrence of a Determination of Taxability, the Borrower shall promptly give written notice to the Issuer and Trustee of the Determination of Taxability.

(2) Neither the Borrower nor any Holder shall be required to contest or appeal any notice of deficiency, ruling, decision or legislative enactment which may give rise to a Determination of Taxability. The expenses of any such contest or appeal shall be paid by the party initiating the contest or appeal.

Section 7.9. Subordination of Management Fees. If, and during any period that, an affiliate of the Borrower is the manager of the Project, any management fees payable by the Borrower with respect to the Project will be wholly subordinate and junior in right of payment to all sums payable under this Loan Agreement. Without limiting the foregoing, during the continuance of an Event of Default hereunder, no payment of such management fees shall be made by the Borrower. Further, the Borrower will not pay any such management fees if such payment will cause an Event of Default hereunder.

Section 7.10. Special Covenants of the Borrower. If the Borrower is able to take advantage of the four percent (4%) floor under Section 42(b)(3) of the Code, the Borrower shall provide the following:

- (1) 20 units must be leased to households at or below 40% of the Area Median Income (25 years);
- (2) An additional 60-80 units at 50% or 20-35 units at 40% AMI (25 years);
- (3) Accept clients of the Richfield Kids@Home program; and
- (4) Shall limit rent increases to 7% annually

Section 7.11. Alternative Covenants of the Borrower. If the Borrower is unable to take advantage of the four percent (4%) floor under Section 42(b)(3) of the Code, the Borrower shall provide the following:

- (1) 20 units to households at or below 40% of the Area Median Income;

(2) Accept clients of the Richfield Kids@Home program

Section 7.12. Subordination. The Borrower's obligation with respect to the repayment of the Loan will be subordinate in repayment of the loan evidenced by the Series 2020 Note issued by the County HRA. **[Add specific provisions or reference to subordination document]**

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ARTICLE 8

BORROWER'S OPTIONS

Section 8.1. Assignment and Transfer. The Borrower may assign its rights and obligations under this Loan Agreement and, as an incident thereto, transfer its interest in the Project without prior consent of the Issuer or the Trustee, but subject to the provisions of Sections 5.2 and 7.5 hereof.

Section 8.2. Prepayment.

(1) The Borrower shall have the option to direct the Trustee to call for redemption and prepayment of the Outstanding Bonds in whole or in part as provided in Section 3.1 of the Indenture. The Bonds to be redeemed shall be redeemed at a price equal to their principal amount plus accrued interest set forth in Section 3.1 of the Indenture. In the event the Bonds are called for redemption in whole or in part, the Borrower shall make a Basic Payment as provided in Section 4.2 hereof on such Redemption Date. The Borrower shall give the Trustee written notice at least 30 days prior to the prepayment date to effect a redemption of the Bonds pursuant to Section 3.1 of the Indenture.

(2) The Borrower shall prepay the Loan in whole or in part to the extent of the mandatory redemption of the Bonds under Article 3 of the Indenture and will at any time transmit directly to the Trustee, for deposit in the Bond Fund, funds in the required amount in addition to any other amounts required to be paid at that time pursuant to this Loan Agreement. The principal amount of the Loan to be prepaid from money remaining on deposit in the Project Fund following the Completion Date will be determined in accordance with Section 3.1(2) of the Indenture. The principal amount of the Loan of the Bonds to be prepaid upon the Borrower's receipt of the proceeds of the Assigned Capital Contributions will be determined in accordance with Section 3.1(3) of the Indenture.

(3) If, after the Borrower exercises its option to redeem all Bonds, no Bonds remain Outstanding, the Indenture is discharged, and the Borrower has satisfied all of its obligations hereunder, the Trustee and the Issuer shall execute and deliver to the Borrower such release and other instruments as the Borrower reasonably determines are necessary to terminate this Loan Agreement. All further obligations of the Borrower hereunder, except as set forth in Section 10.10 hereof, shall thereupon terminate.

Section 8.3. Direction of Investments. Except during the continuance of an Event of Default, the Borrower shall have the right during the Term of Loan Agreement to direct the Trustee to invest or reinvest all money held for the credit of funds established by Article 5 of the Indenture in such securities as are authorized by law for such funds, subject, however, to the further conditions of Article 6 of the Indenture and Section 7.7 hereof.

The Borrower acknowledges that regulations of the Comptroller of the Currency grant the Borrower the right to receive brokerage confirmations of the security transactions as they occur. The Borrower specifically waives such notification to the extent permitted by law and shall receive periodic cash transaction statements from the Trustee that will detail all investment transactions.

Section 8.4. Remarketing of Bonds. The Borrower is hereby granted the right to (1) request a remarketing of the Bonds in the manner and to the extent set forth in Section 3.8 of the Indenture; and (2) in

consultation with the Remarketing Agent, designate the length of the Remarketing Period and the related Mandatory Tender Date in the manner and to the extent set forth in Sections 3.7 and 3.8 of the Indenture.

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ARTICLE 9

EVENTS OF DEFAULT AND REMEDIES

Section 9.1. Events of Default. Any one (1) or more of the following events is an Event of Default under this Loan Agreement, and the term “Event of Default,” wherever used herein, means any one of the following events, whatever the reason for such default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body:

(1) if the Borrower shall fail to pay any Basic Payments on the date due under this Loan Agreement, and such failure continues for five days after mailing of a notice to it by the Trustee;

(2) if the Borrower shall fail to pay any Additional Charges on or before the date that the payment is due, and shall continue to be in arrears for thirty (30) days after mailing of a notice to it by the Issuer or the Trustee that said Additional Charges have not been received on the due date;

(3) if the Borrower shall fail to observe and perform or shall breach any other covenant, condition or agreement on its part under this Loan Agreement for a period of sixty (60) days after mailing of a notice to it by the Issuer or the Trustee, stating that it is a “Notice of Default” hereunder and specifying such default or breach and requesting that it be remedied;

(4) if the Borrower shall be dissolved or liquidated (other than when a new entity assumes the obligations of the Borrower under the conditions permitting such action contained in Section 7.5 hereof) or the Partnership Agreement shall expire or be annulled;

(5) if any representation or warranty made by the Borrower herein, or by a general partner or Representative of the Borrower in any document or certificate furnished the Trustee or the Issuer or the Underwriter in connection herewith or therewith or pursuant hereto or thereto, shall prove at any time to be, in any material respect, incorrect or misleading as of the date made;

(6) if an event of default shall occur and be continuing under the Indenture or any Related Document, subject to applicable notice and cure periods; or

(7) if the Borrower shall fail to pay or cause to be paid the Mandatory Purchase Price on the Mandatory Tender Date.

The Investor Limited Partner in the Borrower shall have the right, but not the obligation, to cure Events of Default on behalf of the Borrower.

Section 9.2. Remedies.

(1) Whenever any Event of Default shall have happened and be subsisting the Trustee may, by written notice to the Borrower, declare all the Basic Payments payable for the remainder of the Term of Loan Agreement (an amount equal to that necessary to pay in full all Outstanding Bonds and the interest thereon assuming acceleration of the Bonds under the Indenture and to pay all other indebtedness thereunder) to be immediately due and payable whereupon the same shall become immediately due and payable by the Borrower.

(2) Upon the occurrence of an Event of Default, the Trustee may also take whatever action at law or in equity may appear necessary or appropriate to collect all sums then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement, covenant, representation or warranty of the Borrower, under this Loan Agreement, or any Collateral Documents; or to otherwise compensate the Issuer, Trustee or Bondholders for any damages on account of such Event of Default.

(3) The Issuer (without the prior written consent of the Trustee if the Trustee is not enforcing the Issuer's right in a manner to protect the Issuer or is otherwise taking action that brings adverse consequences to the Issuer) may take whatever action at law or in equity may appear necessary or appropriate to enforce its rights of indemnification under Section 7.4 and to collect all sums then due and thereafter to become due to the Issuer under Sections 3.2, 4.4, 7.4, 9.5, 10.11, 10.12, and 10.13 hereof. Notwithstanding the foregoing, the Issuer is not precluded from exercising any of its rights reserved to it as set forth in this Section, even if the Trustee is exercising the rights of the Issuer hereunder.

Section 9.3. Disposition of Funds. Any amounts collected pursuant to action taken under Section 9.2 hereof (other than sums collected for the Issuer on account of its rights to indemnification and certain direct payments to be made to the Issuer under Sections 3.2, 4.4, 7.4, 9.5, 10.8, 10.11, 10.12, and 10.13 hereof, which sums shall be paid directly to the Issuer) shall be applied in accordance with the provisions of the Indenture.

Section 9.4. Nonexclusive Remedies. No remedy herein conferred upon or reserved to the Issuer or Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer (or Trustee) to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or as may be required by law.

Section 9.5. Attorneys' Fees and Expenses. If an Event of Default shall exist under this Loan Agreement and the Issuer or Trustee should employ attorneys or incur other expenses for the collection of any amounts due hereunder, or for the enforcement of performance of any obligation or agreement on the part of the Borrower, the Borrower will upon demand pay to the Issuer or Trustee the reasonable fees of such attorneys and such other expenses so incurred.

Section 9.6. Effect of Waiver. In the event any agreement contained in this Loan Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 9.7. Waiver of Stay or Extension. The Borrower covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any appraisal, valuation, stay, or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants in, or the performance of, this Loan Agreement; and the Borrower (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Issuer or Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 9.8. Issuer May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Borrower or the property of the Borrower, the Trustee, or the Issuer with the prior consent of the Trustee, shall be entitled and empowered, by intervention in such proceeding or otherwise,

(1) to file and prove a claim and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Issuer and Trustee (for themselves and on behalf of Bondholders) (including any claim for the reasonable compensation, expenses, disbursements and advances of the Issuer and Trustee, their agents and counsel) allowed in such judicial proceeding; and

(2) to collect and receive any money or other property payable or deliverable on any such claims, and to distribute the same.

Section 9.9. Restoration of Positions. If the Issuer or Trustee have instituted any proceeding to enforce any right or remedy under this Loan Agreement, and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Issuer or Trustee, then and in every such case the Borrower, Trustee and Issuer shall, subject to any determination in the proceeding, be restored to the positions they held prior to commencement of such proceedings, and thereafter all rights and remedies of the Issuer shall continue as though no such proceeding had been instituted.

Section 9.10. Suits to Protect the Project. If the Borrower shall fail to do so after thirty (30) days prior written notice from the Issuer or Trustee, the Issuer shall have power to institute and to maintain such proceedings as it may deem expedient to prevent any impairment of the Project or any portion thereof, by any acts which may be unlawful or in violation of this Loan Agreement, and such suits and proceedings as the Issuer may deem expedient to protect its interests in the Project or any portion thereof, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of, or compliance with, such enactment, rule or order would impair or adversely affect the Project or be prejudicial to the interests of the Bondholders.

Section 9.11. Performance by Third Parties. The Issuer may permit third parties to perform any and all acts or take such action as may be necessary for and on behalf of the Borrower to cure any Event of Default hereunder. The acceptance by the Issuer or the Trustee of any such performance by third parties shall not in any way diminish or absolve the Borrower of primary liability hereunder.

Section 9.12. Exercise of the Issuer's Remedies by Trustee. Whenever any Event of Default shall have happened and be subsisting the Trustee may, but except as otherwise provided in the Indenture shall not be obliged to, exercise any or all of the rights of the Issuer under this Article 9, without notice to the Issuer.

Section 9.13. Limited Recourse. Notwithstanding any provision or obligation to the contrary set forth in this Loan Agreement, (1) the liability of the Borrower and any partner, trustee, director, officer, employee, or agent thereof (collectively, "Borrower Parties") under this Loan Agreement or the Security Documents shall be limited to the property subject to the Security Documents or to such other security as may from time to time be given or have been given for payment of the Borrower's obligations under this Loan Agreement and Bonds, and any judgment rendered against the Borrower Parties under this Loan Agreement, the Security Documents and the Bonds shall be limited to the property subject to the Security Documents and any other security so given for satisfaction thereof; and (2) no deficiency or other personal judgment nor any order or decree of specific performance shall be sought or rendered against the Borrower

Parties, their successors, transferees or assigns, in any action or proceeding arising out of the Security Documents, this Loan Agreement, the Bonds, or any judgment, order or decree rendered pursuant to any such action or proceeding; provided, however, that nothing in this Loan Agreement, the Security Documents or the Bonds shall limit the Issuer's or Trustee's ability to exercise any right or remedy that it may have with respect to any property pledged or granted to the Issuer or the Trustee, or both of them, or to exercise any right against the Borrower Parties or any other person or entity on account of any damage caused by fraud or intentional misrepresentation by the Borrower or any intentional damage of the property subject to the Security Documents. Furthermore, the Borrower shall be fully liable for the misapplication of (a) proceeds paid prior to any foreclosure under any and all insurance policies, under which the Trustee and/or the Issuer is named as insured, by reason of damage, loss or destruction to any portion of the property subject to the Security Documents, to the full extent of such misapplied proceeds and awards; (b) proceeds or awards resulting from the condemnation, or other taking in lieu of condemnation, prior to any foreclosure of the property subject to the Security Documents, to the full extent of such misapplied proceeds and awards; (c) rents, issues, profits and revenues received or applicable to a period subsequent to the occurrence of a default under this Loan Agreement, the Security Documents and the Bonds but prior to foreclosure; and (d) proceeds from the sale of all or any part of the property subject to the Security Documents and any other proceeds that, under the terms hereof, should have been paid to the Issuer or the Trustee. Furthermore, the Borrower shall be fully liable for the breach of the Borrower's covenants contained in Sections 3.2, 4.4(1), (2) and (3), 7.4, 9.5, 10.8, 10.11, 10.12, and 10.13 hereof; provided, however, that in no event shall the Borrower or any Borrower Parties be personally liable for payment of the principal of, premium, if any, or interest on the Bonds. The limit on the Borrower's liability set forth in this paragraph shall not, however, be construed, and is not intended in any way, to constitute a release, in whole or in part, of the Borrower's obligations under this Loan Agreement or a release, in whole or in part, or an impairment of the lien and security interest of the Security Documents, this Loan Agreement and the Bonds upon the properties described therein, or to preclude the Issuer or the Trustee from foreclosing pursuant to the Security Documents in case of any default or enforcing any other right of the Issuer or the Trustee, or to alter, limit or affect the liability of any person or party who may now or hereafter or prior hereto guarantee, or pledge, grant or assign its assets or collateral as security for, the obligations of the Borrower under the Security Documents, this Loan Agreement and the Bonds.

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ARTICLE 10

GENERAL PROVISIONS

Section 10.1. Amounts Remaining in Funds. Except during the continuance of an Event of Default, any amounts remaining in the funds created under Article 5 of the Indenture upon expiration or earlier termination of this Loan Agreement, as provided herein, and after adequate provision has been made for payment in full of the Bonds, in accordance with Article 7 of the Indenture, any Additional Charges payable to the Trustee and Issuer, including Paying Agent's fees and expenses, and all other amounts required to be paid under this Loan Agreement and the Indenture, shall forthwith be paid to the Borrower.

Section 10.2. Notices. All notices, certificates or other communications hereunder shall be in writing (except as otherwise expressly provided herein) and shall be sufficiently given and shall be deemed given when mailed by first class mail, postage prepaid, with proper address as indicated below. The Issuer, the Borrower, and Trustee may, by written notice given by each of them to the others, designate any address or addresses to which notices, certificates or other communications to them shall be sent when required as contemplated by this Loan Agreement. Until otherwise provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

To the Issuer:	Housing and Redevelopment Authority in and for the City of Richfield, Minnesota 6700 Portland Avenue Richfield, MN 55423 Attention: Executive Director
To the Borrower:	Fort Snelling Leased Housing Associates I, LLLP c/o Dominion Development & Acquisition, LLC 2905 Northwest Boulevard, Suite 150 Plymouth, MN 55441-7400 Attention: Owen Metz
With a copy to:	Winthrop & Weinstine, P.A. 225 South Sixth Street, Suite 3600 Minneapolis, MN 55402-4629 Attention: John Nolde, Esq.
To the Trustee:	U.S. Bank Trust Company, National Association EP-MN-WS3C 60 Livingston Avenue, Third Floor Saint Paul, MN 55107 Attention: Corporate Trust Services
To the Remarketing Agent:	Colliers Securities LLC 90 South Seventh Street, Suite 4300 Minneapolis, MN 55402-4108 Attention: Frank J. Hogan

To the Original Purchaser of
the Bonds:

Colliers Securities LLC
90 South Seventh Street, Suite 4300
Minneapolis, MN 55402-4108
Attention: Frank J. Hogan

Section 10.3. Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Issuer and Borrower and their respective successors and assigns.

Section 10.4. Severability. In the event any provisions of this Loan Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.5. Amendments, Changes, and Modifications. Except as otherwise provided in this Loan Agreement or in the Indenture, subsequent to the issuance of the Bonds and before the lien of the Indenture is satisfied and discharged in accordance with its terms, this Loan Agreement may not be effectively amended, changed, modified, altered or terminated except in accordance with the provisions of Article 11 of the Indenture, as applicable.

Section 10.6. Execution Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.7. Required Approvals. Consents and approvals required by this Loan Agreement to be obtained from the Borrower, the Issuer or the Trustee shall be in writing and shall not be unreasonably withheld or delayed.

Section 10.8. Limitation on Issuer's Liability. No covenant, provision or agreement of the Issuer herein or in the Bonds or in any other document executed by the Issuer (or any other party) in connection with the issuance, sale and delivery of the Bonds, or any obligation herein or therein imposed upon the Issuer or respecting the breach thereof, shall give rise to a pecuniary liability of the Issuer or the City or their respective officers, employees or agents, or a charge against the general credit or taxing powers of the Issuer or the City or shall obligate the Issuer or the City or their respective officers, employees or agents, financially in any way except with respect to this Loan Agreement and the application of revenues therefrom and the proceeds of the Bonds. The Bonds shall be and constitute only special, limited revenue obligations of the Issuer, payable solely from the revenues pledged to the payment thereof pursuant to this Loan Agreement and the Indenture. The Bonds do not now and shall never constitute an indebtedness, a general or moral obligation or a loan of the credit of the Issuer, the City, the State or any political subdivision thereof or a lien, charge or encumbrance, legal or equitable, against the general credit or taxing powers of the Issuer or the City or any of the Issuer's property. No failure of the Issuer to comply with any term, condition, covenant or agreement therein shall subject the Issuer or the City or their respective officers, employees or agents, to liability for any claim for damages, costs or other financial or pecuniary charges except to the extent that the same can be paid or recovered from this Loan Agreement or revenues therefrom. No execution on any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or taxing powers of the Issuer or the City. In making the agreements, provisions and covenants set forth herein, the Issuer has not obligated itself except with respect to this Loan Agreement and the application of revenues hereunder as hereinabove provided. It is further understood and agreed by the Borrower and the Lender that the Issuer and the City and their respective officers, employees or agents shall incur no pecuniary liability hereunder and shall not be liable for any expenses related hereto, including administrative expenses and the reasonable fees and disbursement of the Issuer's attorney, Bond Counsel, and fiscal consultant retained in connection therewith, all of which the Borrower agrees to pay. If, notwithstanding the provisions of this Section, the Issuer or the City or their respective officers,

employees or agents incurs any expense, or suffers any losses, claims or damages or incurs any liabilities arising out of or relating to the transaction contemplated by this Loan Agreement and the other Related Documents, other than as a result of the willful misconduct of such indemnitee, the Borrower will indemnify and hold harmless the Issuer and the City and their respective officers, employees or agents from the same and will reimburse the Issuer and its officers, employees or agents for any legal or other expenses incurred by the Issuer and the City and their respective officers, employees or agents in relation thereto. This covenant to indemnify, hold harmless and reimburse the Issuer and the City and their respective officers, employees or agents shall survive delivery of and payment for the Bonds and expiration or termination of this Loan Agreement. The liability of the Issuer is further restricted as provided in the Act.

Section 10.9. Representations of Borrower. All representations made in this Loan Agreement by the Borrower are based on the best of the Borrower's knowledge of the facts and law, and no such representations are made in reliance upon any representations made or legal advice given by the Issuer, its Bond Counsel, or any of its agents, officers or employees.

Section 10.10. Termination. At any time when no Bonds remain Outstanding and arrangements satisfactory to the Issuer and Trustee have been made for the discharge of all liabilities under this Loan Agreement, this Loan Agreement shall terminate. All obligations of the Borrower under Sections 7.4, 7.7, 7.8, 10.11 and 10.12 hereof shall survive termination of this Loan Agreement.

Section 10.11. Administrative Fees, Attorneys' Fees and Costs. The Borrower shall reimburse the Issuer, upon demand, for all costs and expenses, including without limitation attorneys' fees, paid or incurred by the Issuer in connection with (1) the discussion, negotiation, preparation, approval, execution and delivery of the Bonds, the Indenture, this Loan Agreement, and the documents and instruments related hereto or thereto; (2) any amendments or modifications to any of the foregoing documents, instruments or agreements and the discussion, negotiation, preparation, approval, execution and delivery of any and all documents necessary or desirable to effect such amendments or modifications; (3) the servicing and administration of the Loan during the Term of Loan Agreement or thereafter; and (4) the enforcement by the Issuer during the term hereof or thereafter of any of the rights or remedies of the Issuer hereunder or under the foregoing documents, or any document, instrument or agreement related hereto or thereto, including, without limitation, costs and expenses of collection in the Event of Default, whether or not suit is filed with respect thereto.

Section 10.12. Release. The Borrower hereby acknowledges and agrees that the Issuer, its officers, employees and agents shall not be liable to the Borrower, and hereby releases and discharges the Issuer, its officers, employees and agents from any liability, for any and all losses, costs, expenses (including attorneys' fees), damages, judgments, claims and causes of action, paid, incurred or sustained by the Borrower as a result of or relating to any action, or failure or refusal to act, on the part of the Trustee or any other party with respect to the Bonds, the Indenture, this Loan Agreement, or the documents and transactions related hereto or thereto or contemplated hereby or thereby, including, without limitation, the exercise by the Trustee or any third party (other than the Trustee) of any of its rights or remedies pursuant to any of such documents.

Section 10.13. Audit Expenses. The Borrower agrees to pay any costs incurred by the Issuer, including fees of Issuer's counsel, as a result of the Issuer's compliance with an audit or inquiry of any kind, random or otherwise, by the Internal Revenue Service, the Minnesota Department of Revenue, the Minnesota Office of the State Auditor, or any other governmental agency with respect to the Bonds, the Borrower, or the Project.

IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Loan Agreement to be executed by their duly authorized officers as of the date and year first written above.

**HOUSING AND REDEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF RICHFIELD,
MINNESOTA**

By _____
Its Chair

By _____
Its Executive Director

Execution page of the Borrower to the Loan Agreement, dated as of the date and year first written above.

**FORT SNELLING LEASED HOUSING
ASSOCIATES I, LLLP**, a Minnesota limited liability
limited partnership

By: Fort Snelling Leased Housing Associates I, LLC
Its: General Partner

By: _____
Name: Owen C. Metz
Its: Vice President

EXHIBIT A

LEGAL DESCRIPTION

PARCEL 1 (Area J):

That part of Section 29, Township 28 North, Range 23 West, Hennepin County, Minnesota, described as follows:

Commencing at the Northwest corner of said Section 29; thence on an assumed bearing of South 00 degrees 07 minutes 15 seconds East along the West line of said Section 29, a distance of 771.38 feet; thence South 60 degrees 25 minutes 10 seconds East 2326.03 feet; thence South 46 degrees 05 minutes 08 seconds East 166.37 feet; thence North 37 degrees 54 minutes 07 seconds East 218.84 feet; thence South 60 degrees 10 minutes 22 seconds East 1820.75 feet to the point of beginning of the line to be described; thence North 23 degrees 24 minutes 45 seconds East 1564.32 feet; thence Northeasterly 566.88 feet along a tangential curve, concave to the Southeast, having a radius of 1502.00 feet and a central angle of 21 degrees 37 minutes 28 seconds; thence North 45 degrees 02 minutes 13 seconds East, tangent to said curve 697.91 feet to a Westerly right-of-way line of State Highway Number 5; thence Southerly and Southwesterly along said Westerly right-of-way line of State Highway Number 5 to the point of intersection with a line bearing South 60 degrees 10 minutes 22 seconds East from said point of beginning; thence North 60 degrees 10 minutes 22 seconds West 622.24 feet to the point of beginning.

Hennepin County, Minnesota
Abstract Property

PARCEL 2 (Officer's Row):

That part of Section 29, Township 28 North, Range 23 West, Hennepin County, Minnesota, described as follows:

Commencing at the Northwest corner of said Section 29; thence on an assumed bearing of South 00 degrees 07 minutes 15 seconds East along the West line of said Section 29, a distance of 771.38 feet; thence South 60 degrees 25 minutes 10 seconds East 2326.03 feet; thence South 46 degrees 05 minutes 08 seconds East 166.37 feet; thence North 37 degrees 54 minutes 07 seconds East 218.84 feet; thence South 60 degrees 10 minutes 22 seconds East 1439.04 feet to the point of beginning of the land to be described; thence continue South 60 degrees 10 minutes 22 seconds East 341.45 feet; thence North 23 degrees 24 minutes 45 seconds East 1075.01 feet; thence North 66 degrees 38 minutes 47 seconds West 339.32 feet; thence South 23 degrees 24 minutes 45 seconds West 1036.52 to the point of beginning.

Hennepin County, Minnesota
Abstract Property

PARCEL 3 (BOQ):

That part of Section 29, Township 28 North, Range 23 West, Hennepin County, Minnesota, described as follows:

Commencing at the Northwest corner of said Section 29; thence on an assumed bearing of South 00 degrees 07 minutes 15 seconds East along the West line of said Section 29, a distance of 771.38 feet; thence South

60 degrees 25 minutes 10 seconds East 2326.03 feet; thence South 46 degrees 05 minutes 08 seconds East 166.37 feet; thence North 37 degrees 54 minutes 07 seconds East 218.84 feet; thence South 60 degrees 10 minutes 22 seconds East 1439.04 feet; thence North 23 degrees 24 minutes 45 seconds East 1036.52 feet; thence North 66 degrees 38 minutes 47 seconds West 30.00 feet to the point of beginning of the land to be described; thence continuing North 66 degrees 38 minutes 47 seconds West 237.21 feet; thence South 15 degrees 35 minutes 58 seconds West 98.99 feet; thence South 18 degrees 02 minutes 36 seconds East 90.00 feet; thence South 66 degrees 38 minutes 47 seconds East 164.17 feet; thence North 23 degrees 24 minutes 45 seconds East 165.60 feet to the point of beginning.

Hennepin County, Minnesota
Abstract Property

EXHIBIT B

FORM OF DISBURSEMENT REQUEST

DISBURSEMENT REQUEST NO. ____ OF FUNDS FROM THE PROJECT FUND

Date of Disbursement Request: _____, 20__

Pursuant to Section 3.5 of the Loan Agreement, dated as of June 1, 2023 (the “Loan Agreement”), between the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the “Issuer”) and Fort Snelling Leased Housing Associates I, LLLP, a Minnesota limited liability limited partnership (the “Borrower”), relating to the Issuer’s Multifamily Housing Revenue Bonds (Fort Snelling Upper Post Project), Series 2023 (the “Bonds”), in the original aggregate principal amount of \$10,000,000, the undersigned authorized representative of the Borrower (the “Representative”) hereby requests and authorizes U.S. Bank Trust Company, National Association, a national banking association (the “Trustee”), as depository of the Project Fund created by the Indenture of Trust, dated as of June 1, 2023 (the “Indenture”), between the Issuer and the Trustee, to disburse out of the moneys deposited in the Project Fund in the amount(s) and to the person(s) set forth in this Disbursement Request. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Indenture.

To induce the Trustee to release moneys deposited in the Project Fund pursuant to the terms of the Indenture and the Loan Agreement in the amounts(s) and to the person(s) set forth herein and in the Disbursement Schedule attached hereto, the undersigned Representative represents, warrants and certifies to the Issuer and the Trustee:

- (a) All items for which disbursement is requested thereunder either are presently due and payable, constitute Project Costs properly incurred by the Borrower in connection with the Project being financed with the proceeds of the Loan, or are reimbursable Project Costs properly chargeable against the Loan; and in each case none of the items for which disbursement is requested has formed the basis for any disbursement heretofore made from the Project Fund.
- (b) Each such item is or was necessary in connection with the acquisition, rehabilitation, renovation and equipping of the Dwelling Units (as defined in the Regulatory Agreement) of the Project.
- (c) The costs specified in the Disbursement Schedule attached hereto, when added to all previous disbursements under the Loan, will result in at least ninety-five percent (95%) of the aggregate amount of all disbursements having been used to pay or reimburse the Borrower for amounts which are Qualified Project Costs (as defined in the Regulatory Agreement).
- (d) To the knowledge of the undersigned, there is no current or existing event of default pursuant to the terms of the Loan Agreement or the Regulatory Agreement and no event exists which by notice or passage of time or both would constitute an event of default under any of the foregoing documents.
- (e) No representation or warranty of the Borrower contained in the Loan Agreement or the Regulatory Agreement is materially incorrect or inaccurate, except as the Borrower has set

forth in writing, and there has been no event of default under the terms of any of those documents and which is continuing and no event shall exist which by notice, passage of time or both would constitute an event of default under any of those documents.

- (f) Each item for which payment or reimbursement is requested either is or was necessary in connection with the Project, qualifies as a Project Cost under the Loan Agreement and, if for the rehabilitation, renovation, construction and equipping of the Project, was made or incurred in accordance with the plans and specifications for the Project and none of such items has formed the basis for any previous payment from the Project Fund.
- (g) There is no outstanding indebtedness known, after due inquiry, for labor, wages, materials or supplies which, if unpaid, might become the basis of a vendor's lien, or a mechanics' materialmen's, statutory or other similar lien upon the Project or any part thereof, other than indebtedness then certified for payment or diligently being contested in good faith by the Borrower and that each contractor, subcontractor and materialman has filed with the Borrower receipts or waivers of liens for all amounts theretofore certified for payment, or any amount therein certified for reimbursement to the Borrower for payment, for work, materials and equipment furnished by him or that there is on file with the construction manager a cancelled check endorsed by the contractor, subcontractor or materialman evidencing such payment.

This statement constitutes the approval of the Borrower of the disbursement hereby requested and authorized.

FORT SNELLING LEASED HOUSING ASSOCIATES I, LLLP, a Minnesota limited liability limited partnership

By: Fort Snelling Leased Housing Associates I, LLC,
a Minnesota limited liability company
Its: General Partner

By: _____
Name: _____
Its: _____

DISBURSEMENT SCHEDULE

<u>PAYEE</u>	<u>AMOUNT</u>	<u>PURPOSE</u>
--------------	---------------	----------------

RC125-394 (JAE)
871941v2

Second Draft
May 27, 2023

INDENTURE OF TRUST

between

**HOUSING AND REDEVELOPMENT AUTHORITY
IN AND FOR THE
CITY OF RICHFIELD, MINNESOTA,
as Issuer**

and

**U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee**

Dated as of June 1, 2023

Relating to:

**\$10,000,000
Housing and Redevelopment Authority
in and for the
City of Richfield, Minnesota
Subordinate Multifamily Housing Revenue Bonds
(Fort Snelling Upper Post Project)
Series 2023**

This instrument was drafted by:
Kennedy & Graven, Chartered (JAE)
150 South Fifth Street, Suite 700
Minneapolis, MN 55402-1299

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INDENTURE OF TRUST

THIS INDENTURE OF TRUST, dated as of June 1, 2023 (the “Indenture”), is between the HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Issuer”), and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association, authorized to accept and execute trusts of the character herein set out, with a principal corporate trust office in Saint Paul, Minnesota (the “Trustee”). Capitalized terms used herein shall have the meanings provided in Section 1.1 hereof.

WITNESSETH

WHEREAS, Minnesota Statutes, Chapters 462C and 474A, as amended (the “Act”), authorize the Issuer to issue revenue obligations to finance the acquisition, construction, rehabilitation, and equipping of multifamily housing developments; and

WHEREAS, in accordance with Minnesota Statutes, Section 471.656, as amended, a municipality is authorized to issue obligations to finance the acquisition or improvement of property located outside of the corporate boundaries of such municipality if the obligations are issued under a joint powers agreement between the governmental unit issuing the obligations and the governmental unit in which the property to be acquired or improved is located; and

WHEREAS, pursuant to Minnesota Statutes, Section 471.59, as amended, by the terms of a joint powers agreement entered into through action of their governing bodies, two governmental units may jointly or cooperatively exercise any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised and the joint powers agreement may provide for the exercise of such powers by one or more of the participating governmental units on behalf of the other participating units; and

WHEREAS, on November 25, 2020, the Hennepin County Housing and Redevelopment Authority (the “County HRA”) issued its Multifamily Housing Revenue Note (Fort Snelling Upper Post Project), Series 2020 (the “Series 2020 Note”), in the original aggregate principal amount of \$88,000,000 and loaned the proceeds thereof to the Borrower to finance all or a portion of the costs of the leasehold acquisition, rehabilitation and/or construction, and equipping of an approximately 192-unit multifamily housing rental facility and facilities functionally related and subordinate thereto located at 58 Taylor Avenue, Unorganized Territory of Fort Snelling, Minnesota 55111, known as the Fort Snelling Upper Post Project (the “2020 Project”), of which at least forty percent (40%) of the units are available to individuals and families with incomes at or below (60%) of the area median income; and

WHEREAS, the Borrower has proposed to finance additional costs to complete the construction and/or rehabilitation of the 2020 Project (the “2023 Project”); and

WHEREAS, the Issuer has agreed to issue its Subordinate Multifamily Housing Revenue Bonds (Fort Snelling Upper Post Project), Series 2023 (the “Bonds”), in the original aggregate principal amount of \$10,000,000, pursuant to the Act, Minnesota Statutes, Sections 471.59 and 471.656, as amended (the “Joint Powers Act”), and a resolution adopted by the Board of Commissioners of the Issuer on June 5, 2023; and

WHEREAS, to satisfy the requirements of the Joint Powers Act, the Issuer and Hennepin County, Minnesota (the “County”) will enter into a Cooperative Agreement, dated as of June 1, 2023, pursuant to which the County will consent to the issuance of the Bonds by the Issuer to finance the 2023 Project; and

WHEREAS, as security for the payment of the Bonds, the Issuer has agreed to assign and pledge to the Trustee, among other things, all right, title and interest of the Issuer in and to the Loan Agreement (except the Unassigned Issuer’s Rights), including the Basic Payments; and

WHEREAS, as additional security for the Bonds, the Borrower has caused the Security Documents to be executed and delivered; and

WHEREAS, the Issuer, the Borrower, Fort Snelling Leased Housing Associates Master Tenant I, LLLP, a Minnesota limited liability limited partnership and the master tenant, and the Lender will enter into a Regulatory Agreement, dated the date of issuance of the Bonds, relating to the Borrower’s compliance with certain federal and state requirements applicable to the 2023 Project; and

WHEREAS, all things necessary to make the Bonds, when authenticated by the Trustee and issued as in this Indenture provided, valid, binding and legal limited obligations of the Issuer according to the import thereof, and to constitute this Indenture a valid contract for the security of the Bonds, have been done and performed; and the creation, execution and delivery of this Indenture, and the creation, execution and issuance of said Bonds, subject to the terms hereof, have in all respects been duly authorized; and

NOW THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, THIS INDENTURE WITNESSETH:

The Issuer, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the Holders thereof, in order to secure the payment of the principal of and interest and premium, if any, on the Bonds according to their tenor and effect and the performance and observance by the Issuer of all the covenants expressed or implied herein and in the Bonds, does hereby grant a security interest in, assign, transfer in trust, and pledge to the Trustee, and to its successors in trust, and to them and their assigns forever, the following:

FIRST

All rights, title, interest and privileges of the Issuer in, to and under the Loan Agreement, including but not limited to all sums which the Issuer is entitled to receive from the Borrower pursuant to the Loan Agreement and in particular the Basic Payments (but excluding the Unassigned Issuer’s Rights), and all other sums (including Bond proceeds) which are required to be deposited in the trust accounts in accordance with Article 5 hereof, except for the Rebate Fund which is not a part of the Trust Estate, and the earnings derived from the investment of any of the foregoing sums as provided herein; and

SECOND

Any and all other property of every name and nature which may from time to time hereafter by delivery or by writing of any kind be subjected to the lien hereof by the Issuer or by anyone on its behalf or with its written consent, including but not limited to the interests of the Issuer, if any, under the Collateral Documents (including without limitation the proceeds of the Assigned Capital Contributions), and the Trustee is hereby authorized to receive any and all such property at any and all times and to hold and apply the same as additional security hereunder subject to the terms hereof; and

THIRD

Any and all other property of every name and nature which may from time to time hereafter by delivery or by writing of any kind be subjected to the lien hereof by the Issuer or by anyone on its behalf or with its written consent, and the Trustee is hereby authorized to hold and apply the same as additional security hereunder subject to the terms hereof.

TO HAVE AND TO HOLD all the same (herein called the "Trust Estate") with all privileges and appurtenances hereby granted and assigned, or agreed or intended so to be, to the Trustee and its successors in trust and to them and their assigns forever;

SUBJECT TO the rights of the Borrower under the Loan Agreement;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of all Holders from time to time of the Bonds issued under and secured by this Indenture, without privilege, priority or distinction as to lien or otherwise of any of the Bonds over any of the others except as otherwise provided herein;

PROVIDED, HOWEVER, that if the Issuer, its successors or assigns, shall well and truly pay, or cause to be paid, or provide fully for payment as herein provided of the principal of the Bonds and the interest due or to become due thereon (together with premium, if any), at the time and in the manner set forth in the Bonds according to the true intent and meaning thereof, and shall make the payments into the Bond Fund as required under Article 5 hereof or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee sums sufficient for payment of the entire amount due or to become due thereon as herein provided, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then this Indenture and the rights hereby granted shall cease, terminate and be void except as otherwise provided herein; otherwise, this Indenture shall be and remain in full force and effect.

UNDER THE PROVISIONS OF THE ACT the Bonds may not be payable from or be a charge upon any funds of the Issuer other than the revenue pledged to the payment thereof nor shall the Issuer be subject to any pecuniary liability thereon and no Holder or Holders of the Bonds shall ever have the right to compel any exercise of the taxing power of the Issuer or the City to pay any Bonds or the interest and premium, if any, thereon, or to enforce payment thereof against any property of the Issuer or the City, except as above provided; the Bonds shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the Issuer or the City, except as above provided; and no Bond shall constitute a debt of the Issuer or the City within the meaning of any constitutional or statutory limitation, but nothing in the Act impairs the rights of the Holders of Bonds issued under this Indenture to enforce the covenants made for the security thereof as provided in this Indenture and in the Act, and by authority of the Act the Issuer and the Trustee mutually covenant and agree, to the extent specifically provided herein, for the equal and proportionate benefit of all Holders of the Bonds, as follows:

(The remainder of this page is intentionally left blank.)

ARTICLE 1

DEFINITIONS AND GENERAL PROVISIONS

Section 1.1. Definitions. In this Indenture the following terms have the following meanings unless the context hereof clearly requires otherwise, and any other terms defined in the Loan Agreement shall have the same meanings when used herein as assigned them in the Loan Agreement unless the context or use thereof indicates another or different meaning or intent:

Act: Minnesota Statutes, Chapters 462C and 474A, as amended.

Act of Bankruptcy: any of the following events:

(1) if the Borrower shall (a) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like, or of all or a substantial part of its property; (b) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect); or (c) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts; or

(2) a proceeding or case shall be commenced, without the application or consent of the Borrower, in any court of competent jurisdiction, and shall not be dismissed, vacated, or stayed within sixty (60) days after commencement, seeking (a) the liquidation, reorganization, dissolution, winding-up, or the composition or adjustment of its debts; (b) the appointment of a trustee, receiver, custodian, liquidator or the like of the Borrower, or of all or any substantial part of its assets; or (c) similar relief in respect of the Borrower under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts.

Additional Charges: the payments required by Section 4.4 of the Loan Agreement.

Affiliated Party: as to a particular Person, any Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. “Control”, when used with respect to a particular Person, means the possession, directly or indirectly, of the power to direct management and policies of such Person whether through the ownership of voting stock, by contract or otherwise, and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

Assigned Capital Contributions: (1) the fifth capital installment, which is in the expected amount of \$22,653,792, (2) the sixth capital installment, which is in the expected amount of \$24,025,743, and (3) the seventh capital installment, which is in the expected amount of \$11,603,256, of the equity contribution to be made by the Investor Limited Partner to the Borrower, pursuant to Section 3.2 of the Partnership Agreement, but only to the extent such installments are dedicated in the Partnership Agreement towards redemption or repayment of the then Outstanding Bonds in full, and subject to the conditions, terms and provisions of the Partnership Agreement.

Assignment of Partnership Interest and Capital Contributions: the Assignment of Partnership Interest and Capital Contributions, dated as of June 1, 2023, by the Borrower and the General Partner in favor of the Trustee, and acknowledged by the Investor Limited Partner, whereby the Borrower and the General Partner assign to the Trustee all right, title and interest of the General Partner in the Borrower, including all ownership and partnership rights of the General Partner as partner under the Partnership Agreement and all of the Borrower’s rights, now existing or hereafter arising, to receive the Assigned Borrower Capital Contributions under the Partnership Agreement.

Authorized Denominations: \$25,000 or any integral multiple of \$5,000 in excess thereof.

Basic Payments: the payments required by Section 4.2 of the Loan Agreement.

Beneficial Owner: the Person for which a DTC Participant holds an interest in the Bonds as shown on the books and records of the DTC Participant.

Bond Counsel: Kennedy & Graven, Chartered, and any other firm of nationally recognized bond counsel experienced in tax-exempt bond financing selected by the Issuer and acceptable to the Borrower.

Bond Fund: the Bond Fund so designated in Section 5.3 hereof from which the principal of and interest on the Series are payable.

Bondholder or Holder: a Person in whose name a Bond is registered in the Bond Register.

Bond Purchase Agreement: the Bond Purchase Agreement, dated June __, 2023, between the Issuer, the Borrower, and the Underwriter pursuant to which the Underwriter agrees to purchase the Bonds.

Bond Register: the register maintained by the Trustee pursuant to Section 2.9 hereof.

Bonds: the Subordinate Multifamily Housing Revenue Bonds (Fort Snelling Upper Post Project), Series 2023, issued by the Issuer on the Issue Date in the original aggregate principal amount of \$10,000,000.

Bond Year: any twelve (12) month period ending on the anniversary of the Issue Date.

Book-Entry Form or Book-Entry System: with respect to the Bonds, a form or system, as applicable, under which (1) physical Bond certificates in fully registered form are issued only to a Depository or its nominee, with the physical Bond certificates “immobilized” in the custody of the Depository; and (2) the ownership of book-entry interests in Bonds and payments thereon may be transferred only through a book entry made by Persons other than the Issuer or the Trustee. The records maintained by Persons other than the Issuer or the Trustee constitute the written record that identifies the owners, and records the transfer, of book-entry interests in the Bonds and payments thereon;

Borrower: Fort Snelling Leased Housing Associates I, LLLP, a Minnesota limited liability limited partnership, and its successors and assigns or other Person which may assume its obligations under the Loan Agreement.

Business Day: any day on which the Trustee or the Federal Reserve Bank of New York is not authorized by law to close.

Capitalized Interest Fund: the fund so designated in Section 5.4 hereof from which interest on the Bonds is payable.

Cede & Co.: initially, Cede & Co., as nominee of DTC, and any successor or subsequent such nominee designated by DTC respecting DTC’s functions as book-entry depository for any Bond or Bonds.

City: the City of Richfield, Minnesota, a home rule city and political subdivision organized and existing under its Charter and the Constitution and laws of the State.

Code: the Internal Revenue Code of 1986, as amended, and all applicable Treasury Regulations.

Collateral Documents: the Security Documents and any other written instrument other than the Loan Agreement and this Indenture, whereby any property or interest in property of any kind is granted, pledged, conveyed, assigned, or transferred to the Issuer or Trustee, or both, as security for payment of the Bonds or performance by the Borrower of its obligations under the Loan Agreement.

Completion Date: the date that the Borrower certifies the acquisition, rehabilitation, renovation, construction and equipping of the Project is complete pursuant to Section 3.6 of the Loan Agreement.

Condemnation or eminent domain: the taking or requisition by governmental authority or by a Person, acting under governmental authority and a conveyance made under threat of Condemnation, and “Condemnation award” shall refer to payment for property condemned or conveyed under threat of Condemnation.

Continuing Disclosure Agreement: the Continuing Disclosure Agreement, dated as of June 1, 2023, between the Borrower and the Dissemination Agent, as it may be amended from time to time.

County: Hennepin County, Minnesota.

County HRA: the Hennepin County Housing and Redevelopment Authority, a housing and redevelopment authority and political subdivision organized and existing under the Constitution and laws of the State, as the issuer of the Series 2020 Note.

Date of Loan Agreement: June 1, 2023.

Defaulted Interest: this term has the meaning stated in Section 2.2 hereof.

Depository: with respect to the Bonds, DTC, until a successor Depository shall have become such pursuant to the applicable provisions of this Indenture, and thereafter, Depository shall mean the successor Depository. Any Depository shall be a securities depository that is a clearing agency under federal law operating and maintaining, with its participants or otherwise, a Book-Entry System to record ownership of book-entry interests in the Bonds or payments thereon, and to effect transfers of book-entry interests in the Bonds.

Determination of Taxability: a determination that the interest income on any Bond is included in gross income for federal income tax purposes under Section 103 of the Code for any reason, other than that the Holder is a Substantial User of the Project or a Related Person thereto, which determination shall be deemed to have been made upon the occurrence of the first to occur of the following:

(1) the date on which any change in law or regulation becomes effective or on which the Internal Revenue Service has issued any private ruling, technical advice or any other written communication to the effect that the interest income on any of the Bonds is included in gross income for federal income tax purposes; or

(2) the date on which the Borrower shall receive notice from the Trustee or the Issuer in writing that the Trustee has been advised by any Holder that the Internal Revenue Service has issued a thirty (30) day letter or other notice which asserts that the interest on such Bond is included in gross income for federal income tax purposes;

Disbursement Request: the written request by the Borrower for the disbursement of moneys from the Project Fund in substantially the form attached as Exhibit B to the Loan Agreement.

Disbursing Agreement: the [Construction Loan Disbursement Agreement], dated the Issue Date, between the Trustee, the Borrower, the Title Company, and _____, as it may be amended from time to time.

Discharge Date: the date on which all Outstanding Bonds are discharged under Article 7 hereof.

Dissemination Agent: U.S. Bank Trust Company, National Association, a national banking association, its successors and assigns.

DTC: The Depository Trust Company, New York, New York, a limited purpose trust company organized under the laws of the State of New York, or any successor book-entry securities depository for the Bonds appointed pursuant to Section 2.13 hereof.

DTC Participants: those broker-dealers, banks and other financial institutions from time to time for which DTC holds bonds or securities as depository.

Event of Default: any of the events set forth in Section 8.1 hereof or Section 9.1 of the Loan Agreement.

Federal Bankruptcy Code: the United States Bankruptcy Reform Act of 1978, as amended, or any similar or succeeding federal bankruptcy law.

Final Maturity Date: the Stated Maturity, Discharge Date or Redemption Date on which all Outstanding Bonds either mature, are redeemed or discharged, whichever is earliest.

General Partner: Fort Snelling Leased Housing Associates I, LLC, a Minnesota limited liability company, its permitted successors and assigns.

Government Obligations: direct general obligations of, or obligations the prompt payment of the principal of and the interest on which are fully and unconditionally guaranteed by, the United States of America.

Guarantors: together, Dominion Holdings I, LLC, a Minnesota limited liability company, and Dominion Holdings II, LLC, a Minnesota limited liability company, their successors and assigns.

Guaranty: the Guaranty Agreement, dated as of June 1, 2023, by the Guarantors in favor of the Trustee, as it may be amended from time to time.

Holder or Bondholder: the Person in whose name a Bond is registered in the Bond Register.

Indenture: this Indenture of Trust, dated as of June 1, 2023, between the Issuer and the Trustee, as the same may from time to time be amended or supplemented as herein provided.

Independent: when used with reference to an attorney, engineer, architect, certified public accountant, consultant or other professional person, a person who (1) is in fact independent; (2) does not have any material financial interest in the Borrower or the transaction to which his, her, or their certificate or opinion relates (other than payment to be received for professional services rendered); and (3) is not connected with the Issuer or the Borrower as an officer, director or employee.

Independent Accountant: a certified public accountant or firm of certified public accountants registered and qualified to practice as such under the laws of the State, who does not have any direct financial interest in the Borrower, other than the payment to be received under contract for services performed and who is not connected with the Borrower as an officer, employee, underwriter, partner, affiliate, subsidiary, or person performing similar functions and is not a trustee or director of the Borrower.

Independent Counsel: any attorney duly admitted to practice law before the highest court of any state, who may be counsel to the Borrower or the Issuer but who may not be an officer or a full-time employee of the Borrower or the Issuer.

Independent Engineer: an Independent engineer or engineering firm or an Independent architect or architectural firm qualified to practice the profession of engineering or architecture under the laws of the State.

Initial Mandatory Tender Date: July 1, 2025.

Initial Remarketing Date: the Initial Mandatory Tender Date, but only if the conditions for the remarketing the Bonds on such date as provided in Section 3.8 hereof are satisfied.

Interest Payment Date: each January 1 and July 1, commencing January 1, 2024 and continuing until payment in full of the Bonds.

Investor Limited Partner: collectively, USB LIHTC Fund 2021-6, LLC, a Delaware limited liability company, USB LIHTC-NMTC Fund 2022-1, LLC, a Delaware limited liability company, and U.S. Bancorp Community Development Corporation, a Minnesota corporation.

Issuance Expenses: any and all costs and expenses relating to the issuance, sale and delivery of the Bonds incurred or payable by the Borrower, including but not limited to the Underwriter's discount, all fees and expenses of legal counsel, the Trustee, financial consultants, feasibility consultants and accountants, any fee to be paid to the Issuer, the preparation and printing of the Loan Agreement, this Indenture, the Disbursing Agreement, the Regulatory Agreement, the Cooperative Agreement, the Security Documents, any preliminary and final official statement or offering memorandum, the Bonds and all other related closing documents, the costs of rating the Bonds, and all other expenses relating to the issuance, sale and delivery of the Bonds and any other costs which are treated as "issuance costs" within the meaning of Section 147(g) of the Code.

Issue Date: June __, 2023, which is the date on which there is delivery by the Issuer of and payment by the Underwriter for the Bonds.

Issuer: the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of the State, its successors and assigns.

Issuer Documents: collectively, the Bonds, this Indenture, the Loan Agreement, the Regulatory Agreement, and the Cooperative Agreement.

Loan: the loan of Bond proceeds by the Issuer to the Borrower described in Section 4.1 of the Loan Agreement.

Loan Agreement: the Loan Agreement, dated as of June 1, 2023, between the Issuer and the Borrower, as the same may from time to time be amended or supplemented as provided therein and in this Indenture.

Local Time: Central time (daylight or standard, as applicable) in the City.

Mandatory Purchase Price: this term has the meaning provided in Section 3.7 hereof.

Mandatory Tender Date: the later of (a) the Initial Mandatory Tender Date; or (b) if the Bonds Outstanding on such date or on any subsequent Mandatory Tender Date are remarketed pursuant to Section 3.8 hereof for a Remarketing Period that does not extend to the final maturity of the Bonds, the day after the last day of the Remarketing Period.

Master Tenant: Fort Snelling Leased Housing Associates Master Tenant I, LLLP, a Minnesota limited liability limited partnership, its successors and assigns.

Maximum Interest Rate: the interest rate equal to the lesser of (a) eight percent (8%) per annum; or (b) the maximum interest rate per annum permitted by applicable State law.

Moody's: Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of New York, and its successors and assigns, and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a municipal securities rating agency, "Moody's" shall be deemed to refer to any other nationally recognized municipal securities rating agency designated by the Issuer (other than S&P).

Net Bond Proceeds: proceeds of the Bonds, including interest earnings thereon, less such proceeds of the Bonds, including interest earnings thereon, used to fund any reserve fund.

Net Proceeds: when used with respect to proceeds of insurance or a condemnation award, money received or receivable by the Borrower as owner or the Trustee as secured party of the Project, less the cost of recovery (including attorneys' fees) of such money from the insuring company or the condemning authority.

Net Revenues: the excess of revenues over expenses of the Borrower before depreciation, interest and amortization of financing expenses, as determined in accordance with generally accepted accounting principles; for purposes of the Loan Agreement, Net Revenues shall exclude (1) any items properly classified as extraordinary in accordance with generally accepted accounting principles; and (2) any gain arising from the sale or other disposition of any assets of the Borrower other than current assets.

Notice by Mail: notice of any action or condition by mail shall mean a written notice meeting the requirements of this Indenture mailed by first-class mail, postage prepaid, to the Holders of specified Bonds at the addresses shown in the Bond Register.

Original Purchaser: the Underwriter.

Outstanding: with respect to the Bonds issued under this Indenture, as of the date of determination, all Bonds theretofore issued and delivered under this Indenture except:

(1) Bonds theretofore cancelled by the Trustee or Paying Agent or delivered to the Trustee or Paying Agent cancelled or for cancellation;

(2) Bonds for which payment or redemption money or securities (as provided in Article 7 hereof) shall have been theretofore deposited with the Trustee in trust for the Holders of such Bonds; provided, however, that if such Bonds are to be redeemed, notice of such redemption shall have been duly given pursuant to this Indenture or irrevocable action shall have been taken to call such Bonds for redemption at a stated Redemption Date; and

(3) Bonds in exchange for or in lieu of which other Bonds shall have been issued and delivered pursuant to this Indenture;

provided, however, that in determining whether the Holders of the requisite principal amount of Outstanding Bonds have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Bonds owned by the Borrower shall be disregarded and deemed not to be Outstanding Bonds, except that in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, or waiver, only Bonds which the Trustee knows to be owned by the Borrower shall be disregarded.

Paying Agent: the Trustee or any other entity designated pursuant to this Indenture as the agent of the Issuer and the Trustee to receive and disburse the principal of and premium, if any, and interest on the Bonds.

Payment Date: any Interest Payment Date, any Stated Maturity, the Discharge Date or any Redemption Date.

Partnership Agreement: the Amended and Restated Agreement of Limited Liability Limited Partnership of Borrower, dated on or about the Issue Date, as amended, modified, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

Permitted Investments:

(1) Government Obligations;

(2) obligations of any of the following federal agencies which obligations represent full faith and credit of the United States of America, including:

- Export-Import Bank
- Farmers Home Administration
- General Services Administration
- U.S. Maritime Administration
- Small Business Administration
- Government National Mortgage Association (GNMA)
- U.S. Department of Housing & Urban Development (PHA's)
- Federal Housing Administration;

(3) bonds, notes or other evidences of indebtedness rated on the date of purchase "AAA" by S&P and "Aaa" by Moody's issued by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation with remaining maturities not exceeding three (3) years;

(4) U.S. dollar denominated deposit accounts, federal funds and banker's acceptances with domestic commercial banks which have a rating on their short-term certificates of deposit on the date of purchase of "A-1" or "A-1+" by S&P and "P-1" by Moody's and maturing no more than

three hundred sixty (360) days after the date of purchase (ratings on holding companies are not considered as the rating of the bank);

(5) commercial paper which is rated at the time of purchase in the single highest classification, “A-1+” by S&P and “P-1” by Moody’s and which matures not more than two hundred seventy (270) days after the date of purchase;

(6) investments in a money market fund rated on the date of purchase “AAAm” or “AAAm-G” or better by S&P; which fund invests primarily in Government Obligations;

(7) pre-refunded municipal obligations defined as follows: any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state which are not callable at the option of the obligor prior to maturity or as to which irrevocable instructions have been given by the obligor to call on the date specified in the notice; and

(a) which are rated on the date of purchase, based on an irrevocable escrow account or fund (the “escrow”), in the highest rating category of S&P and Moody’s; or

(b) (i) which are fully secured as to principal and interest and redemption premium, if any, by an escrow consisting only of cash or obligations described in clause (1) above, which escrow may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, and (ii) which escrow is sufficient, as verified by a nationally recognized independent certified public accountant, to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate;

(8) investment agreements issued by any financial institution maintaining a rating of “A” or better by S&P or “A2” or better by Moody’s; or

(9) fixed income securities issued by any state of the United States of America or any agency, instrumentality or political subdivision thereof which are rated on the date of purchase not less than “A” by S&P or “A2” by Moody’s.

Person: any natural person, corporation, limited liability company, joint venture, cooperative, partnership, trust or unincorporated organization, government or governmental body or agency, political subdivision or other legal entity, as in the context may be appropriate.

Pledge of Contractor Fee: the _____, dated [the Issue Date] [as of June 1, 2023], by _____ in favor of the Trustee, as it may be amended from time to time.

Pledge of Developer Fee: the _____, dated [the Issue Date] [as of June 1, 2023], by _____ in favor of the Trustee, as it may be amended from time to time.

Project: the approximately 192-unit multifamily rental housing development and functionally related facilities to be located at located at 58 Taylor Avenue, Unorganized Territory of Fort Snelling,

Minnesota 55111, known as the Fort Snelling Upper Post Project, the leasehold acquisition, construction and/or rehabilitation, and equipping of which will be financed, in part, with the proceeds of the Bonds. The leasehold acquisition, construction and/or rehabilitation, and equipping of the Project was also financed with the proceeds of the Series 2020 Note.

Project Costs: the cost items enumerated in Section 3.2 of the Loan Agreement.

Project Equipment: any and all (1) fixtures or tangible personal property now or hereafter attached or affixed to the Project; (2) other tangible personal property now or hereafter located within or used in connection with the Project; and (3) any additions to, replacements of and substitutions for any of the foregoing.

Project Fund: the fund so designated in Section 5.2 hereof.

Rating Agency: S&P or Moody's.

Rating Category: one (1) of the generic rating categories of a Rating Agency, without regard to any refinement or gradation of such Rating Category by a numerical or other modifier.

Rebate Amounts: the amount determined pursuant to Section 7.7(13) of the Loan Agreement to be rebated to the United States.

Rebate Consultant: this term has the meaning provided in 7.7(12) of the Loan Agreement.

Rebate Fund: the fund so designated in Section 5.5 hereof.

Record Date: the fifteenth day of the calendar month next preceding an Interest Payment Date, whether or not such day is a Business Day.

Redemption Date: when used with respect to any Bond to be redeemed, the date on which it is to be redeemed pursuant hereto.

Redemption Price: when used with respect to any Bond to be redeemed, the price at which it is to be redeemed pursuant hereto.

Regular Interest Payments: all interest payments on the Bonds, other than Special Interest Payments.

Regulatory Agreement: the Regulatory Agreement, dated the Issue Date, between the Issuer, the Borrower, the Master Tenant, and the Trustee, as the same may be amended from time to time.

Related Documents: collectively, the Loan Agreement, the Regulatory Agreement, the Cooperative Agreement, the Security Documents, the Disbursing Agreement, the Remarketing Agreement, the Bond Purchase Agreement, and the Continuing Disclosure Agreement.

Related Person: with reference to any Substantial User, a "related person" within the meaning of Section 147(a)(2) of the Code.

Remarketing Agent: Colliers Securities LLC, a Delaware limited liability company, or any successor remarketing agent named by the Borrower.

Remarketing Agent's Fee: the fee of the Remarketing Agent for its remarketing services.

Remarketing Agreement: the Remarketing Agreement, dated as of June 1, 2023, between the Borrower and the Remarketing Agent, as amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

Remarketing Date: the Initial Remarketing Date and, if the Bonds Outstanding on such date or on any subsequent Remarketing Date are remarketed pursuant to Section 3.8 hereof for a Remarketing Period that does not extend to the final maturity of the Bonds, the day after the last day of the Remarketing Period.

Remarketing Expenses: the costs and expenses incurred by the Trustee and its counsel, the Remarketing Agent and its counsel, the Issuer and its counsel, and Bond Counsel in connection with the remarketing of the Bonds, including bond printing and registration costs, costs of funds advanced by the Remarketing Agent, registration or filing fees, and other costs and expenses incurred in connection with or properly attributable to the remarketing of the Bonds as certified to the Trustee by the Remarketing Agent in writing.

Remarketing Notice Parties: collectively, the Borrower, the Issuer, the Trustee, the Remarketing Agent, and the Investor Limited Partner.

Remarketing Period: the period beginning on a Remarketing Date and ending on the last day of the term for which Bonds are remarketed pursuant to Section 3.8 hereof or the Final Maturity Date of the Bonds, as applicable.

Remarketing Rate: the interest rate or rates established pursuant to Section 3.9 hereof and borne by the Bonds then Outstanding from and including each Remarketing Date to, but not including, the next succeeding Remarketing Date or the Final Maturity Date of the Bonds, as applicable.

Representation Letter: such Letter of Representations to DTC or other documentation required by DTC as a condition to its acting as book-entry depository for any bond or bonds together with any replacement thereof or amendment or supplement thereto (and including any standard procedures or policies referenced therein or applicable thereto) respecting the procedures and other matters relating to DTC's role as book-entry depository for the Bonds.

Representative: the Chair or the Executive Director of the Officer and any other officer of the Issuer or an officer of the general partner of the Borrower, or any other person at any time designated to act on behalf of the Issuer or the Borrower, as the case may be, as evidenced by a written certificate furnished to the other party and the Trustee containing the specimen signature of such person and signed for the Issuer by its Chair or Executive Director or for the Borrower by an officer of the general partner of the Borrower.

Responsible Agent: any Person duly authorized and designated by the Trustee to act on its behalf in carrying out the applicable duties and powers of the Trustee as set forth in this Indenture (any action required by the Trustee under this Indenture may be taken by a Responsible Agent).

Responsible Officer: when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

Restricted Project Funds: any Bond proceeds, including interest thereon, which are required to be transferred on the Completion Date from the Project Fund to the Bond Fund and which the Trustee is required under Section 5.3(2) hereof to apply towards the prepayment or pro rata payment of Bonds.

Security Documents: collectively, the Assignment of Partnership Interest and Capital Contributions, the Guaranty, the Pledge of Developer Fee, and the Pledge of Contractor Fee.

Series 2020 Note: the Multifamily Housing Revenue Note (Fort Snelling Upper Post Project), Series 2020, issued by the County HRA on November 25, 2020, in the original aggregate principal amount of \$88,000,000.

Single Purpose Entity: a Person, other than an individual, which is formed or organized solely for the purpose of directly holding an ownership interest in the Project, does not engage in any business unrelated to the Project, does not have any assets other than those related to its interest in such Project, has its own separate books and records and has its own accounts, in each case which are separate and apart from the books and records and accounts of any other Person, and holds itself out as being a Person, separate and apart from any other Person. In addition to the foregoing, with respect to the Borrower, a Single-Purpose Entity shall also be as follows:

(1) a Person which is and at all times since its formation has been (a) a duly formed and existing Person which is either not treated as a taxpayer under the tax laws of any governmental authority or (i) treated as a taxpayer under any tax law of any governmental authority and (ii) has tax liability which is adequately provided for; and (b) duly qualified as a foreign Person in each jurisdiction in which such qualification was or may be necessary for the conduct of its business;

(2) a Person which is in compliance with, and at all times since its formation has complied with, the provisions of its organizational documents and the laws of its jurisdiction of formation;

(3) a Person which has at all times since its formation observed all customary formalities regarding its existence;

(4) a Person which (a) has at all times since its formation accurately maintained its financial statements, accounting records and other books and records separate from those of any Person; (b) has not at any time since its formation commingled its assets with those of any Person; and (c) has at all times since its formation accurately maintained its own bank accounts, payroll and separate books of account;

(5) a Person which has at all times since its formation paid its own liabilities from its own separate assets;

(6) a Person which (a) has at all times since its formation identified itself in all dealings with the public, under its own name or under any “doing business as” name (provided such “doing business as” name is used exclusively by such Person) and as a separate and distinct entity; (b) has not at any time since its formation identified itself as being a division or a part of any other entity; and (c) has not at any time since its formation identified any other Person as being a division or part of such Person;

(7) a Person which has been at all times since its formation adequately capitalized in light of the nature of its business;

(8) a Person which, except with respect to obligations and liabilities set forth in the Loan Agreement and in the Collateral Documents, and except with respect to the Series 2020 Note, has not at any time since its formation incurred, assumed or guaranteed any indebtedness (contingent or otherwise) or the liabilities of any Person or has not at any time since its formation acquired obligations or securities of any Person or has not at any time since its formation made loans or advances to any Person; and

(9) a Person which has not at any time since its formation entered into and was not a party to any transaction with any affiliate, except in the ordinary course of business of such Person on terms which are no less favorable to such Person than would be obtained in a comparable arm's-length transaction with an unrelated third party.

SLGS: United States Treasury Certificates of Indebtedness, Notes and Bonds State and Local Government Series.

S&P: S&P Global Ratings, a division of the McGraw Hill Companies, and its successors and their assigns, and if such entity shall be dissolved or liquidated or shall no longer perform the functions of a municipal securities rating agency, "S&P" shall be deemed to refer to any other nationally recognized municipal securities rating agency designated by the Issuer (other than Moody's).

Special Interest Payments: all payments of (or with respect to) interest on the Bonds made upon the acceleration of the Bonds pursuant to Section 8.2 hereof.

Special Record Date: the date fixed by the Trustee pursuant to Section 2.2 hereof relating to the payment of any Defaulted Interest.

State: the State of Minnesota.

Stated Maturity: when used with respect to any Bond or any installment of interest thereon, the date specified in such Bond as the fixed date on which principal of such Bond or such installment of interest is due and payable.

Substantial User: a "Substantial User" within the meaning of Section 147(a)(1) of the Code.

Tax Certificate: the Tax Certificate of the Borrower executed by the Borrower on the Issue Date, including the endorsement of the Issuer.

Term of Loan Agreement: the period of time commencing on the Date of Loan Agreement and terminating on the date set forth in Section 10.10 of the Loan Agreement or such earlier date as provided by Section 7.8 or 8.2 of the Loan Agreement, whichever date occurs sooner.

Title Company: Commercial Partners Title, LLC, a Minnesota limited liability company.

Trustee: U.S. Bank Trust Company, National Association, a national banking association, and any co-trustee or successor trustee appointed, qualified and then acting as such under the provisions of this Indenture.

Trust Estate: the Trust Estate as defined and set forth in the Granting Clauses hereof.

2020 Project: the portion of the Project financed with the proceeds of the Series 2020 Note.

2023 Project: the portion of the Project financed with the proceeds of the Bonds.

Unassigned Issuer's Rights: all of the rights of the Issuer to receive Additional Charges under Section 4.4 of the Loan Agreement, the payment of costs and fees under Sections 3.2 and 10.13 of the Loan Agreement, to be held harmless and indemnified under Sections 7.4 and 10.8 of the Loan Agreement, to be an insured under Section 5.6 of the Loan Agreement, to be reimbursed for attorneys' fees and expenses under Sections 9.5 and 10.11 of the Loan Agreement, to receive notices pursuant to Section 10.2 of the Loan Agreement, to give or withhold consent to amendments, changes, modifications, alterations and termination of the Loan Agreement under Section 10.5 of the Loan Agreement, to enforce compliance with the requirements under Section 2.3 of the Loan Agreement, and to release under Section 10.12 of the Loan Agreement.

Underwriter: Colliers Securities LLC, a Delaware limited liability company.

Unpaid Bonds: all Outstanding Bonds and any other Bonds which have neither matured nor been redeemed or purchased and cancelled under this Indenture.

Working Capital Expense: any cost that is not properly chargeable to the Project's capital account within the meaning of the Code.

Section 1.2. Rules of Interpretation. This Indenture shall be interpreted in accordance with and governed by the laws of the State.

The words "herein" and "hereof" and "hereunder" and words of similar import, without reference to any particular section or subdivision, refer to this Indenture as a whole rather than to any particular section or subdivision of this Indenture.

References in this Indenture to any particular article, section or subdivision hereof are to the designated article, section or subdivision of this Indenture as originally executed.

All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles; and all computations provided for herein shall be made in accordance with generally accepted accounting principles consistently applied and applied on the same basis as in prior years.

The Table of Contents and titles of articles and sections herein are for convenience only and are not a part of this Indenture.

Unless the context hereof clearly requires otherwise, the singular shall include the plural and vice versa and the masculine shall include the feminine and vice versa.

Articles, sections, subsections and clauses mentioned by number only are those so numbered which are contained in this Indenture.

For purposes of this Indenture and the Loan Agreement, an Act of Bankruptcy shall be deemed no longer pending if either (1) the petition is dismissed by order of a court of competent jurisdiction and no further appeal rights exist from such order or (2) the Borrower notifies the Trustee that such a dismissal has occurred.

Any opinion of counsel called for herein shall be a written opinion of such counsel.

References to the Bonds as “tax exempt” or to the “tax-exempt status of the Bonds” are to the exclusion of interest from gross income pursuant to Section 103(a) of the Code, irrespective of such forms of taxation as the alternative minimum tax or branch profits tax on foreign corporations, as is consistent with the approach taken in Section 59(i) of the Code.

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ARTICLE 2
THE BONDS

Section 2.1. Authorized Amount and Form of Bonds. Bonds secured by this Indenture shall be issued in fully registered form, without coupons, in any Authorized Denominations, in substantially the form set forth in EXHIBIT A attached hereto with such appropriate variations, omissions and insertions as are permitted or required by this Indenture, and in accordance with the further provisions of this Article 2. The total principal amount of the Bonds that may be Outstanding hereunder is expressly limited to \$10,000,000. No additional bonds may be issued hereunder.

Section 2.2. Initial Issue. The Bonds to be issued and secured under this Indenture shall be designated the “Subordinate Multifamily Housing Revenue Bonds (Fort Snelling Upper Post Project), Series 2023” and shall:

- (1) be dated as of their date of original issuance;
- (2) be issued and delivered to the designated office of the Trustee for the account of the Original Purchaser as fully registered bonds without coupons in any Authorized Denomination and shall be numbered R-1 upward;
- (3) be initially issued in the original aggregate principal amount of \$10,000,000 and, subject to the provisions of Sections 3.1 and 3.7 hereof, mature in the principal amount and bear interest as provided below until paid or discharged as herein provided, with interest computed on the basis of a three hundred sixty (360) day year composed of twelve (12) thirty (30) day months;

<u>Stated Maturity</u> <u>(January 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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* Subject to mandatory tender on the Mandatory Tender Date.

** Interest rate on the Bonds from the Issue Date to but not including the Initial Mandatory Tender Date.

(4) bear interest payable semiannually on each Interest Payment Date and continuing until payment in full of the Bonds;

(5) be subject to redemption upon the terms and conditions and at the prices specified in Article 3 hereof;

(6) be payable in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts, at the principal trust office of the Trustee acting as the Paying Agent, or a duly appointed successor Paying Agent, except that interest on the Bonds will be payable by check or draft mailed by the Trustee to the Record Date Holders (as defined in the Bond) at the last addresses thereof as shown in the Bond Register on the applicable Record Date, and principal of and any premium on any Bonds shall be payable at the principal office of the Trustee; provided that any interest on any Bond which is payable but which is not punctually paid or duly provided ("Defaulted Interest") shall be payable, on a date selected by the Trustee, to the Person in whose name such Bond is registered in the Bond Register at the close of business on a Special Record Date selected by the Trustee and which shall be at least ten (10) days but not more than thirty (30) days before the date selected by the Trustee for payment of such Defaulted Interest. The Trustee shall give Notice by Mail of the Special Record Date and date for payment of Defaulted Interest at least ten (10) days before the Special Record Date; and

(7) notwithstanding the foregoing, if the date for payment of the principal of, premium, if any, or interest on any Bond shall be a day which is not a Business Day, then the date for such payment shall be the next succeeding day which is a Business Day, and payment on such later date shall have the same force and effect as if made on the nominal date of payment.

Notwithstanding the foregoing, any Record Holder of at least \$1,000,000 in principal amount of the Outstanding Bonds may file with the Trustee an instrument satisfactory to the Trustee requesting the interest payable by the Trustee to such Holder be paid by transferring by wire transfer in immediately available funds, on the day such payment is due, the amount to be distributed to such Holder to a designated account maintained by such Holder at any bank in the United States. The Trustee shall pay all amounts payable by the Trustee hereunder to such Holder by transfer directly to said designated bank in accordance with the provisions of any such instrument, provided that if such amount represents a payment of the principal of any Bond, such Bond shall have been presented to the Trustee. All payments so made shall be valid and effectual to satisfy and discharge the liability upon such Bonds.

Notwithstanding the foregoing, the Bonds issued under this Indenture are subject to the procedures of DTC.

Section 2.3. Execution. The Bonds shall be executed on behalf of the Issuer by the signatures of the officers of the Issuer designated to sign the Bonds in a resolution of the Issuer and be sealed with the seal of the Issuer; provided, however, that the seal of the Issuer may be a printed facsimile or may be omitted; provided further that all of such signatures may be printed or photocopied facsimiles, in which event the Bonds shall also be executed manually by the Trustee as authenticating agent as provided in Section 2.4 hereof and Minnesota Statutes, Section 475.55, as amended. In the event of disability or resignation or other absence of either such officer, the Bonds may be signed by the manual or facsimile signature of that officer who may act on behalf of such absent or disabled officer. In case either such officer whose signature or facsimile of whose signature shall appear on the Bonds shall cease to be such officer before the delivery of the Bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery. The Bonds may be issued and delivered as typewritten bonds or as printed bonds, provided that if the typewritten bonds are delivered, the facsimile signatures of the Issuer may be conformed signatures.

Section 2.4. Authentication. No Bond shall be valid or obligatory for any purpose or be entitled to any security or benefit under this Indenture unless a Certificate of Authentication on such Bond, substantially in the form set forth in EXHIBIT A attached hereto, shall have been duly executed manually by a Responsible Agent. Certificates of Authentication on different Bonds need not be signed by the same person. The Trustee shall authenticate the signatures of officers of the Issuer on each Bond by execution

of the Certificate of Authentication on the Bond; and the executed Certificate of Authentication on each Bond shall be conclusive evidence that it has been authenticated and delivered under this Indenture.

Section 2.5. Delivery of Initial Issue. Upon the execution and delivery of this Indenture the Issuer shall execute and deliver to the Trustee, and the Trustee shall authenticate, or cause the authentication of, the Bonds in the original aggregate principal amount of \$10,000,000. The Trustee shall deliver the Bonds to the Original Purchaser as hereinafter provided after filing with the Trustee the following:

(1) original executed counterparts of the Loan Agreement, Regulatory Agreement, the Cooperative Agreement, the Disbursing Agreement, the Security Documents, and this Indenture;

(2) a copy, duly certified by the Issuer's appropriate recording officer, of the resolutions adopted and approved by the governing body of the Issuer, authorizing the execution and delivery of this Indenture and the documents described in subsection (1) above;

(3) a request and authorization (which may be part of a certificate of the Issuer) to the Trustee on behalf of the Issuer, signed by the officers of the Issuer designated to sign the Bonds in a resolution of the Issuer, to deliver the Bonds to the Original Purchaser therein identified upon payment to the Trustee for the account of the Issuer of a specified sum plus accrued interest;

(4) the opinion of the Borrower's counsel in the form required by Bond Counsel and counsel to the Original Purchaser;

(5) the opinion of Bond Counsel approving the legality of the Bonds issued pursuant to this Indenture and the tax-exempt status of the Bonds;

(6) any other documents or opinions as Bond Counsel may require for purposes of rendering its opinion required under subsection (5) above; and

(7) payment to the Trustee, for the account of the Issuer, of the purchase price of the Bonds.

Section 2.6. Mutilated, Lost, Stolen or Destroyed Bonds.

(1) In case any Bond issued hereunder shall become mutilated or be destroyed or lost, the Issuer shall, if not then prohibited by law, cause to be executed, and the Trustee shall authenticate and deliver, a new Bond of like series, amount, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Bond, or in lieu of and in substitution for any such Bond destroyed or lost, upon the Holder's paying the reasonable expenses and charges of the Trustee and Issuer and, in the case of a Bond destroyed or lost, the filing with the Trustee evidence satisfactory to the Trustee that such Bond was destroyed or lost, and of the ownership thereof, and furnishing the Issuer and the Trustee with indemnity satisfactory to them. If the mutilated, destroyed or lost Bond has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue a new Bond prior to payment.

(2) In executing a new Bond and in furnishing the Trustee with the written authorization to authenticate and deliver a new Bond as provided for in this Section, the Issuer may rely conclusively on a representation of the Trustee that the Trustee is satisfied with the adequacy of the evidence presented concerning the mutilation, loss, theft or destruction of any Bond.

Section 2.7. Ownership of Bonds. The Issuer, Trustee and Paying Agent may deem and treat the Holder of any Bond, whether or not such Bond shall be overdue, as the absolute owner of such Bond for the purpose of receiving payment thereof and for all other purposes whatsoever, and the Issuer (or any agent thereof), the Trustee and the Paying Agent shall not be affected by any notice to the contrary.

Section 2.8. Preparation of Bonds. The Bonds shall be printed or typewritten bonds substantially in the form attached hereto as EXHIBIT A.

Section 2.9. Registration, Transfer and Exchange of Bonds.

(1) The Trustee will cause to be kept at the principal corporate trust office of the Trustee a Bond Register in which, subject to such reasonable regulations as the Trustee may prescribe, the Issuer shall provide for the registration of Bonds and the registration of transfers of Bonds; and the Trustee is hereby appointed “Bond Registrar” for the purpose of registering the Bonds and transfers of the Bonds as herein provided. The Bond Register shall contain a record of every Bond at any time authenticated hereunder, together with the name and address of the Holder thereof, the date of authentication, the date of transfer or payment, and such other matters as are appropriate for the Bond Register in the estimation of the Trustee.

(2) Upon surrender for transfer of any Bond at the principal corporate trust office of the Trustee, the Issuer shall execute (if necessary), and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees (but not registered in blank or to “bearer” or a similar designation), one (1) or more new Bonds of any Authorized Denomination, having the same Stated Maturity and interest rate, as requested by the transferor. The execution by the Issuer of any Bond of any denomination shall constitute full and due authorization of such denomination and the Trustee shall thereby be authorized to authenticate and deliver such Bond.

(3) At the option of the Holder, Bonds may be exchanged for other Bonds of the same series of any Authorized Denomination of a like aggregate principal amount and Stated Maturity, upon surrender of the Bonds to be exchanged at the principal corporate trust office of the Trustee, and upon payment, if the Issuer shall so require, of the taxes, if any, hereinafter referred to. Whenever any Bonds are so surrendered for exchange, the Issuer shall execute, and the Trustee shall authenticate and deliver, the Bonds which the Holder making the exchange is entitled to receive.

(4) All Bonds surrendered upon any exchange or transfer provided for in this Indenture shall be promptly cancelled by the Trustee and thereafter disposed of in accordance with the Trustee’s policies and procedures.

(5) All Bonds delivered in exchange for or upon transfer of Bonds shall be valid special, limited obligations of the Issuer evidencing the same debt, and entitled to the same benefits under this Indenture, as the Bonds surrendered for such exchange or transfer.

(6) Transfer of a Bond may be made on the Issuer’s books by the registered owner in person or by the registered owner’s attorney duly authorized in writing. Every Bond presented or surrendered for transfer or exchange shall (if so required by the Issuer or the Trustee) be duly endorsed or be accompanied by a written instrument or instruments of transfer, in the form printed on the Bond or in another form satisfactory to the Trustee, duly executed and with guaranty of signature of the Holder thereof or his attorney duly authorized in writing and shall include written instructions as to the details of the transfer of the Bond.

(7) No service charge shall be made to the Holder for any registration, transfer or exchange, but the Trustee may require payment of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in connection with any transfer or exchange of Bonds, other than exchanges expressly provided in this Indenture to be made without expense or without charge to Bondholders.

(8) Subject to the provisions of subsection (9) below, the Trustee as Bond Registrar shall endeavor to comply with rules applicable to transfer agents registered with the Securities and Exchange Commission as to the seventy-two (72) hour “turnaround” standard established for the transfer of registered corporate securities.

(9) The Trustee shall not be required (a) to transfer or exchange any Bond during a period beginning at the opening of business ten (10) days before the day of the first publication or the mailing (if there is no publication) of a notice of redemption of Bonds under this Indenture and ending at the close of business on the day of such publication or mailing; or (b) to transfer or exchange any Bond so selected for redemption in whole or in part.

(10) The Bond Registrar shall insert in each Bond the date of registration which, for purposes of delivering the original Bonds to the Original Purchaser, shall be the date of original issue, and which for all other events shall be the last Interest Payment Date preceding the date of authentication to which interest on the Bond has been paid or made available for payment, unless the date of authentication is an interest payment date to which interest has been paid or made available for payment, in which case the Bond shall be dated as of the date of authentication. Each Bond shall be so dated that neither gain nor loss in interest shall result from any transfers, exchange or substitution provided for herein.

(11) Notwithstanding the foregoing, transfers are subject to the requirements of DTC while the Bonds are held in Book-Entry Form. Neither the Trustee nor any agent shall have any responsibility or liability for any actions taken or not taken by DTC.

Section 2.10. Interest Rights Preserved. Each Bond delivered upon transfer of or in exchange for or in lieu of any other Bond shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by such other Bond.

Section 2.11. Cancellation of Bonds. Whenever any Outstanding Bond shall be delivered to the Trustee for cancellation pursuant to this Indenture, upon payment of the principal amount and interest represented thereby or for replacement pursuant to Section 2.6 hereof or transfer pursuant to Section 2.9 hereof, such Bond shall be cancelled and, subject to the Trustee’s business practices, destroyed by the Trustee.

Section 2.12. Book-Entry System. Upon request of a Holder any Bond may be registered in the Bond Register in the name of Cede & Co., as the nominee of DTC, who will thereafter act as securities depository for such Bond or Bonds.

With respect to Bonds registered in the Bond Register in the name of Cede & Co., as nominee of DTC, none of the Issuer, the Borrower or the Trustee shall have any responsibility or obligation to any DTC Participant or to any Beneficial Owner. Without limiting the immediately preceding sentence, none of the Issuer, the Borrower or the Trustee shall have any responsibility or obligation with respect to (1) the accuracy of the records of DTC, Cede & Co., or any DTC Participant with respect to any ownership interest in the Bonds; (2) the delivery to any DTC Participant, any Beneficial Owner or any other Person, other than DTC, of any notice with respect to the Bonds, including any notice of redemption; (3) the payment to any

DTC Participant, any Beneficial Owner or any other Person, other than DTC, of any amount with respect to the principal of or premium, if any, or interest on the Bonds; or (4) the failure of DTC to provide any information or notification on behalf of any DTC Participant or Beneficial Owner.

The Issuer, the Borrower and the Trustee may treat as and deem DTC to be the absolute owner of each Bond for the purpose of payment of the principal of and premium and interest on such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers with respect to such Bonds, and for all other purposes whatsoever (except for the giving of certain Bondholder consents). The Trustee shall pay all principal of and premium, if any, and interest on the Bonds to the Bondholders as shown on the Bond Register, and all such payments shall be valid and effective to fully satisfy and discharge the Issuer's obligations with respect to the principal of and premium, if any, and interest on the Bonds to the extent of the sum or sums so paid.

Upon delivery by DTC to the Trustee of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., and subject to the transfer provisions in Section 2.9 hereof, references to "Cede & Co." in this Section shall refer to such new nominee of DTC.

Replacement Bonds may be issued directly to the Beneficial Owners of the Bonds other than a Depository, or its nominee, but only in the event that (a) the Depository determines not to continue to act as securities depository for the Bonds (which determination shall become effective no less than ninety (90) days after written notice to such effect to the Issuer and the Trustee); (b) the Trustee has, at the direction of the Borrower, advised a Depository of its determination (which determination is conclusive as to the Depository and Beneficial Owners of the Bonds) that the Depository is incapable of discharging its duties as securities depository for the Bonds; or (c) the majority of the Holders of the Bonds have determined (which determination is conclusive as to the Depository and the Beneficial Owners of the Bonds) that the interests of the Beneficial Owners of the Bonds might be adversely affected if such book-entry only system of transfer is continued. Upon occurrence of any of the foregoing events, the Borrower shall use commercially reasonable efforts to attempt to locate another qualified securities depository. If the Borrower fails to locate another qualified securities depository to replace the Depository, the Trustee and the Issuer, at the Borrower's expense, shall cause to be authenticated and delivered replacement Bonds, in certificate form, to the Beneficial Owners of the Bonds. In the event that the determination noted in clause (b) or (c) above is made (provided that the Trustee undertakes no obligation to make any investigation to determine the occurrence of any events that would permit the Trustee to make any such determination), and has made directed the Trustee in writing to notify the Beneficial Owners of the Bonds of such determination by mailing an appropriate notice to the Depository, the Trustee and the Issuer shall cause to be issued replacement Bonds in certificate form to Beneficial Owners of the Bonds as shown on the records of the Depository provided to the Trustee and the Issuer.

Upon the written consent of one hundred percent (100%) of the Beneficial Owners of the Bonds, the Trustee shall withdraw the Bonds from any Depository and authenticate and deliver Bonds fully registered to the assignees of that Depository or its nominee. If the request for withdrawal is not the result of any Issuer, Borrower or Trustee action or inaction, such withdrawal, authentication and delivery shall be at the cost and expense (including costs of printing, preparing and delivering such Bonds) of the persons requesting such withdrawal, authentication and delivery; otherwise such withdrawal, authentication and delivery shall be at the cost and expense of the Borrower.

Whenever, during the term of the Bonds, the beneficial ownership thereof is determined by a book entry at a Depository, (i) the requirements in this Indenture of holding, delivering or transferring Bonds shall be deemed modified to require the appropriate Person or entity to meet the requirements of the Depository as to registering or transferring the book entry to produce the same effect; and (ii) delivery of

the Bonds will be in accordance with arrangements among the Issuer, the Trustee and the Depository notwithstanding any provision of this Indenture to the contrary.

The Issuer shall enter into any letter of representation with a Depository to implement the Book-Entry System of bond registration described above.

Neither the Trustee nor any of its agents shall have any responsibility or liability for any actions taken or not taken by DTC.

Section 2.13. Termination of Book-Entry Only System. DTC may determine to discontinue providing its services with respect to any Bonds registered in the name of Cede & Co. at any time by giving written notice to the Trustee and discharging its responsibilities with respect thereto under applicable law. Upon the termination of the services of DTC as provided above, the Bonds may be registered in whatever name or names the Bondholders shall designate at that time, in accordance with Section 2.9 hereof. To the extent that the Beneficial Owners are designated as the transferee by the Bondholders, in accordance with Section 2.9 hereof, the Bonds will be delivered in appropriate form, content and Authorized Denomination to the Beneficial Owners.

So long as any Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to the principal of and premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, to DTC as provided in the Representation Letter.

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ARTICLE 3

REDEMPTION AND REMARKETING OF BONDS BEFORE MATURITY

Section 3.1. Redemption Provisions. The Bonds are subject to redemption and prepayment as follows:

(1) Optional Prepayment. Subject to subsection (4) below, the Bonds are subject to redemption and prepayment upon request by the Borrower to the Trustee on any Business Day, on or after July 1, 2024, in whole or in part, in principal increments of \$25,000, or any integral amount of \$5,000, and by lot within any Stated Maturity, at a Redemption Price equal to the principal amount thereof, without premium, plus accrued interest thereon to the date fixed for redemption.

(2) Redemption from Money Remaining in Project Fund. The Bonds are subject to mandatory redemption in part at a Redemption Price equal to the principal amount thereof, without premium, plus accrued interest thereon to the date fixed for redemption, on the earliest practicable date for which notice can be given pursuant to Section 3.3 hereof, to the extent of money remaining on deposit in the Project Fund that is transferred to the Bond Fund upon completion of the Project and payment of all costs of the Project as provided in Section 5.2(2) hereof.

(3) Mandatory Redemption from Certain Money. The Bonds are subject to mandatory redemption in part, at a Redemption Price equal to the principal amount thereof, without premium, plus accrued interest thereon to the date fixed for redemption, on the earliest practicable date for which notice can be given pursuant to Section 3.3 hereof, from the proceeds of the Assigned Capital Contributions, redemption of the Bonds in part to occur upon each receipt by the Borrower or its designee and deposit with the Trustee in accordance with Section 4.2(1)(c) of the Loan Agreement. If the mandatory redemption pursuant to this subsection (3) occurs resulting in the redemption of all Outstanding Bonds, remaining money on deposit in the Capitalized Interest Fund will be used to pay first the portion of the Redemption Price attributable to accrued interest on the Outstanding Bonds, and second the portion of the Redemption Price attributable to principal of the Outstanding Bonds.

(4) No Redemption Prior to Placed in Service Date. Notwithstanding anything to the contrary contained herein, the Bonds shall not be redeemed prior to the date upon which the Borrower has advised the Trustee in writing that the Project has been placed in service for purposes of Section 42 of the Code.

Section 3.2. Partial Redemption of Bonds. In the case of any partial redemption of Bonds of the same maturity pursuant to any provision of this Indenture, the particular Bonds or portions thereof to be redeemed shall be selected by the Trustee by lot. Notwithstanding the foregoing, DTC shall select the Bonds with respect to any Bonds registered in the name of Cede & Co. for redemption within particular maturities according to its stated procedures. In the case of any partial redemption of a Bond in a denomination greater than \$5,000 then for all purposes in connection with such redemption, the first \$5,000 of face value of such Bond shall be treated as though it were a separate Bond in the denomination of \$5,000 and each remaining \$5,000 of face value of such Bond shall be treated as though it were a separate Bond in the denomination of \$5,000, and such Bond shall be redeemed only in a principal amount sufficient to redeem one or more of such separate Bonds in full and so long as no Bond is Outstanding in an amount less than \$25,000. Any Bond which is to be redeemed only in part shall be surrendered to the Trustee (1) for payment of the Redemption Price (including accrued interest thereon to the Redemption Date) of the portion thereof called for redemption and (2) for exchange for Bonds in any Authorized Denomination in aggregate

principal amount equal to the unredeemed portion of such Bond without charge therefor. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Bonds shall relate, in the case of any Bond redeemed or to be redeemed only in part, to the portion of the principal of such Bond which has been or is to be redeemed.

Section 3.3. Procedure for Redemption.

(1) Notice of the intended redemption of any Bonds shall be given by the Trustee not less than twenty (20) nor more than sixty (60) days prior to the date fixed for redemption by first-class mail, postage prepaid, to the registered owner of each Bond to be redeemed (with a copy to the Remarketing Agent), at the address of such owner shown on the Bond Register; and a second notice of redemption shall be sent by first-class mail, postage prepaid at such address to the registered owner of any Bond who has not submitted his Bond to the Trustee for payment on or before the date sixty (60) days following the date fixed for redemption of such Bond in each case stating:

- (a) the complete official caption of which the Bonds being redeemed are a part;
- (b) the date of mailing of the notice of redemption;
- (c) the date fixed for redemption;
- (d) the redemption price or prices;
- (e) with respect to the redemption of the Bonds in part, the numbers of the Bonds to be redeemed, by giving the individual certificate number of each Bond to be redeemed (or stating that all Bonds between two stated certificate numbers, both inclusive, are to be redeemed or that all of the Bonds of one or more maturities have been called for redemption);
- (f) the CUSIP numbers of all Bonds being redeemed (provided that such notice may contain a disclaimer as to the accuracy of the CUSIP numbers);
- (g) in the case of a partial redemption of Bonds, the principal amount and Stated Maturity of each Bond being redeemed;
- (h) the date of issue of the Bonds as originally issued;
- (i) the rate or rates of interest borne by each Bond being redeemed;
- (j) the Stated Maturity of each Bond being redeemed; and
- (k) the place or places where amounts due upon such redemption will be payable.

The notice will state that Bonds must be surrendered at the payment office of the Trustee for redemption at the Redemption Price and shall state that further interest on such Bond will not accrue from and after the Redemption Date provided the Trustee has on deposit sufficient funds to redeem the Bonds on such date. CUSIP number identification with appropriate dollar amounts for each CUSIP number also shall accompany all redemption payments made by check or draft.

With respect to optional redemptions, such notice may be conditioned upon money being on deposit with the Trustee on or prior to the Redemption Date in an amount sufficient to pay the Redemption Price on the Redemption Date. If such notice is conditional and either the Trustee receives written notice from the Borrower that money sufficient to pay the Redemption Price will not be on deposit on the Redemption Date, or such money is not received on or prior to the Redemption Date, then such notice shall be of no force and effect, the Trustee shall not redeem such Bonds and the Trustee shall give notice, in the same manner in which the notice of redemption was given, that such money was not or will not be so received and that such Bonds will not be redeemed.

(2) Notice of such redemption also shall be sent by certified mail, return receipt requested, overnight delivery service or other secure means (including electronic transmission), postage prepaid, to any registered owner of \$1,000,000 or more in aggregate principal amount of Bonds to be redeemed, to certain municipal registered securities depositories which are known to the Trustee to be holding Bonds and to at least two (2) of the national information services that disseminate securities redemption notices, when possible, at least two (2) days prior to the mailing of notices required by subsection (1) above, but in any event at least twenty (20) days, but not more than sixty (60) days, prior to the Redemption Date; provided that neither failure to receive such notice nor any defect in any notice so delivered shall affect the sufficiency of the proceedings for the redemption of such Bonds.

(3) Failure to give notice by mailing to the registered owner of any Bond designated for redemption or any defect in such notice shall not affect the validity of the proceedings for the redemption of such Bond.

(4) As long as DTC is effecting book-entry transfers of the Bonds or is acting as a registered securities depository with respect to any Bonds, the Trustee shall provide the notices specified in this Section 3.3 to the Securities Depository by overnight delivery service, facsimile transmission or by certified mail, return receipt requested at least one (1) day prior to the mailing of the notice to Bondholders required pursuant to subsection (1) above. It is expected that DTC shall, in turn, notify the DTC Participants and that the DTC Participants, in turn, will notify or cause to be notified the Beneficial Owners. Any failure on the part of DTC or a DTC Participant, or failure on the part of a nominee of a Beneficial Owner of a Bond (having been mailed notice from the Trustee, a DTC Participant or otherwise) to notify the Beneficial Owner of the Bond so affected, shall not affect the validity of the redemption of such Bond.

(5) Notice of redemption having been given in the manner provided above, and money sufficient for the redemption being held by the Trustee or Paying Agent for that purpose, thereupon the Bonds so called for redemption shall become due and payable on the Redemption Date, and interest thereon shall cease to accrue; and the owners of the Bonds so called for redemption shall thereafter no longer have any security or benefit under this Indenture except to receive payment of the Redemption Price for such Bonds.

Section 3.4. Payment of Bonds Upon Redemption. The Redemption Price of Bonds or portions thereof called for redemption in accordance with Section 3.3 hereof shall be payable on the date of redemption upon presentation and surrender of such Bonds at the place or places of payment. If, on the Redemption Date, sufficient money shall have been deposited with the Trustee to effect such redemption in accordance with this Indenture, then interest shall cease to accrue on all Bonds or portions thereof so called for redemption.

Section 3.5. No Partial Redemption After Default. Anything in this Indenture to the contrary notwithstanding, if there shall have occurred and be continuing an Event of Default, there shall be no redemption of less than all of the Bonds at the time Outstanding.

Section 3.6. Cancellation of Redeemed Bonds. All Bonds which have been redeemed shall be cancelled by the Trustee as provided in Section 2.11 hereof and shall not be reissued.

Section 3.7. Mandatory Purchase of Bonds on Mandatory Tender Date. All Bonds then Outstanding are subject to mandatory purchase from the Bondholders on Initial Mandatory Tender Date at a purchase price equal to one hundred percent (100%) of the outstanding principal amount thereof plus accrued interest (the “Mandatory Purchase Price”). All Bonds purchased on the Mandatory Tender Date as provided for herein and in the Loan Agreement shall continue to be Outstanding for all purposes hereof and shall be registered in the name or at the direction of the Remarketing Agent or the Borrower, as the case may be, following such mandatory purchase on the Mandatory Tender Date. Pursuant to the Loan Agreement, the Borrower shall, on or prior to the Mandatory Tender Date, deposit or cause to be deposited into the Bond Fund a sum equal to the Mandatory Purchase Price and the Mandatory Purchase Price shall be paid on the Mandatory Tender Date by the Trustee to the registered owners of record of the Bonds from such funds deposited by or on behalf of the Borrower.

On the Mandatory Tender Date, if the Bonds are remarketed pursuant to Section 3.8 hereof, the interest rates on the Bonds shall be adjusted in accordance with Section 3.9 hereof. On or prior to the Mandatory Tender Date, a schedule of such adjusted rates for each of the Bonds shall be furnished to the Trustee and the Borrower by the Remarketing Agent. On the Mandatory Tender Date, all of the then Outstanding Bonds shall be subject to mandatory tender for purchase by or on behalf of the Borrower from the Bondholders on the Mandatory Tender Date, and the Bondholders shall have no right to retain the ownership of such Bonds following the Mandatory Tender Date. The Trustee shall deliver or mail by first class mail a notice of the mandatory purchase at least thirty (30) days but not more than forty-five (45) days prior to the Mandatory Tender Date to each registered owner of such Bonds (with a copy to the Remarketing Agent) at the address shown on the registration books. Any notice given as provided in this Section shall be conclusively presumed to have been duly given, whether or not a particular Bondholder receives the notice. Said notice shall state in substance the following:

- (1) the Mandatory Tender Date;
- (2) that all registered owners of the Bonds then Outstanding are required to tender such Bonds to the Trustee at its principal office for purchase at the Mandatory Purchase Price on the Mandatory Tender Date; and
- (3) that all of the Bondholders shall be deemed to have tendered their Bonds for purchase on the Mandatory Tender Date regardless of whether they tender such Bonds on or prior to such date and no interest will accrue on or after the Mandatory Tender Date to the owners of such Bonds tendered or deemed tendered.

The Mandatory Tender Date shall be (a) the Initial Mandatory Tender Date; and (b) any subsequent dates for mandatory tender of the Bonds established by the Borrower in consultation with the Remarketing Agent in connection with a remarketing of the Bonds pursuant to Section 3.8 hereof.

All owners of Bonds shall be required to tender such Bonds to the Trustee for purchase by or on behalf of the Borrower at the Mandatory Purchase Price, and any such Bonds not delivered to the Remarketing Agent or the Trustee on or prior to the Mandatory Tender Date (the “Undelivered Bonds”), for which there has been irrevocably deposited in trust with the Trustee an amount of money sufficient to

pay the Mandatory Purchase Price of the Undelivered Bonds, shall be deemed to have been purchased on the Mandatory Tender Date pursuant to this Section. IN THE EVENT OF A FAILURE BY AN OWNER OF BONDS TO DELIVER SUCH BONDS ON OR PRIOR TO THE MANDATORY TENDER DATE, SAID OWNER SHALL NOT BE ENTITLED TO ANY PAYMENT (INCLUDING ANY INTEREST TO ACCRUE SUBSEQUENT TO THE MANDATORY TENDER DATE) OTHER THAN THE MANDATORY PURCHASE PRICE FOR SUCH UNDELIVERED BONDS, AND ANY UNDELIVERED BONDS SHALL NO LONGER BE ENTITLED TO THE BENEFITS OF THE INDENTURE, EXCEPT FOR THE PURPOSE OF PAYMENT OF THE MANDATORY PURCHASE PRICE THEREFOR.

Section 3.8. Remarketing of Bonds.

(1) Notice of Mandatory Tender. No later than 11:00 am Local Time on the thirty-fifth day prior to each Mandatory Tender Date, the Trustee shall give notice in writing to the Remarketing Notice Parties which states the aggregate principal amount of Bonds which are to be tendered or deemed to be tendered pursuant to Section 3.7 hereof.

(2) Preliminary Conditions to Remarketing. No later than 11:00 a.m. Local Time on the twentieth day prior to the Mandatory Tender Date then in effect, the Borrower may give notice in writing to the Remarketing Notice Parties that the Borrower elects to cause the Bonds to be remarketed. A remarketing of the Bonds shall be permitted only if the following conditions are satisfied no later than the time the foregoing election notice is given:

(a) Notice by the Borrower to the Remarketing Agent of the Remarketing Period pursuant to Section 8.4 of the Loan Agreement; and

(b) Notice by the Borrower to the Remarketing Agent that it has approved as to form and substance any disclosure document or offering materials which, in the discretion of the Remarketing Agent, is necessary to be used in connection with the remarketing of the Outstanding Bonds.

(3) Remarketing. Not less than ten (10) days before each Remarketing Date, the Remarketing Agent shall offer for sale and use its best efforts to sell the Bonds Outstanding on the Remarketing Date at a price equal to one hundred percent (100%) of the principal amount of such Bonds in accordance with Section 3.9 hereof plus, if such Remarketing Date is a date other than an Interest Payment Date, accrued interest on such Bonds from the preceding Interest Payment Date to which interest has been paid. Not less than four (4) Business Days before each Remarketing Date, the Remarketing Agent shall give notice in writing to the Remarketing Notice Parties specifying the principal amount of Bonds, if any, it has remarketed (including Bonds to be purchased by the Remarketing Agent on the Remarketing Date for its own account, if any), the Remarketing Rate and the Remarketing Period applicable to the Bonds.

The Remarketing Agent shall have the right to remarket any Bond tendered pursuant to Section 3.7 hereof; provided, however, that no such Bond shall be remarketed at a price less than one hundred percent (100%) of the principal amount thereof in accordance with Section 3.9 hereof plus accrued interest (if any). The Remarketing Agent shall have the right but not the obligation to purchase any Bond tendered or deemed tendered pursuant to Section 3.7 hereof at one hundred percent (100%) of the principal amount thereof, and to thereafter sell such Bond. Any such purchase shall constitute a remarketing hereunder.

The Remarketing Agent shall not remarket any Bond to the Issuer, the Borrower, any guarantor of the Bonds or any person which is an “insider” of the Issuer, Borrower, or any such guarantor within the meaning of the Federal Bankruptcy Code.

(4) Final Conditions to Remarketing. If, not later than the Remarketing Date:

(a) the Remarketing Agent shall have notified the Trustee in writing of the remarketing of the Outstanding Bonds and that the proceeds from the remarketing (including proceeds of remarketing of Outstanding Bonds to be purchased by the Remarketing Agent on the Remarketing Date for its own account) or other funds equal to the amount needed to purchase the remarketed Bonds on the Remarketing Date are expected to be available to the Trustee on the Remarketing Date for deposit into the Bond Fund;

(b) there shall be on deposit with the Trustee, from funds made available by the Borrower, an amount determined by the Remarketing Agent for deposit to the Capitalized Interest Fund with respect to the payment of Bond Service Charges during the new Remarketing Period; and

(c) there shall either (i) be on deposit with the Trustee an amount sufficient to pay the estimated Remarketing Expenses as certified in writing to the Trustee by the Borrower, or (ii) the Remarketing Agent shall have certified in writing to the Trustee that provision for the payment of the estimated Remarketing Expenses shall have been made to the satisfaction of the Remarketing Agent;

then the Trustee shall immediately give notice in writing to the Remarketing Notice Parties that (A) all conditions precedent to the remarketing of the Outstanding Bonds have been satisfied and (B) the sale and settlement of the Outstanding Bonds is expected to occur on the Remarketing Date. Following the Trustee’s notice, the Outstanding Bonds shall be sold to the purchasers identified by the Remarketing Agent for delivery and settlement on the Remarketing Date, and the Trustee shall apply the funds in the Bond Fund on the Remarketing Date to payment of the purchase price of the Outstanding Bonds.

(5) Failure to Satisfy Final Conditions. If, not later than the Remarketing Date, any condition set forth in subsection (4) above has not been satisfied, then, unless the Outstanding Bonds are otherwise purchased on the Remarketing Date, the Remarketing Agent shall not sell any of the Outstanding Bonds on the Remarketing Date.

(6) Remarketing Proceeds. No later than 11:00 a.m. Local Time on each Remarketing Date, the Remarketing Agent shall pay to the Trustee, in immediately available funds, the proceeds theretofore received by the Remarketing Agent from the remarketing of Bonds tendered for purchase on such Remarketing Date; provided, that the Remarketing Agent may use its best efforts to cause the purchasers of the remarketed Bonds to pay the purchase price plus accrued interest (if any) to the Trustee in immediately available funds. The proceeds from the remarketing of the Bonds shall be segregated from any funds of the Borrower and the Issuer and shall in no case be considered to be or be assets of the Borrower or the Issuer. Funds representing remarketing proceeds received by the Remarketing Agent after 11:00 a.m. Local Time on each Remarketing Date shall be paid to the Trustee as soon as practicable upon such receipt.

(7) Delivery of Purchased Bonds. On or before the Business Day next preceding each Remarketing Date, the Remarketing Agent shall notify the Trustee in writing of (a) the principal

amount of Bonds to be sold by the Remarketing Agent pursuant to this Section 3.8 and the purchase price, and, unless the Bonds are then in Book-Entry Form, the names, addresses and social security numbers or other tax identification numbers of the proposed purchasers thereof; and (b) the principal amount of Bonds tendered for purchase on such Remarketing Date which will not be sold by the Remarketing Agent pursuant to this Section 3.8.

Bonds purchased by the Trustee on a Mandatory Tender Date that have been remarketed shall be delivered to the purchasers thereof as directed by the Remarketing Agent. Bonds delivered as provided in this Section shall be registered in the manner directed in writing by the recipient thereof.

Section 3.9. Establishment and Notice of Remarketing Rate. The Remarketing Agent shall establish the interest rate on the Bonds Outstanding for each Remarketing Period at the Remarketing Rate in accordance with this Section. Not less than ten (10) Business Days preceding each Remarketing Date, the Remarketing Agent, taking into consideration prevailing market conditions, shall, using its best professional judgment, determine the minimum rate(s) of interest which, if borne by the Bonds then Outstanding for the Remarketing Period specified by the Borrower as provided in Section 3.8 hereof, would permit all such Bonds to be remarketed at a price equal to par. The rate of interest determined in accordance with the previous sentence shall be the Remarketing Rate for the specified Remarketing Period; provided that if the rate of interest so determined for such period would exceed the Maximum Interest Rate, the Bonds Outstanding shall be remarketed for the longest Remarketing Period for which the minimum rate of interest that would enable such Bonds to be remarketed at a price equal to one hundred percent (100%) of the principal amount of such Bonds that would not exceed the Maximum Interest Rate. Notwithstanding the foregoing, if the rate of interest so determined for any Remarketing Period would exceed the Maximum Interest Rate, the Bonds Outstanding shall not be remarketed.

The Remarketing Agent shall, upon determination of the Remarketing Rate and Remarketing Period, immediately (and in no event later than the Business Day following the day on which the Remarketing Agent makes its determination of the Remarketing Rate and the Remarketing Period) give notice of its determination in writing to the Remarketing Notice Parties. The Remarketing Rate and the Remarketing Period shall be conclusive and binding upon the Remarketing Notice Parties and the Holders for the purposes of this Indenture.

Section 3.10. Cancellation of Bonds. The Trustee shall immediately cancel Bonds if the tender price of the Bonds is paid from amounts other than proceeds derived from the remarketing of the Bonds.

Section 3.11. Concerning the Remarketing Agent. The Remarketing Agent identified in Section 1.1 hereof shall serve as the Remarketing Agent for the Bonds. The Remarketing Agent shall designate to the Trustee its designated office and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer, the Borrower and the Trustee. In addition, the Remarketing Agent will agree particularly to:

- (1) keep such records relating to its computations of interest rates for the Bonds as shall be consistent with prudent industry practice and to make such records available for inspection by the Issuer, the Trustee and the Borrower at all reasonable times; and
- (2) perform all of its functions and duties under this Indenture.

The Remarketing Agent shall be entitled to advice of legal counsel on any matter relating to the Remarketing Agent's obligations hereunder and shall be entitled to act upon the opinion of such counsel in the exercise of reasonable care in fulfilling such obligations.

The Remarketing Agent shall be entitled to appoint additional co-Remarketing Agents to assist in the performance of the Remarketing Agent's obligations under this Indenture, and any such appointment shall be effective without any action by the Issuer or the Borrower being necessary; provided that any such co-Remarketing Agent, shall have a capitalization of at least \$5,000,000, or shall have a line of credit with a commercial bank in the amount of at least \$5,000,000, shall be in conformity with all standards and requirements of the Municipal Securities Rulemaking Board and the Securities and Exchange Commission, and shall be authorized by law to perform all the duties imposed upon it by this Indenture. The Remarketing Agent shall take responsibility for any co-Remarketing Agent it appoints.

Section 3.12. Qualifications of Remarketing Agent. The Remarketing Agent shall be a member in good standing of the Financial Industry Regulatory Authority having a capitalization of at least \$5,000,000, or shall have a line of credit with a commercial bank in the amount of at least \$5,000,000, and shall be authorized by law to perform all the duties imposed upon it by this Indenture. Subject to the terms of the Remarketing Agreement, the Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least thirty (30) days' notice of such resignation to the Issuer, the Borrower, Investor Limited Partner and the Trustee. The Remarketing Agent may be removed, with prior notice to the Issuer, at any time by the Borrower, with at least thirty (30) days' notice of such removal to the Remarketing Agent.

Upon any resignation or removal of the Remarketing Agent, the departing Remarketing Agent shall pay over, assign and deliver any money and Bonds held by it in such capacity to its successor.

The Trustee, within thirty (30) days of the resignation or removal of the Remarketing Agent or the appointment of a successor Remarketing Agent, shall give notice thereof by registered or certified mail to the Holders of the Bonds.

Section 3.13. Notices to Remarketing Notice Parties. The Trustee shall notify the Remarketing Notice Parties of (1) the occurrence of an Event of Default of which the Trustee has actual notice; (2) the occurrence of any monetary or other material default under the Loan of which the Trustee has actual notice; (3) any change in the identity of the Trustee; (4) any amendments, modifications, supplements or changes to this Indenture, the Loan Agreement or the Bonds, including any extension of principal or modification of interest or redemption premium due on any of the Bonds, in each case only in the event the Trustee has actual notice; (5) any change or proposed change in the structure or identity of the Borrower of which the Trustee has actual knowledge; (6) any change or notification of proposed change of the Mandatory Tender Date or Remarketing Date; (7) any partial prepayment of the Loan or the giving of notice of the call for redemption of any Bonds; (8) any defeasance or acceleration of the Bonds hereunder; or (9) any change in the Remarketing Agent of which its Trustee has actual knowledge.

The Trustee shall not, however, be subject to any liability to any Holder or any party to the transaction by reason of its failure to mail any such notice, and any such failure shall not affect the validity of actions which are the subject of such notice.

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ARTICLE 4

GENERAL COVENANTS

Section 4.1. Payment of Principal, Premium and Interest. Solely from the money derived from the Loan Agreement (other than to the extent payable from proceeds of the Bonds or temporary investments), the Issuer will duly and punctually pay the principal of, premium, if any, and interest on the Bonds in accordance with the terms of the Bonds and this Indenture. Money derived from the Loan Agreement includes all money derived from the Granting Clauses set forth herein, including but not limited to Basic Payments under the Loan Agreement and trust funds deposited in the funds and accounts established under Article 5 hereof to the extent and in the manner provided in said Article. Nothing in the Bonds or in this Indenture shall be considered as assigning or pledging funds or assets of the Issuer other than those covered by the Granting Clauses set forth herein.

Section 4.2. Performance of and Authority for Covenants. The Issuer covenants that it is duly authorized under the Act and the Joint Powers Act to issue the Bonds authorized hereby, to execute this Indenture, to loan the Bond proceeds to the Borrower and to assign and pledge the payments from the Loan Agreement in the manner and to the extent herein set forth; that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken.

Section 4.3. Instruments of Further Assurance. The Issuer covenants that it has not made, done, executed or suffered, and will not make, do, execute or suffer, any act or thing whereby its interest in the Loan Agreement or any part thereof is now or at any time hereafter impaired, changed or encumbered in any manner whatsoever, except as may be expressly permitted herein; and that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such instruments supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, pledging, assigning and confirming unto the Trustee all and singular the sums assigned and pledged hereby to the payment of the principal of and interest on the Bonds.

Section 4.4. Recording and Filing. The Borrower, in accordance with Section 5.3 of the Loan Agreement, has covenanted to cause the Security Documents and all supplements thereto, to be kept, recorded and filed in such manner and in such places as may be required by law in order to preserve and protect fully the security of the Holders of the Bonds and the rights of the Trustee hereunder and under any other instruments aforesaid.

The Trustee will not know and is not responsible for the legality, effectiveness or sufficiency of any Security Document. To continue the security interest evidenced by such Security Documents or financing statements where the Trustee is named as the secured party, which are filed upon the issuance of the Bonds and included in the transcript of documents delivered to the Trustee, the Trustee shall, at the expense of the Borrower, cause the Borrower to file and record or cause to be filed and recorded such necessary continuation statements from time to time as may be required pursuant to the provisions of the said Uniform Commercial Code or other similar law to fully preserve and protect the security interest of the Trustee in the Trust Estate and to perfect the security interest in the Security Documents. In addition, unless the Trustee shall have been notified in writing by the Borrower that any such initial filing or description of collateral was or has become defective, the Trustee shall be fully protected in (1) relying on such initial filing and descriptions in filing any financing or continuation statements or modifications thereto pursuant to this Section; and (2) filing any continuation statements in the same filing offices as the initial filings were made.

Section 4.5. Books and Records. The Trustee covenants that so long as any Outstanding Bonds issued hereunder and secured by this Indenture shall be unpaid, the Trustee will keep proper books or records and accounts, in which full, true and correct entries will be made of all its financial dealings or transactions in relation to the Project and the payments derived from the Loan Agreement and this Indenture. At reasonable times and under reasonable regulations established by the Trustee, such books shall be open to the inspection of Holders and such accountants or other agencies as the Trustee may from time to time designate.

Section 4.6. Bondholders' Access to Bond Register. Except as otherwise may be provided by law, the Bond Register shall not be deemed a public record and shall not be made available for inspection by the public, unless and until notice to the contrary is given to the Trustee by the Issuer.

Section 4.7. Rights under Loan Agreement. The Loan Agreement sets forth covenants and obligations of the Issuer and the Borrower, and reference is hereby made to the same for a detailed statement of said covenants and obligations. The Issuer agrees to cooperate in the enforcement of all covenants and obligations of the Borrower under the Loan Agreement and agrees that the Trustee in its name or in the name of the Issuer may enforce all rights of the Issuer and all obligations of the Borrower under and pursuant to the Loan Agreement and on behalf of the Holders, whether or not the Issuer has undertaken to enforce such rights and obligations. The Trustee shall not be bound to ascertain or inquire as to the observance or performance of any covenants, agreements or obligations on the part of the Issuer or the Borrower under the Loan Agreement except as set forth therein. The Trustee may require of the Issuer or the Borrower full information and advice as to the observance or performance of those covenants, agreements and obligations. Except as otherwise provided herein, the Trustee shall have no obligation to observe or perform any of the duties of the Issuer under the Loan Agreement.

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ARTICLE 5

FUNDS AND ACCOUNTS

Section 5.1. “Trust Money” Defined. All money received by the Trustee (all such money being herein sometimes called “Trust Money”):

(1) as elsewhere herein provided to be held and applied under this Article 5, or required to be paid to the Trustee and whose disposition is not elsewhere herein otherwise specifically provided for, including but not limited to the investment income of all Trust Funds held by the Trustee under this Indenture;

(2) as proceeds from the sale of the Bonds; or

(3) as Basic Payments, or as otherwise payable under the Loan Agreement;

shall be held by the Trustee as a part of the Trust Estate, and, upon the exercise by the Trustee of any remedy specified in Article 8 hereof, such Trust Money shall be applied in accordance with Section 8.6 hereof, except to the extent that the Trustee is holding in Trust Money or Government Obligations, as the case may be, for the payment of any specified Bonds which are no longer deemed to be Outstanding under the provisions of Article 7 hereof, which money or Government Obligations shall be applied only as provided in said Article 7. Prior to the exercise of any such remedy, all or any part of the Trust Money shall be held, invested, withdrawn, paid or applied by the Trustee, from time to time, as provided in this Article 5 and in Articles 6 and 7 hereof.

Section 5.2. Project Fund.

(1) There is hereby created a Project Fund. On the Issue Date, the Project Fund will be funded with proceeds of the Bonds in the amount of \$_____ and equity of the Borrower in the amount of \$_____. Subject to the provisions of this Section 5.2, other than disbursements on the Issue Date to pay Project Costs in accordance with the closing memorandum and without a disbursement request, the Trustee shall make disbursements from the Project Fund to pay Project Costs only upon the receipt of a Disbursement Request of the Borrower in the form attached as Exhibit B to the Loan Agreement and in accordance with the Disbursing Agreement, the Loan Agreement, and this Indenture. Proceeds of the Bonds deposited in the Project Fund shall be disbursed by the Trustee in accordance with the applicable provisions of Article 3 of the Loan Agreement and the Disbursing Agreement. The Issuance Expenses of the Bonds may be disbursed by the Trustee from the Project Fund, upon a written request of the Borrower, without having to comply with the provisions of the Disbursing Agreement or the Loan Agreement regarding disbursement of Bond proceeds for the payment of Project Costs.

(2) Any sums in the Project Fund in excess of any amount required to pay Project Costs shall be transferred to the Bond Fund at the time or times and in the manner provided in Article 3 of the Loan Agreement.

(3) Any funds deposited in the Project Fund by the Borrower shall be disbursed before any proceeds of the Bonds, including any earnings thereon, shall be disbursed.

(4) Any interest earned on sums held in the Project Fund prior to the Completion Date shall remain a part of the Project Fund.

(5) For purposes of complying with the requirements of this Section, the Trustee may conclusively rely on the Disbursement Request executed by the Borrower and shall be protected in acting or refraining from acting upon the Disbursement Request, which may be submitted by email (pdf). All payments made from the Project Fund shall be presumed by the Trustee to be made for the purposes certified in said written requests, and the Trustee shall not be required to see to the application of any payments made from the Project Fund or to inquire into the purposes for which withdrawals are being made from the Project Fund. The Trustee shall not be bound to make an investigation into the facts or matters stated in any written request. The Trustee shall not be responsible for determining whether the funds on hand in the Project Fund are sufficient to complete the Project. The Trustee shall not be responsible to collect lien waivers. The Trustee shall not be responsible for determining whether the funds on hand in the Project Fund are sufficient to complete the Project. The Trustee shall have no responsibility whatsoever to disburse or transfer funds absent written instructions from the Borrower. The Trustee shall not be liable or accountable for the use or application by the Borrower of any of the Bonds or the proceeds thereof or for the use or application of any money paid over by the Trustee in accordance with the provisions of this Section.

Section 5.3. Bond Fund.

(1) There is hereby created a Bond Fund.

(a) There shall be credited to the Bond Fund, as and when received:

(i) each payment received by the Trustee under and pursuant to any of the provisions of this Indenture or the Loan Agreement which is required to be paid into Bond Fund, or which is accompanied by directions that such payment is to be credited to the Bond Fund;

(ii) funds transferred from the Capitalized Interest Fund pursuant to Section 5.4(1) hereof;

(iii) all income derived from the investment of amounts described in clause (i) above, as realized.

(b) The Trustee shall disburse, from time to time, sufficient money from the Bond Fund as specified below to pay the principal of, premium, if any, and the interest on, the Bonds as the same become due and payable.

(c) If any Bond shall not be presented for payment at maturity, provided money sufficient to pay such Bond shall have been made available to the Trustee and held by the Trustee for the benefit of the Holder thereof, all liability of the Issuer to the Holder thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged, and thereupon it shall be the duty of the Trustee to hold such money, without liability for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such money for any claim of whatever nature on his part hereunder or on, or with respect to, such Bond.

(d) Any money remaining in the Bond Fund after payment in full of the respective series of Bonds, and payment of the fees, charges and expenses of the Trustee,

the Paying Agent, the Issuer and any co-Paying Agent which have accrued and which will accrue and all other items required to be paid hereunder shall be paid to the Borrower.

(e) Money in the Bond Fund shall be invested as provided in Section 6.1 hereof.

(f) At any time upon request, the Trustee shall advise the Borrower and the Investor Limited Partner of the amount of funds determined by the Trustee to be necessary to redeem the Bonds in full pursuant to Section 3.1(3) of the Indenture, which determination shall take into account any money on deposit in the Capitalized Interest Fund that may be applied to the Redemption Price of the Bonds pursuant to this Indenture.

(2) Any surplus money in the Project Fund at the Completion Date which is transferred to the Bond Fund as provided in Section 5.2(2) (and interest earned thereon) shall be used by the Trustee to (a) to redeem the largest number of respective Bonds callable, without premium or penalty, under the terms of this Indenture at the first opportunity; or (b) pay that portion of the annual principal due on the respective Bonds in an amount that bears the same ratio to the annual principal due that the total of such surplus funds bears to the face amount of such Bonds; and such funds, to the extent transferred to the Bond Fund, shall be invested as directed by the Borrower and shall not be invested to produce a yield greater than the yield on the Bonds, as required by Internal Revenue Service Revenue Procedure 79-5, Revenue Procedure 81-22 and 26 CFR 601.201 (and any subsequent amendments, modifications or replacements thereof), provided that, if the Trustee receives an opinion of Bond Counsel, the funds may be invested at a yield greater than the yield on the Bonds or the balance may be applied to meet current debt service requirements and accordingly become a part of the balance in the Bond Fund which may be credited against current installments of Basic Payments.

Section 5.4. Capitalized Interest Fund.

(1) There is hereby created a Capitalized Interest Fund. On the Issue Date, the Capitalized Interest Fund will be funded with proceeds of the Bonds in the amount of \$_____ and equity of the Borrower in the amount of \$_____. Funds in the Capitalized Interest Fund shall be transferred automatically by the Trustee to the Bond Fund on the last Business Day of the month prior to a month in which an Interest Payment Date occurs in full or partial satisfaction of the interest payment payable by the Borrower with respect to the Bonds until the Capitalized Interest Fund is fully depleted.

(2) Any interest earned on sums held in the Capitalized Interest Fund prior to the Completion Date shall remain a part of the Capitalized Interest Fund.

(3) At the written direction of the Borrower, any funds remaining in the Capitalized Interest Fund following the Completion Date of the Project shall be transferred to the Bond Fund.

Section 5.5. Rebate Fund.

(1) There is hereby created a Rebate Fund. The Trustee shall deposit in the Rebate Fund, upon receipt, all Rebate Amounts deposited with the Trustee in accordance with Section 7.7(12) of the Loan Agreement; and for purposes of making such deposits the Trustee shall, at the direction of the Borrower, transfer from the appropriate fund to the Rebate Fund a sum equal to any Rebate Amounts attributable to sums held in the Project Fund.

(2) The Trustee shall cooperate with the Borrower in making the determinations for each computation required pursuant to 7.7(12) of the Loan Agreement; and to that end, the Trustee shall, within thirty (30) days after the end of the fifth Bond Year for the Bonds, prepare and file with the Borrower a report with respect to the Project Fund setting forth the total amount invested during the preceding five (5) Bond Years, the investments made with the money in the Project Fund and the investment earnings (and losses) resulting from such investments, together with such additional information concerning the Bond Fund and the investments therein as the Rebate Consultant or the Borrower shall reasonably request.

(3) The Trustee shall remit sums in the Rebate Fund to the United States as provided in Section 7.7(12) of the Loan Agreement.

(4) Upon written direction of the Borrower, the Trustee shall remit to the Borrower, or transfer to the Bond Fund, any surplus rebate sums held in the Rebate Fund as provided in Section 7.7(13) of the Loan Agreement.

(5) Within the Rebate Fund, the Trustee shall maintain such accounts as shall be necessary to comply with written instructions of the Borrower given pursuant to the terms and conditions of the Tax Certificate. Subject to the transfer provisions provided below, all money at any time deposited in the Rebate Fund shall be held by the Trustee in trust, to the extent required to satisfy the required rebate payments (the "Rebate Requirement") to the federal government of the United States of America. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section and by the Tax Certificate (which is incorporated herein by reference). The Trustee shall be deemed conclusively to have complied with such provisions if it follows the directions of the Borrower including supplying all necessary information in the manner provided in the Tax Certificate, and shall have no liability or responsibility to enforce compliance by the Borrower or the Issuer with the terms of the Tax Certificate or any other tax covenants contained in the Loan Agreement. The Trustee shall not be responsible for calculating rebate amounts or for the adequacy or correctness of any rebate report or rebate calculations. The Trustee shall have no independent duty to review such calculations or enforce the compliance by the Borrower with such rebate requirements. The Trustee shall have no duty or obligation to determine the applicability of the Code and shall only be obligated to act in accordance with written instructions provided by the Borrower.

(6) Computations of the Rebate Requirement shall be furnished by or on behalf of the Borrower in accordance with the Tax Certificate. The Trustee shall supply to the Borrower and/or the Issuer and any Rebate Consultant of the Borrower all necessary information in the manner provided in the Tax Certificate to the extent such information is reasonably available to the Trustee.

(7) The Trustee shall have no obligation to rebate any amounts required to be rebated pursuant to this Section, other than from moneys held in the funds and accounts created under this Indenture or from other moneys provided to it by the Borrower.

(8) At the written direction of the Borrower, which shall include a statement to the effect that such direction complies with the restrictions set forth in the Tax Certificate, the Trustee shall invest all amounts held in the Rebate Fund in Permitted Investments. The Trustee shall not be liable for any consequences arising from such investment.

(9) Any funds remaining in the Rebate Fund after each five year remission to the United States of America, redemption and payment of all of the Bonds and payment and satisfaction

of any Rebate Requirement, or provision made therefor satisfactory to the Trustee, shall be withdrawn and remitted to the Borrower.

(10) Notwithstanding any other provision of this Indenture, the obligation to remit the Rebate Requirement to the United States and to comply with all other requirements of this Section and the Tax Certificate shall survive the defeasance or payment in full of the Bonds.

Section 5.6. Deposit of Funds with Paying Agent.

(1) The Trustee shall transfer and remit sums from the Bond Fund to the Paying Agent in advance of each interest and principal due date and redemption date, from the balance then on hand in the Bond Fund, sufficient to pay all principal, interest and redemption premiums then due on the Bonds. The Paying Agent shall hold in trust for the Holders of such Bonds all sums so transferred to it until paid to such Holders or otherwise disposed of as herein provided.

(2) Interest on each Bond, including accrued interest to the date of deposit and interest, to the extent permitted by law, on overdue installments of interest at the rate borne by such Bond, (a) shall cease on its Stated Maturity, or on any prior date on which it shall have been duly called for redemption as herein provided, provided that funds sufficient for the payment thereof with accrued interest and any redemption premium have been deposited with the Paying Agent on or before the Stated Maturity or Redemption Date, as the case may be, and in the case of redemption, that the requirements of Article 3 have been complied with; or (b) shall cease on any date after Stated Maturity on which such deposit has been made, and the Holder shall have no further rights with respect to the Bonds or under this Indenture except to receive the payment so deposited.

(3) If any Bond is not presented for payment when due and funds sufficient to pay such Bond shall have been paid to the Trustee (or other Paying Agent, if any): (a) all liability of the Issuer for payment of such Bond shall forthwith cease; (b) such Bond shall forthwith cease to be entitled to any lien, benefit or security under this Indenture, and the Holder of such Bond shall forthwith have no rights in respect thereof except to receive payment thereof; and (c) the Trustee (or other Paying Agent, if any) shall hold such funds, without liability for interest thereon, for the benefit of the Holder of such Bond. Any money still held by the Trustee (or other Paying Agent, if any) after two (2) years and eleven (11) months from the date on which the Bond with respect to such amount was paid to the Trustee (or other Paying Agent, if any), shall, if and to the extent permitted by law, be paid by the Trustee (or other Paying Agent, if any) to the Borrower and shall be discharged from the trust and all liability of the Paying Agent or the Trustee with respect to such Trust Money shall cease; and the Bondholders shall thereafter be entitled to look only to the Borrower for payment, and the Borrower shall not be liable for any interest thereon.

(4) If there is any Paying Agent who is not the Trustee, the Trustee will cause such Paying Agent to execute and deliver to it an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section 5.6, that such Paying Agent will:

(a) hold all sums held by it for the payment of principal of (and premium, if any) or interest on Bonds in trust for the benefit of the Holders of such Bonds until such sums shall be paid to such Holders or otherwise disposed of as herein provided; and

(b) at any time during the continuance of any default in the making of any such payment of principal (and premium, if any) or interest, upon the written request of the Trustee forthwith pay to the Trustee all sums so held in trust by such Paying Agent.

The Trustee, acting as Paying Agent, shall also be bound by the terms of the foregoing requirements.

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ARTICLE 6

INVESTMENTS

Section 6.1. Investments by Trustee.

(1) Except during the continuance of an Event of Default, and subject to the provisions of Section 8.2 hereof, money held for the credit of the funds established by Article 5 hereof shall be held by the Trustee as required by law and shall at the written request and direction of the Representative of the Borrower, to the extent practicable and permitted by the Act, and except as provided below with respect to the money in the Bond Fund be invested as received and reinvested by the Trustee in Permitted Investments (including investments in securities authorized by the Act, through a common trust fund or similar fund maintained by a bank (including the Trustee) exclusively for the collective investment and reinvestment of money contributed thereto by the bank in its capacity as trustee, certificates of deposit, and repurchase agreements).

Subject to Minnesota Statutes, as to the investment of sums (other than Bond proceeds) held in the Bond Fund, the type, amount and maturity of such investments shall be as specified by the Representative of the Borrower, provided that sums in the Bond Fund may in any event only be invested in securities which mature or are subject to redemption or repurchase at the option of the Trustee on or prior to the date or dates on which the Trustee anticipates that cash funds will be required.

(2) The Trustee shall sell and reduce to cash funds a sufficient portion of investments under the provisions of this Section whenever the cash balance in the fund for which the investment was made is insufficient for its current requirements. Securities so purchased as an investment of money shall be held by the Trustee, shall be registered in the name of the Trustee if registration is required, and shall be deemed at all times a part of the applicable fund, and the interest accruing thereon and any profit realized from such investments shall be credited to the fund from which the investment was made, subject to any transfer to another fund as herein provided. Any loss resulting from such investment shall be charged to the fund from which the investment was made.

(3) The Trustee shall have no liability whatsoever for any loss, fee, tax or other charge incurred in connection with any investment, reinvestment, sale or liquidation of an investment hereunder. The Trustee shall be entitled to rely on any written direction of the Borrower as to the suitability and legality of the directed investments. The Trustee shall have no responsibility whatsoever to determine whether any investments made pursuant to this Indenture are or continue to be Permitted Investments. Any deposit or investment directed by the Borrower shall constitute a certification by the Borrower to the Trustee that the assets so deposited or to be purchased pursuant to such directions are Permitted Investments. In no event shall the Trustee be deemed an investment manager or adviser in respect of any selection of investments hereunder.

(4) Such Permitted Investments shall be made so as to mature or be subject to redemption at the option of the holder thereof on or prior to the date or dates that the Borrower anticipates that money therefrom will be required. The Trustee may trade with itself or its affiliates in the purchase and sale of such Permitted Investments. Such Permitted Investments shall be registered in the name of the Trustee. The Trustee may invest in Permitted Investments through its own trust department or through or from any of its affiliates and Trust Money may be deposited in time deposits, or certificates of deposit issued by, the Trustee or any of its affiliates.

(5) The Trustee shall without further direction from the Issuer or the Borrower sell such Permitted Investments as and when required to make any payment for the purpose of which such investments are held. Each investment shall be credited to the fund for which it is held, subject to any other provision of this Indenture directing some other credit, but income on such Permitted Investments shall be held or transferred, as received, in accordance with this Indenture.

(6) If the Borrower does not file a Borrower request with the Trustee with respect to the investment of the money held under this Indenture, the Trustee shall invest to the extent practicable in investments described in clause (6) of the definition of the term “Permitted Investment”; provided, however, that any such investment shall be made by the Trustee only if, prior to the date on which such investment is to be made, the Trustee shall have received a written Borrower request specifying a specific money market fund or other Permitted Investment and, if no such written Borrower request is so received, the Trustee shall hold such moneys uninvested.

Section 6.2. Return on Investments.

(1) In directing investments pursuant to Section 8.3 of the Loan Agreement, the Borrower will not instruct the Trustee to use the proceeds of the Bonds or other sums pledged to the payment of the Bonds, directly or indirectly, to acquire any securities or obligations the acquisition of which would cause any of the Bonds to be an “arbitrage bond” as defined in Section 148 of the Code, and for this purpose the Trustee, in order to restrict yield on investments, may invest in SLGS, when available (and accordingly is hereby authorized to act as agent of the Issuer for such purpose). The Trustee has no duty to monitor the yield on any directed investment or any obligation to limit the yield or any investment the Borrower directs the Trustee to make. The Trustee shall be fully protected in relying on the Borrower’s directions with respect to whether the acquisition of any securities or obligations would have the effect prohibited by this Section.

(2) No money in any fund or account shall be invested in investments which cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code. If at any time the money in all funds and accounts relating to the Bonds exceeds, within the meaning of Section 149(b) of the Code, (a) amounts invested for an initial temporary period until the money is needed for the purpose for which the Bonds were issued, (b) investments of a bona fide debt service fund, and (c) investments of a reserve which meet the requirement of Section 148(d) of the Code, then money in excess of such amounts shall be invested at the direction of the Borrower pursuant to Section 8.3 of the Loan Agreement in (i) obligations issued by the United States Treasury, (ii) other investments permitted under regulations, or (iii) obligations which are (A) not issued by, or guaranteed by, or insured by, the United States or any agency or instrumentality thereof or (b) not federally insured deposits or accounts, all within the meaning of Section 149(b) of the Code. The Borrower shall not direct the Trustee to take any action or do anything the effect of which shall be to cause the Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code.

(3) The provisions of this Section 6.2 shall survive discharge and release of the Indenture.

Section 6.3. Computation of Balances in Funds. In computing the assets of any fund established hereunder, investments and accrued but unpaid interest thereon shall be deemed a part thereof, and such investments shall be valued at par value, or at the Redemption Price thereof, if then redeemable at the option of the holder; provided that in any event for purposes of determining whether any balance in a fund may only be invested at a restricted yield to comply with Section 148 of the Code and the federal arbitrage regulations, any investments in the fund shall be valued at their par value or the price (less accrued interest) at which they were purchased, whichever is the greater.

Section 6.4. Rebate to United States. The Bonds are subject to the rebate to the United States of earnings in excess of the yield on the Bonds imposed by Section 148 of the Code and Section 1.148-3 of the Treasury Regulations. The Trustee shall have no obligation to calculate the amount of, or make, any required rebate as provided in Section 5.5 hereof. The Trustee shall cooperate with the Borrower in determining the amount of any rebate.

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ARTICLE 7

DISCHARGE OF LIEN

Section 7.1. Payment of Bonds; Satisfaction and Discharge of Bonds and Obligation to Bondholders. Whenever the conditions specified in either clause (a) or (b) of subsection (1) below and the conditions specified in the following subsections (2) and (3) to the extent applicable, shall exist, namely:

(1) either:

(a) all Bonds have been cancelled by the Trustee or delivered to the Trustee for cancellation, excluding, however,

(i) Bonds for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Paying Agent or Trustee and thereafter repaid to the Borrower or discharged from such trust; and

(ii) Bonds alleged to have been destroyed, lost or stolen which have been replaced or paid as provided in Section 2.6 hereof, and (A) which, prior to the satisfaction and discharge of this Indenture as hereinafter provided, have not been presented to the Paying Agent or the Trustee with a claim of ownership and enforceability by the Holder thereof; or (B) whose enforceability by the Holder thereof has been determined adversely to the Holder by a court of competent jurisdiction or other competent tribunal; or

(b) the Issuer or the Borrower has deposited or caused to be deposited as trust funds:

(i) with the Paying Agent, cash which shall be sufficient; or

(ii) with the Trustee cash and/or Government Obligations, which do not permit the redemption thereof at the option of the issuer thereof, the principal of, premium, if any, and interest on which when due (or upon the redemption thereof at the option of the holder), will, without reinvestment, provide cash which together with the cash, if any, deposited with the Trustee at the same time, shall be sufficient,

to pay and discharge the entire indebtedness on Bonds not theretofore cancelled by the Trustee or delivered to the Trustee for cancellation by the payment of interest on and principal (and premium, if any) of the Bonds which have become due and payable or which shall become due at their Stated Maturity or Redemption Date, as the case may be, and which are to be discharged under the provisions hereof, and has made arrangements satisfactory to the Trustee for the giving of notice of redemption, if any, by the Trustee in the name, and at the expense, of the Borrower in the same manner as is provided by Section 3.2 hereof; and

(2) the Borrower has paid, caused to be paid or made arrangements satisfactory to the Trustee for the payment of all other sums payable hereunder and under the Loan Agreement, and the Related Documents by the Trustee or the Borrower until the Bonds are so paid; and

(3) the Borrower has delivered to the Trustee a report of an Independent Accountant stating that the payments to be made on the security referred to in clause (b)(ii) of subsection (1) above will be sufficient to pay when due the principal of, premium, if any, and interest on the Bonds to be defeased; and

(4) if discharge is to be effected under clause (b) of subsection (1) above, an opinion of Bond Counsel is delivered to the Trustee stating in effect that such discharge will not impair the tax-exempt status of the Bonds;

then, except as otherwise provided in Article 7 and Sections 8.2 and 9.3 hereof, the rights of the Bondholders shall be limited to the cash or cash and securities deposited as provided in clause (a) or (b) of subsection (1) above, and upon the Borrower's request the rights and interest hereby granted or granted by the Loan Agreement and the Collateral Documents to or for the benefit of the Trustee or Bondholders shall cease, terminate and become null and void, and the Issuer and the Trustee shall, at the expense of the Borrower, execute and deliver such instruments of satisfaction and transfer as may be necessary, and forthwith the estate, right, title and interest of the Trustee in and to all of the Project and in and to all rights under the Loan Agreement and this Indenture (except the money or securities or both deposited as required above and except as may otherwise be provided in Article 7 and Sections 8.2 and 9.3 hereof shall thereupon be discharge and satisfied); except that in any event the obligations of the Borrower under Sections 7.4, 7.7, 7.8, 10.10, 10.11, 10.12, and 10.13 of the Loan Agreement shall survive.

Section 7.2. Discharge of Indenture. Notwithstanding the fact that the lien of this Indenture upon the Trust Estate may have been discharged and cancelled in accordance with Section 7.1 hereof, this Indenture and the rights granted and duties imposed hereby, to the extent not inconsistent with the fact that the lien upon the Trust Estate may have been discharged and cancelled, shall nevertheless continue and subsist until the principal of and the interest on, all of the Bonds shall have actually been paid in full and the Trustee shall have applied all funds theretofore held by the Trustee for payment of any Bonds not theretofore presented for payment or purchase, as the case may be, which funds shall be held in trust solely for the Holders of such Bonds pending their application in accordance herewith.

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ARTICLE 8

DEFAULT PROVISIONS AND REMEDIES

Section 8.1. Events of Default. Each of the following events is hereby defined as, and declared to be and to constitute, an “Event of Default” hereunder:

(1) default in the due and punctual payment of any interest on any Bond or the Mandatory Purchase Price of any Bond on the Mandatory Tender Date;

(2) default in the due and punctual payment of the principal of any Bond at its Stated Maturity;

(3) if default shall be made in the due and punctual payment of any other money required to be paid to the Trustee under the provisions hereof and such default shall have continued for a period of thirty (30) days after written notice thereof, specifying such default, shall have been given by the Trustee to the Issuer and the Borrower, or to the Issuer, the Borrower and the Trustee by the Holders of not less than twenty-five percent (25%) in aggregate principal amount of the then Outstanding Bonds;

(4) if default shall be made in the performance or observance of any other of the covenants, agreements or conditions on the part of the Issuer contained in this Indenture or in the Bonds, and such default shall have continued for a period of thirty (30) days after written notice thereof given in the manner provided in subsection (3) above. Notwithstanding the foregoing, if the default reasonably requires more than thirty (30) days to cure, such default shall not constitute an Event of Default, provided that the curing of the default is promptly commenced upon receipt by the Issuer of the notice of the default, and with due diligence is thereafter continuously prosecuted to completion and is completed within a reasonable period of time, and provided that Issuer keeps the Trustee well informed at all times of its progress in curing the default; provided in no event shall such additional cure period extend beyond sixty (60) days;

(5) the occurrence of an Act of Bankruptcy; or

(6) the occurrence of an “Event of Default” under the Loan Agreement or the Security Documents.

The Investor Limited Partner in the Borrower shall have the right, but not the obligation, to cure Events of Default on behalf of the Borrower.

Section 8.2. Acceleration.

(1) Upon the occurrence of an Event of Default referred to in Section 8.1 hereof, the Trustee may, and at the written request of the Holders of not less than twenty-five percent (25%) in aggregate principal amount of the Outstanding Bonds shall, by notice in writing delivered to the Issuer and the Borrower declare the principal of all Bonds immediately due and payable, whereupon the same shall become immediately due and payable any time herein or in the Bonds to the contrary notwithstanding.

(2) Upon any declaration of acceleration, or occurrence resulting in acceleration under this Section 8.2, the Trustee shall immediately declare the Basic Payments required to be made by

the Borrower under the Loan Agreement to be immediately due and payable in accordance with Section 9.2 of the Loan Agreement.

(3) Upon any acceleration required under this Section 8.2, interest shall cease to accrue on the Bonds as of the date of declaration of such acceleration.

(4) Except as provided in this Section 8.2, under no other circumstances may the Trustee accelerate the payment of the Bonds.

Section 8.3. Remedies.

(1) Subject to the provisions of Section 8.2, upon the occurrence of an Event of Default and acceleration of the Bonds, the Trustee may proceed to pursue any available remedy by suit at law or in equity to enforce all rights of the Bondholders, including without limitation the right to the payment of the principal or premium, if any, and interest on the then Outstanding Bonds. Upon the occurrence of an Event of Default under the Loan Agreement, the Trustee may also enforce any and all rights, if any, of the Issuer thereunder. The Issuer may also exercise any of its rights as provided in Section 9.12 of the Loan Agreement.

(2) If any Event of Default shall have occurred, and if it shall have been requested to do so by the Holders of seventy-five percent (75%) in aggregate principal amount of the then Outstanding Bonds, and if it shall have received an indemnity bond as provided in Section 9.1 hereof, the Trustee shall be obliged to exercise such rights and powers conferred on the Trustee by this Section and Section 8.2 hereof as the Trustee (being advised by Independent Counsel) shall deem most expedient in the interests of the Bondholders; provided, however, that the Trustee shall have the right to decline to comply with any such request if the Trustee shall be advised by Independent Counsel that the action so requested may not lawfully be taken or if the Trustee in good faith shall determine that such action would be unjustly prejudicial to the Bondholders not parties to such request.

(3) No remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy (a) given to the Trustee or to the Holders hereunder; or (b) now or hereafter existing at law or in equity or by statute.

(4) No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default, or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient.

(5) No waiver of any Event of Default hereunder, whether by the Trustee or by the Holders, shall extend to or shall affect any subsequent Event of Default or impair any rights or remedies consequent thereon.

Section 8.4. Direction of Proceedings By Bondholders. The Holders of a majority in aggregate principal amount of the then Outstanding Bonds shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, the Loan Agreement, the Collateral Documents or for the appointment of a receiver or any other proceedings hereunder; provided, that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

Section 8.5. Waiver of Stay or Extension Laws. Upon the occurrence of an Event of Default, to the extent that such rights may then lawfully be waived, neither the Issuer nor anyone claiming through it or under it shall or will set up, claim, or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement of this Indenture, but the Issuer, for itself and all who may claim through or under it, hereby waives to the extent that it lawfully may do so the benefit of all such laws and all right of appraisal and redemption to which it may be entitled under the laws of the State.

Section 8.6. Priority of Payment and Application of Money. All money received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the costs and expenses of the proceedings resulting in the collection of such other money and of the related expenses, liabilities and advances incurred or made by the Issuer or the Trustee, be deposited in the Bond Fund. All money in the Bond Fund shall be applied, subject to the provisions of Article 5 hereof, pro rata with respect to the outstanding amounts of the Bonds, as follows:

(1) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such money shall be applied:

FIRST: To the payment to the Persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the Persons entitled thereto, without any discrimination or privilege.

SECOND: To the payment to the Persons entitled thereto the unpaid principal of any of the Bonds which shall have become due in the order of their due dates with interest on such Bonds at the applicable rate and, if the amount available shall not be sufficient to pay in full the unpaid principal on Bonds due on any particular due date, then to the payment ratably, according to the amount of principal and premium, if any, due on such date, to the Persons entitled thereto, without any discrimination or privilege.

(2) If the principal of all Bonds shall have become due or shall have been declared due and payable, all such money shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal or any redemption premium over interest or of interest over principal or any redemption premium, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto, without any discrimination or privilege.

(3) If the principal of all the Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article, then, subject to the provisions of subsection (2) above in the event that the principal of all the Bonds shall later become due or be declared due and payable, the money shall be applied in accordance with the provisions of subsection (1) above.

Whenever money is to be applied by the Trustee pursuant to the provisions of this Section, such money shall be applied by it at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of such money available for application and the likelihood of additional money becoming available for such application in the future. Whenever the Trustee shall apply such funds, it shall (i) fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable)

upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such dates shall cease to accrue; and (ii) on or before such date set aside the money necessary to effect such application. The Trustee shall give to the Bondholders mailed notice of the deposit with it of any such money and of the fixing of any such date. Neither the Trustee nor any Paying Agent shall be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all Bonds and interest thereon have been paid under the provisions of this Section 8.6, and all expenses and charges of the Trustee and the Issuer have been paid, any balance remaining shall be paid to the person entitled to receive the same pursuant to Section 12.9 hereof.

Section 8.7. Remedies Vested in Trustee. All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Holders of the Bonds, and any recovery or judgment shall be for the equal benefit of the Holders of the Outstanding Bonds to the extent and in the manner provided herein. The Issuer and the Trustee hereby agree, without in any way limiting the effect and scope thereof, that the pledge and assignment hereunder to the Trustee of all rights included within the Trust Estate shall constitute an agency appointment coupled with an interest on the part of the Trustee which, for all purposes of this Indenture, shall be irrevocable and shall survive and continue in full force and effect notwithstanding the bankruptcy or insolvency of the Issuer or its default hereunder or on the Bonds.

Section 8.8. Rights and Remedies of Holders. No Holder of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture, the Loan Agreement, or for the execution of any trust hereof or any remedy hereunder or thereunder or for the appointment of a receiver, unless: (1) a default thereunder shall have become an Event of Default and the Holders of seventy-five percent (75%) in aggregate principal amount of the Bonds then Outstanding shall have made written request to the Trustee and shall have offered it reasonable opportunity either to proceed to exercise the powers hereunder granted or to institute such action, suit or proceeding in its own name; (2) such Holders shall have offered to indemnify the Trustee as provided in Section 11.1(11) hereof; and (3) the Trustee shall thereafter fail or refuse to exercise within a reasonable period of time the remedies hereunder granted, or to institute such action, suit or proceeding in its own name. Such notification, request and offer of indemnity are hereby declared in every such case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, the Loan Agreement, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more Holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture, by its, his or their action or to enforce any right thereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the Holders of all Bonds then Outstanding, provided, however, that nothing herein shall be construed to preclude any Bondholder from enforcing, or impair the right of any Bondholder to enforce, the payment by the Trustee of principal of, and interest and premium, if any, on any Bond of such Bondholder at or after its date of maturity, if and to the extent that such payment is required to be made to such Bondholder by the Trustee from available funds in accordance with the terms hereof.

Section 8.9. Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture or the Loan Agreement by the appointment of a receiver, by entry and possession or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee, then and in every such case the Issuer and the Trustee shall be restored to their former positions and rights hereunder with respect to the property herein

conveyed, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 8.10. Waiver of an Event of Default. The Trustee may waive any Event of Default and its consequences and shall do so upon written request of the Holders of a majority in aggregate principal amount of the Bonds then Outstanding. No Event of Default giving rise to mandatory acceleration may be waived. No such waiver or rescission shall extend to any subsequent or other Events of Default, or impair any right consequent thereon.

Section 8.11. Borrower as Agent of Issuer.

(1) No default under Section 8.1(4) hereof shall constitute an Event of Default until actual notice of such default by registered or certified mail shall be given by the Trustee to the Issuer, the Borrower, and the Issuer and the Borrower shall have had the time permitted by the applicable subsection after receipt of such notice to correct said default or cause said default to be corrected and the Issuer or Borrower shall not have corrected said default or caused said default to be corrected within said time.

(2) With regard to any alleged default concerning which notice is given to the Borrower under the provisions of this Section 8.11, the Issuer hereby names and appoints the Borrower as its attorney-in-fact and agent with full authority to perform any covenant or obligation of the Issuer alleged in said notice to constitute a default, in the name and stead of the Issuer with full power to do any and all things and acts to the same extent that the Issuer could do and perform any such things and acts and with power of substitution; provided that the Borrower shall give the Issuer notice of its intention so to perform on behalf of the Issuer, and provided further that the Issuer may at any time, by a writing addressed to the Borrower withdraw, limit or modify the appointment hereby made.

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ARTICLE 9

THE TRUSTEE

Section 9.1. Acceptance of Trustee. The Trustee, prior to the occurrence of an Event of Default, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture; and no implied covenants or obligations should be read into this Indenture against the Trustee. Upon the occurrence and continuation of an Event of Default, the Trustee shall exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person ordinarily would exercise and use under the circumstances in the conduct of their own affairs, but in any such event, only upon and subject to the following express terms and conditions:

(1) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers, or employees, but shall be answerable for the conduct of the same in accordance with the standard specified above, and shall be entitled to advice of counsel concerning all matters of trusts hereof and duties hereunder, and may in all cases pay such reasonable compensation to any attorney, agent, receiver or employee retained or employed by it in connection herewith. The Trustee may act upon the written opinion or written advice of any attorney, surveyor, engineer or accountant selected by it in the exercise of reasonable care or, if selected or retained by the Issuer, approved by the Trustee in the exercise of such care, provided that the only legal advice or opinion that the Trustee may rely upon for purposes of securing advice or an opinion relating to the tax-exempt status of the Bonds is given by Bond Counsel. The Trustee shall not be responsible for any loss or damage resulting from any action or nonaction in good faith in reliance upon such opinion or advice.

(2) The Trustee shall not be responsible for any recital herein, or in the Bonds (except with respect to the certificate of authentication on the Bonds) or for the investment of money as herein provided, except as may be provided in Section 6.1, or for the validity of the execution by the Issuer of this Indenture, or of any supplemental indentures or instruments of further assurance, or for the sufficiency of any security for the Bonds issued hereunder or intended to be secured hereby, or for the value of title of the property herein conveyed, if any, or otherwise as to the maintenance of the security hereof; except as otherwise provided in Section 4.4 and except that in the event the Trustee enters into possession of a part or all of the property conveyed pursuant to any provisions of this Indenture, it shall use due diligence in preserving such property. The Trustee may, but shall be under no duty to, require of the Borrower full information and advice as to the performance of the covenants, conditions and agreements in the Loan Agreement as to the condition of the Project and the performance of all other obligations thereunder and shall use its best efforts, but without any obligation, to advise the Issuer and the Borrower of any impending Event of Default known to the Trustee.

(3) The Trustee shall not be accountable for the use or application by the Issuer or the Borrower of any of the Bonds or the proceeds thereof (except as herein expressly provided) or for the use or application of any money paid over by the Trustee in accordance with the provisions of this Indenture or for the use and application of money received by any Paying Agent. The Trustee may become the owner of Bonds secured hereby with the same rights it would have if not Trustee.

(4) The Trustee shall be protected in acting upon any written notice, order, requisition, request, consent, certificate, opinion (including an opinion of Independent Counsel or Bond Counsel), affidavit, letter, telegram or other paper or document reasonably believed by it to be genuine and correct and to have been signed or sent by the proper person or persons. Any action

taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any person who at the time of making such request or giving such authority or consent is the Holder of any Bond, shall be conclusive and binding upon all future Holders of the same Bond and upon Bonds issued in exchange therefor, upon transfer thereof, or in place thereof.

(5) As to the existence or non-existence of any fact or as to the sufficiency or authenticity of any instrument, paper or proceeding, the Trustee shall be entitled to rely upon a certificate of the Issuer signed by a Representative of the Issuer as sufficient evidence of the facts stated therein as the same appear from the books and records under such Representative's custody or control or are otherwise known to him, her, or them. The Trustee may accept a certificate of such Representative under the seal of the Issuer to the effect that a motion, resolution or ordinance in the form therein set forth has been adopted by the governing body of the Issuer as conclusive evidence that such motion, resolution or ordinance has been duly adopted, and is in full force and effect, and may accept such motion, resolution or ordinance as sufficient evidence of the facts stated therein and the necessity or expediency of any particular dealing, transaction or action authorized or approved thereby, but may at its discretion, secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same.

(6) The Trustee shall not be answerable except for its own negligence, willful misconduct or willful default.

(7) The Trustee shall not be personally liable for any debts contracted or for damages to persons or to personal property injured or damaged, or for salaries or nonfulfillment of contracts during any period in which they may be in possession of or managing the real and tangible personal property as in this Indenture provided.

(8) At any and all reasonable times, the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives, shall have the right fully to inspect any and all of the property comprising the Project, including all books, papers and records of the Issuer pertaining to the Project and the Bonds, and to take such memoranda from and with regard thereto as may be desired.

(9) The Trustee shall not be required to give any bond or surety with respect to the execution of said trusts and powers or otherwise in respect to the premises.

(10) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, with respect to the authentication of any Bonds, the withdrawal of any cash, the release of any property or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions (including opinions of Independent Counsel), appraisals or other information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee, deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, the release of any property, or the taking of any other action by the Trustee.

(11) Before taking any action under this Indenture, the Trustee may require that it be furnished an indemnity bond satisfactory to the Trustee for the reimbursement of all expenses to which the Trustee may be put and to protect the Trustee against all liability except liability which is adjudicated to have resulted from the negligence, willful misconduct or willful default of the Trustee, by reason of any action so taken by the Trustee.

(12) All money received by the Trustee, the Paying Agent or any co-Paying Agent for the Bonds shall, until used or applied or invested as herein provided, be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required herein or by law. None of the Trustee, the Paying Agent, or any co-Paying Agent shall be under any liability for interest on any money received hereunder except such as may be agreed upon.

(13) No provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if the Trustee shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(14) The Trustee shall make no representation as to the validity or adequacy of this Indenture or the Bonds, it shall not be accountable for the Issuer's use of the proceeds of the Bonds or any money paid to the Issuer or upon the Issuer's direction under any provision hereof, it shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee and it shall not be responsible for any statement or recital herein or any statement in the Bonds or any other document in connection with the sale of the Bonds or pursuant to this Indenture other than its certificate of authentication.

(15) The Trustee shall not be liable for any error in judgment exercised in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

(16) In no event shall the Trustee be liable for incidental, indirect, special, consequential or punitive damages or penalties (including, but not limited to lost profits), even if the Trustee has been advised of the likelihood of such damages or penalty and regardless of the form of action.

(17) The Trustee shall not be required to take notice or be deemed to have notice of any Event of Default, except Events of Default described in Section 8.1(1) and (2) hereof, unless the Responsible Officer shall be notified of such default in writing by the Issuer or by the Holders of a majority in aggregate principal amount of the Bonds then Outstanding and all notices required to be delivered to the Responsible Officer must, in order to be effective, be delivered at the designated corporate trust office of the Trustee and, in the absence of such notice so delivered, the Trustee may conclusively assume there is no default except as aforesaid.

Section 9.2. Trustee's Fees, Charges and Expenses. The Trustee and any Paying Agent shall be entitled to payment and/or reimbursement for reasonable fees for services rendered hereunder and all advances, counsel fees and other expenses reasonably and necessarily made or incurred by the Trustee in and about the execution of the trusts created by this Indenture and in and about the exercise and performance of the powers and duties of the Trustee hereunder and for the reasonable and necessary costs and expenses incurred in defending any liability in the premises of any character whatsoever (unless such liability is adjudicated to have resulted from the negligence, willful misconduct or willful default of the Trustee). In this regard the Issuer has made provisions in Section 4.4 of the Loan Agreement for the payment of said fees, advances, counsel fees, costs and expenses and reference is hereby made to the Loan Agreement for the provisions so made; and the Issuer shall not otherwise be liable for the payment of such sums. Upon an Event of Default, but only upon an Event of Default, the Trustee shall have a first lien with right of payment prior to payment on account of interest on or principal or premium, if any, of any Bond and upon the money received by it hereunder, for said fees, advances, counsel fees, costs and expenses incurred by it.

Section 9.3. Notice to Holders of Default. The Trustee shall give to the Bondholders written notice of all Events of Default known to the Trustee, within ninety (90) days after the occurrence of an Event of Default; provided that, except in the case of an Event of Default in the payment of the principal of or interest on any of the Bonds, the Trustee shall be protected in withholding such notice if and so long as the Board of Directors, the executive committee or a trust committee of directors or chief executive officer of the Trustee in good faith determine that the withholding of such notice is in the interest of the Holders.

Section 9.4. Intervention by Trustee. In any judicial proceeding to which the Issuer is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of Holders of Bonds, the Trustee may intervene on behalf of Holders and shall do so if requested in writing by the Holders of at least twenty-five percent (25%) of the aggregate principal amount of Outstanding Bonds. The rights and obligations of the Trustee under this Section are subject to the approval of a court of competent jurisdiction in the premises.

Section 9.5. Successor Trustee. Any corporation, association or agency into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto, shall be and become successor trustee and paying agent under this Indenture and vested with all of the title to the Trust Estate, and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 9.6. Resignation by Trustee. The Trustee and any successor trustee may at any time resign from the trusts hereby created by giving thirty (30) days' written notice to the Issuer and to the Borrower and by first-class mail to each Holder of Bonds as shown on the Bond Register, and such resignation shall take effect upon the appointment of a successor trustee by the Holders or by the Issuer. Such notice to the Issuer and the Borrower may be served personally or sent by registered mail. The Trustee shall not be relieved of its duties until such successor trustee has accepted appointment. If at any time the Trustee resigns and no appointment of a successor trustee is made pursuant hereto within forty-five (45) days after the giving of a notice of resignation, the resigning Trustee may apply to a court of competent jurisdiction at the expense of the Issuer for the appointment of a successor Trustee. The resigning Trustee shall not be liable for the actions of the successor Trustee.

Section 9.7. Removal of Trustee. The Trustee may be removed at any time upon thirty (30) days' written notice by an instrument or concurrent instruments in writing delivered to the Trustee, to the Borrower and to the Issuer, and signed by the Holders of a majority in aggregate principal amount of then Outstanding Bonds. Such removal shall only take effect upon the appointment of a successor trustee.

Section 9.8. Appointment of Successor Trustee. In case the Trustee shall resign or be removed, or be dissolved or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor may be appointed by the Holders of a majority in aggregate principal amount of the then Outstanding Bonds, by an instrument or concurrent instruments in writing signed by such Holders, or by their attorney-in-fact, duly authorized. Nevertheless, in case of such vacancy the Issuer by resolution of its governing body may appoint a temporary trustee to fill such vacancy until a successor trustee shall be appointed by the Holders in the manner above provided; and any such temporary trustee so appointed by the Issuer shall immediately and without further act be superseded by the trustee so appointed by such Holders. Every such Trustee appointed pursuant to the provisions of this Section 9.8 shall be a trust company or bank having trust powers and having a reported capital and surplus not less than

\$25,000,000, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms.

Section 9.9. Acceptance by Successor Trustees. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor, to the Borrower and also to the Issuer, an instrument in writing accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance shall become fully vested with all the estates, properties, rights, powers, trusts, duties and obligations of its predecessors as Trustee and Paying Agent; but such predecessor shall, nevertheless, on the written request of the Issuer, or of its successor Trustee, execute and deliver an instrument transferring to such successor Trustee all the estates, properties, rights, powers and trusts of such predecessor hereunder, and every predecessor Trustee shall deliver all securities and money held by it as Trustee hereunder to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vesting in such successor the estates, rights, powers and duties hereby vested or intended to be vested in the predecessor trustee, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer. The resignation of any Trustee and the instrument or instruments removing any Trustee and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be forthwith filed or recorded or both by the successor Trustee in each recording office where the Indenture shall have been filed or recorded or both.

Section 9.10. Right of Trustee to Pay Taxes and Other Charges. If any tax, assessment or governmental or other charge upon any part of the Trust Estate is not paid as required herein, the Trustee may pay such tax, assessment or charge, without prejudice, however, to any rights of the Trustee or the Bondholders hereunder arising in consequence of such failure; and any amount at any time so paid under this Section, or under the Loan Agreement, with interest thereon (to the extent permitted by law) from the date of such payment until paid to the Trustee in full at a rate per annum equal to the prime rate, shall become so much additional indebtedness secured hereby, and the same shall be given a preference in payment over the principal of and the interest on, the Bonds and shall be paid out of the revenues and receipts from the Trust Estate, if not otherwise caused to be paid. The Trustee shall not be under an obligation to make any such payment unless it shall have been requested to do so by the Holders of at least twenty-five percent (25%) in principal amount of the Bonds then Outstanding and shall have been provided with sufficient money for the purpose of making such payment.

Section 9.11. Trustee Protected in Relying upon Resolutions. The resolutions, orders, requisitions, opinions, certificates and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warrant, protection and authority to the Trustee.

Section 9.12. Successor Trustee as Custodian of Bond Fund and Paying Agent. In the event of a change in the office of the Trustee the predecessor trustee which has resigned or been removed shall cease to be custodian of the funds described in Article 5 hereof and shall cease to act as the Paying Agent for principal and interest on the Bonds, and the successor trustee shall be and become such custodian and Paying Agent.

Section 9.13. Co-Trustee. At any time or times, for the purpose of meeting any legal requirements of any jurisdiction in which any part of the Trust Estate may at the time be located, the Issuer and the Trustee shall have the power to appoint, and, upon the request of the Trustee or of the Holders of at least fifty-one percent (51%) in aggregate principal amount of the then Outstanding Bonds, the Issuer shall for such purpose join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint one or more persons approved by the Trustee either to act as co-trustee or co-trustees, jointly with the Trustee, of all or any part of the Trust Estate, or to act as separate

trustee or separate trustees of all or any part of the Trust Estate, and to vest in such person or persons, in such capacity, such right to the Trust Estate or any part thereof, and such rights, powers, duties, trusts or obligations as the Issuer and the Trustee may consider necessary or desirable subject to the remaining provisions of this Section 9.13.

If the Issuer shall not have joined in such appointment within fifteen (15) days after the receipt by it of a request so to do, or in case an Event of Default shall have occurred and be continuing, the Trustee alone shall have power to make such appointment.

The Issuer shall execute, acknowledge and deliver all such instruments as may be required by any such co-trustee or separate trustee for more fully confirming such title, rights, powers, trusts, duties and obligations to such co-trustee or separate trustee.

Every co-trustee or separate trustee shall, to the extent permitted by law but to such extent only, be appointed subject to the following terms, namely:

(1) The Bonds shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Indenture conferred upon the Trustee in respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by the Trustee.

(2) All rights, powers, trusts, duties and obligations conferred or imposed upon the trustees shall be conferred or imposed upon and exercised or performed by the Trustee, or by the Trustee and such co-trustee or co-trustees or separate trustee or separate trustees jointly, as shall be provided in the instrument appointing such co-trustee or co-trustees or separate trustee or separate trustees, except to the extent that, under the law of any jurisdiction in which any particular act or acts are to be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-trustee or co-trustees or separate trustee or separate trustees.

(3) Any request in writing by the Trustee to any co-trustee or separate trustee to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking, or the refraining from taking, of such action by such co-trustee or separate trustee.

(4) Any co-trustee or separate trustee may delegate to the Trustee the exercise of any right, power, trust, duty or obligation, discretionary or otherwise.

(5) The Trustee at any time, by an instrument in writing, with the concurrence of the Issuer, may accept the resignation of or remove any co-trustee or separate trustee appointed under this Section 9.13, and, in case of a continuing Event of Default the Trustee shall have power to accept the resignation of, or remove, any such co-trustee or separate trustee without the concurrence of the Issuer. Upon the request of the Trustee, the Issuer shall join with the Trustee in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-trustee or separate trustee so resigned or removed may be appointed in the manner provided in this Section 9.13.

(6) No trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder.

(7) Any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing delivered to the Trustee shall be deemed to have been delivered to each co-trustee or separate trustee.

(8) Any money, papers, securities or other items of personal property received by any such co-trustee or separate trustee hereunder shall forthwith, so far as may be permitted by law, be turned over to the Trustee.

Upon the acceptance in writing of such appointment by any such co-trustee or separate trustee, it or he shall be vested with such interest in and to the Trust Estate or any part thereof, and with such rights, powers, duties or obligations, as shall be specified in the instrument of appointment jointly with the Trustee (except insofar as local law makes it necessary for any such co-trustee or separate trustee to act alone) subject to all the terms of this Indenture. Every such acceptance shall be filed with the Trustee. Any co-trustee or separate trustee may, at any time by an instrument in writing, constitute the Trustee its or his attorney-in-fact and agent, with full power and authority to do all acts and things and to exercise all discretion on its or his behalf and in its or his name.

In case any co-trustee or separate trustee shall die, become incapable of acting, resign or be removed, the title to the Trust Estate and all rights, powers, trusts, duties and obligations of said co-trustee or separate trustee shall, so far as permitted by law, vest in and be exercised by the Trustee unless and until a successor co-trustee or separate trustee shall be appointed in the manner herein provided.

Section 9.14. Obligation to Trustee as to Reporting. The Trustee shall, at the request and direction of the Borrower, cause to be filed any reports lawfully required by any public agency to be filed under any applicable security laws and any other reports lawfully required by any public agency to be filed under the Act or any other applicable state law. For this purpose the Borrower shall cause to be furnished to the Trustee whatever information is necessary to comply with such reporting requirements at the Borrower's sole expense.

Section 9.15. Successor Paying Agent. The provisions of Sections 9.5 through 9.9 hereof with respect to removal, resignation and appointment of a successor trustee shall be equally applicable to resignation, removal and appointment of a successor to the Paying Agent. The Trustee shall be eligible for appointment as successor to the Paying Agent.

Section 9.16. Confirmation of Trustee.

(1) At any time while the Bonds remain Outstanding under this Indenture and in any of the following circumstances, to the extent permitted by law, to-wit:

(a) The Trustee is in doubt as to whether or not the Indenture or any Related Document or instrument requires Bondholders' consent or the consent of the Borrower, any guarantor, or the Issuer in connection with any proposed action;

(b) The Trustee has substantial doubt as to whether its consent to a proposed action, although authorized, should in the particular circumstances be given;

(c) The Trustee's consent is sought or deemed necessary in connection with a proposed action which is not specifically dealt with or contemplated by the Indenture or any other Related Document, or it is unclear whether the Indenture or other Related Document is intended to deal with the proposed action;

(d) There is a disagreement between any of the parties to the Indenture or any other Related Document as to whether a proposed action may be taken or is required to be taken;

(e) There appears to be a conflict, ambiguity or inconsistency between or among the provisions of the Indenture and any other Related Document other than as provided for in Sections 10.1 and 11.1 hereof;

(f) There is doubt as to whether or not a proposed action falls within one (1) of the provisions of Sections 10.1 and 11.1 hereof authorizing such action without Bondholders' consent;

(g) Bondholders' consent is required by this Indenture or Related Document but consent cannot be obtained because:

(i) it is not possible to comply with requirements of this Indenture or any other Related Document as to the notice to be given to Bondholders with respect to the proposed matter requiring consent; or

(ii) if action is to be taken at a meeting of Bondholders, the requisite number of Bondholders (the quorum) necessary to be present at a meeting in order for a proposed action to be taken was not present at such meeting or any adjourned meeting;

(h) The Trustee wishes to depart from the procedures set forth in Section 12.3 hereof for purposes of calling or conducting a meeting of the Bondholders; or in any other eventuality in which it shall be necessary to determine a question arising under or to construe this Indenture or any other Related Document, the Trustee may, and upon request of the Issuer, the Borrower or the Holders of twenty-five percent (25%) or more in principal amount of Outstanding Bonds shall, proceed in accordance with the provisions of Minnesota Statutes, Sections 501C.0201 through 501C.0208, as amended.

If Bondholder's consent cannot be obtained because of the circumstances described in clause (g) above a court of competent jurisdiction may amend or supplement the Loan Agreement or Indenture or any Related Document upon a proper showing of the necessity therefor.

(2) In construing and interpreting the Indenture and any other Related Document, the objective shall always be to ascertain and effectuate the intention of the parties. So far as possible and appropriate, and to the extent that it does not conflict with the provisions of the Indenture or the other Related Documents, the principles of statutory construction enunciated in Minnesota Statutes, Sections 645.16 through 645.20, as amended, shall be applied in the interpretation and construction of the Indenture and other Related Documents.

(3) The Trustee or successor Trustee shall not be answerable for actions taken in compliance with any final order of the court. The Trustee or successor Trustee shall not be entitled to require an indemnity bond pursuant to Section 9.1(11) hereof, prior to taking any action directed by final order of the court.

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ARTICLE 10

SUPPLEMENTAL INDENTURES

Section 10.1. Supplemental Indentures Not Requiring Consent of Bondholders. The Issuer and the Trustee may, from time to time and at any time, without the consent of, or notice to, any of the Holders, and when so required by this Indenture shall, enter into an indenture or indentures supplemental to this Indenture as shall not be inconsistent with the terms and provisions hereof (which supplemental indentures or indentures shall thereafter form a part hereof), so as to thereby (1) cure any ambiguity or formal defect or omission in this Indenture or in any supplemental indentures; (2) grant to or confer upon the Trustee for the benefit of the Holders any additional rights, remedies, powers, authority or security that may lawfully be granted to or conferred upon the Holders or the Trustee; (3) more precisely identify the Trust Estate, or any other property which may become a part of the Trust Estate; (4) subject to the lien and pledge of this Indenture additional revenues, properties or collateral; (5) evidence the appointment of a separate trustee or a co-trustee or the succession of a new Trustee and/or Paying Agent hereunder; (6) modify, eliminate and/or add to the provisions of this Indenture to such extent as shall be necessary to prevent any interest on the Bonds from becoming taxable under the Federal income tax laws or to effect the qualification of this Indenture under the Trust Indenture Act of 1939, as then amended, or under any similar federal statute hereafter enacted, and to add to this Indenture such other provisions as may be expressly permitted by said Trust Indenture Act of 1939, excluding however the provisions referred to in Section 316(a)(2) of said Trust Indenture Act of 1939; (7) make any other change which is required by any provision of this Indenture necessary to reconcile the Indenture with the Related Documents, or any amendments thereto; or (8) make any other change which is necessary or desirable and will not materially prejudice any non-consenting Holder of a Bond.

Section 10.2. Supplemental Indentures Requiring Consent of Holders. Exclusive of supplemental indentures covered by Section 10.1 hereof and subject to the terms and provisions contained in this Section, and not otherwise, the Trustee, upon receipt of an instrument evidencing the consent to the below-mentioned supplemental indentures by the Holders of not less than fifty-one percent (51%) of the aggregate principal amount of the then Outstanding Bonds affected thereby, shall join with the Issuer in the execution of such other indentures supplemental hereto as shall be deemed necessary and desirable for the purpose of modifying, altering, amending, adding to or rescinding, any of the terms or provisions contained in this Indenture or in any supplemental indentures; provided, however, that nothing herein contained shall permit or be construed as permitting (1) an extension of the maturity of the principal or of the interest on any Bond issued hereunder; (2) a reduction in the principal amount of any Bond or the rate of interest thereon or any premium thereon; (3) a privilege or priority of any Bond or Bonds over any other Bond or Bonds except as may be otherwise expressly provided herein; (4) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental indentures; or (5) a modification to any of the provisions of this Section without the consent of the Holders of one hundred percent (100%) of the principal amount of all Bonds adversely affected thereby ("100% Bondholders' Consent").

If at any time the Issuer shall request the Trustee to enter into any such supplemental indentures for any of the purposes of this Section which does not require 100% Bondholders' Consent, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indentures to be mailed by first-class mail, postage prepaid, to the Holders of the Bonds at the addresses shown on the Bond Register. Such notice shall briefly set forth the nature of the proposed supplemental indentures and shall state that copies thereof are on file at the principal office of the Trustee for inspection by all Bondholders. The Trustee shall not, however, be subject to any liability to any Bondholder by reason of its failure to mail such notice to any particular Bondholder if notice was generally mailed to Bondholders, and any such failure shall not affect the validity of such supplemental indentures

when consented to and approved as provided in this Section. If the Holders of not less than fifty-one percent (51%) in aggregate principal amount of the then Outstanding Bonds at the time of the execution of any such supplemental indenture shall have consented to and approved the execution thereof as herein provided, no Holder of any Bond shall have any right to object to any of the terms and provisions contained herein or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such supplemental indenture as in this Section permitted and provided, this Indenture shall be and is deemed to be modified and amended in accordance herewith.

Anything herein to the contrary notwithstanding, a supplemental indenture under this Article 10 which adversely affects the right of the Borrower under the Loan Agreement shall not become effective unless and until the Borrower shall have consented in writing to the execution and delivery of such supplemental indenture. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any such supplemental indenture, together with a copy of the proposed supplemental indenture, to be mailed by certified or registered mail to the Borrower, the Investor Limited Partner at least thirty (30) days prior to the proposed date of execution and delivery of any such supplemental indenture.

Anything contained herein to the contrary notwithstanding, a supplemental indenture executed and delivered in accordance with this Article 10 which affects any rights or obligations of the Remarketing Agent shall not become effective unless and until the Remarketing Agent shall have consented in writing to the execution and delivery of that supplemental indenture. The Trustee shall cause notice of the proposed execution and delivery of any supplemental indenture and a copy of the proposed supplemental indenture to be mailed to the Remarketing Agent (a) at least thirty (30) days (unless waived by the Remarketing Agent) before the date of the proposed execution and delivery in the case of a supplemental indenture to which reference is made in Section 10.1 hereof; and (b) at least thirty (30) days (unless waived by the Remarketing Agent) before the giving of the notice of the proposed execution and delivery in the case of a supplemental indenture for which provision is made in this Section 10.2.

Section 10.3. Rights of Trustee. If, in the opinion of the Trustee, any supplemental indenture provided for in this Article affects the rights, duties or immunities of the Trustee under this Indenture or otherwise, the Trustee may, in its discretion, decline to execute such supplemental indenture, except to the extent that this may be required in the case of a supplemental indenture entered into under Section 10.1 hereof. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, an opinion of Independent Counsel as conclusive evidence that any such supplemental indenture conforms to the requirements of this Indenture.

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ARTICLE 11

AMENDMENTS TO LOAN AGREEMENT AND OTHER RELATED DOCUMENTS

Section 11.1. Amendments Not Requiring Bondholder Consent. The Issuer and/or the Trustee may, without the consent of or notice to the Bondholders, consent to any amendment, change or modification of the Related Documents:

- (1) which may be required or permitted without Bondholder consent by the provisions of the Related Documents or this Indenture;
- (2) for the purpose of curing any ambiguity or formal defect or omission;
- (3) to reconcile the Related Documents with any amendment or supplement to the Indenture; or
- (4) to effect any other change to the Related Documents which will not materially prejudice any non-consenting Holder of a Bond.

Section 11.2. Amendments Requiring Bondholder Consent. Except for amendments, changes or modifications as provided in Section 11.1, neither the Issuer nor the Trustee shall consent to any other amendment, change or modification of the Related Documents, without the giving of notice and the written approval or consent of the Holders of not less than fifty-one percent (51%) in aggregate principal amount of the Bonds affected thereby then Outstanding given and procured as provided in this Section; provided that in no event shall such amendment, change or modification relieve the Borrower of the obligation under the Related Documents to make when and as due any payments required for the payment of principal, interest and any premium due or to become due on the Bonds unless the consent of the Holders of all Bonds adversely affected thereby is first secured. If at any time the Issuer and the Borrower shall request the consent of the Trustee to any such proposed amendment, change or modification of any Related Documents, the Borrower shall request consent of the Trustee to any such proposed amendment, change or modification, and the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of such proposed amendment, change or modification to be given in the same manner as provided in Section 10.2 hereof with respect to supplemental indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the principal office of the Trustee for inspection by all Holders. The Trustee shall not, however, be subject to any liability to any Holder by reason of its failure to mail such notice to any particular Bondholder if notice was generally mailed to Bondholders, and any such failure shall not affect the validity of such amendment, change or modification when consented to and approved as provided in this Section. If the Holders of not less than fifty-one percent (51%) in aggregate principal amount of the Bonds then Outstanding at the time of the execution of any such amendment shall consent to the execution thereof as herein provided, no Holder of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof. Upon the execution of any such amendment, the affected Related Document shall be deemed to be modified and amended in accordance therewith. Nothing in this Section contained shall permit or be construed as permitting any reduction in the payments required to be made (1) by Section 4.2 of the Loan Agreement; or (2) permitting a reduction or change in the Stated Maturities of the Bonds.

ARTICLE 12

MISCELLANEOUS PROVISIONS

Section 12.1. Consent of Holders. Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Holders may be in any number of concurrent writings of similar tenor and must be signed or executed by such Holders in person or by an agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner, shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken by it under such request or other instrument, namely:

(1) The fact and date of the execution by any Person of any such writing may be proved by the certificate of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the Person signing such writing acknowledged before him, her, or them the execution thereof, or by an affidavit of any witness to such execution.

(2) The fact of the ownership by any Person of Bonds and the amounts and numbers of such Bonds, and the date of the holding of the same, may be proved only by reference to the Bond Register.

Section 12.2. Rights under Indenture. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give any person or company other than the parties hereto, and the Bondholders, any legal or equitable right, remedy, or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions hereof being intended to be and being for the sole and exclusive benefit of the parties hereto and the Holders of the Bonds hereby secured as herein provided.

Section 12.3. Meetings of Bondholders.

(1) A meeting of Bondholders may be called at any time and from time to time pursuant to this Section to facilitate any of the following purposes:

(a) to give any notice to the Issuer, the Borrower or the Trustee, or to give any directions to the Trustee, or to consent to the waiving of any default under this Indenture, or to take any other action authorized to be taken by the Bondholders under this Indenture;

(b) to remove the Trustee or to appoint a successor trustee pursuant to Sections 9.7 and 9.8 hereof;

(c) to consent to the execution of a supplemental indenture pursuant to Section 10.2 hereof, or to consent to the execution of an amendment, change or modification of any Related Document pursuant to Section 11.2 hereof; or

(d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Bonds under any other provision of this Indenture or under applicable law.

(2) Meetings of Bondholders may be held at such place or places as the Trustee or, in case of its failure to act, the Bondholders calling the meeting, shall from time to time determine.

(3) The Trustee may at any time call a meeting of Bondholders to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of Bondholders setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be mailed by first-class mail, postage prepaid, to the Holders of the Bonds at the address shown on the Bond Register. Any failure of the Trustee to mail such notice to a particular Bondholder, or any defect therein shall not, however, in any way impair or affect the validity of any such meeting if notice was generally mailed to Bondholders. In the event that the Holders of at least ten percent (10%) in aggregate principal amount of the Outstanding Bonds affected shall have requested the Trustee to call a meeting of the Bondholders by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have accomplished the mailing of notice of such meeting within twenty (20) days after receipt of such request, then such Bondholders may determine the time and the place for such meeting and may call such meeting to take any action authorized in subsection (1) above by giving notice of such meeting in accordance with the provisions of this subsection (3).

(4) To be entitled to vote at any meeting of Bondholders, a person shall be a Holder of one or more Bonds Outstanding, or a person appointed by an instrument in writing as proxy for a Bondholder by such Bondholder. The only persons who shall be entitled to be present or to speak at any meeting of Bondholders shall be the persons entitled to vote at such meeting and their counsel and any representatives of the Trustee, Borrower, and Issuer and their counsel.

(5) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Bondholders in regard to proof of the ownership of Bonds and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the ownership of Bonds shall be proved in the manner specified in Section 12.1 hereof and the appointment of any proxy shall be proved in the manner specified in said Section or by having the signature of the person executing the proxy witnessed or guaranteed by any bank, banker or trust company authorized by said Section to certify to the ownership of Bonds:

(a) The Trustee or, if the Bondholders have called the meeting, the Bondholders shall, by an instrument in writing, appoint a temporary chairperson of the meeting. A permanent chairperson and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority of the Bonds represented at the meeting and entitled to vote.

(b) At any meeting such Bondholder or proxy shall be entitled to one (1) vote for each \$5,000 of principal amount of Outstanding Bonds owned or represented by him, her, or them; provided, however, that no vote shall be cast or counted at any meeting in respect of any Bond challenged as not Outstanding and ruled by the chairperson of the meeting to be not Outstanding. The chairperson of the meeting shall have no right to vote, except as a Bondholder or proxy.

(c) At any meeting of Bondholders, the presence of persons owning or representing Bonds in an aggregate principal amount sufficient under the appropriate provision of this Indenture to take action upon the business for the transaction of which

such meeting was called shall constitute a quorum. Any meeting of Bondholders duly called pursuant to this Section may be adjourned from time to time by vote of the Holders (or proxies for the Holders) of a majority of the Bonds represented at the meeting and entitled to vote, whether or not a quorum shall be present; and the meeting may be held as so adjourned without further notice.

(6) The vote upon any resolution submitted to any meeting of Bondholders shall be by written ballots on which shall be subscribed the signatures of the Bondholders or of their proxies and the number or numbers of the Bonds Outstanding held or represented by them. The permanent chairperson of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in triplicate of all votes cast at the meeting. A record, at least in triplicate, of the proceedings of each meeting of Bondholders shall be prepared by the secretary of the meeting. The original reports of the inspectors of votes on any vote by ballot taken at such meeting, and affidavits by one (1) or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was published or mailed as provided in this Section shall be attached to such record. Each copy shall be signed and verified by the affidavits of the permanent chairperson and secretary of the meeting and one such copy shall be delivered to the Issuer, another to the Borrower and another to the Trustee to be preserved by the Trustee, which copy shall have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

(7) At any time prior to the preparation of the record of the meeting in accordance with the terms of this Section for delivery to the Trustee evidencing the taking of any action by the Holders of the percentage in aggregate principal amount of the Bonds specified in this Indenture in connection with such action, any Holder of a Bond the number of which is included in the Bonds, the Holders of which have consented to such action, may, by filing written notice with the Trustee at its principal corporate trust office and upon proof of holding as provided in Section 12.1 hereof, revoke such consent so far as it concerns such Bond. Except as aforesaid, any such consent given by the Holder of any Bond shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Bond and of any Bond issued in exchange therefor, upon transfer thereof, or in lieu thereof, irrespective of whether or not any notation in regard thereto is made upon such Bond. Any action taken by the Holders of the percentage in aggregate principal amount of the Bonds specified in this Indenture in connection with such action shall be conclusively binding upon the Issuer, the Borrower, the Trustee and the Holders of all the Bonds.

(8) Nothing in this Section 12.3 is intended to limit or prevent the Trustee from taking any action permitted under Section 9.16 hereof, including but not limited to the Trustee's right to apply to a court of competent jurisdiction for confirmation of appointment, or for instructions in accordance with the provisions of Minnesota Statutes, Sections 501C.0201 through 501C.0208, as amended.

Section 12.4. Severability. If any provision of this Indenture shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions of any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or paragraphs in this Indenture contained shall not affect the remaining portions of this Indenture or any part thereof.

Section 12.5. Notices. All notices, certificates or other communications hereunder shall be in writing (except as otherwise expressly provided herein) and shall be sufficiently given and shall be deemed given when mailed by first-class mail, postage prepaid, with proper address as indicated below. The Issuer, the Borrower, the Bondholders and the Trustee may, by written notice given by each to the others, designate any address or addresses to which notices, certificates or other communications to them shall be sent when required as contemplated by this Indenture. Until otherwise provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as provided in Section 10.2 of the Loan Agreement.

Section 12.6. Required Approvals. Consents and approvals required by this Indenture to be obtained from the Borrower, the Issuer or the Trustee shall be in writing and shall not be unreasonably withheld or delayed.

Section 12.7. Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one (1) and the same instrument.

Section 12.8. Limitation of Liability of Issuer, City, and Their Officers, Employees and Agents. No covenant, provision or agreement of the Issuer herein or in the Bonds or in any other document executed by the Issuer in connection with the issuance, sale and delivery of the Bonds, or any obligation herein or therein imposed upon the Issuer or breach thereof, shall give rise to a pecuniary liability of the Issuer or the City or a charge against their general credit or taxing powers or shall obligate the Issuer or the City financially in any way except with respect to this Indenture and the application of revenues therefrom and the proceeds of the Bonds. No failure of the Issuer to comply with any term, condition, covenant or agreement therein shall subject the Issuer to liability for any claim for damages, costs or other financial or pecuniary charges except to the extent that the same can be paid or recovered from this Indenture or revenues therefrom or proceeds of the Bonds. No execution on any claim, demand, cause of action or judgment shall be levied upon or collected from the general credit, general funds or taxing powers of the Issuer or the City. In making the agreements, provisions and covenants set forth herein, the Issuer has not obligated itself except with respect to this Indenture and the application of revenues hereunder as hereinabove provided.

The Bonds constitute special, limited obligations of the Issuer, payable solely from the revenues pledged to the payment thereof pursuant to this Indenture, and do not now and shall never constitute an indebtedness or a loan of the credit of the Issuer, the City, the State or any political subdivision thereof or a charge against the general taxing powers of the Issuer, the City, the State or any political subdivision thereof within the meaning of any constitutional or statutory provision whatsoever. It is further understood and agreed by the Borrower and the Holders that the Issuer shall incur any pecuniary liability hereunder nor shall it be liable for any expenses related hereto, all of which the Borrower agrees to pay. If, notwithstanding the provisions of this Section, the Issuer incurs any expense, or suffers any losses, claims or damages or incurs any liabilities, the Borrower will indemnify and hold harmless the Issuer from the same and will reimburse the Issuer, for any legal or other expenses incurred by the Issuer, in relation thereto, and this covenant to indemnify, hold harmless and reimburse the Issuer shall survive delivery of and payment for the Bonds. The liability of the Issuer is further restricted as provided in the Act.

Section 12.9. Amounts Remaining in Funds. Upon expiration or sooner termination of the Loan Agreement as provided therein and after adequate provision has been made to discharge the Bonds in accordance with Article 7 hereof and make all other payments required hereunder and under the Loan

Agreement, the Trustee forthwith shall, pay all remaining amounts in the funds established in Article 5 hereof to the Borrower.

Section 12.10. [Reserved].

Section 12.11. Payments Due on Saturdays, Sundays and Holidays. If any Interest Payment Date or a date of maturity of the principal of any Bonds is a Saturday, Sunday or a day on which (1) the Trustee is required, or authorized or not prohibited, by law (including without limitation, executive orders) to close and is closed, then payment of interest and principal need not be made by the Trustee or the Paying Agent on that date, but that payment may be made on the next succeeding Business Day on which the Trustee and the Paying Agent are open for business with the same force and effect as if that payment were made on the Interest Payment Date or Stated Maturity, and no interest shall accrue for the period after that date, or (2) a Paying Agent is required, or authorized or not prohibited, by law (including without limitation, executive orders) to close and is closed, then payment of interest and principal need not be made by that Paying Agent on that date, but that payment may be made on the next succeeding Business Day on which that Paying Agent is open for business with the same force and effect as if that payment were made on the Interest Payment Date or Stated Maturity and no interest shall accrue for the period after that date; provided, that if the Trustee is open for business on the applicable Interest Payment Date or Stated Maturity, it shall make any payment required hereunder with respect to payment of interest on Outstanding Bonds and payment of principal of the Bonds presented to it for payment, regardless of whether the Paying Agent shall be open for business or closed on the applicable Interest Payment Date or Stated Maturity.

Section 12.12. Binding Effect. This Indenture shall inure to the benefit of and shall be binding upon the Issuer and the Trustee and their respective successors and assigns, subject, however, to the limitations contained herein.

Section 12.13. Governing Law. This Indenture and the Bonds shall be deemed to be contracts made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

Section 12.14. Security Advice Waiver. The Issuer acknowledges that regulations of the Comptroller of the Currency grant the Borrower the right to receive brokerage confirmations of the security transactions as they occur. Pursuant to Section 8.3 of the Loan Agreement, the Borrower specifically waives such notification to the extent permitted by law and will receive periodic cash transaction statements that will detail all investment transactions.

Section 12.15. Patriot Act. To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust or other legal entity the Trustee will request documentation to verify its formation and existence as a legal entity. Furthermore, if required by the Patriot Act, Trustee may request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

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IN WITNESS WHEREOF, the Issuer has caused this Indenture of Trust to be signed in its name on its behalf by its duly authorized officials, and to evidence its acceptance of the trusts hereby created the Trustee has caused these presents to be signed in its name and behalf by its duly authorized officer, all as of the date and year first written above.

**HOUSING AND REDEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF RICHFIELD,
MINNESOTA**

By _____
Its Chair

By _____
Its Executive Director

Execution page of the Trustee to the Indenture of Trust, dated as of the date and year first written above.

**U.S. BANK TRUST COMPANY, NATIONAL
ASSOCIATION**

By _____
Its Vice President

EXHIBIT A

FORM OF BOND

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF HENNEPIN

No. R-1

\$10,000,000

HOUSING AND REDEVELOPMENT AUTHORITY
IN AND FOR THE
CITY OF RICHFIELD, MINNESOTA
SUBORDINATE MULTIFAMILY HOUSING REVENUE BOND
(FORT SNELLING UPPER POST PROJECT)
SERIES 2023

Interest Rate	Stated Maturity	Mandatory Tender Date	Date of Original Issue	CUSIP Number
____%	July 1, 20____	July 1, 2025	June __, 2023	

REGISTERED HOLDER: CEDE & CO.

PRINCIPAL AMOUNT: _____ DOLLARS

(1) KNOW ALL PERSONS BY THESE PRESENTS that the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of the State of Minnesota (the “Issuer”), for value received, promises to pay to the registered holder named above, or registered assigns, but only from the Bond Fund, and upon presentation and surrender hereof at the principal corporate trust office of the Trustee named below, the principal sum specified above, on the Stated Maturity specified above, or, if this Bond is prepayable as stated below, or a prior date on which it shall have been duly called for redemption, and to pay interest on said principal sum to the Record Date Holder hereof, semiannually on January 1 and July 1 of each year (each an “Interest Payment Date”), commencing January 1, 2024, solely from the Bond Fund, until the principal sum is paid or discharged at the rates per annum specified above on the basis of a three hundred sixty (360) day year composed of twelve (12) thirty (30) day months. Capitalized terms used herein that are otherwise not defined shall have the meanings provided in the Indenture of Trust, dated as of June 1, 2023 (the “Indenture”), between the Issuer and U.S. Bank Trust Company, National Association, a national banking association (the “Trustee”).

This Bond shall bear interest from the date of original issue set forth above, or in the case of transfer or exchange, from the most recent Interest Payment Date to which interest has been paid or provided for. The “Record Date Holder” is the person in whose name this Bond is registered in the Bond Register maintained by the Trustee named below or its successor in trust (the “Registered Holder” or “Holder”) on the fifteenth day of the calendar month next preceding an Interest Payment Date, whether or not such day is a Business Day. Interest shall be payable by check or draft mailed to the Registered Holder at his, her, or their address as it appears on the Bond Register on the Record Date, except as otherwise provided in the Indenture.

The principal of and interest and premium, if any, on this Bond are payable in lawful money of the United States of America. Upon notice to the Trustee accompanied by proper wire instructions, any Holder of Bonds in an aggregate principal amount equal to or greater than \$1,000,000 may elect to be paid the interest on such Bond payable on any Interest Payment Date by Federal Reserve wire transfer in immediately available funds to any bank in the United States specified by such Holder.

Interest not timely paid or duly provided for will be paid by check mailed to the person in whose name this Bond is registered on the Bond Register at the close of business on a date (the “Special Record Date”) fixed by the Trustee, notice of which is to be mailed to all Bondholders.

(2) This Bond is one of a duly authorized issue of obligations of the Issuer designated as the “Subordinate Multifamily Housing Revenue Bonds (Fort Snelling Upper Post Project), Series 2023” (the “Bonds”), issued in the original aggregate principal amount of \$10,000,000, all of like nominal date of original issue and tenor, except as to number, rate, amount, and redemption privilege, issued in accordance with the Indenture, setting forth the terms upon which the Bonds are issued. The Bonds are issued for the purpose of financing a portion of the costs of the leasehold acquisition, construction and/or rehabilitation, and equipping of a an approximately 192-unit multifamily housing rental facility and facilities functionally related and subordinate thereto located at 58 Taylor Avenue, Unorganized Territory of Fort Snelling, Minnesota 55111, known as the Fort Snelling Upper Post Project (the “Project”), to be owned by Fort Snelling Leased Housing Associates I, LLLP, a Minnesota limited liability limited partnership (the “Borrower”). The Borrower has agreed under a Loan Agreement, dated as of June 1, 2023 (the “Loan Agreement”), between the Issuer and the Borrower, to repay all amounts necessary to repay the Bonds, together with interest thereon, in amounts and at times sufficient to pay the principal of, premium, if any, and interest on the Bonds as the same shall become due and payable (the “Basic Payments”). The Issuer, the Borrower, Fort Snelling Leased Housing Associates Master Tenant I, LLLP, a Minnesota limited liability limited partnership and the master tenant of the Project, and the Trustee have entered into a Regulatory Agreement of even date herewith (the “Regulatory Agreement”), which requires compliance with certain requirements of federal and state law relating to the operation of the Project as a multifamily rental housing project. Pursuant to the Indenture, the Issuer has assigned and pledged to the Trustee, for the equal and ratable benefit of the Holders of the Bonds, the Basic Payments due under the Loan Agreement. As additional security for the Bonds, the Borrower has delivered the Guaranty and the Assignment of Partnership Interest and Capital Contributions (together, the “Security Documents”). Proceeds of the Bonds will be disbursed to or for the benefit of the Borrower pursuant to the Disbursing Agreement.

(3) Reference is hereby made to the Loan Agreement, the Regulatory Agreement, the Disbursing Agreement, the Security Documents and the Indenture, including all indentures supplemental thereto, for a description of the property encumbered and assigned, the provisions, among others, with respect to the nature and extent of the security, the rights of the Issuer, and the rights, duties and obligations of the Borrower, the Trustee and the Holders of the Bonds and the terms upon which the Bonds are issued and secured.

(4) The term “Business Day” shall mean any day on which the Trustee or the Federal Reserve Bank of New York are not authorized by law to close. If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Bond, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day.

(5) The Bonds are subject to redemption prior to maturity as provided in the Indenture as follows:

(a) Optional Prepayment. Subject to the provisions of paragraph (d) below, the Bonds are subject to redemption and prepayment upon request by the Borrower to the Trustee on any Business Day, on or after July 1, 2024, in whole or in part, in principal increments of \$5,000, so long as no Bond is Outstanding in an amount less than \$100,000, and by lot within a maturity, at a Redemption Price equal to the principal amount of the Bonds to be redeemed, plus accrued interest thereon.

(b) Mandatory Redemption from Money Remaining in the Project Fund. The Bonds are subject to mandatory redemption in part, at a Redemption Price equal to the principal amount thereof, without premium, plus accrued interest thereon to the date fixed for redemption, on the earliest practicable date for which notice can be given pursuant to the Indenture, to the extent of money remaining on deposit in the Project Fund that is transferred to the Bond Fund upon completion of the Project and payment of all costs of the Project as provided in Indenture.

(c) Mandatory Redemption from Certain Money. The Bonds are subject to mandatory redemption in part, at a Redemption Price equal to the principal amount thereof, without premium, plus accrued interest thereon to the date fixed for redemption, on the earliest practicable date for which notice can be given pursuant to the Indenture, from the Assigned Capital Contributions described in the Indenture, redemption of the Bonds in part to occur upon each receipt by the Borrower or its designee and deposit with the Trustee in accordance with the Loan Agreement.

(d) No Redemption Prior to Placed in Service Date. Notwithstanding anything to the contrary contained herein, the Bonds shall not be redeemed prior to the date upon which the Project has been placed in service for purposes of Section 42 of the Code.

(6) In the case of any partial redemption of the Bonds of the same maturity, the particular Bonds to be redeemed shall be selected by the Trustee by lot and the Bonds shall be redeemed in the principal amounts specified in the Indenture. Any Bond which is to be redeemed only in part shall be surrendered to the Trustee (i) for payment of the Redemption Price (including accrued interest thereon to the Redemption Date) of the portion thereof called for redemption and (ii) for exchange for Bonds in any authorized denomination or denominations in aggregate principal amount equal to the unredeemed portion of such Bond.

(7) Notice of the intended redemption of Bonds shall be given by first-class mail, to the registered owner of each Bond to be redeemed, at the address of such owner shown on the Bond Register. Notice by publication shall not be required. All such redemption notices shall be given not less than twenty (20) days nor more than sixty (60) days prior to the date fixed for redemption. Each notice with respect to a partial redemption of Bonds shall specify the numbers of the Bonds being called, the Redemption Date, and the place or places where amounts due upon such redemption will be payable. Such notice shall further state that payment of the applicable Redemption Price plus accrued interest (if not previously paid) to the date fixed for redemption will be made upon presentation and surrender of the Bonds. Failure to give notice by mailing to the registered owners of any Bonds designated for redemption or any defect in such notice shall not affect the validity of the proceedings for the redemption of such Bonds.

With respect to optional redemptions, such notice may be conditioned upon money being on deposit with the Trustee on or prior to the Redemption Date in an amount sufficient to pay the Redemption Price on the Redemption Date. If such notice is conditional and either the Trustee receives written notice from the Borrower that money sufficient to pay the Redemption Price will not be on deposit on the Redemption Date, or such money is not received on or prior to the Redemption Date, then such notice shall be of no force and effect, the Trustee shall not redeem such Bonds and the Trustee shall give notice, in the same

manner in which the notice of redemption was given, that such money was not or will not be so received and that such Bonds will not be redeemed.

Notice of redemption having been given in the manner provided above, and money sufficient for the redemption being held by the Trustee for that purpose, thereupon the Bonds so called for redemption shall become due and payable on the Redemption Date, and interest thereon shall cease to accrue; and the owners of the Bonds so called for redemption shall thereafter no longer have any security or benefit under the Indenture except to receive payment of the Redemption Price for such Bonds.

(8) The Bonds are subject to mandatory tender and purchase prior to their stated maturity in whole on the Mandatory Tender Date.

(9) In addition to the foregoing, if under certain circumstances an Event of Default shall occur, the principal of all the Bonds and all interest accrued thereon may, without prior notice to the Bondholders, be declared due and payable in the manner and with the effect provided in the Loan Agreement and Indenture.

(10) The Bonds are issued pursuant to and in full compliance with the Constitution and laws of the State, particularly Minnesota Statutes, Chapters 462C and 474A, as amended, and Minnesota Statutes, Sections 471.59 and 471.656, as amended, and pursuant to a resolution adopted and approved by the governing body of the Issuer on June 5, 2023, which resolution authorized the financing of the Project and the execution and delivery of the Indenture, and the issuance of the Bonds as special, limited obligations payable solely from revenues derived from the Loan Agreement and the Security Documents except that under certain circumstances the Bonds may be payable from Bond proceeds. The loan repayments under the Loan Agreement are scheduled to be sufficient to pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable and are to be paid to the Trustee for the account of the Issuer and credited to the Bond Fund as a special trust fund account created by the Issuer and have been and are hereby pledged for that purpose.

(11) The Bonds, including principal, premium and any other payments however designated, and the interest due thereon do not and shall never constitute a general indebtedness of the Issuer, the City, the State of Minnesota (the "State"), or any political subdivision thereof within the meaning of any state constitutional or statutory provision and do not and shall not constitute or give rise to a pecuniary liability or moral obligation of the Issuer, the City, the State or any of its political subdivisions, or a charge against its general credit or taxing powers, or to the extent permitted by law, any pecuniary liability of any officer, employee or agent of the Issuer or the City. The provisions of this paragraph are controlling notwithstanding anything herein to the contrary.

(12) The Registered Holder of this Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any Event of Default under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. Modifications or alterations of the Indenture, or of any indenture supplemental thereto, may be made only to the extent and in the circumstances permitted by the Indenture.

(13) With the consent of the Issuer, the Borrower and the Trustee, as appropriate, and to the extent permitted by and as provided in the Indenture, the terms and provisions of the Indenture, the Loan Agreement, or of any instrument supplemental thereto relating to the Bonds, may be modified or altered by the consent of the Registered Holders of at least fifty-one percent (51%) in aggregate principal amount of the Bonds then Outstanding thereunder.

(14) The Indenture also contains provisions permitting Holders of a majority in aggregate principal amount of the Bonds at the time Outstanding, on behalf of all the Holders of all the Bonds, to waive compliance by the Issuer with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Registered Holder of this Bond shall be conclusive and binding upon such Registered Holder and on all future Registered Holders of this Bond and of any Bond issued in lieu hereof whether or not notation of such consent or waiver is made upon this Bond.

(15) The Bonds are issued as fully registered bonds without coupons in the Authorized Denominations. No single Beneficial Owner of Bonds is authorized to own a bond in an amount less than an Authorized Denomination. The Bonds are interchangeable for one or more Bonds in Authorized Denominations and of the same series, aggregate principal amount, interest rate and maturity date, upon surrender thereof by the Holder at the principal office of the Trustee, in the manner and subject to the limitations provided in the Indenture. The Issuer, the Trustee and any additional paying agents may deem and treat the Registered Holder hereof as the absolute owner hereof (whether or not this Bond shall be overdue) for the purpose of receiving payment of or on account of principal hereof and interest (except as otherwise hereinabove provided with respect to the Record Date) due hereon and for all other purposes, and the Issuer, the Trustee and any additional paying agents shall not be affected by any notice to the contrary.

(16) Subject to the limitations provided in the Indenture, this Bond is only transferable by the Registered Holder hereof upon surrender of this Bond for transfer at the principal corporate trust office of the Trustee, duly endorsed or accompanied by a written instrument or instruments of transfer in the form printed on this Bond or in another form satisfactory to the Trustee and executed and with guaranty of signature by the Registered Holder hereof or his, her, or their attorney duly authorized in writing, containing written instructions as to the details of the transfer of the Bond. Thereupon the Issuer shall execute (if necessary) and the Trustee shall authenticate and deliver, in exchange for this Bond, one or more new Bonds in the name of the transferee (but not registered in blank or to "bearer" or a similar designation), of an authorized denomination, in aggregate principal amount equal to the principal amount of this Bond, of the same maturity, and bearing interest at the same rate.

(17) No service charge shall be made to the Registered Holder for any registration, transfer or exchange hereinbefore referred to, but the Trustee may require payment of a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in connection with any transfer or exchange of Bonds, other than exchanges expressly provided in the Indenture to be made without charge to Bondholders.

(18) IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner, as required by law, and that the issuance of this Bond and the series of which it forms a part, together with all other obligations of the Issuer, does not exceed or violate any constitutional or statutory limitation.

(19) This Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Indenture unless the Certificate of Authentication hereon shall have been executed by the Trustee.

IN WITNESS WHEREOF, the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, by its governing body, has caused this Bond to be executed in its name by the facsimile signature of its duly authorized official and by the manual signature of a Responsible Agent of the Trustee acting as authenticating agent.

**HOUSING AND REDEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF RICHFIELD,
MINNESOTA**

By _____
Its Chair

By _____
Its Executive Director

CERTIFICATE OF AUTHENTICATION

This is one of the Bonds of the series designated therein referred to in the within-mentioned Indenture.

Date of Authentication: _____, 2023

**U.S. BANK TRUST COMPANY, NATIONAL
ASSOCIATION**

By _____
Responsible Officer

ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____,
the within Bond and does hereby irrevocably constitute and appoint _____,
attorney, to transfer the within Bond on the books kept for registration thereof, with full power of
substitution in the premises.

Dated: _____

PLEASE INSERT SOCIAL SECURITY
OR OTHER IDENTIFYING NUMBER OF
ASSIGNEE _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever. Signature(s) must be guaranteed by an “eligible guarantor institution” meeting the requirements of the Trustee, which requirements include membership or participation in STAMP or such other “signature guaranty program” as may be determined by the Trustee in addition to or in substitution for STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

**Second Draft
May 27, 2023**

REGULATORY AGREEMENT

between

**HOUSING AND REDEVELOPMENT AUTHORITY
IN AND FOR THE
CITY OF RICHFIELD, MINNESOTA,
as Issuer**

**FORT SNELLING LEASED HOUSING ASSOCIATES I, LLLP,
as Borrower**

**FORT SNELLING LEASED HOUSING ASSOCIATES MASTER TENANT I, LLLP,
as Master Tenant**

and

**U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee**

Dated June __, 2023

Relating to:

**\$10,000,000
Housing and Redevelopment Authority
in and for the
City of Richfield, Minnesota
Subordinate Multifamily Housing Revenue Bonds
(Fort Snelling Upper Post Project)
Series 2023**

This instrument was drafted by:
Kennedy & Graven, Chartered (JAE)
150 South Fifth Street, Suite 700
Minneapolis, MN 55402-1299

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REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT, dated June __, 2023 (the “Regulatory Agreement”), is between the HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD, MINNESOTA, a public body corporate and politic under the laws of the State of Minnesota (the “Issuer”), FORT SNELLING LEASED HOUSING ASSOCIATES I, LLLP, a Minnesota limited liability limited partnership (the “Borrower”), as the leasehold owner of the property described in EXHIBIT A attached hereto (the “Land”), FORT SNELLING LEASED HOUSING ASSOCIATES MASTER TENANT I, LLLP, a Minnesota limited liability limited partnership (the “Master Tenant”), and U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association (the “Trustee”).

RECITALS

Minnesota Statutes, Chapters 462C and 474A, as amended (the “Act”), authorize the Issuer to issue revenue obligations to finance the acquisition, construction, rehabilitation, and equipping of multifamily housing developments.

In accordance with Minnesota Statutes, Section 471.656, as amended, a municipality is authorized to issue obligations to finance the acquisition or improvement of property located outside of the corporate boundaries of such municipality if the obligations are issued under a joint powers agreement between the governmental unit issuing the obligations and the governmental unit in which the property to be acquired or improved is located.

Pursuant to Minnesota Statutes, Section 471.59, as amended, by the terms of a joint powers agreement entered into through action of their governing bodies, two governmental units may jointly or cooperatively exercise any power common to the contracting parties or any similar powers, including those which are the same except for the territorial limits within which they may be exercised and the joint powers agreement may provide for the exercise of such powers by one or more of the participating governmental units on behalf of the other participating units.

On November 25, 2020, the Hennepin County Housing and Redevelopment Authority (the “County HRA”) issued its Multifamily Housing Revenue Note (Fort Snelling Upper Post Project), Series 2020 (the “Series 2020 Note”), in the original aggregate principal amount of \$88,000,000 and loaned the proceeds thereof to the Borrower to finance all or a portion of the costs of the leasehold acquisition, rehabilitation and/or construction, and equipping of an approximately 192-unit multifamily housing rental facility and facilities functionally related and subordinate thereto located on the Land at 58 Taylor Avenue, Unorganized Territory of Fort Snelling, Minnesota 55111, known as the Fort Snelling Upper Post Project (the “2020 Project”), of which at least forty percent (40%) of the units are available to individuals and families with incomes at or below (60%) of the area median income.

The Borrower has proposed to finance additional costs to complete the construction and/or rehabilitation of the 2020 Project (the “2023 Project”). The Issuer has agreed to issue its Subordinate Multifamily Housing Revenue Bonds (Fort Snelling Upper Post Project), Series 2023 (the “Bonds”), in the original aggregate principal amount of \$10,000,000, pursuant to the Act, Minnesota Statutes, Sections 471.59 and 471.656, as amended, a resolution adopted by the Board of Commissioners of the Issuer on June 5, 2023, and an Indenture of Trust, dated as of June 1, 2023 (the “Indenture”), between the Issuer and the Trustee. The Issuer will loan the proceeds derived from the sale of the Bonds to the Borrower pursuant to the terms of a Loan Agreement, dated as of June 1, 2023 (the “Loan Agreement”), between the Issuer and the Borrower, and the Borrower will apply such proceeds to finance the 2023 Project.

For good and valuable consideration, the Borrower, the Trustee, and the Issuer have determined to enter into this Regulatory Agreement in order to assure compliance with certain requirements of the Code (hereinafter defined) and of the Act applicable to the 2020 Project and the 2023 Project (together, the “Project”).

NOW, THEREFORE, the Borrower, the Trustee, and the Issuer do hereby impose upon the Project the following covenants, restrictions, charges, and easements, which shall run with the Land and shall be binding and a burden upon the Project and all portions thereof, and upon any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein, for the length of time that this Regulatory Agreement shall be in full force and effect:

Section 1. Definitions. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the terms defined above shall have the meanings set forth above and the following terms shall have the respective meanings set forth below for the purposes hereof. Capitalized terms used but not defined herein shall have the meanings assigned to such terms in the Indenture.

“Act” means Minnesota Statutes, Chapters 462C and 474A, as amended.

“Adjusted Income” means the adjusted income of a person (together with the adjusted income of all persons of the age of 18 years or older who intend to reside with such person in one Dwelling Unit), as calculated in the manner prescribed under Section 142(d)(2)(B) of the Code.

“Bond Counsel” means Kennedy & Graven, Chartered, or any other attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on bonds and other obligations issued by states and political subdivisions thereof, duly admitted to practice law before the highest court of any state of the United States of America.

“Bonds” means the Subordinate Multifamily Housing Revenue Bonds (Fort Snelling Upper Post Project), Series 2023, issued by the Issuer on the Closing Date in the original aggregate principal amount of \$10,000,000.

“Borrower” means Fort Snelling Leased Housing Associates I, LLLP, a Minnesota limited liability limited partnership, and its lawful successors and assigns to the extent permitted by the Loan Agreement.

“Closing Date” means June ___, 2023, which is the date of issuance of the Bonds.

“Code” means the Internal Revenue Code of 1986, as amended, and all applicable regulations (whether proposed, temporary or final) under the Code and the statutory predecessor of the Code, and any official rulings and judicial determinations under the foregoing applicable to the Bonds.

“County” means Hennepin County in the State.

“County HRA” means the Hennepin County Housing and Redevelopment Authority, a housing and redevelopment authority and political subdivision organized and existing under the Constitution and laws of the State, as the issuer of the Series 2020 Note.

“Dwelling Units” means the units of multifamily residential rental housing comprising the Project.

“Event of Default” has the meaning specified in Section 13 hereof.

“Functionally Related and Subordinate” means and includes facilities for use by tenants, for example, laundry facilities, parking areas, and recreational facilities, provided that the same is of a character and size commensurate with the character and size of the Project.

“Housing Act” means the United States Housing Act of 1937, as amended, codified as 42 U.S.C. Sections 1401 et seq.

“Indenture” means the Indenture of Trust, dated as of June 1, 2023, between the Issuer and the Trustee, as it may be supplemented and amended from time to time.

“Issuer” means the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of the State.

“Loan” means the loan provided by the Issuer to the Borrower pursuant to the Loan Agreement to provide financing for the 2023 Project.

“Loan Agreement” means the Loan Agreement, dated as of June 1, 2023, between the Issuer and the Borrower, as amended from time to time.

“Low Income Tenants” means persons or families with Adjusted Income which does not exceed sixty percent (60%) of the Median Income for the Area adjusted for household size. In no event will the occupants of a unit be considered to be Low Income Tenants if all of such occupants are students (as defined in Section 152(f)(2) of the Code), unless the unit is occupied:

- (i) by an individual who is (A) a student and receiving assistance under Title IV of the Social Security Act, (B) a student who was previously under the care and placement responsibility of the State agency responsible for administering a plan under Part B or Part E of Title IV of the Social Security Act, or (C) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar federal, State, or local laws; or

- (ii) entirely by full-time students if such students are (A) single parents and their children and such parents are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual and such children are not dependents (as defined in Section 152 of the Code, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B) thereof) of another individual other than a parent of such children, or (B) married and entitled to file a joint return.

“Low Income Units” means the Dwelling Units in the Project designated for occupancy by Low Income Tenants pursuant to Section 4(a) hereof.

“Master Tenant” means Fort Snelling Leased Housing Associates Master Tenant I, LLLP, a Minnesota limited liability limited partnership, its successors and assigns.

“Median Income for the Area” means the median yearly income for households of an applicable size in the applicable Primary Metropolitan Statistical Area as most recently determined by the Secretary of Housing and Urban Development under Section 8(f)(3) of the Housing Act, or, if such figures are no longer available, the method of calculation is substantially altered, or the programs under Section 8(f) are terminated, the Issuer shall provide the Borrower with another income determination that is reasonably similar to the method used by the Secretary prior to such termination.

“Project” means, in general, the leasehold acquisition, construction and/or rehabilitation, and equipping of the approximately 192-unit multifamily rental housing development and functionally related facilities to be located at located at 58 Taylor Avenue, Unorganized Territory of Fort Snelling, Minnesota 55111, known as the Fort Snelling Upper Post Project, and consists of the 2020 Project and the 2023 Project.

“Qualified Project Period” means the period beginning on the later of the date of issuance of the Bonds and the first day on which ten percent (10%) of the Dwelling Units in the Project are occupied and ending on the latest of:

- (i) the date which is twenty (20) years after the date on which fifty percent (50%) of the Dwelling Units in the Project are occupied;
- (ii) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding; or
- (iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates.

“Regulatory Agreement” means this Regulatory Agreement, dated the Closing Date, between the Issuer, the Borrower, the Master Tenant, and the Trustee, together with any amendments or supplements hereto.

“Section 474A Penalty” means the penalty described in Section 474A.047, subdivision 3 of the Act, as applied to the Project.

“Series 2020 Note” means the Multifamily Housing Revenue Note (Fort Snelling Upper Post Project), Series 2020, issued by the County HRA on November 25, 2020, in the original aggregate principal amount of \$88,000,000.

“State” means the State of Minnesota.

“Treasury Regulations” means the regulations promulgated or proposed by the Department of the Treasury pursuant to the Code from time to time or pursuant to any predecessor statute to the Code.

“Trustee” means U.S. Bank Trust Company, National Association, a national banking association, its successors and assigns.

“2020 Project” means the portion of the Project financed with the proceeds of the Series 2020 Note.

“2023 Project” means the portion of the Project financed with the proceeds of the Bonds.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement words of the masculine, feminine or neuter gender shall be construed to include each other gender when appropriate, and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all of the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

Section 2. Representations by the Borrower. The Borrower covenants, represents, and warrants that:

(a) The Borrower is a limited liability limited partnership organized and existing under the laws of the State. The Borrower is in good standing in the State and has duly authorized, by proper action, the execution and delivery of this Regulatory Agreement. The Borrower is duly authorized by the laws of the State to transact business in the State and to perform all of its duties hereunder.

(b) Neither the execution and delivery of this Regulatory Agreement or any other document in connection with the financing of the 2023 Project, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the terms and conditions hereof and thereof conflicts with or results in a breach of any of the terms, conditions, or provisions of any agreement or instrument to which the Borrower is now a party or by which it is bound or constitutes a default (with due notice or the passage of time or both) under any of the foregoing or results in the creation or imposition of any prohibited lien, charge, or encumbrance whatsoever upon any of the property or assets of the Borrower under the terms of any instrument or agreement to which the Borrower is now a party or by which it is bound.

(c) The execution, delivery, and performance of this Regulatory Agreement and all other documents to be delivered by the Borrower in connection with the consummation of the transactions contemplated hereby will not conflict with, or constitute a breach of or default under, any indenture, mortgage, deed of trust, lease, commitment, agreement, or other instrument or obligation to which the Borrower is a party or by which the Borrower or any of its property is bound, or under any law, rule, regulation, judgment, order, or decree to which the Borrower is subject or by which the Borrower or any of its property is bound.

(d) There is no action, suit, proceeding, inquiry, or investigation by or before any governmental agency, public board, or body pending or to the best of the Borrower's knowledge, threatened against the Borrower (nor to the best of its knowledge is there any basis therefor), which:

(i) affects or seeks to enjoin, prohibit, or restrain the issuance, sale, or delivery of the Bonds or the use of the proceeds of the Bonds to finance the leasehold acquisition, rehabilitation, and equipping of the 2023 Project or the execution and delivery of this Regulatory Agreement;

(ii) affects or questions the validity or enforceability of the Bonds or this Regulatory Agreement;

(iii) questions the tax-exempt status of the Bonds (except for any loss of tax-exempt status that results from the application of Section 147(a) of the Code or any successor provisions of the Code and applicable Treasury Regulations or any successor law or regulation); or

(iv) questions the power or authority of the Borrower to own, acquire, rehabilitate, construct, equip, or operate the Project or to execute, deliver, or perform the Borrower's obligations under this Regulatory Agreement.

(e) The Project will be located wholly within the boundaries of unincorporated land in the County.

(f) On and after the date on which the Bonds are executed and delivered to the Trustee, the Borrower will have a leasehold interest in the Project sufficient to carry out the purposes of this Regulatory Agreement, and such title shall be in and remain in the name of the Borrower except as otherwise permitted by this Regulatory Agreement.

(g) The Project consists and will consist of those facilities described herein, which generally are described as a residential apartment building and related facilities situated on the Land. The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exemption from federal income taxation of the interest on the Bonds. The Borrower will utilize and operate the Project as a multifamily rental housing project during the term of the Bonds in accordance with all applicable federal, State, and local laws, rules, and regulations applicable to the Project.

(h) The Borrower has obtained, or will obtain on or before the date required therefor, all necessary certificates, approvals, permits, and authorizations with respect to the operation of the Project.

(i) The Borrower acknowledges that if the Borrower or a “substantial user” of the Project financed with the proceeds of the Bonds or a “related person,” as those terms are employed in Section 147(a) of the Code, owns the Bonds, or any portion thereof, interest on the Bonds during such period of ownership will not be excludable from gross income for federal income tax purposes.

(j) The Borrower does not own any buildings or structures which are proximate to the Project other than those buildings or structures which comprise the Project, which are being financed pursuant to a common plan under which the Project is also being financed.

(k) The Borrower will incur rehabilitation expenditures (as defined in Section 147(d)(3) of the Code) with respect to the Project in an amount of at least fifteen percent (15%) of the acquisition cost of the Project financed with the proceeds of the Bonds within two (2) years from the later of (i) the date the Borrower acquires the Project or (ii) the date of issuance of the Bonds.

(l) The statements made in the various certificates delivered by the Borrower to the Issuer or the Trustee on the date of issuance of the Bonds are true and correct.

Section 3. Qualified Residential Rental Project. The Borrower shall acquire, rehabilitate, construct, equip, own, manage, and operate the Project as a “qualified residential rental project,” as such phrase is utilized in Section 142(d) of the Code, on a continuous basis during the Qualified Project Period. To that end, the Borrower hereby represents, warrants, and covenants as follows:

(a) that a qualified residential rental project will be rehabilitated and/or constructed on the property described in EXHIBIT A hereto, and the Borrower shall own, through a leasehold interest, manage and operate the Project as a qualified residential rental project containing Dwelling Units and facilities Functionally Related and Subordinate to such Dwelling Units, in accordance with Section 142(a)(7) and Section 142(d) of the Code and all applicable Treasury Regulations promulgated thereunder, as the same may be amended from time to time;

(b) that all of the Dwelling Units of the Project will be similarly constructed and rehabilitated and each Dwelling Unit in the Project will contain complete facilities for living, sleeping, eating, cooking, and sanitation for a single person or a family;

(c) that:

(i) none of the Dwelling Units in the Project shall at any time in the future be utilized on a transient basis;

(ii) that none of the Dwelling Units in the Project shall at any time in the future be leased or rented for a period of less than thirty (30) days; and

(iii) that neither the Project nor any portion thereof shall be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, nursing home, sanitarium, rest home, or trailer park or trailer court for use on a transient basis, or by a cooperative housing corporation (as defined in Section 216(b)(1) of the Code);

(d) that following the rehabilitation thereof, once available for occupancy:

(i) each Dwelling Unit in the Project must be rented or available for rental on a continuous basis to members of the general public, in compliance with this Regulatory Agreement, during the Qualified Project Period, except for any Dwelling Unit for a resident manager or maintenance personnel; and

(ii) the Borrower shall not give preference in renting Dwelling Units in the Project to any particular class or group of persons, other than Low Income Tenants as provided herein or as otherwise permitted by law, including in particular, Revenue Procedure 2019-17, 2019-17 I.R.B., issued on April 22, 2019, which clarifies that a qualified residential rental project (as defined in Section 142(d) of the Code) does not fail to meet the general public use requirement applicable to exempt facilities solely because of occupancy restrictions or preferences that favor tenants described in Section 42(g)(9), including those tenants who are members of a specified group under a federal program or state program or policy that supports housing for such a specified group;

(e) that the Project consists of one (1) or more discrete edifices and other man-made construction, each consisting of an independent foundation, outer walls and roof, all of which will be (i) owned by the same person for federal tax purposes; (ii) located on a common tract of land or two (2) or more parcels of land which are contiguous except for being separated only by a road, street, stream, or a similar property; and (iii) financed by the Loan or otherwise pursuant to a common plan of financing, and which consists entirely of:

(i) units which are similar in quality and type of construction and amenities; and

(ii) property Functionally Related and Subordinate in purpose and size to the Project, *e.g.*, parking areas, laundries, swimming pools, tennis courts, and other recreational facilities (none of which may be unavailable to any person because such person is a Low Income Tenant) and other facilities which are reasonably required for the Project, *e.g.*, heating and cooling equipment, trash disposal equipment, or units for residential managers or maintenance personnel;

(f) that no portion of the Project shall be used to provide any health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;

(g) that the Project shall not include a Dwelling Unit in a building where all Dwelling Units in such building are not also included in the Project;

(h) that the Borrower shall not convert the Project to condominium or cooperative ownership;

(i) that no Dwelling Unit in the Project shall be occupied by the Borrower (or any person related to the Borrower within the meaning of Section 147(a)(2) of the Code) at any time unless such person resides in a Dwelling Unit in a building or structure which contains at least five Dwelling Units and unless the resident of such Dwelling Unit is a resident manager or other necessary employee (*e.g.*, maintenance and security personnel);

- (j) that the Bonds will not be “federally guaranteed,” as defined in Section 149(b) of the Code;
- (k) that the Project shall at all times be used and operated as a “multifamily housing development,” as defined in the Act; and
- (l) that the Borrower shall not discriminate on the basis of race, creed, color, sex, sexual preference, source of income (*e.g.*, AFDC or SSI), physical disability, national origin, or marital status in the rental, lease, use, or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project.

Section 4. Low Income Tenants. Pursuant to the requirements of the Act and Section 142(d) of the Code, the Borrower hereby represents, warrants, and covenants as follows:

(a) Upon completion of the rehabilitation of the Project, at least forty percent (40%) of the units in the Project will be occupied or held for occupancy by Low Income Tenants. Throughout the Qualified Project Period, not less than forty percent (40%) of the completed units in the Project shall be continuously occupied or held for occupancy by Low Income Tenants. The Borrower will designate the Low Income Units and will make any revisions to such designations as necessary to comply with the applicable provisions of the Code and the Treasury Regulations. As set forth in subsection (e) below, the Borrower shall advise the Issuer and the Trustee by delivery of a certificate in writing of the status of the occupancy of the Project with respect to Low Income Tenants on an annual basis for the term of this Regulatory Agreement. An Annual Certification of a Residential Rental Project, Form 8703 (Rev. December 2021), or successor form, shall be prepared annually by the Borrower and filed with the United States Secretary of the Treasury pursuant to Section 142(d)(7) of the Code (currently with the Internal Revenue Service Center, Ogden, Utah 84201), with a copy to be filed by the Borrower with the Issuer and the Trustee. The percentage of units is measured by number of units, and not square footage of units.

For purposes of satisfying the occupancy requirements set forth above, a unit occupied by a person or family who at the commencement of their occupancy qualified as a Low Income Tenant shall be treated as occupied by a Low Income Tenant until such time as any recertification of such tenant’s income in accordance with Sections 4(c) and (h) below demonstrates that such tenant’s income exceeds one hundred forty percent (140%) of the income limitation applicable to Low Income Tenants.

A unit occupied by a Low Income Tenant shall be deemed, upon the termination of such tenant’s occupancy, to be continuously occupied by a Low Income Tenant until reoccupied, other than for a temporary period (not to exceed sixty (60) days), at which time the character of the unit shall be redetermined.

(b) The Borrower will notify the Issuer on an annual basis of any vacancy of any Low Income Units.

(c) The Borrower will obtain, complete, and maintain on file income certifications from each Low Income Tenant, obtained immediately prior to the initial occupancy of such tenant in the Project and at least annually thereafter. Such income certifications (based upon their then current income) from each Low Income Tenant shall be provided in the form of income certification set forth in EXHIBIT B attached hereto or another form approved by Bond Counsel (the “Tenant Income Certification”). The preceding sentence shall not apply for any year if, during such year, no residential unit in the Project is occupied by a new resident whose income exceeds the applicable income limit for Low Income Tenants. The Borrower will also provide such additional information as may be required by Section 142(d) of the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable

rules, rulings, policies, procedures, Treasury Regulations now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service applicable to the Bonds. Such Tenant Income Certification shall be obtained prior to initial occupancy. If requested by the Trustee or Issuer, a copy of such Tenant Income Certification shall be filed with the Trustee and the Issuer prior to occupancy by the tenant whenever possible but in no event more than one month after initial occupancy by the tenant. A copy of each re-certification of income shall be attached to each report filed with the Issuer and the Trustee pursuant to subsection (a) above. The Borrower shall make a good-faith effort to verify that the income reported by an applicant in an income certification is accurate by taking at least one (1) of the following steps as a part of the verification process: (1) obtain a pay stub for the most recent pay period; (2) obtain an income tax return for the most recent tax year; (3) conduct a credit or similar search; (4) obtain an income verification form from the applicant's current employer; (5) obtain an income verification form from the Social Security Administration if the applicant receives assistance from such agency; or (6) if the applicant is unemployed and has no such tax return, obtain another form of independent verification. If the Low Income Tenant is a Section 8 certificate holder, the Borrower shall retain a copy of the certificate or voucher for verification of income in lieu of an income verification.

The Borrower understands that failure to file the Annual Certification of a Residential Rental Project, Form 8703 (Rev. December 2021), or successor form, as required by Section 142(d)(7) of the Code at the times stated therein may subject it to the penalty described in Section 6652(j) of the Code.

(d) The Borrower will maintain complete and accurate records pertaining to the Low Income Units and will permit, upon reasonable prior notice, any duly authorized representative of the Issuer, the Trustee, the Department of the Treasury, or the Internal Revenue Service to inspect the books and records of the Borrower pertaining to the Project, including those records pertaining to the occupancy of the Low Income Units. This section is not intended to create any additional duties to inspect records.

(e) The Borrower will prepare and submit to the Issuer and the Trustee on or before March 1 of each year during the Qualified Project Period, beginning the first March 1 following commencement of the Qualified Project Period, a Continuing Program Compliance Certificate in the form attached hereto as EXHIBIT C and executed by the Borrower, and, if requested by the Issuer, or the Trustee, the Tenant Income Certification described in subsection (c) above.

(f) The Borrower, upon becoming aware of an Event of Default, will notify the Issuer and the Trustee, in writing, of the occurrence of any such Event of Default hereunder or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto. Such notice shall be given promptly and in no event longer than ten (10) business days after the Borrower receives notice or gains knowledge of the occurrence of any such event. The Borrower further agrees that it will give prompt written notice to the Issuer and the Trustee if insurance proceeds or condemnation awards are received with respect to the Project and are not used to repair or replace the Project, which notice shall state the amount of such proceeds or award.

(i) Except as provided in clause (ii) below, the Borrower shall accept as tenants on the same basis as all other prospective tenants Low Income Tenants who are recipients of federal certificates for rent subsidies pursuant to the existing program under Section 8 of the Housing Act or its successor and shall not apply selection criteria to Section 8 certificate/voucher holders that are more burdensome than the criteria applied to all other prospective tenants.

(ii) The Borrower agrees to modify the leases for units in the Project as necessary to allow the rental of Low Income Units to Section 8 certificate/voucher holders.

(g) Each lease pertaining to a Low Income Unit shall contain a provision to the effect that the Borrower has relied on the income certification and supporting information supplied by the Low Income Tenant in determining qualification for occupancy of the Low Income Unit and that any material misstatement in such certification (whether or not intentional) will be cause for immediate termination of such lease.

(h) Throughout the Qualified Project Period, the Borrower shall re-certify each Low Income Tenant's income on or before the anniversary of the Low Income Tenant's tenancy by obtaining a completed Income Certification. The preceding sentence shall not apply for any year if, during such year, no residential unit in the Project is occupied by a new resident whose income exceeds the applicable income limit for Low Income Tenants. In the event the recertification demonstrates that any such tenant's household income exceeds one hundred forty percent (140%) of the applicable income limit, the Borrower shall hold the next available unit or units of comparable or smaller size in the Project available for rental by new Low Income Tenants.

The Borrower in its sole discretion may notify, in writing, each tenant who is no longer a Low Income Tenant of such fact, and that the rent of such tenant(s) is subject to increase thirty (30) days after receipt of such notice. The Borrower shall be entitled to so increase any such tenant's rent only if Borrower complies with any law applicable thereto and only after the Borrower has rented the next available unit or units in the Project on a one-for-one basis to a Low Income Tenant, or holds units vacant and available for occupancy by Low Income Tenants.

The Borrower agrees to inform all prospective Low Income Tenants of the requirements for recertification of income and of the provisions of the preceding paragraph.

Section 5. Restrictions Imposed by Minnesota Statutes, Chapter 474A. Because the Bonds are issued by the Issuer as a "residential rental project bond," as defined in Chapter 474A of the Act, and has received an allocation of tax-exempt bonding authority pursuant to applicable provisions of Chapter 474A, the restrictions imposed by Chapter 474A apply to the Project as described below.

(a) In addition to any other restrictions on rent or the income of tenants set forth in this Regulatory Agreement, during the Qualified Project Period, the Borrower shall restrict rents on at least twenty percent (20%) of the units in the Project (which may consist of the same units as meet the requirements of Section 4 hereof) to an amount not exceeding the area fair market rents or exception fair market rents, as applicable, for existing housing as established by the federal Department of Housing and Urban Development from time to time, which units shall be occupied, or held for occupancy, by Low Income Tenants.

(b) The annual certifications required to be made by the Borrower hereunder shall conform to the requirements of Section 474A.047, subdivision 3, and the Issuer shall have the authority to impose upon the Borrower any and all penalties described in Section 474A.047, subdivision 3, from time to time, in addition to any remedies otherwise available under this Regulatory Agreement.

(c) The Borrower must satisfy the requirements of Section 474A.047, subdivision 1(a), during the Qualified Project Period. The Borrower must annually certify to the Issuer over the term of this Regulatory Agreement that the rental rates for the rent-restricted units are within the limitations under Section 474A.047, subdivision 1(a). The Issuer may request individual certification of the income of residents of the income-restricted units. The Commissioner of Minnesota Management and Budget may request from the Issuer a copy of the annual certification prepared by the Borrower. The Commissioner of Minnesota Management and Budget may require the Issuer to request individual certification of all residents of the income-restricted units.

Section 6. Covenants Run with the Land. The Borrower hereby declares its express intent that the covenants, restrictions, charges, and easements set forth herein shall be deemed covenants running with the land and shall, except as otherwise provided in this Regulatory Agreement, pass to and be binding upon the Borrower's successors in title including any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein and upon the respective heirs, executors, administrators, devisees, successors, and assigns of any purchaser, grantee, owner, or lessee of any portion of the Project and any other person or entity having any right, title, or interest therein. Except as otherwise provided in this Regulatory Agreement, each and every contract, deed, or other instrument hereafter executed covering or conveying the Project or any portion thereof or interest therein shall contain an express provision making such conveyance subject to the covenants, restrictions, charges, and easements contained herein; provided, however, that any such contract, deed, or other instrument shall conclusively be held to have been executed, delivered, and accepted subject to such covenants, regardless of whether or not such covenants are set forth or incorporated by reference in such contract, deed, or other instrument.

Section 7. Indemnification. The Borrower hereby covenants and agrees that it shall indemnify and hold harmless the Issuer and the City and their respective officers, agents, and employees (the "Indemnified Parties") and the Trustee and its officers, members, directors, officials, and employees, as provided in the Loan Agreement. All provisions of the Loan Agreement relating to indemnification are incorporated by reference herein and are considered provisions of this Regulatory Agreement, as if expressly set out herein.

Section 8. Consideration. The Issuer has issued the Bonds in part to provide funds to make the Loan to finance the 2023 Project all for the purpose, among others, of inducing the Borrower to acquire, rehabilitate, construct, equip, and operate the Project. In consideration of the issuance of the Bonds by the Issuer, the Borrower has entered into this Regulatory Agreement and has agreed to restrict the uses to which the Project can be put on the terms and conditions set forth herein.

Section 9. Reliance. The Issuer and the Borrower hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all persons interested in the legality and validity of the Bonds and in the exemption from federal income taxation of the interest on the Bonds. In performing their duties and obligations hereunder and under the Loan Agreement, the Issuer and the Trustee may rely upon statements and certificates of the Borrower and the tenants and upon audits of the books and records of the Borrower pertaining to the Project. In addition, the Issuer and the Trustee may consult with counsel, and the written opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Issuer or the Trustee hereunder in good faith and in conformity with such written opinion. A copy of any such opinion shall be furnished by the Issuer or the Trustee to the Borrower upon written request. In determining whether any default or lack of compliance by the Borrower exists under this Regulatory Agreement, the Issuer or the Trustee shall not be required to conduct any investigation into or review of the operations or records of the Borrower and may rely solely on any notice or certificate delivered to the Issuer or the Trustee by the Borrower with respect to the occurrence or absence of a default unless it knows, or in the exercise of reasonable care should have known, that the notice or certificate is erroneous or misleading.

The Trustee shall be under no duty to make any investigation or inquiry as to any statements or other matters contained or referred to in any documents or any instruments delivered to it in accordance with this Regulatory Agreement, but it may receive and accept the same as conclusive evidence of the truth and accuracy of such statements.

Section 10. Sale or Transfer of the Project. Any attempted sale, transfer, or disposition which would cause or result in the violation of any of the covenants herein, provisions, reservations, restrictions, charges, or easements shall be null and void ab initio and of no force and effect. Nothing herein shall prohibit the transfer, sale or assignment of the interests in the Borrower or any direct or indirect ownership interests in Borrower's partners. In the event of sale, transfer, or disposition of the Project, the Borrower shall provide notice to the Issuer of such event.

Notwithstanding anything to the contrary contained herein, the Borrower has entered into the Master Sublease, dated November 25, 2020, with the Master Tenant. The Master Tenant joins in the execution of this Regulatory Agreement for the purpose of being bound hereby; provided, however, that all references in this Regulatory Agreement to the Master Tenant shall be of no further force or effect and shall be disregarded for all purposes of this Regulatory Agreement from and after the date the aforementioned Master Sublease is terminated.

Section 11. Term. This Regulatory Agreement and the terms hereof shall become effective upon its execution and delivery and shall remain in full force and effect for a term and period equal to the Qualified Project Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Bonds and termination of the Loan Agreement and the Loan if the Qualified Project Period has not expired at the time of such retirement and expiration. Notwithstanding anything in this Regulatory Agreement to the contrary:

(a) The Project may be transferred pursuant to a foreclosure, exercise of power of sale, or deed in lieu of foreclosure, or comparable proceedings without the consent of or fee of any kind payable to the Issuer or compliance with the provisions of this Regulatory Agreement. In connection with any such foreclosure, deed in lieu of foreclosure, or other proceedings, this Regulatory Agreement shall be terminated upon completion of the foreclosure and expiration of the applicable redemption period, or recording of a deed in lieu of foreclosure.

(b) The requirements of this Regulatory Agreement shall terminate and be of no further force and effect in the event of involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire or other casualty, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in a federal law, or an action of a federal agency after the date of this Regulatory Agreement, which prevents the Issuer and the Trustee from enforcing such provisions, or condemnation or a similar event, but only if, within a reasonable period, the Bonds are retired or amounts received as a consequence of such event are used to provide a project that meets the requirements hereof (provided that this shall be deemed met if the Bonds have been previously retired); provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained herein shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure, or the delivery of a deed in lieu of foreclosure, or a similar event, the Borrower or any related person (within the meaning of Section 1.103-10(e) of the Treasury Regulations) obtains an ownership interest in the Project for federal income tax purposes. The Borrower hereby agrees that, following any foreclosure, transfer of title by deed in lieu of foreclosure, or similar event, if the Borrower or any such related person as described above obtains an ownership interest in the Project for federal tax purposes during the Qualified Project Period, the limitations imposed by Section 4 hereof shall apply to the Project for the remainder of the Qualified Project Period.

(c) This Regulatory Agreement, or any of the provisions or sections hereof, may be terminated upon agreement by the Issuer, the Borrower and the Trustee, upon receipt by the Issuer, the Borrower and the Trustee of an opinion of Bond Counsel to the effect that such termination will not cause interest on the Bonds to become included in gross income for federal income tax purposes or cause interest on the Bonds

to become included in the net taxable income of individuals, trusts, and estates for State income tax purposes.

Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver, and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms.

Section 12. Burden and Benefit. The Issuer and the Borrower hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that the Borrower's legal interest in the Project is rendered less valuable thereby. The Issuer and the Borrower hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by Low Income Tenants, the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes for which the Bonds were issued. Notwithstanding the foregoing, the Low Income Tenants are not intended to be third-party beneficiaries of this Regulatory Agreement and shall have no rights to enforce any provision herein.

Section 13. Enforcement. If the Borrower defaults in the performance or observance of any covenant, agreement, or obligation of the Borrower set forth in this Regulatory Agreement, and if such default remains uncured for a period of sixty (60) days after written notice thereof shall have been given by the Issuer or the Trustee to the Borrower, then the Issuer or the Trustee, acting upon the direction of the Holders of the Bonds pursuant to the Indenture, may declare an "Event of Default" to have occurred hereunder and, at its option, may take any one (1) or more of the following steps:

(a) by mandamus or other suit, action, or proceeding at law or in equity require the Borrower to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer or the Trustee hereunder;

(b) have access to and inspect, examine, and make copies of all the books and records of the Borrower pertaining to the Project;

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants, and agreements of the Borrower hereunder; or

(d) with the Trustee's consent, declare a default under the Loan, accelerate the indebtedness evidenced by the Loan, and proceed to redeem the Bonds in accordance with their terms.

Notwithstanding anything to the contrary contained herein, the Issuer and the Trustee hereby agree that any cure of any default made or tendered by one or more of Borrower's partners or by the Trustee shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower.

All fees, costs, and expenses of the Trustee or the Issuer incurred in taking any action pursuant to this Section 13 shall be the sole responsibility of the Borrower and shall be paid to the Trustee or the Issuer, as the case may be, on demand.

After the Bonds have been discharged, the Issuer may act on its own behalf to declare an "Event of Default" to have occurred and to take any one (1) or more of the steps specified hereinabove to the same extent and with the same effect as if taken by the Trustee at the direction of the holders of the Bonds.

Section 14. The Trustee and the Issuer. The Trustee is entering into this Regulatory Agreement in its capacity as the Trustee for the Bonds with respect to the Bonds and the Indenture. The Issuer may, at all times, assume the Borrower's compliance with this Regulatory Agreement unless otherwise notified in writing by the Trustee (but the Trustee shall have no obligation to so notify the Issuer), or unless the Issuer has actual knowledge of noncompliance. The Trustee can rely on the accuracy of any certificates, instruments, opinions, or reports delivered to it by the Borrower. It is expected that the Bonds will be discharged and the Indenture and the Loan Agreement will terminate prior to the expiration of the Qualified Project Period. Following the payment in full and the discharge of the Bonds and the termination of the Indenture and the Loan Agreement: (i) all obligations, rights, and duties of the Trustee under this Regulatory Agreement will terminate and be of no further force and effect; (ii) all actions required by the Trustee will instead be undertaken by the Issuer; (iii) all notices to be delivered to the Trustee will instead be delivered to the Issuer and all notices to be delivered by the Trustee will instead be delivered by the Issuer; and (iv) the Trustee shall no longer be a party to this Regulatory Agreement and shall be considered released from all obligations hereunder.

Section 15. Amendment. The provisions hereof shall not be amended or revised prior to the stated term hereof except by an instrument in writing duly executed by the Issuer and the Borrower, and consented to by the Trustee as may be required by the Loan Agreement, and duly recorded. The Issuer's and the Trustee's consent to any such amendment or revision (whether or not the Bonds shall then be outstanding) shall be given only upon receipt of an opinion of Bond Counsel addressed to the Issuer and the Trustee that such amendment or revision will not adversely affect the exemption from federal income taxation of interest on the Bonds. Neither the Issuer nor the Trustee shall have a duty to prepare any such consent, amendment, or revision. The Trustee may rely upon counsel or consultants in determining whether to consent to any amendment as set forth in the provisions of the Indenture.

Section 16. Right of Access to the Project and Records. The Borrower agrees that during the term of this Regulatory Agreement, the Issuer and the Trustee and the duly authorized agents of either of them shall have the right at all reasonable times, and upon reasonable notice of at least twenty-four (24) hours, to enter upon the site of the Project during normal business hours to examine and inspect the Project and to have access to the books and records of the Borrower with respect to the Project, a copy of which shall be maintained at the site of the Project.

Section 17. No Conflict with Other Documents. The Borrower warrants that it has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof.

Section 18. Severability. The invalidity of any clause, part, or provision of this Regulatory Agreement shall not affect the validity of the remaining portions thereof.

Section 19. Notices. All notices to be given pursuant to this Regulatory Agreement shall be in writing and shall be deemed given when sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods or when mailed by certified or registered mail, return receipt requested, to the parties hereto at the addresses set forth below, or to such other place as a party may from time to time designate in writing:

To the Issuer:

Housing and Redevelopment Authority in and for the
City of Richfield, Minnesota
6700 Portland Avenue
Richfield, MN 55423
Attention: Executive Director

To the Borrower:

Fort Snelling Leased Housing Associates I, LLLP
c/o Dominion Development & Acquisition, LLC
2905 Northwest Boulevard, Suite 150
Plymouth, MN 55441-7400
Attention: Owen C. Metz

With a copy to:

Winthrop & Weinstine, P.A.
225 South Sixth Street, Suite 3600
Minneapolis, MN 55402-4629
Attention: John Nolde, Esq.

To the Trustee:

U.S. Bank Trust Company, National Association
EP-MN-WS3C
60 Livingston Avenue, Third Floor
Saint Paul, MN 55107
Attention: Corporate Trust Services

Section 20. Governing Law. This Regulatory Agreement shall be governed by and construed in accordance with the laws and judicial decisions of the State, except as such laws may be preempted by any federal rules, regulations, and laws.

Section 21. Payment of Fees. Notwithstanding payment of the Loan, the termination of the Project Loan Agreement, and the defeasance or discharge of the Bonds, throughout the term of the Qualified Project Period, the Borrower shall continue to pay:

(a) to the Issuer, reimbursement for all reasonable fees and expenses, including but not limited to financial advisory and legal fees and expenses necessary for the Issuer's reviewing and, if necessary, enforcing compliance by the Borrower with the terms of this Regulatory Agreement; and

(b) the fees and expenses of any entity or person designated by the Issuer to perform the review of the Borrower's compliance with this Regulatory Agreement; provided that such fees and expenses are not duplicative of any fees and expenses paid under subsection (a) above.

Section 22. Limited Liability. All obligations of the Issuer hereunder shall be special, limited obligations of the Issuer, payable solely and only from proceeds of the Bonds and amounts derived by the Issuer from the Loan and the Loan Agreement.

Section 23. Actions of Issuer. The Issuer shall be entitled to rely conclusively on an opinion of counsel in the exercise or non-exercise of any of the rights or powers vested in the Issuer by virtue of this Regulatory Agreement or any other agreement or instrument executed in connection with the issuance of the Bonds; it being the intent of the parties hereto that the Issuer, and any and all present and future trustees, members, commissioners, officers, employees, attorneys, and agents of the Issuer shall not incur any financial or pecuniary liability for the exercise or non-exercise of any rights or powers vested in the Issuer by this Regulatory Agreement or any other instrument or agreement executed in connection with the issuance of the Bonds; or for the performance or nonperformance of any obligation under, or the failure to assert any right, power, or privilege under this Regulatory Agreement, the Bonds, the Indenture, the Loan Agreement or any other instrument or agreement executed in connection with the issuance of the Bonds. If the Issuer's consent or approval is required under this Regulatory Agreement, or any other agreement or instrument executed in connection with the issuance of the Bonds, the Issuer shall be entitled to rely

conclusively on an opinion of counsel and shall not be responsible for any loss or damage resulting from any action or inaction in reliance upon such opinion.

Section 24. Counterparts. This Regulatory Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Regulatory Agreement, and, in making proof of this Regulatory Agreement, it shall not be necessary to produce or account for more than one such counterpart.

Section 25. Recording and Filing. The Borrower shall cause this Regulatory Agreement and all amendments and supplements hereto and thereto to be recorded and filed in the real property records of the County, the State, and in such other places as the Issuer may reasonably request. The Borrower shall pay all fees and charges incurred in connection with any such recording.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, the Issuer, the Borrower, the Master Tenant, and the Trustee have caused this Regulatory Agreement to be executed by their respective duly authorized representatives as of the date and year first written above.

**HOUSING AND REDEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF RICHFIELD,
MINNESOTA**

By _____
Its Chair

By _____
Its Executive Director

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by _____, the Chair of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Issuer.

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Melissa Poehlman, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota, a public body corporate and politic under the laws of the State of Minnesota, on behalf of the Issuer.

Notary Public

Execution page of the Borrower to the Regulatory Agreement, dated the date and year first written above.

FORT SNELLING LEASED HOUSING ASSOCIATES I, LLLP, a Minnesota limited liability limited partnership

By: Fort Snelling Leased Housing Associates I, LLC
Its: General Partner

By: _____
Name: Owen C. Metz
Its: Vice President

STATE OF _____)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Owen C. Metz, the Vice President of Fort Snelling Leased Housing Associates I, LLC, a Minnesota limited liability company, the general partner of Fort Snelling Leased Housing Associates I, LLLP, a Minnesota limited liability limited partnership, on behalf of the Borrower.

Notary Public

Execution page of the Master Tenant to the Regulatory Agreement, dated the date and year first written above.

**FORT SNELLING LEASED HOUSING
ASSOCIATES MASTER TENANT I, LLLP, a
Minnesota limited liability limited partnership**

By: Fort Snelling Leased Housing Associates Master
Tenant I, LLC

Its: General Partner

By: _____

Name: Owen C. Metz

Its: Vice President

STATE OF _____)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Owen C. Metz, the Vice President of Fort Snelling Leased Housing Associates Master Tenant I, LLC, a Minnesota limited liability company, the general partner of Fort Snelling Leased Housing Associates Master Tenant I, LLLP, a Minnesota limited liability limited partnership, on behalf of the Master Tenant.

Notary Public

Execution page of the Trustee to the Regulatory Agreement, dated the date and year first written above.

**U.S. BANK TRUST COMPANY, NATIONAL
ASSOCIATION**

By _____
Its Vice President

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by
_____, the Vice President of U.S. Bank Trust Company, National
Association, a national banking association, on behalf of the Trustee.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF LAND

PARCEL 1 (Area J):

That part of Section 29, Township 28 North, Range 23 West, Hennepin County, Minnesota, described as follows:

Commencing at the Northwest corner of said Section 29; thence on an assumed bearing of South 00 degrees 07 minutes 15 seconds East along the West line of said Section 29, a distance of 771.38 feet; thence South 60 degrees 25 minutes 10 seconds East 2326.03 feet; thence South 46 degrees 05 minutes 08 seconds East 166.37 feet; thence North 37 degrees 54 minutes 07 seconds East 218.84 feet; thence South 60 degrees 10 minutes 22 seconds East 1820.75 feet to the point of beginning of the line to be described; thence North 23 degrees 24 minutes 45 seconds East 1564.32 feet; thence Northeasterly 566.88 feet along a tangential curve, concave to the Southeast, having a radius of 1502.00 feet and a central angle of 21 degrees 37 minutes 28 seconds; thence North 45 degrees 02 minutes 13 seconds East, tangent to said curve 697.91 feet to a Westerly right-of-way line of State Highway Number 5; thence Southerly and Southwesterly along said Westerly right-of-way line of State Highway Number 5 to the point of intersection with a line bearing South 60 degrees 10 minutes 22 seconds East from said point of beginning; thence North 60 degrees 10 minutes 22 seconds West 622.24 feet to the point of beginning.

Hennepin County, Minnesota
Abstract Property

PARCEL 2 (Officer's Row):

That part of Section 29, Township 28 North, Range 23 West, Hennepin County, Minnesota, described as follows:

Commencing at the Northwest corner of said Section 29; thence on an assumed bearing of South 00 degrees 07 minutes 15 seconds East along the West line of said Section 29, a distance of 771.38 feet; thence South 60 degrees 25 minutes 10 seconds East 2326.03 feet; thence South 46 degrees 05 minutes 08 seconds East 166.37 feet; thence North 37 degrees 54 minutes 07 seconds East 218.84 feet; thence South 60 degrees 10 minutes 22 seconds East 1439.04 feet to the point of beginning of the land to be described; thence continue South 60 degrees 10 minutes 22 seconds East 341.45 feet; thence North 23 degrees 24 minutes 45 seconds East 1075.01 feet; thence North 66 degrees 38 minutes 47 seconds West 339.32 feet; thence South 23 degrees 24 minutes 45 seconds West 1036.52 to the point of beginning.

Hennepin County, Minnesota
Abstract Property

PARCEL 3 (BOQ):

That part of Section 29, Township 28 North, Range 23 West, Hennepin County, Minnesota, described as follows:

Commencing at the Northwest corner of said Section 29; thence on an assumed bearing of South 00 degrees 07 minutes 15 seconds East along the West line of said Section 29, a distance of 771.38 feet; thence South

60 degrees 25 minutes 10 seconds East 2326.03 feet; thence South 46 degrees 05 minutes 08 seconds East 166.37 feet; thence North 37 degrees 54 minutes 07 seconds East 218.84 feet; thence South 60 degrees 10 minutes 22 seconds East 1439.04 feet; thence North 23 degrees 24 minutes 45 seconds East 1036.52 feet; thence North 66 degrees 38 minutes 47 seconds West 30.00 feet to the point of beginning of the land to be described; thence continuing North 66 degrees 38 minutes 47 seconds West 237.21 feet; thence South 15 degrees 35 minutes 58 seconds West 98.99 feet; thence South 18 degrees 02 minutes 36 seconds East 90.00 feet; thence South 66 degrees 38 minutes 47 seconds East 164.17 feet; thence North 23 degrees 24 minutes 45 seconds East 165.60 feet to the point of beginning.

Hennepin County, Minnesota
Abstract Property

EXHIBIT B**FORM OF INCOME CERTIFICATION**

TENANT INCOME CERTIFICATION		Effective Date: _____
<input type="checkbox"/> Initial Certification <input type="checkbox"/> Recertification <input type="checkbox"/> Other		Move-in Date: _____
_____		(MM/DD/YY): _____
PART I. DEVELOPMENT DATA		
Property Name: Fort Snelling Upper Post Address: 58 Taylor Avenue, Unorganized Territory of Fort Snelling, Minnesota 55111		County: Hennepin Unit Number: _____ BIN #: _____ # Bedrooms: _____

PART II. HOUSEHOLD COMPOSITION						
HH Br #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YY)	F/T Student (Y or N)	Social Security or Alien Reg. No.
1			HEAD			
2						
3						
4						
5						
6						

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)				
HH Br #	(A) Employment or Wages	(B) Soc. Security / Pensions	(C) Public Assistance	(D) Other Income
TOTAL	\$	\$	\$	\$
Add totals from (A) through (D) above			TOTAL INCOME (E):	\$

PART IV. INCOME FROM ASSETS

HH Mbr#	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
TOTALS:			\$	\$
Enter Column (H) Total if over \$5,000 \$ _____		Passbook Rate x 0.06 % = (J) Imputed Income		\$
Enter the greater of the total column I, or J: imputed income TOTAL INCOME FROM ASSETS (K)				\$
(L) Total Annual Household Income from all sources [Add (E) + (K)]				\$

HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full-time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Signature

(Date)

Signature

(Date)

Signature

(Date)

Signature

(Date)

PART V. DETERMINATION OF INCOME ELIGIBILITY

TOTAL ANNUAL HOUSEHOLD INCOME FROM ALL SOURCES

From Item (L) on page 1

\$ _____

Household Meets Income Restriction

at:

☐ 60% ☐ 50%

☐ 40% ☐ 30%

☐ ____%

RECERTIFICATION ONLY:

Current Income Limit x 140%

\$ _____

Current Income Limit per Family Size: \$ _____

Household income exceeds 140% at recertification:

☐ Yes ☐ No

Household Income at Move-in _____

Household Size at Move-in:

PART VI. RENT

Tenant Paid Rent \$ _____
Utility Allowance \$ _____

Rent Assistance: \$ _____
Other non-optional charges: \$ _____

GROSS RENT FOR UNIT:

Tenant paid rent plus Utility
Allowance and other non-optional
charges

\$

Unit Meets Rent Restriction at:

☐ 60% ☐ 50% ☐ 40% ☐ 30% ☐ ____%

Maximum Rent Limit for this unit: \$ _____

PART VII. STUDENT STATUS

ARE ALL OCCUPANTS
FULL-TIME STUDENTS?

☐ yes ☐ no

If yes, enter student explanation**
(also attach documentation)

Enter
1-4

Student explanation:

1. TANF assistance
2. Job training program
3. Single parent/dependent child
4. Married/joint return*

*** Exception 4 for married/joint return is the only exception available for units necessary to qualify tax-exempt bonds.**

PART VIII. PROGRAM TYPE

Mark the program(s) listed below (a. through e.) for which this household's unit will be counted toward the property's occupancy requirements. Under each program marked, indicate the household's income status as established by this certification/recertification

a. Tax Credit ☐ b. HOME ☐ c. Tax Exempt ☐ d. AHDP ☐ e. _____ ☐
(Name of Program)

See Part V above.

Income Status

☐ ≤ 50% AMGI

☐ ≤ 60% AMGI

☐ ≤ 80% AMGI

☐ ≤ OI **

Income Status

☐ 50% AMGI

☐ 60% AMGI

☐ 80% AMGI

☐ OI **

Income Status

☐ ≤ 50% AMGI

☐ ≤ 80% AMGI

☐ ≤ OI **

Income Status

☐ _____

☐ _____

☐ ≤ OI **

** Upon recertification, household was determined over income (OI) according to eligibility requirements of the program(s) marked above.

SIGNATURE OF OWNER / REPRESENTATIVE

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of Section 42 of the Internal Revenue Code, as amended, and the Land Use Restriction Agreement (if applicable), to live in a unit in this Project.

SIGNATURE OF OWNER / REPRESENTATIVE

DATE

INSTRUCTIONS FOR COMPLETING TENANT INCOME CERTIFICATION

This form is to be completed by the owner or an authorized representative.

Part I – Development Data

Check the appropriate box for Initial Certification (move-in), Recertification (annual recertification), or Other. If Other, designate the purpose of the recertification (i.e., a unit transfer, a change in household composition, or other state-required recertification).

Move-in Date	Enter the date the tenant has or will take occupancy of the unit.
Effective Date	Enter the effective date of the certification. For move-in, this should be the move-in date. For annual recertification, this effective date should be no later than one year from the effective date of the previous (re)certification.
Property Name	Enter the name of the development.
County	Enter the county (or equivalent) in which the building is located.
BIN #	Enter the Building Identification Number (BIN) assigned to the building (from IRS Form 8609).
Address	Enter the unit number.
Unit Number	Enter the unit number.
# Bedrooms	Enter the number of bedrooms in the unit.

Part II – Household Composition

List all occupants of the unit. State each household member's relationship to the head of the household by using one of the following coded definitions:

H	Head of household	S	Spouse
A	Adult co-tenant	O	Other family member
C	Child	F	Foster child
L	Live-in caretaker	N	None of the above

Enter the date of birth, student status, and Social Security number or alien registration number for each occupant.

If there are more than seven occupants, use an additional sheet of paper to list the remaining household members and attach it to the certification.

Part III – Annual Income

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.

From the third party verification forms obtained from each income source, enter the gross amount anticipated to be received for the 12 months from the effective date of the (re)certification. Complete a separate line for each income-earning member. List the respective household member number from Part II.

Column (A)	Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment; distributed profits and/or net income from a business.
Column (B)	Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc.
Column (C)	Enter the annual amount of income received from public assistance (i.e., TANF, general assistance, disability, etc.)
Column (D)	Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.
Row (E)	Add the totals from columns (A) through (D) above. Enter this amount.

Part IV – Income from Assets

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms obtained from each asset source, list the gross amount anticipated to be received during the 12 months from the effective date of the certification. List the respective household member number from Part II and complete a separate line for each member.

Column (F)	List the type of asset (i.e., checking account, savings account, etc.)
Column (G)	Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).
Column (H)	Enter the cash value of the respective asset.
Column (I)	Enter the anticipated annual income from the asset (i.e., savings account balance multiplied by the annual interest rate).
TOTALS	Add the total of Column (H) and Column (I), respectively.

If the total in Column (H) is greater than \$5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value, multiply by 0.06% and enter the amount in (J), Imputed Income.

Row (K)	Enter the Greater of the total in Column (I) or (J)
Row (L)	Total Annual Household Income from All Sources Add (E) and (K) and enter the total

HOUSEHOLD CERTIFICATION AND SIGNATURES

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Tenant Income Certification. For move-in, it is recommended that the Tenant Income Certification be signed no earlier than five days prior to the effective date of the certification.

Part V – Determination of Income Eligibility

Total Annual Household Income from all sources	Enter the number from item (L).
Current Income Limit per Family Size	Enter the Current Move-in Income Limit for the household size.
Household income at move-in Household size at move-in	For recertifications only. Enter the household income from the move-in certification. On the adjacent line, enter the number of household members from the move-in certification.
Household Meets Income Restriction	Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.
Current Income Limit x 140%	For recertification only. Multiply the Current Maximum Move-in Income Limit by 140% and enter the total. Below, indicate whether the household income exceeds that total. If the Gross Annual Income at recertification is greater than 140% of the current income limit, then the available unit rule must be followed.

Part VI – Rent

Tenant Paid Rent	Enter the amount the tenant pays toward rent (not including rent assistance payments such as Section 8).
Rent Assistance	Enter the amount of rent assistance, if any.
Utility Allowance	Enter the utility allowance. If the owner pays all utilities, enter zero.
Other non-optional charges	Enter the amount of non-optional charges, such as mandatory garage rent, storage lockers, charges for services provided by the development, etc.
Gross Rent for Unit	Enter the total of Tenant Paid Rent plus Utility Allowance and other non-optional charges.

Maximum Rent Limit for this unit	Enter the maximum allowable gross rent for the unit.
Unit Meets Rent Restriction at??	Check the appropriate rent restriction that the unit meets according to what is required by the set-aside(s) for the project.

Part VII – Student Status

If all household members are full-time* students, check “yes.” If at least one household member is not a full-time student, check “no.”

If “yes” is checked, the appropriate exemption must be listed in the box to the right. If none of the exemptions apply, the household is ineligible to rent the unit.

** Full time is determined by the school the student attends.*

Part VIII – Program Type

Mark the program(s) for which this unit will be counted toward the property’s occupancy requirements. Under each program marked, indicate the household’s income status as established by this certification/recertification. If the property does not participate in the HOME, Tax-Exempt Bond, Affordable Housing Disposition, or other housing program, leave those sections blank.

Tax Credit	See Part V above.
HOME	If the property participates in the HOME program and the unit this household will occupy will count towards the HOME program set-asides, mark the appropriate box indicating the household’s designation.
Tax Exempt	If the property participates in the Tax Exempt Bond program, mark the appropriate box indicating the household’s designation.
AHDP	If the property participates in the Affordable Housing Disposition Program (AHDP), and this household’s unit will count towards the set-aside requirements, mark the appropriate box indicating the household’s designation.
Other	If the property participates in any other affordable housing program, complete the information as appropriate.

SIGNATURE OF OWNER / REPRESENTATIVE

It is the responsibility of the owner or the owner’s representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Tenant Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well-trained in tax credit compliance.

These instructions should not be considered a complete guide on tax credit compliance. The responsibility for compliance with federal program regulations lies with the owner of the building(s) for which the credit is allowable.

EXHIBIT C

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

The undersigned, an authorized representative of Fort Snelling Leased Housing Associates I, LLLP, a Minnesota limited liability limited partnership (the “Owner”), hereby certifies, represents, and warrants that:

1. The Owner has a leasehold interest in the multifamily housing development located at 58 Taylor Avenue, Unorganized Territory of Fort Snelling, Minnesota 55111 commonly known as Fort Snelling Upper Post Project (the “Project”).

2. The undersigned and the Owner have read and are thoroughly familiar with the provisions of (1) the Regulatory Agreement, dated June __, 2023 (the “Regulatory Agreement”), between the Housing and Redevelopment Authority in and for the City of Richfield, Minnesota (the “Issuer”), the Owner, Fort Snelling Leased Housing Associates Master Tenant I, LLLP, a Minnesota limited liability limited partnership, as master tenant, and U.S. Bank Trust Company, National Association, a national banking association (the “Trustee”); and (2) the Loan Agreement, dated as of June 1, 2023 (the “Loan Agreement”), between the Issuer and the Borrower with respect to the Bonds. The Regulatory Agreement was executed, delivered, and recorded against the Project in connection with the issuance of the Bonds. Capitalized terms used herein that are otherwise not defined shall have the meanings provided in the Regulatory Agreement.

3. A review of the activities of the Owner and of the Owner’s performance under the Regulatory Agreement during the year ending ____ has been made under the supervision of the undersigned.

4. The Project’s Qualified Project Period commenced on ____, 20__ (the date on which ten percent (10%) of the residential units in the Project were occupied), and will end on the latest of:

(i) ____, 20__ (the date which is twenty (20) years after the date on which fifty percent (50%) of the residential units in the Project were occupied);

(ii) the first day on which no tax-exempt private activity bond issued with respect to the Project is outstanding; or

(iii) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates.

5. As of the date of this Certificate, the following percentages of completed residential units in the Project are (i) occupied by Low Income Tenants or (ii) currently vacant and being held available for occupancy by Low Income Tenants and have been so held continuously since the date a Low Income Tenant vacated such unit, as indicated:

Occupied by Low Income Tenants	_____ % Units	Nos. _____
--------------------------------	---------------	------------

Continuously held vacant for occupancy by Low Income Tenants since last occupied by Low Income Tenants	_____ % Units	Nos. _____
--	---------------	------------

6. At no time since the date of filing of the last Continuing Program Compliance Certificate (or since the issuance of the Bonds, if this is the first such certificate) have fewer than forty percent (40%) of the completed units in the Project been occupied by, last occupied, or held for occupation by Low Income Tenants.

7. As of the date of this Certificate, at least forty percent (40%) of the units in the Project are (i) occupied by persons or families with Adjusted Income which does not exceed sixty percent (60%) of the Median Income for the Area adjusted for household size; or (ii) held vacant for occupancy for persons or families with Adjusted Income which does not exceed sixty percent (60%) of the Median Income for the Area adjusted for household size. Project Units occupied or held vacant for persons or families with Adjusted Income which does not exceed sixty percent (60%) of the Median Income for the Area adjusted for household size include Unit numbers _____.

8. At all times since the date of filing of the last Continuing Program Compliance Certificate the rent on at least twenty percent (20%) of the units in the Project has been equal to or less than the applicable area fair market rents or exception fair market rents, as applicable, for existing housing as established by the federal Department of Housing and Urban Development from time to time.

9. To the knowledge of the undersigned, after due inquiry, all units were rented or available for rental on a continuous basis during the immediately preceding year to members of the general public, and the Owner is not now and has not been in default under the terms of the Regulatory Agreement or Project Loan Agreement, and to the knowledge of the undersigned, no Determination of Taxability has occurred with respect to the Bonds.

10. **[CHOOSE ONE:** None/One or more] of the Tenants in the Project are currently receiving assistance under Section 8 of the United States Housing Act of 1937.

11. The Owner has not transferred any interest in the Project since the date of submission of the Continuing Program Compliance Certificate last submitted to the Issuer and the Trustee with respect to the Project. **(If the Owner has transferred any interest in the Project, such transfer should be detailed here.)**

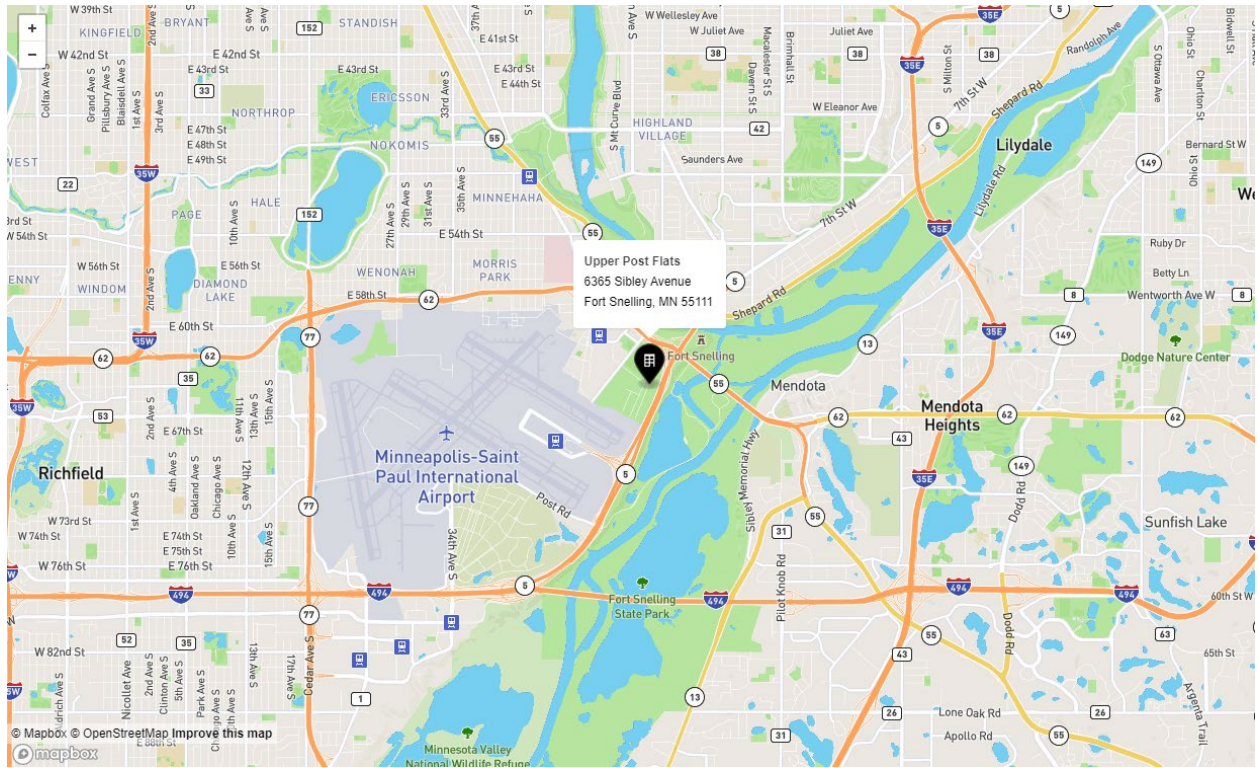
Dated: _____, 20____.

**FORT SNELLING LEASED HOUSING
ASSOCIATES I, LLLP**, a Minnesota limited liability
limited partnership

By: Fort Snelling Leased Housing Associates I, LLC
Its: General Partner

By: _____
Name: _____
Its: _____

Upper Post Flats



Response to Open Forum Questions of April 25, 2023

1. Why refurbish a building outside of Richfield?

The City and the HRA are not refurbishing a building outside of Richfield. They would be providing the borrower with the ability to obtain tax-exempt debt known as “conduit bonds” in order to rehabilitate buildings at the Upper Post of Fort Snelling to provide affordable housing.

2. How will bringing in another 200 students improve the quality of education we offer our children?

It is our understanding that the School District is supportive of the project and the proposed action. Specific impacts of additional students should be addressed with the District directly; however in any case, the project will open and children will live there and be eligible to attend RPS. This action does not impact whether or not the project will exist. Additionally, more children attending school means more funds for the school district, which would likely be seen as a positive impact.

3. What is the borrower’s track record?

Dominium has many housing developments in Minnesota and across the county. We have never heard of Dominium defaulting on its debt.

4. What security has the borrower pledged to secure the loan?

The HRA has proposed to issue conduit bonds for Dominium. The City and the HRA have no liability with respect to the bonds to be issued. The Dominium affiliate rehabilitating the Upper Post of Fort Snelling is solely responsible to pay the principal of and interest on the debt.

Conduit debt issued by the City or the HRA does not impact the City’s credit rating. The debt is not payable from any revenues of the City or the HRA. If there is a default or an IRS audit, the borrower must pay all costs incurred by the City and/or the HRA. The conduit debt will not impact the city’s ability to issue bank-qualified bonds later this year.

5. Why did the borrower not approach a traditional bank to secure the loan

Private developers can only issue conduit bonds for housing if they obtain housing allocation from Minnesota Management and Budget. The conduit bonds must be issued by a governmental entity and must be tax-exempt. Traditional banks cannot issue tax-exempt debt without involving a governmental entity.

6. Why does Richfield want to function as a bank?

The City of Richfield and the HRA are not functioning as a bank. They will not be loaning any money of the City or the HRA to Dominium.

7. And lastly and most importantly, how will this benefit the City of Richfield?

The Richfield HRA will receive a fee for issuing the bonds and will have all its costs paid with respect to the conduit bonds. The HRA is also seeking additional affordability and other requests related to the Upper Post of Fort Snelling project.



STAFF REPORT NO. 10
HOUSING AND REDEVELOPMENT AUTHORITY
MEETING
6/5/2023

REPORT PREPARED BY: Melissa Poehlman, Executive Director

EXECUTIVE DIRECTOR REVIEW: Melissa Poehlman, Executive Director
5/30/2023

ITEM FOR COUNCIL CONSIDERATION:

Executive Director Poehlman will provide an update on discussions and actions related to the request by Best Buy to terminate the Minimum Assessment Agreement for the Corporate Campus property at 7601 Penn Avenue South.

EXECUTIVE SUMMARY:

On May 23, 2023, the City Council denied a proposal by Best Buy to terminate the Minimum Assessment Agreement in place for their property at 7601 Penn Avenue. The details of the proposal are included in the attached Council packet. This discussion time will allow the Housing and Redevelopment Authority (HRA) Commissioners an opportunity to ask questions of staff regarding the attached information.

Staff continues to participate in discussions with Best Buy representatives in hopes that a mutually beneficial resolution can be found.

RECOMMENDED ACTION:

None. Discussion only.

BASIS OF RECOMMENDATION:

A. **HISTORICAL CONTEXT**

N/A

B. **POLICIES (resolutions, ordinances, regulations, statutes, etc):**

N/A

C. **CRITICAL TIMING ISSUES:**

N/A

D. **FINANCIAL IMPACT:**

N/A

E. **LEGAL CONSIDERATION:**

N/A

ALTERNATIVE RECOMMENDATION(S):

N/A

PRINCIPAL PARTIES EXPECTED AT MEETING:

ATTACHMENTS:

Description	Type
052323 City Council Report	Exhibit



STAFF REPORT NO. 66
CITY COUNCIL MEETING
5/23/2023

REPORT PREPARED BY: Melissa Poehlman, Community Development Director / HRA Executive Director

DEPARTMENT DIRECTOR REVIEW: Melissa Poehlman, Community Development Director / HRA Executive Director
5/18/2023

OTHER DEPARTMENT REVIEW:

CITY MANAGER REVIEW: Katie Rodriguez, City Manager
5/18/2023

ITEM FOR COUNCIL CONSIDERATION:

Consider a request to modify (2024) and then terminate (2025) Best Buy's Minimum Assessment Agreement.

EXECUTIVE SUMMARY:

The Interchange West / Lyndale Gateway Tax Increment Financing (TIF) District was established in 1999. This District is a "scattered site" redevelopment District with multiple projects and outstanding obligations, including the Best Buy corporate headquarters, Mainstreet Village, and the Casteel Place Townhomes. Best Buy has approached the City and Housing and Redevelopment Authority (HRA) to request a modification to their individual contract which would remove the Minimum Assessment Agreement that prevents the tax value of their property from falling below \$118.5 million during the life of the TIF District (ending December 31, 2025).

The Minimum Assessment Agreement (MAA) is in place for two purposes. As part of the Contract for Private Development with Best Buy, the City agreed to issue General Obligation Bonds (Bonds) to help fund the significant infrastructure improvements necessary to handle the traffic of the Best Buy Corporate Campus. The principal and interest payments on these Bonds are made with tax increment generated by the project. This obligation remains outstanding, with the final payment due on February 1, 2024. Sufficient increment will be available to make the remaining two payments. The MAA is also in place to provide a mechanism for pooling. Pooling allows the HRA to spend a portion of tax increment outside the geographical boundaries of the TIF District for TIF-eligible activities such as affordable housing. A modification or termination of the MAA will not impact remaining Bond payments, but it will likely impact the amount of money contributed to the Housing and Redevelopment Fund.

In November of 2022, Best Buy submitted a request for termination of the MAA (attached). After significant work by HRA staff, the HRA Attorney, and HRA financial consultants from Ehlers, a work session was held with the Council and HRA in March to discuss the potential impacts to the HRA and Best Buy. At the time, Best Buy proposed a contract amendment that would ensure no loss of revenue to the HRA for pooling for affordable housing, which is estimated to be between \$210,000 and \$385,000 over the remaining two years of the District.

Best Buy also requested that the HRA provide an accounting of payments to Best Buy and pooling over the life of the TIF District. This analysis was ongoing at the time of the work session; however, policymakers made it clear that a global solution to all outstanding issues should be found prior to any request to modify or terminate the MAA. This financial review has now been completed and has revealed that due to the complexities of this District and two successful tax court petitions by Best Buy to reduce their property tax value, the HRA has overpaid Best Buy by approximately \$851,000.

HRA and City staff have indicated support for a solution that 1) ensures that the Housing and Redevelopment Fund is fully funded at the level anticipated by the MAA and 2) that Best Buy acknowledge that the HRA intends to recoup the identified overpayment by withholding additional available increment received over the last two years of the TIF District.

Best Buy has submitted the attached letter and legal analysis (dated May 12, 2023) disputing the HRA's assertion that they have been overpaid. To resolve the dispute and move forward with their request for modification and termination of the MAA, they have proposed that the City and HRA approve their request in exchange for 20% of the actual tax benefit to Best Buy in 2024 and 2025 (staff recommends that the request to subtract Best Buy's legal and appraisal fees to pursue a tax value reduction be rejected out of hand; therefore the following analysis does not include a reduction for these costs).

If successful in their request for a reduced tax value in 2024 and 2025, the potential payment to the HRA under the proposal is estimated to be between \$423,000 and \$764,000 (cumulative). HRA staff and financial consultants believe that this would leave the HRA between \$472,000 and \$638,000 short of full recoupment. If Best Buy is unable to get a reduction for pay 2024 taxes, the amount paid to the HRA would be halved. The HRA has advised Best Buy and believes that the approval of the City, School District and County are required to modify and/or terminate the MAA and the deadline for these approvals is June 30, 2023. The HRA believes that Best Buy is unlikely to be successful in their request for the 2024 tax year and that the second scenario is therefore more likely. Finally, there is a possibility (though seemingly unlikely) that no reduction in value would be granted, in which case, the HRA would continue to receive the anticipated funds for the Housing and Redevelopment Fund but would not recoup any overpayment.

HRA and City staff, along with the HRA Attorney and financial experts have reviewed the proposal and legal analysis provided. We strongly disagree with the analysis and a legal response by the HRA Attorney is included as an attachment to this report. Based on our analysis, we recommend denial of the request. While Best Buy is an important and valued employer in our community, the contractual agreement in place should be honored unless a "do no harm" solution can be found.

RECOMMENDED ACTION:

By Motion: Deny a request to modify and/or terminate the Minimum Assessment Agreement for the Best Buy Corporate Campus at 7601 Penn Avenue South.

BASIS OF RECOMMENDATION:

A. HISTORICAL CONTEXT

The MAA requires that during the life of the TIF District the value upon which Best Buy's taxes are calculated does not fall below \$118.5 million. The value of the Best Buy parcel exceeded the MAA amount until 2014. Since that time, the value has remained at the minimum assessment.

B. POLICIES (resolutions, ordinances, regulations, statutes, etc):

See attached legal analysis by HRA Attorney Julie Eddington.

C. CRITICAL TIMING ISSUES:

Best Buy has indicated to staff that they would like the MMA modified/terminated as soon as possible. In order to reduce pay 2024 taxes, Best Buy must obtain written approval of a modification or termination of the MAA from the City, County, and School Board and record the document modifying the MMA on or prior to June 30, 2023.

D. FINANCIAL IMPACT:

- The HRA has concluded that Best Buy has been overpaid by approximately \$851,000.

- Modification and/or termination of the Minimum Assessment Agreement will reduce money available for other housing and redevelopment work in the community by an estimated \$210,000 to \$385,000.
- In exchange for the City and HRA's support, Best Buy has proposed to share the benefits of a reduced tax value with the HRA should their request to the County be successful. The HRA estimates that this amount could be in the range of \$212,000 to \$764,000. HRA staff and consultants believe that the lower end of the range is more likely given timing constraints for a pay 2024 reduction.
- In all of the proposed scenarios, the HRA fails to recoup the total increment and pooling that it should receive under the terms of the current contract.

E. LEGAL CONSIDERATION:

- The HRA has the legal authority and duty to recoup overpayments and will begin to do so with the August 1, 2023 TIF Payment.
- HRA Attorney Julie Eddington will be present to address legal questions.
- An amendment to the Contract for Private Development between the HRA and Best Buy is also required. Consideration by the HRA has been scheduled for June 5, 2023.

ALTERNATIVE RECOMMENDATION(S):

Approve the request for modification/termination of the Minimum Assessment Agreement with Best Buy for property at 7601 Penn Avenue South.

PRINCIPAL PARTIES EXPECTED AT MEETING:

Julie Eddington, HRA Attorney, Kennedy & Graven Jeanne Vogt, Senior Fiscal Consultant, Ehlers Tracy Smith, Senior Director and Tax Counsel, Best Buy Dan Lopez, Director of Government Affairs, Best Buy William Griffith & Timothy Rye, Attorneys for Best Buy, Larkin Hoffman

ATTACHMENTS:

Description	Type
▢ Best Buy - Min. Assessment Termination Request	Exhibit
▢ 051223 Best Buy Ltr to Richfield HRA	Exhibit
▢ 051223 Best Buy Legal Analysis of HRA Position	Exhibit
▢ HRA Legal Response to 051223 Best Buy Ltr	Exhibit



Best Buy
Tax – C6-901
Mobile: 612-817-8573
tracy.smith4@bestbuy.com

November 22, 2022

VIA U.S. Mail and Email to MPoehlman@richfieldmn.gov

Melissa Poehlman, Executive Director
Richfield Housing and Redevelopment Authority
6700 Portland Avenue
Richfield, MN 55423

Re: Termination of Minimum Assessment Agreement Between Richfield HRA and Best Buy

Dear Ms. Poehlman:

Thanks so much for meeting with me and the Best Buy team on November 1, 2022, to discuss both the orderly winddown of the Lyndale Gateway/Interchange West Tax Increment Financing District (the "TIF District") and the termination of the longstanding Minimum Assessment Agreement between Richfield HRA and Best Buy dated March 5, 2003 (the "Minimum Assessment Agreement"). This letter addresses the second item above and is our formal request to terminate the Minimum Assessment Agreement, including obtaining the required consent of the City Council, before December 31, 2022.

Background

The Best Buy Corporate Headquarters (the "Campus") is located in the Interchange West TIF District, which was combined with the Lyndale Gateway District and is referred to in this letter as the "TIF District." As we discussed in our meeting, the City and Best Buy have a long history of working cooperatively to build this corporate campus and upgrade local streets and utilities, and to provide funding for reconstruction of the Penn Avenue interchange.

In 2010, Best Buy consented to the issuance of refunding bonds, which resulted in significant savings retained by the HRA under the Fourth Amendment to Contract for Private Development. Over the years, the TIF District has provided more than \$10 million in support of the HRA's programs and housing initiatives. Since 2003, the Campus has drawn thousands of employees and business visitors to the City each day who support local businesses including hotels, retailers, convenience stores, and restaurants. In addition, Best Buy has been proud to engage as a good corporate citizen supporting the Richfield community through funding and sponsorships. This includes supporting local youth at our Teen Tech Center at the Richfield Middle School and the Minnesota Independence College & Community, as well as sponsorships of community events like the July 4th fireworks and Richfield Police and Fire Safety Awareness Day.

Importantly, as the end of the TIF District approaches in 2026, Best Buy is facing an uncertain macroeconomic environment and a seismic shift in workplace expectations, behavior and utilization. Many employers, including Best Buy, have implemented hybrid work policies to meet new post-pandemic employee expectations where more flexibility is demanded. Specifically, we allow a flexible workweek where employees work three days per week in the office, and have the option to work two days from a remote location. We believe this shift to be permanent in the marketplace. In that context, Best Buy remains focused on keeping the Campus buildings viable and productive for corporate use and as a driver of economic activity for Richfield. To support those efforts Best Buy must be attentive to the costs of operating the Campus, including keeping property taxes competitive. Richfield's own interests of attracting workers and commerce to its City clearly are furthered by supporting these same efforts.

Discussion

Without a doubt, the Minimum Assessment Agreement results in the Campus being significantly overvalued for property tax purposes – particularly given the amount of available office space in the Twin Cities following the recent pandemic. To remain a viable and attractive corporate office building in the Twin Cities, property taxes must be competitive and based on fair market value – like essentially all other corporate offices in the Twin Cities. Best Buy's efforts to attract workers, commerce, and potentially new lessees to its Campus also clearly will benefit the City. First, full utilization of the Campus will bring more people to the City on a daily basis and additional commercial traffic to the City. Second, the City's long-term tax base will be enhanced and stabilized. This will become even more important when the TIF District ends in the near future and tax increment is replaced with tax payments to the City's general funds.

Moreover, Best Buy has ensured that the original intent of the TIF financing arrangement, including limited risk to the City, has and will come to fruition. The termination of the Minimum Assessment Agreement is entirely consistent with its original purpose, namely, to ensure the source of repayment of the bonds issued to build the interchange at Penn Avenue and I-494. Since the final payment of the bonds is scheduled for February 2024, based on taxes already assessed and payable in 2023, the City faces absolutely no risk related to the few remaining bond payments.

In the meantime, Best Buy necessarily is focused on bringing the assessed value of the Campus for property tax purposes in line with its peer properties, and competitors, in the market. In this regard, Best Buy is merely taking steps to pay fair taxes based on the Campus's fair market value; rather than paying artificially inflated property taxes pursuant to the Minimum Assessment Agreement – an agreement that no longer serves its intended purpose. Best Buy respectfully requests that the HRA approve the termination of the Minimum Assessment Agreement, including the City Council's consent, before December 31, 2022. This timing will help ensure that the Campus will be subject to property taxes based on its fair market value for 2023 taxes payable in 2024.

Best Buy's request provides a win-win for both Best Buy and the City of Richfield. The City pays off its bond obligations with tax increment generated by the Campus in 2023 and terminates the Minimum Assessment Agreement without risk to the City or its taxpayers. Best Buy, in turn, takes an important

Melissa Poehlman
Page 3
November 22, 2022

step toward paying fair, competitive property taxes on the Campus building, which will help attract opportunities to fill the excess space. Best Buy and the City will work together to help support the viability of one of Richfield's cornerstone properties with a flow of employees and commerce to the City for years to come.

We appreciate our longstanding partnership with the City of Richfield and look forward to addressing these important issues in a timely manner for the benefit of the City, its residents, and Best Buy.

Sincerely,



Tracy M. Smith
Senior Director & Tax Counsel

cc: Julie A. Eddington (JEddington@Kennedy-Graven.com)
Julie Urban (JUrban@richfieldmn.gov)
William C. Griffith (wgriffith@larkinhoffman.com)
Tim Rye (trye@larkinhoffman.com)
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May 12, 2022

Best Buy
Tax – C6-938
Mobile: 612-817-8573
tracy.smith4@bestbuy.com

Sent via email to: MPoehlman@richfieldmn.gov

Melissa Poehlman, Executive Director
Richfield Housing and Redevelopment Authority
6700 Portland Avenue
Richfield, MN 55423

Re: Interchange West TIF District – Settlement of Issues as the District Approaches
Decertification

Dear Ms. Poehlman:

This letter follows up our recent discussion in which Best Buy, the City of Richfield (“City”) and the Richfield Housing and Redevelopment Authority (“HRA”) are seeking a global resolution of all matters and issues facing the parties regarding administration of the Interchange West TIF District (the “TIF District” or the “District”). To do so, the parties must be respectful of their mutual good work, long term relationship, and fruitful negotiations over the past two decades that have led to the unqualified success of the largest office building in Richfield, along with significant funding of the housing programs of the HRA.

As discussed, the parties recognize and are proud that the increased tax increment generated from Best Buy’s corporate headquarters has supported numerous affordable housing and rehabilitation initiatives in Richfield, including the new home program, the rehabilitation loan program, Richfield Rediscovered, transformation home loans, and the affordable housing trust fund. Best Buy itself has funded over \$11 million to the City/HRA to be used as they saw fit to support the community and these affordable housing initiatives. Best Buy also is proud of its significant presence in the Richfield community, which includes repeated contributions to over a dozen local organizations, including Richfield Public Schools, and its recent and very exciting opening of a Best Buy Teen Tech Center at Richfield Middle School.

In this letter, Best Buy’s intent is to provide the parties with a win-win resolution; this intent has remained constant throughout our discussions this past year (and previously). Today we are again making a “win-win” proposal to address all issues at hand, while also making it clear that Best Buy has a strong legal basis for its claims. In furtherance of our desire to reach a global resolution with full transparency and on a reasonable and fair basis, I have asked our outside counsel to provide relevant background, our understanding of the HRA’s position with respect to outstanding matters, and Best Buy’s response to this position. See attached correspondence and exhibits to Larkin Hoffman letter dated May 12, 2023 (“Larkin Hoffman Letter”).

- Best Buy's New Proposal for Resolution

In addition to resolving administrative and legal claims, Best Buy puts forth a global resolution that would include: (1) Richfield's express support and cooperation with Best Buy's request to modify and then terminate the Minimum Assessment Agreement, which agreement has fully served its intended purpose; (2) a resolution of Richfield's recent claim that it has overpaid Best Buy, which according to Richfield's own analysis largely arose from payments made about a decade ago; and (3) a resolution of the HRA's pooling of tax increment generated by the District, which Best Buy believed had previously been resolved as a result of our discussions that culminated in execution of the Fifth Amendment in 2014.

To be clear, this proposal is made for global settlement purposes only. Aside from the legal and financial issues outlined in the Larkin Hoffman Letter, Best Buy and the HRA have worked diligently to align on matters associated with the Minimum Assessment Agreement. The parties understand the Minimum Assessment Agreement is no longer beneficial to either party (with the full payment of bonds), particularly given Best Buy's offer to "make the HRA whole" for the loss of any funds associated with the modification/termination of the Minimum Assessment Agreement (assuming Best Buy is able to reduce the value of the property for property tax purposes to a reasonable fair market value).

As discussed at the meeting with the HRA on March 6th, the parties were encouraged to negotiate a global resolution of all matters, including those associated with the modification and termination of the Minimum Assessment Agreement and pooling limitations. In various discussions following the City Council meeting, and despite the strength of Best Buy's legal position, Best Buy has offered to be flexible with respect to the substantial amount of funds to which it believes Best Buy is entitled under Minnesota law and the Contract for Private Development (about \$1.5 million as of the end of the District). The HRA, however, continues to pursue its newfound position desiring to collect a legally questionable "overpayment" to Best Buy of approximately \$850,000 – most of which arises from payments over a decade ago.

Setting aside these past discussions, Best Buy is offering a new resolution for the mutual benefit of the parties. In very simple terms, (1) the HRA/City agrees to, and expressly supports, the modification and termination of the Minimum Assessment Agreement on or before June 27, 2023, and (2) any property tax benefit flowing to Best Buy from the reduction in assessed value below \$118,500,000 in tax years pay-2024 and pay-2025 (net of attorney's fees and appraisal costs incurred in pursuing this change to the Minimum Assessment Agreement and the property tax reduction) will be shared by the parties – with 20 percent of such net benefit to be received by the HRA. The idea behind this proposal is that the parties work in collaboration to their mutual benefit, with the HRA ultimately receiving funds that may well exceed the "make whole" payment originally discussed with the HRA. Of course, any shared benefit is dependent on a lower assessed value reached for the pay-2024 and pay-2025 tax years.

Please keep in mind that the potential benefit to the HRA and to Best Buy as a result of a reduced assessed value for property tax purposes is reduced dramatically if the Minimum Assessment Agreement is not modified and consented to by the County Assessor before June 30, 2023.

Melissa Poehlman

May 12, 2023

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Conclusion

Best Buy, like the HRA, strongly believes a global resolution is in the best interests of the parties; it manages risk, resolves longstanding concerns with the administration of the District, shares potential benefits, and avoids protracted dispute resolution. Best Buy does not believe the HRA's current position is supported by law. Best Buy has acted in good faith throughout our long relationship with the HRA and the City and does so again with this proposal for a global resolution that offers a "win-win" for all parties.

We look forward to hearing from you within the next week or so to discuss our next steps.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracy M. Smith", written in a cursive style.

Tracy M. Smith
Vice President, Tax Counsel

cc via email: Julie Eddington
William Griffith
Timothy Rye
Mike Hiltner
Dan Lopez



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May 12, 2023

Ms. Tracy Smith
Best Buy
7601 Penn Avenue South
Richfield, MN 55423-3645

Via Email
(tracy.smith4@bestbuy.com)

Re: Legal Analysis of Issues Presented for Wind Down of the Best Buy-Richfield HRA TIF District

Dear Tracy:

Since 2014, Best Buy Co., Inc. ("Best Buy"), has been working to understand the administration by the City of Richfield (the "City") and the Richfield Housing and Redevelopment Authority (the "HRA"), of the Interchange West TIF District (the "District") that includes the Best Buy corporate headquarters at 7601 Penn Ave. S. (the "Campus"). In 2014, it was discovered that the HRA was collecting tax increment at levels well in excess of statutory limits, which would result in a substantial overcollection by the HRA through the end of the District if action were not taken. As a result, Best Buy and the HRA agreed to amend the Contract for Private Development (the "Contract") to bring the HRA collections in line with statutory limits and moderate the degree of overcollections by the HRA so that it would be easier to fall under the statutory limit before decertification. That agreement was memorialized in the Fifth Amendment to the Contract, dated July 14, 2014 (the "Fifth Amendment").

Throughout that process, and even after the Fifth Amendment, calculation errors and issues with the administration of the District were identified. We had correspondence, meetings and information exchanges with you and the HRA from 2015 through 2018, but substantial issues remained. We were frequently reminded, by the HRA and its counsel, that the HRA only had to comply with pooling requirements by the end of the District and that any miscalculations and overcollections would be corrected in the final years of the District.

In the fall of 2022, we reached out to the HRA to open that discussion and work toward an orderly wind down of the District. As part of that conversation, Best Buy requested the termination or modification of the Minimum Assessment Agreement ("MAA") so that the Campus could be fairly valued at market rates allowing Best Buy and other tenants to pay taxes

in line with other similar quality office buildings in the Twin Cities, particularly given the unprecedented downsizing taking place in the office market.¹

Through many meetings and exchanges, progress was made. We now have a common understanding of how the District was administered by the HRA, and the HRA seems to agree that the Campus being valued at market levels would be a positive for Best Buy, potential tenants, and the City. Unfortunately, other legal and administrative issues remain unresolved.

The HRA has presented a position that disregards Best Buy's rights under the Contract and violates Minnesota statutory law. This letter outlines our legal analysis of the HRA's position. We have outlined below the HRA's position as we understand it and our responsive analysis.

1. HRA Position

a. HRA Asserts Overpayment to Best Buy

The HRA currently alleges it overpaid Best Buy \$851,420.75 to date. This is a newfound assertion made by the HRA for the first time during the parties' recent discussions in 2022 and 2023. The HRA's recent analysis of the TIF payments over the life of the District shows that almost every single semi-annual payment to Best Buy over the past two decades has been inaccurate. Attached hereto as Ex. 1 (column entitled "Over/(Under) Payment"). Ex. 1 is the HRA's own current analysis of the tax increment calculations associated with the District. Despite these numerous inaccuracies over the years with respect to the District, the HRA now purports it overpaid Best Buy between 2010 and 2014, almost more than a decade ago.

b. HRA Argues that Minn. Stat. § 469.1763, Subd. 2, 25% Pooling Limit, Does Not Apply

The HRA asserts it follows Minn. Stat. § 469.1763, Subd. 2, the statutory 25% pooling limit, despite HRA's own analysis and documentation showing that it has collected 29% of total tax increment. See Ex. 1. As shown at the bottom of Column M in Exhibit 1, the HRA admits it currently has collected amounts in excess of 29%, which is well above the 25% statutory limit as discussed below. Moreover, the HRA asserts it has no plans to reduce its collections below 25%

¹ Recent articles regarding office downsizing:

<https://www.axios.com/2023/05/09/commercial-real-estate-us-fed>
<https://protect-us.mimecast.com/s/PUKSC5yALjHMpvl3tztPLRG?domain=startribune.com/>
<https://www.startribune.com/marshalls-in-downtown-minneapolis-is-closing/600234487/>
https://www.bizjournals.com/twincities/news/2022/12/15/what-to-do-with-big-office-blocks-in-twin-cities.html?utm_source=st&utm_medium=en&utm_campaign=me&utm_content=MN&ana=e_MN_me&j=30001285&senddate=2022-12-16
<https://www.startribune.com/ameriprise-will-cut-its-downtown-mpls-office-space-moving-to-one-building-from-two/600234538/>
<https://www.axios.com/2023/05/09/commercial-real-estate-us-fed>
<https://www.startribune.com/unitedhealth-group-headquarters-building-in-minnetonka-is-for-sale/600261083/>
<https://www.axios.com/local/twin-cities/2023/04/17/wells-fargo-office-consolidation-twin-cities-home-mortgage-campus>
<https://www.twincities.com/2023/03/30/blue-cross-blue-shield-downsizing-cagan-real-estate-footprint/>
<https://www.startribune.com/thomson-reuters-searches-for-new-offices-in-the-twin-cities/600243289/>

per payment, but nonetheless the HRA claims it will comply with pooling requirements at the end of the District.

HRA Wind Down Proposal to Best Buy

In recent discussions with Best Buy, the HRA said it would withhold \$851,420.75 from the remaining PayGo payments to Best Buy while continuing to collect 25% of the tax increment from Best Buy's portion of the District – the same rate it has been collecting since the commencement of the Fifth Amendment. See Ex. 2, which is a copy of the Fifth Amendment. Either or both actions by the HRA, the withholding of the \$851,420.75 and the continuing to collect 25% of the tax increment, are contrary to the parties' agreement and understanding as of the execution of the Fifth Amendment. Attached hereto is Ex. 3, the HRA's own forecast and analysis as of February 2014, prepared by Ehlers, the HRA's finance expert, to calculate the impact of the Fifth Amendment and the parties' negotiations at that time to address the 25% statutory limit problem. Ex. 3 provides, "...From 2014 forward, we have projected increment and payments using the following assumptions...Total pooling of 25% for the HRA to allocate between the Administration and Housing and Redevelopment Fund...We also want to note that we previously estimated that the HRA would not take administration the last 1.5 years; however, based on final review that period will be 3.0 years." The chart in Ex. 3 further confirms, "City cannot collect Admin/Pooling [for last six semi-annual payments] to stay within 25% limit." Clearly, the HRA's continued collection of 25% of the tax increment is contrary to the parties' understanding at the time of the Fifth Amendment, as confirmed by Ex. 3 specifically showing HRA collections of zero during the last three years of the District to allow the overall collection percentage to meet the 25% statutory threshold.

2. Legal Problems with the HRA Position

a. Asserted Overpayment Is Beyond the Statute of Limitations and Unenforceable

The HRA Act, defined as Minn. Stat. §§ 469.001-469.047 by the Contract under Article 1, provides that contract and tort law apply to the Contract for Private Development between the parties. The HRA Act provides that "an authority *shall* be liable in contract or tort in the same manner as a private corporation." Minn. Stat. § 469.014 (emphasis added). As such, any action for the enforcement of a contract or other obligation (such as an assertion of an overpayment) must be commenced within six years from the commission of the act. Minn. Stat. § 541.05, subd. 1(1). Since the majority of the alleged overpayments occurred between 2010 and 2014, stated simply, the statute of limitations has expired, and any assertion of overpayment is time barred. Moreover, if the HRA attempted to collect the claimed overpayment now, it also would be a breach of the Contract pursuant to the 5th Amendment and all remedies for breach would be available to Best Buy. Accordingly, the HRA's claim for payment of \$851,420.75 is legally infirm and unenforceable.

Keep in mind that one rationale for Minnesota's six-year contract dispute statute of limitations is to ensure that any such dispute is decided on good, valid, and available information and evidence. When disputes, such as contract disputes, are a decade old, the witnesses and documents involved become dated and often inaccurate. In fact, it is clear that many of the

discussions and communications between the parties in the 2010 through 2014 period are no longer available and have not been thoroughly researched. Today's assertion by the HRA of an overpayment is based solely on an analysis of the numbers as of today, and not the specific facts that may have existed at the time. Even if the HRA somehow overlooks both the clear statute of limitations bar and the breach of contract problem, the HRA still can only "find" an "overpayment" if the HRA collects and spends tax increment in excess of the statutory pooling limit, which it cannot under Minnesota law as we explain in the next section.

b. The HRA is in Violation of the Statutory 25% Pooling Limit

Minn. Stat. § 469.1763, Subd. 2, limits the amount of money eligible for spending by the HRA for activities outside the District but within a defined geographic area to 25%. More importantly, the statute mandates that at least 75% of the total revenue derived from the tax increment "must be expended on activities in the district", which in this case are the Bonds and the PayGo Note. Minn. Stat. 469.1763, Subd. 3(a)(2) and (3).

Under the HRA's own analysis, HRA collections of 29% of the total tax increment generated from taxes paid by Best Buy confirms that its collections violate the 25% statutory limit. *See*, Ex. 1. Moreover, in May of 2022, pursuant to Resolution No 11979, the HRA unilaterally amended the TIF Plan attempting to increase the pooling limit from 25% to 35%, so long as 10% was for affordable housing. However, the statute relied on by the City, Minn. Stat. § 469.1763, Subd. 2(d) does not increase the 25% pooling limit, it merely alters the geographic area in which the funds can be spent.

Subdivision 2(a) provides:

Not more than 25 percent of the total revenue derived from tax increments paid by properties within the district may be expended, through a develop fund or otherwise, *on activities outside of the district but within the defined geographic area of the project.*

Subdivision 2(d) provides:

The authority may elect, in the tax increment financing plan for the district, to increase by up to ten percentage points the permitted amount of expenditures *for activities located outside the geographic area of the district* under paragraph (a).

There are two components to the 25% pooling limit: 1) expenditures outside of the District; and 2) within a specified geographic area. Subdivision 2(d) does not change the 25% limit or the mandate that at least 75% of the tax increment must be spent on *in district* obligations. It only changes the geographic area in which the HRA can spend its maximum 25%. As a result, the election by the HRA pursuant to Minn. Stat. § 469.1763, subd. 2(d) does increase the 25% pooling limit to 35%, it only changes **where** the 25% can be spent.

Interestingly, this election would have been relevant at the beginning of the District when the Richfield Redevelopment Project Area ("Project Area") did not incorporate the entire city, but on December 13, 2005 the Project Area was increased to incorporate the entire city. After December 13, 2005 the HRA could spend its 25% anywhere in the city. As a result, the May 2022 Amendment to the TIF Plan has no meaning and the 25% pooling limit remains.

Moreover, even if the City were successful in increasing the pooling limit to 35%, it would violate the terms of the Fifth Amendment, and of the Contract, which also set the limit at 25%. Finally, the HRA cannot make any change that would alter the terms or application of the agreement without written consent of Best Buy – see Section 10.13 of the Contract. Accordingly, any unilateral change to the terms or operations of the contract is a material breach of the Contract.

c. Other issues

- (1) Best Buy appreciates the work that the HRA, the City, and Best Buy have invested to understand the TIF calculations performed by Ehlers, the HRA's financial advisor. However, Best Buy only agrees with the current Ehlers TIF calculations for the District for purposes of settlement discussions; in any other venue, the HRA will need to prove all of its calculations and the particular facts and errors applicable to each payment to Best Buy pursuant to the PayGo Note;
- (2) Consistent with the above explanation, Minn. Stat. § 469.1763, Subd. 2(d) does not increase the spending limit outside the district to 35%; as such, the HRA has overcollected approximately \$575,000 from the non-Best Buy portion of the District, which will need to go to in-district obligations, including the PayGo Note.

3. An Orderly Wind Down of the TIF District Requires Payment to Best Buy of \$605,449 to Comply with Minnesota Law and the Parties' Contract for Private Development.

As of this moment, according to the HRA's own financial advisor, the HRA has collected \$10,304,940 of the \$35,392,281 in total tax increment; or 29.12% of the total tax increment. Twenty-five percent (25%) of the \$35,392,281 in total tax increment equals \$8,848,070, which means the HRA currently has overcollected \$1,456,870 from Best Buy portion of the District. Due to accounting errors, some of the nearly \$1.45 million must be transferred to the Best Buy portion of the District, including toward paydown of the PayGo Note. To comply with Minn. Stat. 469.1763, Subd. 2(a), the HRA is required to pay Best Buy \$605,449, consistent with the following schedule.

	Total Tax Increment	HRA @ 25%	Bonds	PayGo
Compliant	\$35,392,281	\$8,848,070	\$11,826,921	\$14,717,290
Actual	\$35,392,281	\$10,304,940	\$11,826,921	\$14,111,841
Correction	\$0	(\$1,456,870)	\$0	\$605,449²

² This amount is less than the HRAs overcollection because it offsets any purported overpayments on the PayGo.

Best Buy's request to confirm the orderly wind down of the TIF District, consistent with the parties' discussions in 2014 when the Fifth Amendment was executed, has already led to correction of administrative errors and, more importantly, is a reasonable step to resolve the HRA's continued overcollection to avoid refunds that would be required by the HRA to meet the 25% pooling limit by the end of the District.

The HRA's newfound assertion of an overpayment to Best Buy reaches back more than a decade ago. This assertion is not only problematic because it is inconsistent with the HRA's projections in 2014 that it would be able to meet the 25% limit by the end of the District by ending pooling early, but is barred by the statute of limitations and is a violation of Minn. Stat. § 469.1763, subd. 2(a) limiting HRA collections to 25%. This is what the parties intended when negotiating the Fifth Amendment. See Exhibit 3.

4. Conclusion

As of this moment, the HRA has collected \$10,304,940 of the \$35,392,281 in total tax increment; or 29.12% of the total tax increment (25% of \$35,392,281 is \$8,848,070, which means the HRA has overcollected by \$1,456,870). To comply with Minn. Stat. 469.1763, subd. 2(a) as of now the tax increment should be corrected as shown in the preceding section

As you have noted on several occasions in our discussions with HRA staff, legal counsel, and consultants, Best Buy initiated discussions in 2014 and again in 2022 to resolve the substantial financial and legal issues set forth in this letter, among others on a cooperative basis. Through Best Buy's insistence and diligence in this regard, significant accounting errors have been corrected and both parties have a better understanding of collections over the life of the District. Still, the HRA cannot unilaterally alter the applicable TIF Plan, TIF collections, and pooling limits in ways that undermine the Contract, PayGo Note or avoid its obligations under Minnesota law.

Sincerely,



Timothy A. Rye, for
Larkin Hoffman



William C. Griffith, for
Larkin Hoffman

EXHIBIT 1

** REVISED AS OF 03/13/2023 - FINAL **

City of Richfield
Lyndale Gateway / Interchange West TIF District
History of PAYGO Payments to Best Buy
Through and Including August 1, 2022 Payment

		Ties to G/L		10%		15%		Ties to G/L							
A	B	C	D	E	F	G	H	I = D - E - F - G - H	J	K = J - I	L	M	N		
Payment Date	Developer Agreement In Place	Developer Agreement Requirements	Increment Used in PAYGO Calc	Tax Increment Received - Best Buy Portion Only	Amounts Withheld				Net Payment to Best Buy	Actual Payment	Over / (Under) Payment	Comments	% of Admin & Pooling to TIF Received	Cummulative Over / (Under) Payment	
					Admin Costs	To HRA Trust Fund (Pooling)	TIF Shortfall Payments / Adjustments	Debt Service Payments							
8/1/2002	2nd Amendment		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -			\$ -	
2/1/2003	2nd Amendment		-	-	-	-	-	-	-	-	-			-	
8/1/2003	3rd Amendment	Fixed Exhibits	-	-	-	-	-	-	-	-	-			-	
2/1/2004	3rd Amendment	Fixed Exhibits	-	-	-	-	-	-	-	-	-			-	
8/1/2004	3rd Amendment	Fixed Exhibits	868,271.00	870,480.02	(32,012.00)	(224,084.00)	-	(195,321.88)	419,062.14	416,853.00	(2,209.14)	Admin is Exhibit C	29%	(2,209.14)	
2/1/2005	3rd Amendment	Fixed Exhibits	868,271.00	870,480.01	(32,686.00)	(228,801.00)	-	(455,321.88)	153,671.13	156,853.00	3,181.87	Admin is Exhibit C	30%	972.73	
8/1/2005	3rd Amendment	Fixed Exhibits	923,239.00	906,162.44	(32,686.00)	(228,801.00)	-	(190,121.88)	454,553.56	471,631.00	17,077.44	Admin is Exhibit C	29%	18,050.17	
2/1/2006	3rd Amendment	Fixed Exhibits	923,239.00	945,408.92	(33,371.00)	(233,598.00)	-	(460,121.88)	218,318.04	201,631.00	(16,687.04)	Admin is Exhibit C	28%	1,363.13	
8/1/2006	3rd Amendment	Fixed Exhibits	856,073.00	858,672.26	(33,371.00)	(233,598.00)	-	(184,721.88)	406,981.38	404,382.00	(2,599.38)	Admin is Exhibit C	31%	(1,236.25)	
2/1/2007	3rd Amendment	Fixed Exhibits	856,073.00	858,672.25	(34,068.00)	(238,479.00)	-	(469,721.88)	116,403.37	119,382.00	2,978.63	Admin is Exhibit C	32%	1,742.38	
8/1/2007	3rd Amendment	Fixed Exhibits	895,588.00	898,460.12	(34,068.00)	(238,479.00)	-	(179,021.88)	446,891.24	444,020.00	(2,871.24)	Admin is Exhibit C	30%	(1,128.86)	
2/1/2008	3rd Amendment	Fixed Exhibits	895,588.00	898,460.13	(34,777.00)	(243,443.00)	-	(474,021.88)	146,218.25	149,020.00	2,801.75	Admin is Exhibit C	31%	1,672.89	
8/1/2008	3rd Amendment	Fixed Exhibits	994,093.51	990,015.10	(34,777.00)	(243,443.00)	-	(173,121.88)	538,673.22	-	(538,673.22)	Admin is Exhibit C	28%	(537,000.33)	
2/1/2009	3rd Amendment	Fixed Exhibits	994,093.51	990,015.10	(35,499.00)	(248,493.00)	-	(483,121.88)	222,901.22	767,330.01	544,428.79	Admin is Exhibit C	29%	7,428.46	
8/1/2009	3rd Amendment	Fixed Exhibits	1,186,644.76	1,029,251.37	(35,499.00)	(248,493.00)	-	(166,766.88)	578,492.49	-	(578,492.49)	Admin is Exhibit C	28%	(571,064.03)	
2/1/2010	3rd Amendment	Fixed Exhibits	1,180,652.87	1,026,100.11	(36,233.00)	(253,631.00)	-	(486,766.88)	249,469.23	1,137,941.96	888,472.73	PAYGO Pd on full district, not just Best Buy	28%	317,408.70	
8/1/2010	3rd Amendment	Fixed Exhibits	897,090.80	893,861.27	(36,233.00)	(253,631.00)	-	(160,046.88)	443,950.39	453,912.18	9,961.79	Admin is Exhibit C	32%	327,370.49	
2/1/2011	4th Amendment	Fixed Exhibits	993,584.48	893,861.27	(36,979.00)	(263,611.08)	-	(495,046.88)	98,224.31	190,345.99	92,121.68	Debt refinanced	34%	419,492.17	
8/1/2011	4th Amendment	Fixed Exhibits	678,299.10	510,892.14	(36,979.00)	(258,857.00)	-	(95,458.45)	119,597.69	287,004.69	167,407.00	PAYGO Pd on full district, not just Best Buy	58%	586,899.17	
2/1/2012	4th Amendment	Fixed Exhibits	633,289.20	475,121.50	(37,739.00)	(320,583.63)	-	(451,433.75)	(334,634.88)	-	334,634.88	\$170,391.14 withheld; paid on full district	75%	921,534.05	
8/1/2012	4th Amendment	Fixed Exhibits	948,293.74	949,230.22	(37,739.00)	(264,173.00)	(28,897.04)	(300,508.75)	346,809.47	230,208.31	(116,601.16)	Admin is Exhibit C	32%	804,932.89	
2/1/2013	4th Amendment	Fixed Exhibits	971,755.62	949,230.20	(38,511.00)	(328,632.26)	(28,896.82)	(300,508.75)	281,578.19	310,081.06	28,502.87	G/L doesn't have Clean-up settlement of \$1,777.09	39%	833,435.76	
8/1/2013	4th Amendment	Fixed Exhibits	1,037,457.24	1,037,368.76	(38,511.00)	(269,581.00)	(28,905.89)	(301,358.75)	427,918.01	309,121.34	(118,796.67)	Admin changed from Exhibit B to Exhibit C	30%	714,639.09	
2/1/2014	4th Amendment	Fixed Exhibits	1,037,457.24	1,037,457.77	(39,297.00)	(330,783.26)	(28,899.22)	(301,358.75)	366,018.76	368,179.28	2,160.52	Admin changed from Exhibit B to Exhibit C	36%	716,799.61	
8/1/2014	4th Amendment	Fixed Exhibits	907,565.45	997,757.58	(39,297.00)	(275,082.00)	(28,905.89)	(301,633.75)	381,744.83	506,220.81	124,475.98	Reduction for pooling not included in payment	32%	841,275.58	
2/1/2015	5th Amendment	75% of TIF Received	907,565.45	997,757.57	(99,775.76)	(149,663.64)	(28,906.86)	(301,633.75)	446,684.42	350,133.48	(96,550.94)	PAYGO schedule had incorrect frozen rate	25%	744,724.64	
8/1/2015	5th Amendment	75% of TIF Received	1,181,472.27	1,181,465.53	(118,146.55)	(177,219.83)	-	(303,483.75)	582,615.40	582,620.45	5.05	Value petitioned	25%	744,729.70	
2/1/2016	5th Amendment	75% of TIF Received	1,181,472.27	1,181,465.53	(118,146.55)	(177,219.83)	(206,924.92)	(303,483.75)	375,690.48	375,695.54	5.06	Value petitioned - portion of payment withheld	25%	744,734.75	
8/1/2016	5th Amendment	75% of TIF Received	1,529,741.27	1,378,151.63	(137,815.16)	(206,722.74)	(346,357.95)	(304,573.75)	382,682.03	382,682.02	(0.01)	Value petitioned - portion of payment withheld	25%	744,734.74	
2/1/2017	5th Amendment	75% of TIF Received	1,377,593.76	1,378,151.61	(137,815.16)	(206,722.74)	(346,357.94)	(304,573.75)	382,682.02	382,682.02	-	Value petitioned - portion of payment withheld	25%	744,734.74	
8/1/2017	5th Amendment	75% of TIF Received	1,300,674.61	1,300,681.97	(130,068.20)	(195,102.30)	(323,359.72)	(304,638.75)	347,513.00	347,507.49	(5.51)	Value petitioned - portion of payment withheld	25%	744,729.23	
12/31/2017	5th Amendment	75% of TIF Received	(179,851.69)	(179,851.01)	17,985.10	26,977.65	206,924.92	-	72,036.66	109,778.73	37,742.07	2015 Adjustment - Tax Court Petition		782,471.30	
12/31/2017	5th Amendment	75% of TIF Received	(586,554.23)	(585,104.29)	58,510.43	87,765.64	692,715.89	-	253,887.67	292,273.34	38,385.67	2016 Adjustment - Tax Court Petition		820,856.97	
12/31/2017	5th Amendment	75% of TIF Received	754,306.25	745,418.54	(74,541.85)	(111,812.78)	323,359.72	(304,638.75)	577,784.88	578,901.16	1,116.28	Includes reduction for Pay 2017 tax court petition	25%	821,973.25	
8/1/2018	5th Amendment	75% of TIF Received	979,426.56	975,900.99	(97,590.10)	(146,385.15)	-	(304,258.75)	427,666.99	428,166.72	499.73	Bond payment reduction for 2019 not 2018	25%	822,472.98	
2/1/2019	5th Amendment	75% of TIF Received	979,426.56	975,900.99	(97,590.10)	(146,385.15)	-	(304,258.75)	427,666.99	428,166.72	499.73	Bond payment reduction for 2019 not 2018	25%	822,972.71	
8/1/2019	5th Amendment	75% of TIF Received	1,011,713.23	987,514.72	(98,751.47)	(148,127.21)	-	(306,898.75)	433,737.29	756,053.30	322,316.01	Payment not reduced for debt service	25%	1,145,288.72	
2/1/2020	5th Amendment	75% of TIF Received	1,011,713.23	987,514.72	(98,751.47)	(148,127.21)	-	(306,898.75)	433,737.29	142,255.80	(291,481.49)	Payment corrected	25%	853,807.23	
8/1/2020	5th Amendment	75% of TIF Received	896,142.72	892,916.61	(89,291.66)	(133,937.49)	-	(306,621.25)	363,066.21	363,066.21	(0.00)		25%	853,807.23	
2/1/2021	5th Amendment	75% of TIF Received	896,142.72	892,916.61	(89,291.66)	(133,937.49)	-	(306,621.25)	363,066.21	363,066.21	(0.00)		25%	853,807.22	
8/1/2021	5th Amendment	75% of TIF Received	885,065.89	881,875.38	(88,187.54)	(132,281.31)	-	(308,090.00)	353,316.53	353,319.74	3.21		25%	853,810.43	
2/1/2022	5th Amendment	75% of TIF Received	885,065.89	885,065.89	(88,506.59)	(132,759.88)	-	(308,090.00)	355,709.42	353,319.74	(2,389.68)	G/L not reduced for OSA fee	25%	851,420.75	
8/1/2022	5th Amendment	75% of TIF Received	816,730.29	813,790.06	(81,379.01)	(122,068.51)	-	(311,325.00)	299,017.54	299,017.55	0.01		25%	851,420.75	
2/1/2023	5th Amendment	75% of TIF Received	816,730.29	813,790.06	(81,379.01)	(122,068.51)	(81,379.01)	(311,325.00)	299,017.54	299,017.54	-		25%	851,420.75	
8/1/2023	5th Amendment	75% of TIF Received		813,790.06	(81,379.01)	(122,068.51)		(313,500.00)	296,842.54	296,842.54	-		25%	851,420.75	
2/1/2024	5th Amendment	75% of TIF Received		813,790.06	(81,379.01)	(122,068.51)		(313,500.00)	296,842.54	296,842.54	-		25%	851,420.75	
8/1/2024	5th Amendment	75% of TIF Received		813,790.06	(81,379.01)	(122,068.51)		-	610,342.54	610,342.54	-		25%	851,420.75	
2/1/2025	5th Amendment	75% of TIF Received		813,790.06	(81,379.01)	(122,068.51)		-	610,342.54	610,342.54	-		25%	851,420.75	
8/1/2025	5th Amendment	75% of TIF Received		813,790.06	(81,379.01)	(122,068.51)		-	610,342.54	610,342.54	-		25%	851,420.75	
2/1/2026	5th Amendment	75% of TIF Received		813,790.06	(81,379.01)	(122,068.51)		-	610,342.54	610,342.54	-		25%	851,420.75	
GRAND TOTALS - PAID THROUGH & INCLUDING 2/1/2023			\$ 36,957,602.78	\$ 35,392,281.65	\$ (2,400,864.31)	\$ (7,904,075.71)	\$ (173,411.72)	\$ (11,826,921.02)	\$ 13,260,420.61	\$ 14,111,841.36	\$ 851,420.75		29%		
CALCULATION OF ADMIN AND POOLING CAPPED AT 25%				\$ 35,392,281.65	\$ (3,539,228.17)	\$ (5,308,842.25)	\$ (173,411.72)	\$ (11,826,921.02)	\$ 14,717,290.21	\$ 14,111,841.36	\$ (605,448.85)		25%		
DIFFERENCE				\$ -	\$ (1,138,363.86)	\$ 2,595,233.46	\$ -	\$ -	\$ 1,456,869.60	\$ -	\$ (1,456,869.60)				

EXHIBIT 2

FIFTH AMENDMENT TO CONTRACT FOR PRIVATE REDEVELOPMENT

THIS AGREEMENT, made and entered into as of the 14th day of July, 2014, by and between the HOUSING AND REDEVELOPMENT AUTHORITY IN AND FOR THE CITY OF RICHFIELD, MINNESOTA, a Minnesota public body corporate and politic (the "HRA"), and BEST BUY CO., INC., a Minnesota corporation (the "Redeveloper").

WITNESSETH:

WHEREAS, the parties hereto did on or about March 28, 2000 enter into an agreement entitled Contract for Private Redevelopment (the "Contract"), calling for the redevelopment of an area of land (the "Property") lying within the City of Richfield; and

WHEREAS, the parties hereto did on or about November 27, 2000, February 20, 2001, March 5, 2003, and December 21, 2010, enter into agreements entitled First Amendment to Contract for Private Redevelopment (the "First Amendment"), the Second Amendment to Contract for Private Redevelopment (the "Second Amendment"), the Third Amendment to Contract for Private Redevelopment (the "Third Amendment"), and the Fourth Amendment to Contract for Private Redevelopment (the "Fourth Amendment"), respectively, which amended the Contract; and

WHEREAS, the HRA and the Redeveloper propose to amend the Contract further to revise the provisions related to the City's administrative fees and housing fund fees; and

NOW, THEREFORE, based upon the mutual covenants and undertakings hereinafter, and in the Contract provided, the parties hereto stipulate and agree as follows:

I. The WHEREAS clauses set forth above are incorporated into this Fifth Amendment to Contract for Private Redevelopment and confirmed in all respects.

II. The Contract is hereby amended in the following respects:

1. The definition of "Available Tax Increment" found in Section 1.1 of the Contract (as amended by the Fourth Amendment) is amended as follows:

"Available Tax Increment" for the purpose of the Note means seventy-five percent (75%) of the Tax Increment attributable to the Minimum Improvements and Development Property that is paid to the HRA by the County in the six months preceding each Payment Date, after deducting any amount necessary to pay principal and interest on the TIF Bonds or, subject to the provisions of Section 3.5, subd. 3, any TIF Refunding Bonds.

2. Exhibits A, B, and C to the Fourth Amendment are deleted.

3. The HRA and the Redeveloper acknowledge and agree that pursuant to the terms of the Contract and the Note, all Available Tax Increment will be used to pay the principal of and interest on the Note.

IN WITNESS WHEREOF, the parties hereto have caused this Fifth Amendment to Contract for Private Redevelopment to be duly executed in their behalf by their authorized representatives on or as of the date first above written.

**HOUSING AND REDEVELOPMENT AUTHORITY
IN AND FOR THE CITY OF RICHFIELD**

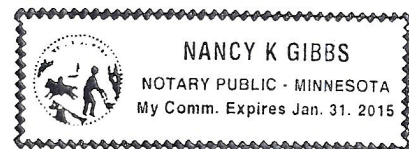
By *Wendy B. Ruff*
Its Chairperson, Vice Chair

By *Steven L. Devich*
Its Executive Director

STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

III. The foregoing instrument was acknowledged before me this 16 day of June, 2014, by ^{Wendy B. Ruff} ~~Suzanne M. Sandahl~~, the Chairperson of the Housing and Redevelopment Authority in and for the City of Richfield, a public body corporate and politic under the laws of Minnesota, on behalf of the HRA.

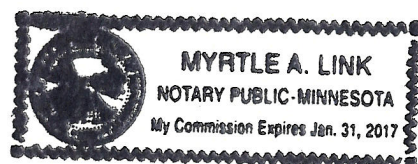
Nancy K Gibbs
Notary Public



STATE OF MINNESOTA)
) ss.:
COUNTY OF HENNEPIN)

IV. The foregoing instrument was acknowledged before me this 16 day of June, 2014, by Steven L. Devich, the Executive Director of the Housing and Redevelopment Authority in and for the City of Richfield, a public body corporate and politic under the laws of Minnesota, on behalf of the HRA.

Myrtle A. Link
Notary Public



BEST BUY CO., INC.

By

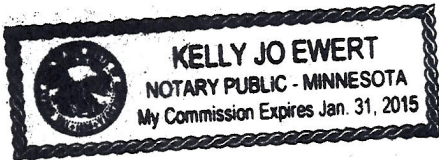
Its

[Signature]
VP - Global Properties

STATE OF MINNESOTA)
)
COUNTY OF HENNEPIN)

ss.:

The foregoing instrument was acknowledged before me this 14th day of July, 2014,
by David Sisson, the VP - Global Properties of Best Buy Co., Inc., a Minnesota corporation, on
behalf of the Redeveloper.



Notary Public

Kelly Ewert

EXHIBIT 3

From: Rebecca Kurtz [<mailto:rkurtz@ehlers-inc.com>]
Sent: Monday, February 03, 2014 11:41 AM
To: Griffith, William C.
Cc: Steve Devich (SDevich@cityofrichfield.org); John Stark; Myrt Link (MLink@cityofrichfield.org); Julie Eddington (External Address)
Subject: RE: Best Buy Co.

Good morning, Bill,

Attached is the cashflow for the estimated increment and payments for the Best Buy TIF Note, assuming the minimum market value of \$118,500,000 and the needed adjustments for the HRA's administration and pooling.

The top half shows actual TIF payments from Hennepin County to date and the Pooling (Administration and Housing and Redevelopment Fund) payments. These payments are per the Contract. We received the final settlement information for 2013 from the County last week, so that has been updated for the 2013 information. From 2014 forward, we have projected increment and payments using the following assumptions:

- Semi-annual TIF settlement based on the current market value and tax rate with no inflationary increases
- Total Pooling of 25% for the HRA to allocate between the Administration and Housing and Redevelopment Fund

Based on the updated information and final review, we are estimating that the remaining amount to be paid on the Pay-as-you-go Note is \$18,712,117. We also want to note that we previously estimated that the HRA would not take administration the last 1.5 years; however, based on final review, that period will be 3.0 years.

As you know, to the extent that market values and tax rates change, the TIF projections will change, and therefore the Paygo Note and Pooling projections will be adjusted.

Please do not hesitate to contact me with any questions.

Rebecca L. Kurtz, Financial Advisor/CIPFA
3060 Centre Pointe Drive
Roseville, MN 55113
Phone: (651) 697-8516



From: Griffith, William C. [<mailto:wgriffith@larkinhoffman.com>]
Sent: Friday, January 31, 2014 9:36 AM
To: Rebecca Kurtz
Subject: Best Buy Co.

Good morning Rebecca,

I am following up our last meeting with you and City staff to see if we can get copies of your modeling of the revised administrative fees and impact on the PAYG Note. Thanks so much,

Bill

William C. Griffith
Shareholder
p | 952-896-3290
m | 612-986-7711
www.larkinhoffman.com



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City of Richfield

Best Buy projections with proposed Amendment to Contract (reducing Administration and Pooling amount)

Actual to date and projections beginning in 2014 based on minimum assessed market value of \$118,500,000 and estimated Pay 2014 tax information, but City takes only 25% for Administration and Pooling beginning in 2014.

Tax Year	Payment Date	Semi-Annual Gross Tax Increment	MVHC	Total Increment	Per Agreement		Pooling 25%	Tax Exempt G.O. Bond Payment	\$170,408 Repayment of 2/1/12 Shortfall	Available for Paygo	Annual Available for Paygo	Pooling Calculation	
					Admin. at FIXED	Housing at FIXED						Total Pooling	Pooling %
1999													
2000		1,440		1,440									
2001		74,977		74,977									
2002		91,095	255	91,350									
2003		384,269	4,157	388,426									
2004		1,740,960	5,890	1,746,850	116,278	448,169						564,447	
2005		1,851,571		1,851,571	118,622	457,601						576,223	
2006		1,717,344		1,717,344	121,004	467,196						588,200	
2007		1,796,920		1,796,920	123,428	476,957						600,385	
2008		1,980,030		1,980,030	125,894	486,886						612,780	
2009		2,055,351		2,055,351	128,404	496,987						625,391	
2010		1,787,723		1,787,723	130,956	507,261						638,217	
2011		986,014		986,014	133,552	522,468						650,020	
2012		1,898,460		1,898,460	136,192	584,757						720,949	
2013		2,078,663		2,078,663	138,878	598,213						737,091	
through 2013		18,444,817	10,302	18,455,119	1,273,208	5,046,496						6,319,704	34.24%
2014	08/01/14	1,037,457		1,037,457			(259,364)	(76,634)	(28,897)	931,926		259,364	
2014	02/01/15	1,037,457		1,037,457			(259,364)	(526,634)	(28,907)	481,916	1,413,843	259,364	33.31%
2015	08/01/15	1,037,457		1,037,457			(259,364)	(73,484)		963,973		259,364	
2015	02/01/16	1,037,457		1,037,457			(259,364)	(533,484)		503,973	1,467,947	259,364	32.55%
2016	08/01/16	1,037,457		1,037,457			(259,364)	(69,574)		967,883		259,364	
2016	02/01/17	1,037,457		1,037,457			(259,364)	(539,574)		497,883	1,465,767	259,364	33.65%
2017	08/01/17	1,037,457		1,037,457			(259,364)	(64,639)		972,818		259,364	
2017	02/01/18	1,037,457		1,037,457			(259,364)	(544,639)		492,818	1,465,637	259,364	31.38%
2018	08/01/18	1,037,457		1,037,457			(259,364)	(58,759)		978,698		259,364	
2018	02/01/19	1,037,457		1,037,457			(259,364)	(548,759)		488,698	1,467,397	259,364	32.35%
2019	08/01/19	1,037,457		1,037,457			(259,364)	(51,899)		985,558		259,364	
2019	02/01/20	1,037,457		1,037,457			(259,364)	(561,899)		475,558	1,461,117	259,364	31.83%
2020	08/01/20	1,037,457		1,037,457			(259,364)	(44,121)		993,336		259,364	
2020	02/01/21	1,037,457		1,037,457			(259,364)	(569,121)		468,336	1,461,672	259,364	30.17%
2021	08/01/21	1,037,457		1,037,457			(259,364)	(35,590)		1,001,867		259,364	
2021	02/01/22	1,037,457		1,037,457			(259,364)	(580,590)		456,867	1,458,734	259,364	29.87%
2022	08/01/22	1,037,457		1,037,457			(259,364)	(26,325)		1,011,132		259,364	
2022	02/01/23	1,037,457		1,037,457			(259,364)	(596,325)		441,132	1,452,264	259,364	29.59%
2023	08/01/23	1,037,457		1,037,457			0	(13,500)		1,023,957		0	
2023	02/01/24	1,037,457		1,037,457			0	(613,500)		423,957	1,447,914	0	28.03%
2024	08/01/24	1,037,457		1,037,457			0	0		1,037,457		0	
2024	02/01/25	1,037,457		1,037,457			0	0		1,037,457	2,074,914	0	26.62%
2025	08/01/25	1,037,457		1,037,457			0	0		1,037,457		0	
2025	02/01/26	1,037,457		1,037,457			0	0		1,037,457	2,074,914	0	25.35%
Estimated Totals:		43,343,785	10,302	43,354,087	1,273,208	5,046,496	(4,668,557)	(6,129,048)	(57,804)	18,712,117	18,712,117	10,988,260	25.35%

Notes:

1. Projections are estimates based on the Pay 2014 market value. To the extent that market values and tax rates change, the payment for the Paygo note and Pooling will change.

Estimated Pay-as-you-go payment

City cannot collect Admin/ Pooling to stay within 25% limit



Offices in
Minneapolis
Saint Paul
St. Cloud

Fifth Street Towers
150 South Fifth Street, Suite 700
Minneapolis, MN 55402
(612) 337-9300 telephone
(612) 337-9310 fax
kennedy-graven.com
Affirmative Action, Equal Opportunity Employer

May 18, 2023

Melissa,

Thank you for sharing with me the letter drafted by Larkin Hoffman which Tracy Smith from Best Buy provided to you. There are a number of inaccuracies in the letter that I would like to clarify. I believe a lot of the inaccuracies arise due to the fact that the contract is what drives the TIF payments for the Best Buy development and the manner of providing TIF to the HRA and to Best Buy fluctuated over time.

Contract for Private Development

The contract and its five amendments provide the requirements of how TIF is used for the Best Buy portion of the TIF District. The contract itself had numerous changes in TIF payments over the years. The HRA is required to follow the requirements of the contract and its amendments. The manner of providing TIF to the HRA and Best Buy changed four times over the years.

It is important to note that TIF contracts can be structured in many ways - an authority can provide any amount of TIF (from a very small amount like \$5,000 to 100% of the TIF). An authority may determine to collect some TIF to pool for other projects. How TIF is used and what TIF amounts are provided to the developer are memorialized in the contract.

HRA Expenditures of TIF

An authority can collect TIF and keep the TIF as provided by the contract. However, an authority cannot *expend* more than 25% of the TIF. The HRA can use up to 10% of the TIF from the TIF District for administrative expenses and can pool tax increment with a maximum of pooled TIF in the amount of 25% of the TIF (including administrative expenses).

TIF District

The TIF District is complicated. The TIF District has three different developments and each development has or had its own contract and TIF Note. Each development has to comply with the requirements of their contracts. Each development receives TIF from the property upon which it has developed. For purposes of reporting to the Office of the State Auditor every year, the HRA must treat the TIF District as one TIF District. **The HRA is currently below the 25% expenditure limit for the TIF District.**

Change in TIF Payments Over Time (TIF Note was issued 7/31/2001)

- The original contract (2000) had a set schedule of payments to be provided under the TIF Note to Best Buy and the HRA kept the remaining TIF.
- The First Amendment (2000) changed the TIF payment formula to provide that the HRA receive 15% of the TIF (with a maximum amount of \$634,366 per year), plus 5% of the TIF (with a maximum of \$210,566).
- The Third Amendment (2010) revised the definition of "Available Tax Increment" to include set schedule of payments to the HRA for pooling for affordable housing (to replace the housing that was lost) and a set schedule of payments for administrative expenses of the HRA.

- The Fourth Amendment (2010) revised the definition of “Available Tax Increment” to include set payments to the HRA for pooling for affordable housing (to replace the housing that was lost) and set payments for administrative expenses of the HRA.
- The Fifth Amendment (2014) revised the definition of “Available Tax Increment” to the following formula (which remains in place today):
 “Available Tax Increment” for the purpose of the Note means seventy-five percent (75%) of the Tax Increment attributable to the Minimum Improvements and Development Property that is paid to the HRA by the County in the six months preceding each Payment Date, after deducting any amount necessary to pay principal and interest on the TIF Bonds or, subject to the provisions of Section 3.5, subd. 3, any TIF Refunding Bonds.

The HRA and Best Buy approved the original contract and all the amendments that changed how TIF was distributed over time.

Confusion Regarding Fifth Amendment

The only material change made in the Fifth Amendment was to update the definition of “Available Tax Increment.” The definition was changed as follows:

“Available Tax Increment” for the purpose of the Note means seventy-five percent (75%) of the Tax Increment attributable to the Minimum Improvements and Development Property that is paid to the HRA by the County in the six months preceding each Payment Date, after deducting any amount necessary to pay principal and interest on the TIF Bonds or, subject to the provisions of Section 3.5, subd. 3, any TIF Refunding Bonds.

What the Fifth Amendment says is that moving forward (as of July 14, 2014), the developer will receive 75% of the TIF collected from the County in the last six months and the HRA will receive the remaining 25% of the Tax Increment collected from the County in the last six months. There was no other substantive agreement in the Fifth Amendment.

“Unilateral” Amendment to TIF Plan

The TIF Plan is a document approved by the City and the HRA and not approved or executed by the developer. The HRA modified the TIF Plan for this TIF district (per Minn. Stat. Section 469.1763, subd. 2d) in order to maximize the use of the TIF it had received under the First Amendment and used the unobligated TIF funds to (i) transfer money to a spending plan pursuant to Minn. Stat. Section 469.176, subd. 4n; and (ii) transfer money to the City’s affordable housing trust fund as provided in special legislation the HRA received in 2021. These were funds that otherwise would have been returned to the County for redistribution and not funds that would have been paid to Best Buy. To be clear, these funds were provided to the HRA in the early 2000s and were lawfully provided to the HRA based on the contract at the time.

Overpayments of TIF to Best Buy

TIF law does not prevent the TIF authority from seeking to correct an overpayment. We confirmed this with Jason Nord at the Office of the State Auditor. In fact, the HRA has a duty to correct the error because otherwise, an overpayment is an unauthorized use of tax increment. Best Buy’s position that a statute of limitations is applicable does not make sense in this context. The HRA makes payments on the TIF Note every six months. A statute of limitations argument does not apply because the semi-annual TIF payments on the TIF Note are effectively just prepayments of the total amount that is due to the developer under the terms of the TIF Note and the contract. The statute of limitations period would not be triggered payment by payment but rather based on the total amount due at maturity. A statute of limitations period would only begin *after* final payment of the TIF Note.

Minimum Assessment Agreement

We discussed the assessment agreement during our meetings with Best Buy several times. We repeatedly informed the Best Buy team that they would need significant lead time in order to get the proper sign offs from the County, the School District, and the City in order to remove the assessment agreement from the Best Buy property (as required by Minn. Stat. Section 469.177, subd. 8).

Please contact me at your convenience with any questions regarding the foregoing.

KENNEDY & GRAVEN, CHARTERED

A handwritten signature in cursive script that reads "Julie Eddington".

Julie Eddington