
SUBORDINATE INDENTURE OF TRUST

between

**CITY OF MINNETONKA, MINNESOTA,
as Issuer**

and

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

Dated as of September 1, 2018

Relating to:

**\$4,090,000
City of Minnetonka, Minnesota
Tax Increment Revenue and
Subordinate Multifamily Housing Revenue Bonds
(Legends of Minnetonka Project)
Series 2018C**

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SUBORDINATE INDENTURE OF TRUST

THIS SUBORDINATE INDENTURE OF TRUST, dated as of September 1, 2018 (the “Indenture”), is between the CITY OF MINNETONKA, MINNESOTA, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State of Minnesota (the “Issuer”), and U.S. Bank National Association, a national banking association, authorized to accept and execute trusts of the character herein set out, with its principal office in Saint Paul, Minnesota (the “Trustee”).

WITNESSETH

WHEREAS, the Issuer is authorized by Minnesota Statutes, Chapter 462C, as amended (the “Act”), to issue revenue obligations to finance the acquisition, construction, rehabilitation, and equipping of multifamily housing developments, including housing developments for seniors; and

WHEREAS, Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the “Borrower”), has requested that the Issuer issue its Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C (the “Subordinate Bonds”), in the original aggregate principal amount of \$4,090,000, and the Issuer has authorized the issuance of the Subordinate Bonds pursuant to a resolution adopted by the City Council of the Issuer on August 27, 2018, the Act, and this Indenture; and

WHEREAS, the Issuer will loan the proceeds of the Subordinate Bonds to the Borrower (the “Loan”) pursuant to a Subordinate Loan Agreement, dated as of September 1, 2018 (the “Loan Agreement”), between the Issuer and the Borrower, and the Borrower will apply the proceeds of the Loan to (i) finance a portion of the costs of the acquisition, construction, and equipping of a 262-unit senior housing rental development located at 11001 Bren Road East, Minnetonka, Minnesota to be known as Legends of Minnetonka (the “Project”); (ii) finance capitalized interest on the Subordinate Bonds during the construction of the Project; and (iii) pay costs of issuance of the Subordinate Bonds; and

WHEREAS, in order to finance an additional portion of the costs of the acquisition, construction, and equipping of the Project, the Issuer has agreed to issue, pursuant to a separate plan of financing, its (i) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1 (the “Series A-1 Governmental Note”), in the maximum principal amount of \$____; (ii) Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2 (the “Series A-2 Governmental Note”), in the maximum principal amount of \$____; (iii) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1 (the “Series B-1 Governmental Note”), in the maximum principal amount of \$____; and (iv) Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-2 (the “Series 2018B-2 Governmental Note,” and collectively with the Series A-1 Governmental Note, the Series A-2 Governmental Note, and the Series B-1 Governmental Note, the “Senior Notes”), in the maximum principal amount of \$____; and

WHEREAS, the Senior Notes evidence loans (the “Funding Loans”) made to the Issuer by U.S. Bank National Association, a national banking association, and BMO Harris Bank N.A., a national banking association, in their capacity as initial funding lenders (together, the “Funding Lender”), pursuant to a Funding Loan Agreement, dated as of September 1, 2018, between the Issuer, U.S. Bank National Association, a national banking association, as administrative agent for the Funding Lender, and U.S. Bank National Association, a national banking association, as fiscal agent with respect to the Senior Notes (the “Fiscal Agent”); and

WHEREAS, the Issuer will loan the proceeds of the Funding Loans to the Borrower pursuant to the terms of a Project Loan Agreement, dated as of September 1, 2018, between the Issuer, the Borrower, and the Fiscal Agent; and

WHEREAS, as security for the payment of the Subordinate 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 certain rights reserved to the Issuer), including the Basic Payments (hereinafter defined); and

WHEREAS, as additional security for the Subordinate Bonds, the Borrower has agreed in the Loan Agreement and the Assignment, Pledge, and Security Agreement, dated as of September 1, 2018 (the "Security Agreement"), between the Borrower and the Trustee, to pledge to the Trustee the Borrower's interest in payments due to it under the TIF Note (hereinafter defined) for repayment of the Loan; and

WHEREAS, as additional security for the Subordinate Bonds, the Borrower will execute and deliver to the Issuer a Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents, dated as of September 1, 2018 (the "Subordinate Mortgage"), providing the Issuer with a subordinate mortgage lien on the property described therein, which the Issuer shall assign to the Trustee; and

WHEREAS, as additional security for the Subordinate Bonds, the Borrower will cause the execution and delivery of a Subordinate Guaranty Agreement, dated as of September 1, 2018 (the "Guaranty"), from Dominion Holdings II, LLC, a Minnesota limited liability company, in favor of the Trustee; and

WHEREAS, in connection with the issuance of the Senior Notes and the Subordinate Bonds, the Issuer, the Borrower, the Fiscal Agent, and the Trustee will enter into a Regulatory Agreement, dated September ____, 2018, pursuant to which the Borrower will agree to comply with certain federal and state requirements applicable to the Project; and

WHEREAS, all things necessary to make the Subordinate 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 Subordinate Bonds, have been done and performed; and the creation, execution and delivery of this Indenture, and the creation, execution and issuance of said Subordinate 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 Subordinate Bonds by the Holders (hereinafter defined) thereof, in order to secure the payment of the principal of and interest and premium, if any, on the Subordinate 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 Subordinate 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 rights of the Issuer to indemnification and certain direct payments to be made to it pursuant to Sections 3.2, 4.4, 7.4, 9.5, 10.8, 10.11, 10.12, and 10.13 of the Loan Agreement), and all other sums (including proceeds of the Subordinate Bonds) which are required to be deposited in the trust accounts in accordance with Article 5 hereof, including amounts paid under the Guaranty and payments on the TIF Note, 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;

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, 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

All property mortgaged, pledged, and assigned under the Subordinate Mortgage and the Security Agreement and 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 and the Subordinate Mortgage;

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 Subordinate Bonds issued under and secured by this Indenture, without privilege, priority or distinction as to lien or otherwise of any of the Subordinate 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 Subordinate 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 Subordinate 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 Subordinate 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 Subordinate Bonds shall ever have the right to compel any exercise of the taxing power of the Issuer to pay any Subordinate Bonds or the interest and premium, if any, thereon, or to enforce payment thereof against any property of the Issuer, except as above provided; the Subordinate Bonds shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the Issuer, except as above provided; and no Subordinate Bond shall constitute a debt of the Issuer within the meaning of any constitutional or statutory limitation, but nothing in the Act impairs the rights of the Holders of Subordinate 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 Subordinate Bonds, as follows:

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ARTICLE 1

DEFINITIONS, EXHIBITS AND GENERAL PROVISIONS

Section 1.1 Definitions. In this Indenture the following terms have the following meanings unless the context hereof clearly requires otherwise:

Act: Minnesota Statutes, Chapter 462C, as amended.

Act of Bankruptcy: any of the following events:

(i) 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 their 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

(ii) 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 ninety (90) 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.

Administrative Agent: U.S. Bank National Association, a national banking association, in its capacity as administrative agent for the Initial Funding Lender, its successors and assigns.

Affiliated Party: as to a particular Person, any Person directly and 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.

Assignment of Subordinate Mortgage: the Assignment of Mortgage, dated as of September 1, 2018, by the Issuer in favor of the Trustee, as it may be amended from time to time.

Authority: the Economic Development Authority in and for the City of Minnetonka, Minnesota, a public body corporate and politic organized under the laws of the State.

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

Available Tax Increment: has the meaning provided in the TIF Note.

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 Subordinate Bonds as shown on the books and records of the DTC Participant.

Bond Counsel: Kennedy & Graven, Chartered, or 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 fund so designated in Section 5.5 hereof from which the principal of and interest on the Subordinate Bonds are payable.

Bond Purchase Agreement: the Bond Purchase Agreement, dated _____, 2018, between the Issuer, the Borrower, and the Underwriter, pursuant to which the Underwriter will purchase the Subordinate Bonds.

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

Bond Registrar: has the meaning provided in Section 2.9 hereof.

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

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

Borrower: Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership, 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 5.6 hereof from which interest on the Subordinate Bonds shall be paid.

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 Subordinate Bond or Bonds.

City: the Issuer.

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

Collateral Documents: collectively, the Guaranty, the Subordination Agreement, the Security Agreement, the Disbursing Agreement, and any other written instrument other than the Loan Agreement, the Subordinate Mortgage, 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 Subordinate Bonds or performance by the Borrower of its obligations under the Loan Agreement.

Completion Date: the date the Borrower certifies the construction of the Project is complete pursuant to Section 3.7 of the Loan Agreement.

Condemnation: the word “Condemnation” or phrase “eminent domain” as used herein shall include 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 mean payment for property condemned or conveyed under threat of Condemnation;

Continuing Disclosure Agreement: the Continuing Disclosure Agreement, dated as of September 1, 2018, between the Borrower and the Dissemination Agent, as it may be amended from time to time.

Costs of Issuance Fund: the fund so designated in Section 5.9 hereof from which the Issuance Expenses are payable.

County: Hennepin County, Minnesota.

Date of Issuance: September ____, 2018, which is the date on which there is delivery by the Issuer of and payment by the Underwriter for the Subordinate Bonds.

Date of Taxability: the date as of which the interest on the Subordinate Bonds is deemed taxable under a Determination of Taxability.

Defaulted Interest: interest on any Subordinate Bond which is payable but which is not punctually paid or duly provided.

Determination of Taxability: a determination that the interest income on any Subordinate 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:

(i) 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 Subordinate Bonds is included in gross income for federal income tax purposes; or

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

Development Agreement: the Contract for Private Development, dated _____, 2018, between the Issuer, the Authority, and the Borrower, as it may be amended from time to time, with respect to the Project.

Disbursing Agreement: the _____ Agreement, dated as of September 1, 2018, between the Borrower, the Trustee, the Fiscal Agent, the Administrative Agent, and Title, specifying the conditions for the disbursement of the proceeds of the Senior Notes and Subordinate Bonds to pay Project Costs.

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

Dissemination Agent: U.S. Bank 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 Subordinate 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.

Escrow Fund: the fund so designated in Section 5.8 hereof.

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

Fiscal Agent: U.S. Bank National Association, a national banking association, acting as fiscal agent with respect to the Senior Notes under the provisions of the Funding Loan Agreement.

Freddie Mac Commitment: the commitment from Freddie Mac to the Freddie Mac Seller/Serviceer pursuant to which Freddie Mac has agreed to purchase the Funding Loan following the Conversion Date, subject to the terms and conditions set forth therein, as such commitment may be amended, modified or supplemented from time to time.

Funding Loans: the loans in the maximum aggregate principal amount of \$_____ made to the Issuer pursuant to the Funding Loan Agreement by the Initial Funding Lender.

Funding Loan Agreement: the Funding Loan Agreement, dated as of September 1, 2018, between the Administrative Agent for the Initial Funding Lender, the Issuer, and the Fiscal Agent, as it may be amended from time to time.

Government Obligations: SLGS and any other 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.

Guarantor: Dominion Holdings II, LLC, a Minnesota limited liability company, its successors and assigns.

Guaranty: the Subordinate Guaranty Agreement, dated as of September 1, 2018, from the Guarantor in favor of the Trustee, as it may be amended from time to time.

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

Independent: when used with reference to an attorney, engineer, architect, certified public accountant, consultant or other professional person, means a person who (a) is in fact independent;

(b) does not have any material financial interest in the Borrower or the transaction to which his or her certificate or opinion relates (other than payment to be received for professional services rendered); and
(c) 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.

Indenture: this Subordinate Indenture of Trust, dated as of September 1, 2018, between the Issuer and the Trustee, as the same may from time to time be amended or supplemented as herein provided.

Initial Funding Lender: together, U.S. Bank National Association, a national banking association, its successors and assigns, and BMO Harris Bank N.A., a national banking association, as initial funding lender under the Funding Loan Agreement with respect to the Senior Notes, their successors and assigns.

Interest Payment Date: March 1 and September 1 of each year, commencing March 1, 2019, and continuing until payment in full of the Subordinate Bonds.

Issuance Expenses: any and all costs and expenses relating to the issuance, sale and delivery of the Subordinate Bonds incurred or payable by the Borrower, including but not limited to 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 this Loan Agreement, the Indenture, the Disbursing Agreement, the Subordinate Mortgage, any preliminary and final official statement or offering memorandum, the Subordinate Bonds and all other related closing documents, the costs of rating the Subordinate Bonds, and all other expenses relating to the issuance, sale and delivery of the Subordinate Bonds and any other costs which are treated as "issuance costs" within the meaning of Section 147(g) of the Code.

Issuer: the City of Minnetonka, Minnesota, a home rule charter city, municipal corporation, and political subdivision duly organized and existing under its charter and the Constitution and laws of the State, its successors and assigns.

Loan: the loan of the proceeds of the Subordinate Bonds by the Issuer to the Borrower pursuant to Section 4.1 of the Loan Agreement.

Loan Agreement: the Subordinate Loan Agreement, dated as of September 1, 2018, between the Issuer and the Borrower, as the same may from time to time be amended.

Mandatory Redemption Payments: the payments which are required to be made under Section 3.1(2) hereof to redeem the Subordinate Bonds in accordance with the Mandatory Redemption Schedule after appropriate credits, if any, have been made.

Mandatory Redemption Schedule: the mandatory redemption schedule for the Subordinate Bonds set forth in Section 3.1(2) hereof.

Maturity or Maturity Date: any date on which principal of or interest or premium, if any, on the Subordinate Bonds is due, whether at maturity, on a scheduled Interest Payment Date, or upon redemption, defeasance, acceleration, or otherwise.

Moody's: Moody's Investors Service, Inc., a corporation organized and existing under the laws of the State of New York, 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 Borrower (other than S&P).

Mortgaged Property: has the meaning assigned in the Subordinate Mortgage.

Net Bond Proceeds: proceeds of the Subordinate Bonds, including interest earnings thereon.

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.

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, or any other financial institution, investment banker, bond dealer, registered investment company, or other person who purchases the Subordinate Bonds from the Issuer.

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

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

(ii) Subordinate 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 Subordinate Bonds, provided, however, that if such Subordinate 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 Subordinate Bonds for redemption at a stated Redemption Date; and

(iii) Subordinate Bonds in exchange for or in lieu of which other Subordinate 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 Subordinate 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 Subordinate Bonds.

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

Permitted Investments:

- (i) Government Obligations;
- (ii) 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;
- (iii) bonds, notes or other evidences of indebtedness rated at the time of investment "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 years;
- (iv) 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);
- (v) commercial paper which is rated at the time of purchase in the single highest classification, "A-1+" by Standard & Poor's and "P-1" by Moody's and which matures not more than two hundred seventy (270) days after the date of purchase;
- (vi) investments in a money market fund rated at the time of investment "AAAm" or "AAAm-G" or better by S&P;
- (vii) 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 at the time of investment, based on an irrevocable escrow account or fund (the “escrow”), in the highest rating category of S&P and Moody’s; or

(b) (1) 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 (i) 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 (2) 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 Subordinate Bonds or other obligations described in this paragraph on the maturity date or dates specified in the irrevocable instructions referred to above, as appropriate;

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

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

Permitted Encumbrances: those encumbrances set forth in Section 5 of the Subordinate Mortgage.

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.

Principal Payment Date: March 1 and September 1 of each year, commencing September 1, 2022.

Project: the 262-unit senior housing rental development to be located on the Project Premises and to be known as Legends of Minnetonka, a portion of which will be acquired, constructed, and equipped with proceeds of the Subordinate Bonds.

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

Project Fund: the fund so designated in Section 5.4 hereof from which the Project Costs are payable.

Project Loan Agreement: the Project Loan Agreement, dated as of September 1, 2018, between the Issuer, the Fiscal Agent, and the Borrower, as it may be amended from time to time.

Project Loan Fund: the fund established by the Fiscal Agent pursuant to Section 2.12 of the Funding Loan Agreement and the fund so designated in Section 5.2 hereof.

Project Premises: the real estate located at 11001 Bren Road East in the City and legally described in Exhibit A attached to the Subordinate Mortgage, together with all additions to, replacements of and substitutions for the foregoing, but excluding any real estate released from the lien of the Subordinate Mortgage pursuant to the terms of the Subordinate Mortgage.

Rating Agency: S&P or Moody's.

Rebatable Arbitrage: has the meaning provided in Section 5.7 hereof.

Rating Category: one 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 5.7 hereof and Section 7.7(13) of the Loan Agreement to be rebated to the United States.

Rebate Analyst: a certified public accountant, financial analyst or bond counsel, or any firm of the foregoing, or financial institution (which may include the Trustee) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code, selected and retained by the Borrower at the expense of the Borrower, with the prior written consent of the Issuer, to make the rebate computations required under this Indenture and the Loan Agreement.

Rebate Fund: the fund so designated in Section 5.7 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 Subordinate Bond to be redeemed, the date on which it is to be redeemed pursuant hereto.

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

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

Regulatory Agreement: the Regulatory Agreement, dated the Date of Issuance, between the Issuer, the Borrower, the Fiscal Agent, and the Trustee, as the same may be amended from time to time.

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

Related Loan Documents: collectively, the Loan Agreement, the Subordinate Mortgage, the Collateral Documents, and the Disbursing Agreement.

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 Subordinate Bonds.

Representative: the Mayor, City Manager, and Finance Director of the Issuer or a 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 Mayor, City Manager, or Finance Director or for the Borrower by a general partner of the Borrower.

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 Obligations: an obligation the interest on which is included in gross income for federal income tax purposes under Section 103 of the Code.

Security Agreement: the Assignment, Pledge, and Security Agreement, dated as September 1, 2018, from the Borrower in favor of the Trustee, granting a security interest in the TIF Note, as it may be amended from time to time.

Senior Mortgage: (i) with respect to the Series A-1 Governmental Note and the Series A-2 Governmental Note, a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series A), dated September __, 2018, from the Borrower to the Issuer and assigned by the Issuer to the Fiscal Agent, as it may be amended from time to time; and (ii) with respect to the Series B-1 Governmental Note and the Series B-2 Governmental Note, a Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Series B), dated September __, 2018, from the Borrower to the Issuer and assigned by the Issuer to the Fiscal Agent, as it may be amended from time to time.

Senior Notes: collectively, the Series A-1 Governmental Note, the Series A-2 Governmental Note, the Series B-1 Governmental Note, and the Series B-2 Governmental Note.

Series A-1 Governmental Note: the Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-1, issued by the Issuer pursuant to the Funding Loan Agreement in the maximum principal amount of \$_____.

Series A-2 Governmental Note: the Multifamily Note with designation as Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018A-2, issued by the Issuer pursuant to the Funding Loan Agreement in the maximum principal amount of \$_____.

Series B-1 Governmental Note: the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-1, issued by the Issuer pursuant to the Funding Loan Agreement in the maximum principal amount of \$_____.

Series B-2 Governmental Note: the Taxable Multifamily Note with designation as Taxable Multifamily Housing Revenue Note (Legends of Minnetonka Project), Series 2018B-2, issued by the Issuer pursuant to the Funding Loan Agreement in the maximum principal amount of \$_____.

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:

(i) 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;

(ii) 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;

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

(iv) 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;

(v) a Person which has at all times since its formation paid its own liabilities from its own separate assets or, if paid by another, provided for reimbursement thereof;

(vi) 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 and (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;

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

(viii) a Person which, except with respect to obligations and liabilities set forth in the Loan Agreement, the Subordinate Mortgage, and the Collateral Documents, 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

(ix) 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, 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 Borrower (other than Moody’s).

Special Interest Payments: all payments of (or with respect to) interest on the Subordinate Bonds made upon the acceleration of the Subordinate 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 Subordinate Bond or any installment of interest thereon, the date specified in such Subordinate Bond as the fixed date on which principal of such Subordinate Bond or such installment of interest is due and payable.

Subordinate Bond Proceeds Subaccount: with respect to the Subordinate Bonds, the Subordinate Bond Proceeds Subaccount of the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 of the Funding Loan Agreement and the subaccount so designated in Section 5.4 hereof.

Subordinate Bonds: the Issuer’s Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C, issued by the Issuer in the original aggregate principal amount of \$4,090,000.

Subordinate Mortgage: the Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents, dated as of September 1, 2018, by the Borrower in favor of the Trustee and assigned by the Issuer to the Trustee pursuant to the Assignment of Subordinate Mortgage, as it may be amended from time to time.

Subordination Agreement: the Subordination Agreement, dated the Date of Issuance, between the Issuer, the Borrower, the Fiscal Agent, the Trustee, and the Administrative Agent for the Initial Funding Lender, as it may be amended from time to time.

Substantial User: a “substantial user” within the meaning of Section 147(a)(1) of the Code.

Surplus Cash: has the meaning assigned to such term in the Subordination Agreement.

Tax Certificate: the Borrower Tax Certificate executed by the Borrower on the Date of Issuance with the endorsement of the Issuer.

Taxable Note Proceeds Subaccount: the Taxable Note Proceeds Subaccount of the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 of the Funding Loan Agreement and the subaccount so designated in Section 5.4 hereof.

Tax-Exempt Note Proceeds Subaccount: the Tax-Exempt Note Proceeds Subaccount of the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.12 of the Funding Loan Agreement and the subaccount so designated in Section 5.4 hereof.

Term of Loan Agreement: the period of time commencing on the date of execution of the 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 8.4 of the Loan Agreement.

TIF Note: the pay-as-you-go note designated as the Tax Increment Revenue Note, Series 2018, dated _____, 2018, issued by the Authority in the maximum principal amount of \$4,161,000 in favor of the Borrower and pledged by the Borrower to the Trustee, at the direction of the Borrower, pursuant to the Loan Agreement and the Security Agreement to secure the Subordinate Bonds.

Title: Commercial Partners Title, LLC, a Minnesota limited liability company, its successors and assigns.

Treasury Regulations: the regulations promulgated under the Code.

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

Trustee: U.S. Bank 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.

Underwriter: Dougherty & Company LLC, or any successor underwriter appointed and serving in such capacity pursuant to this Indenture.

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," "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 the petition is dismissed by order of a court of competent jurisdiction and no further appeal rights exist from such order.

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

References to the Subordinate Bonds as “tax exempt” or to the “tax-exempt status of the Subordinate 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 SUBORDINATE BONDS

Section 2.1 Special Obligations and Sources of Payment; Authorized Amount and Form of Bonds.

(1) The Subordinate Bonds are special, limited obligations of the Issuer, the principal of, premium, if any, and interest on which are payable solely from the Trust Estate, but if such amounts are not sufficient, the Borrower shall make such payments from funds realized from the sale or other disposition of the Mortgaged Property and net revenues of the Project available after payment of all amounts due with respect to the Senior Notes.

(2) Subordinate 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 Subordinate Bonds that may be outstanding hereunder is expressly limited to \$4,090,000.

Section 2.2 Initial Issue. The Subordinate Bonds shall be initially issued in the original aggregate principal amount of \$4,090,000 and shall:

(1) be dated as of their date of nominal original issuance, or the date of their registration as provided in Section 2.9 hereof;

(2) be issued and delivered to the Original Purchaser as fully registered bonds without coupons in any Authorized Denomination and shall be numbered R-1 upward;

(3) be subject to the provisions of Section 3.1 hereof, have Stated Maturities on the Principal Payment Dates of each of the following years, in the following respective principal amounts, and bear interest at the rates per annum for each Stated Maturity of the Subordinate Bonds 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, as set forth below opposite the respective Stated Maturities:

<u>Stated Maturity</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
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(4) bear interest payable semiannually on each Interest Payment Date and continuing until payment in full of the Subordinate 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 Subordinate Bonds will be payable by check or draft mailed by the Trustee to the Holders of such Subordinate Bonds on the applicable Record Date (the “Record Date Holders”) at the last addresses thereof as shown in the Bond Register on the applicable Record Date, and principal of and any premium on any Subordinate Bonds shall be payable at the principal office of the Trustee, provided that any Defaulted Interest shall be payable, on a date selected by the Trustee, to the Person in whose name such Subordinate 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 Subordinate 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 \$500,000 in principal amount of the Outstanding Subordinate 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 Subordinate Bond, such Subordinate 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 Subordinate Bonds.

Section 2.3 Execution. The Subordinate Bonds shall be executed on behalf of the Issuer by the signatures of its Mayor and City Manager 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 Subordinate 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 Subordinate 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 Subordinate Bonds shall cease to be such officer before the delivery of the Subordinate 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 Subordinate 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 Subordinate 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 signed by the Trustee (the “Certificate of Authentication”) on such Subordinate Bond, substantially in the form attached hereto as EXHIBIT A, shall have been duly executed manually by a Responsible Officer. Certificates of Authentication on different Subordinate Bonds need not be signed by the same person. The Trustee shall authenticate the signatures of officers of the Issuer on each Subordinate Bond by execution of the Certificate of Authentication on the Subordinate Bond, and the executed Certificate of

Authentication on each Subordinate 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, the Subordinate Bonds in the original aggregate amount of \$4,090,000 and the Trustee shall deliver the Subordinate Bonds to the Original Purchaser as hereinafter provided after filing with the Trustee the following:

(1) original executed counterparts of the Loan Agreement, the Subordinate Mortgage, the Regulatory Agreement, the Assignment of Subordinate Mortgage, the Disbursing Agreement, the Guaranty, the TIF Note, the Security Agreement, the Subordination Agreement, the Continuing Disclosure Agreement, 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 to which the Issuer is a party;

(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 its Mayor and City Manager to deliver the Subordinate 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 (the "Issuer Request");

(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 and tax-exempt status of the Subordinate Bonds issued pursuant to this Indenture; and

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

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

(1) In case any Subordinate 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 Subordinate Bond of like series, amount, maturity date and tenor in exchange and substitution for and upon cancellation of any such mutilated Subordinate Bond, or in lieu of and in substitution for any such Subordinate 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 Subordinate Bond destroyed or lost, the filing with the Trustee evidence satisfactory to the Trustee that such Subordinate 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 Subordinate Bond has already matured or been called for redemption in accordance with its terms, it shall not be necessary to issue a new Subordinate Bond prior to payment.

(2) In executing a new Subordinate Bond and in furnishing the Trustee with the written authorization to authenticate and deliver a new Subordinate 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 Subordinate Bond.

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

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

Section 2.9 Registration, Transfer and Exchange of Subordinate Bonds.

(1) The Issuer 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 Subordinate Bonds, and the Trustee is hereby appointed “Bond Registrar” for the purpose of registering the Subordinate Bonds and transfers of the Subordinate Bonds as herein provided. The Bond Register shall contain a record of every Subordinate 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 Subordinate 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 or more new Subordinate 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 Subordinate 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 Subordinate Bond.

(3) At the option of the Holder, Subordinate Bonds may be exchanged for other Subordinate Bonds of the same series of any Authorized Denomination of a like aggregate principal amount and Stated Maturity, upon surrender of the Subordinate 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 Subordinate Bonds are so surrendered for exchange, the Issuer shall execute, and the Trustee shall authenticate and deliver, the Subordinate Bonds which the Holder making the exchange is entitled to receive.

(4) All Subordinate Bonds surrendered upon any exchange or transfer provided for in this Indenture shall be promptly cancelled by the Trustee and thereafter disposed of as directed by the Issuer.

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

(6) Transfer of a Subordinate 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 Subordinate Bond presented or surrendered for transfer or exchange shall be duly endorsed or be accompanied by a written instrument or instruments of transfer, in the form printed on the Subordinate 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 Subordinate 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 Subordinate 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 (i) to transfer or exchange any Subordinate 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 Subordinate Bonds under this Indenture and ending at the close of business on the day of such publication or mailing, or (ii) to transfer or exchange any Subordinate Bond so selected for redemption in whole or in part.

(10) The Bond Registrar shall insert in each Subordinate Bond the date of registration which, for purposes of delivering the original Subordinate 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 Subordinate 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 Subordinate Bond shall be dated as of the date of authentication. Each Subordinate Bond shall be so dated that neither gain nor loss in interest shall result from any transfers, exchange or substitution provided for herein.

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

Section 2.11 Cancellation of Subordinate Bonds. Whenever any Outstanding Subordinate 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 Subordinate 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 Subordinate 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 Subordinate Bond or Subordinate Bonds.

With respect to Bonds registered in the Bond Register in the name of Cede & Co., as nominee of DTC, neither the Issuer, the Borrower nor the Trustee shall have any responsibility or obligation to any DTC Participant or to any Beneficial Owner. Without limiting the immediately preceding sentence, neither the Issuer, the Borrower, nor the Trustee shall have any responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co., or any DTC Participant with respect to any ownership interest in the Subordinate Bonds, (ii) the delivery to any DTC Participant, any Beneficial Owner or any other Person, other than DTC, of any notice with respect to the Subordinate Bonds, including any notice of redemption, (iii) 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 Subordinate Bonds, or (iv) 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 Subordinate Bond for the purpose of payment of the principal of and premium and interest on such Subordinate Bond, for the purpose of giving notices of redemption and other matters with respect to such Subordinate Bond, for the purpose of registering transfers with respect to such Subordinate 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 Subordinate 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 Subordinate 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.

Notwithstanding the provisions of this Indenture to the contrary (including without limitation surrender of Subordinate Bonds, registration thereof, and Authorized Denominations), as long as the Subordinate Bonds are in book-entry form, full effect shall be given to the Representation Letter and the procedures and practices of DTC thereunder.

Section 2.13 Termination of Book-Entry Only System. DTC may determine to discontinue providing its services with respect to any Subordinate 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 Subordinate 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 Subordinate Bonds will be delivered in appropriate form, content and Authorized Denomination to the Beneficial Owners.

So long as any Subordinate 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 Subordinate Bond and all notices with respect to such Subordinate Bond shall be made and given, respectively, to DTC as provided in the Representation Letter.

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ARTICLE 3

REDEMPTION OF BONDS BEFORE MATURITY

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

(1) Optional Redemption. The Subordinate Bonds are subject to redemption and prepayment upon request by the Borrower to the Trustee on _____ 1, 20____, and on any Business Day thereafter, in whole or in part, and if in part, in inverse order of their maturity dates in principal increments of \$5,000 and by lot within any Maturity, at a Redemption Price equal to the principal amount of the Subordinate Bonds to be redeemed plus accrued interest thereon.

(2) Mandatory Redemption Upon Failure to Meet Disbursement Requirements. The Subordinate Bonds are subject to mandatory redemption in whole but not in part on September 1, 2019 if the conditions set forth in Section 3.6 of the Loan Agreement for disbursement are not met on or before August 1, 2019.

(3) Mandatory Sinking Fund Redemption. The Subordinate Bonds maturing _____ 1, 20____, _____ 1, 20____, and _____ 1, 20____ are subject to mandatory redemption by lot in the principal increments of \$5,000, at par and accrued interest without premium, on the dates and in the principal amounts set forth below (unless and to the extent a credit against any such amount is applied as provided in the Funding Loan Agreement):

Subordinate Bonds Maturing _____ 1, 20____			
Year	Amount	Year	Amount

* *Maturity*

Subordinate Bonds Maturing _____ 1, 20____			
Year	Amount	Year	Amount

* *Maturity*

Subordinate Bonds Maturing 1, 20

Year	Amount	Year	Amount
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* *Maturity*

At the option of the Borrower exercised not less than forty-five (45) days prior to any Sinking Fund Redemption Date, the Borrower may (i) deliver to the Trustee for cancellation Subordinate Bonds in any aggregate principal amount desired, or (ii) receive a credit in respect of such sinking fund obligation for any Subordinate Bonds which prior to such date have been purchased or redeemed (other than through the operation of the sinking fund) and not otherwise previously applied as a credit against sinking fund payments.

(4) Extraordinary Redemption. In the events described in Section 8.4(1) of the Loan Agreement and exercise by the Borrower of its option to terminate the Loan Agreement, the Subordinate Bonds shall be redeemed in whole by the Issuer on the earliest date for which timely notice of call can be given after receipt of the Borrower's notice of exercise, at a Redemption Price equal to the principal amount to be redeemed, without any premium, plus accrued interest to the Redemption Date.

(5) Tax Redemption. The Subordinate Bonds are subject to mandatory redemption in whole on the first Business Day for which notice of redemption can properly be given as provided herein upon the occurrence of a Determination of Taxability at a Redemption Price equal to one hundred percent (100%) of the principal amount of the Subordinate Bonds plus accrued interest thereon to the Redemption Date.

Section 3.2 Partial Redemption of Subordinate Bonds. In the case of any partial redemption of Subordinate Bonds of the same maturity pursuant to any provision of this Indenture, the particular Subordinate Bonds or portions thereof to be redeemed shall be selected by the Trustee by lot. In the case of any partial redemption of a Subordinate 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 Subordinate Bond shall be treated as though it were a separate Subordinate Bond in the denomination of \$5,000 and each remaining \$5,000 of face value of such Subordinate Bond shall be treated as though it were a separate Subordinate Bond in the denomination of \$5,000, and such Subordinate Bond shall be redeemed only in a principal amount sufficient to redeem one or more of such separate Subordinate Bonds in full. Any Subordinate 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 Subordinate Bonds in any Authorized Denomination in aggregate principal amount equal to the unredeemed portion of such Subordinate Bond without charge therefor. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Subordinate Bonds shall relate, in the case of any Subordinate Bond redeemed or to be redeemed only in part, to the portion of the principal of such Subordinate Bond which has been or is to be redeemed.

Section 3.3 Procedure for Redemption. In the event the Borrower shall give notice to the Trustee of any redemption of the Subordinate Bonds under Section 3.1, the Trustee shall give notice, in the name of the Issuer, of the redemption of such Subordinate Bonds, which notice shall (1) specify the Subordinate Bonds (or portions thereof) to be redeemed, the Redemption Date, the Redemption Price and the place or places where or, if a partial redemption the manner in which the amounts due upon such

redemption will be payable and (2) state that on the Redemption Date the Subordinate Bonds (or portions thereof) to be redeemed shall cease to bear interest. Such notice may set forth any additional information relating to such redemption, including any conditions thereto. The Trustee shall give such Notice by Mail at least thirty (30) days but not more than sixty (60) days prior to the date fixed for redemption, to the Holders of the Subordinate Bonds to be redeemed.

Notwithstanding the foregoing, notice of any redemption pursuant to Section 3.1(1) hereof may provide that the redemption is conditioned on the deposit of sufficient moneys for payment of the Redemption Price on or prior to the Redemption Date. If the notice is conditioned upon moneys being on deposit with the Trustee in an amount sufficient to pay the Redemption Price on the Redemption Date, the notice shall state such condition and that such redemption shall not be effective unless such condition is met.

Any Subordinate Bonds and portions of Subordinate Bonds which have been duly selected for redemption and which are deemed to be paid in accordance with Article 7 hereof shall cease to bear interest on the specified Redemption Date.

Section 3.4 Payment of Subordinate Bonds Upon Redemption. The Redemption Price of Subordinate 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 Subordinate 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 Subordinate 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 Subordinate Bonds at the time Outstanding.

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

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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 Subordinate Bonds or temporary investments), the Issuer will duly and punctually pay the principal of, premium, if any, and interest on the Subordinate Bonds in accordance with the terms of the Subordinate Bonds and this Indenture. Money derived from the Loan Agreement include 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 herein to the extent and in the manner provided in said Article; provided, however, that the Rebate Fund shall not be a trust fund. Nothing in the Subordinate 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 to issue the Subordinate Bonds authorized hereby, to execute this Indenture, to loan the proceeds of the Subordinate Bonds 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 Subordinate Bonds; and that 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 may be reasonably required 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 Subordinate Bonds.

Section 4.4 Recording and Filing. The Trustee requires that the Borrower cause this Indenture 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 Subordinate Bonds and the rights of the Trustee hereunder and under any other instruments aforesaid.

Section 4.5 Books and Records. The Trustee covenants that so long as any Outstanding Subordinate 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.

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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; or

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

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

(4) any payments received under the Guaranty; or

(5) any amounts received as a result of enforcement of the Security Agreement or the Subordinate Mortgage;

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 Subordinate 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 or in Articles 6 and 7 hereof.

Section 5.2 Establishment of Funds. The Issuer hereby establishes as trust funds and creates the following funds and accounts:

(a) a Project Fund;

(b) a Bond Fund;

(c) a Rebate Fund;

(d) a Capitalized Interest Fund; and

(e) an Escrow Fund.

Section 5.3 Application of Proceeds and Other Funds. On the Date of Issuance, \$_____ of the proceeds of the Subordinate Bonds will be deposited in the Costs of Issuance Fund and disbursed to pay Issuance Expenses and \$_____ of the proceeds of the Subordinate Bonds will be deposited to the Capitalized Interest Fund. The remaining proceeds of the Subordinate Bonds received by the Trustee on the Date of Issuance in the amount of \$_____ will be held by the Trustee in the Escrow Fund until the conditions set forth in Section 3.6(1) of the Loan Agreement are satisfied. Upon satisfaction of

the conditions set forth in Section 3.6(1) of the Loan Agreement, the Trustee shall deposit the proceeds of the Subordinate Bonds in the amount of \$_____ to the following funds:

- (i) \$_____ to the Project Fund; and
- (ii) \$_____ to the Bond Fund.

Section 5.4 Project Fund.

(1) Upon satisfaction of the conditions set forth in Section 3.6(1) of the Loan Agreement, proceeds of the Subordinate Bonds shall be deposited to the Bond Fund the amount provided in Section 5.3(a)(i) hereof. The proceeds of the Subordinate Bonds deposited in the Project Fund shall be disbursed pursuant to the provisions of the Construction Continuing Covenant Agreement (as defined in the Funding Loan Agreement) and the Disbursing Agreement (except the disbursement of Issuance Expenses of the Subordinate Bonds shall not be subject to the provisions of the Disbursing Agreement).

(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 Subordinate Bonds, including any earnings thereon, in accordance with the Construction Continuing Covenant Agreement (as defined in the Funding Loan Agreement) and the Disbursing Agreement.

(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) Any sums remaining in the Project Fund in excess of any amount required to pay Project Costs shall be transferred to the Bond Fund. Any sums remaining in the Subordinate Bond Proceeds Subaccount of the Project Account of the Project Loan Fund in excess of any amount required to pay Project Costs shall be transferred to the Bond Fund.

Section 5.5 Bond Fund.

(1) Upon satisfaction of the conditions set forth in Section 3.6(1) of the Loan Agreement, proceeds of the Subordinate Bonds shall be deposited to the Bond Fund the amount provided in Section 5.3(a)(ii) hereof. There shall be credited to the Bond Fund, as and when received, 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 the Bond Fund, or which is accompanied by directions that such payment is to be credited to the Bond Fund, and all payments received with respect to the TIF Note, together with all income derived from the investment of such amounts.

(2) The Trustee shall use amounts on deposit in the Bond Fund to pay the principal of and interest on the Subordinate Bonds as they become due and payable.

(3) If any Subordinate Bond shall not be presented for payment at Maturity, provided money sufficient to pay such Subordinate Bond shall have been made available to the Trustee and are 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 Subordinate 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 Subordinate 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 Subordinate Bond.

(4) Any money remaining in the Bond Fund after payment in full of all Subordinate 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.

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

(6) Any surplus money in the Project Fund transferred to the Bond Fund pursuant to Section 5.4(5) hereof shall be used by the Trustee (a) to redeem the largest number of Subordinate Bonds callable, without premium or penalty, under the terms of this Indenture at the first opportunity or (b) to pay principal due on the Subordinate Bonds.

Section 5.6 Capitalized Interest Fund. There is hereby created a Capitalized Interest Fund into which the Trustee shall deposit and hold proceeds of the Subordinate Bonds, in the amount provided in Section 5.3(a)(iii) hereof, to pay interest on the Subordinate Bonds (net of projected tax increment collections) through March 1, 2022.

Any interest earned on sums held in the Capitalized Interest Fund prior to _____ shall remain a part of the Capitalized Interest Fund. Any funds remaining in the Capitalized Interest Fund following _____ shall be transferred to the Bond Fund.

Section 5.7 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(13) 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.

On any date on which any amounts are required by applicable federal tax law to be rebated to the federal government, amounts shall be deposited into the Rebate Fund by the Borrower for such purpose. 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 rebate requirement (as set forth in the Tax Certificate) and as calculated by the Rebate Analyst, for payment to the government of the United States of America, and neither the Issuer nor the Borrower shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section and by the Tax Certificate. The Trustee shall conclusively be deemed to have complied with such provisions if it follows the written instructions of the Issuer, Bond Counsel or the Rebate Analyst, including supplying all necessary information in the manner set forth in the Tax Certificate, and shall not be required to take any actions under the Tax Certificate in the absence of written instructions from the Issuer, Bond Counsel or the Rebate Analyst.

Within fifty-five (55) days of the end of the fifth Rebate Year and each fifth Rebate Year thereafter, the Borrower shall deliver to the Trustee and the Issuer a certificate that it has determined no Rebateable Arbitrage is due or shall cause the Rebate Analyst to calculate the amount of Rebateable Arbitrage, in accordance with Section 148(f)(2) of the Code and Section 1.148-3 of the Treasury Regulations (taking into account any exceptions with respect to the computation of the Rebateable Arbitrage, described, if applicable, in the Tax Certificate (e.g., the temporary investments exceptions of Section 148(f)(4)(B) and (C) of the Code)), for this purpose treating the last day of the applicable Rebate Year as a (computation) date, within the meaning of Section 1.148-1(b) of the Treasury Regulations (the

“Rebatable Arbitrage”). Pursuant to Section 7.7 of the Loan Agreement, the Borrower shall cause the Rebate Analyst to provide any such calculations to the Trustee and the Issuer. In the event that the Borrower fails to provide such information to the Trustee and the Issuer within fifty-five (55) days of the end of the fifth Rebate Year and each fifth Rebate Year thereafter, the Borrower shall select the Rebate Analyst, with the prior written approval of the Issuer, and shall cause the Rebate Analyst to calculate the amount of Rebatable Arbitrage as required herein.

Within fifty-five (55) days of the end of the fifth Rebate Year and each fifth Rebate Year thereafter, upon the written direction of the Issuer, Bond Counsel or the Rebate Analyst, an amount shall be deposited to the Rebate Fund by the Trustee from amounts provided by the Borrower, if and to the extent required so that the balance in the Rebate Fund shall equal the amount of Rebatable Arbitrage so calculated in accordance with the preceding paragraph.

The Trustee shall pay, as directed by the Issuer, Bond Counsel or the Rebate Analyst, to the United States Department of the Treasury, out of amounts in the Rebate Fund:

(1) Not later than sixty (60) days after the end of (A) the fifth Rebate Year, and (B) each applicable fifth Rebate Year thereafter, an amount equal to at least ninety (90%) of the Rebatable Arbitrage calculated as of the end of such Rebate Year; and

(2) Not later than sixty (60) days after the payment in whole of the Subordinate Bonds, an amount equal to one hundred percent (100%) of the Rebatable Arbitrage calculated as of the end of such applicable Rebate Year, and any income attributable to the Rebatable Arbitrage, computed in accordance with Section 148(f) of the Code.

Each payment required to be made under this Section shall be made to the Internal Revenue Service Center, Ogden, Utah 84201 (or such other address provided in such direction), on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038-T, which shall be prepared by the Rebate Analyst and provided to the Trustee.

Notwithstanding any provision of this Indenture to the contrary, the obligation to remit payment of the Rebatable Arbitrage to the United States of America and to comply with all other requirements of Section 7.7 of the Loan Agreement and this Section 5.7, and the requirements of the Tax Certificate shall survive the defeasance or payment in full of the Subordinate Bonds.

Any funds remaining in the Rebate Fund after payment in full of the Subordinate 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.

The Trustee shall obtain and keep such records of the computations made pursuant to this Section 5.7 as are required under Section 148(f) of the Code to the extent furnished to the Trustee. The Borrower shall or shall cause the Rebate Analyst to provide to the Issuer and the Trustee copies of all rebate computations made pursuant to this Section 5.7. The Trustee shall keep and make available to the Borrower such records concerning the investments of the gross proceeds of the Subordinate Bonds and the investments of earnings from those investments made by the Trustee as may be requested by the Borrower in order to enable the Borrower to cause the Rebate Analyst to make the aforesaid computations as are required under Section 148(f) of the Code.

Notwithstanding the foregoing, the computations and payments of Rebatable Arbitrage need not be made to the extent that neither the Issuer nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on an opinion of Bond Counsel, to the effect that such

failure will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Subordinate Bonds, a copy of which shall be provided to the Trustee, at the expense of the Borrower.

Section 5.8 Escrow Fund. The Trustee shall maintain an Escrow Fund into which will be deposited proceeds of the Subordinate Bonds in the amount provided in Section 5.2 hereof. Upon satisfaction of the conditions set forth in Section 3.6(1) of the Loan Agreement, the Trustee shall disburse the funds in the Escrow Fund pursuant to Section 5.2 hereof.

Section 5.9 Costs of Issuance Fund. The Trustee shall maintain a Costs of Issuance fund into which will be deposited proceeds of the Subordinate Bonds in the amount provided in Section 5.3(a) hereof. The Trustee shall disburse amounts in the Escrow Fund to pay Issuance Expenses.

Section 5.10 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 Subordinate Bonds. The Paying Agent shall hold in trust for the Holders of such Subordinate Bonds all sums so transferred to it until paid to such Holders or otherwise disposed of as herein provided.

(2) Interest on each Subordinate 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 Subordinate Bond, (a) shall cease on its Maturity Date, 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 Maturity Date or Redemption Date, as the case may be, and in the case of redemption, that the requirements of Article 3 hereof have been complied with, or (b) shall cease on any date after Maturity on which such deposit has been made, and the Holder shall have no further rights with respect to the Subordinate Bonds or under this Indenture except to receive the payment so deposited.

(3) If any Subordinate Bond is not presented for payment when due and funds sufficient to pay such Subordinate Bond shall have been paid to the Trustee (or other Paying Agent, if any): (a) all liability of the Issuer for payment of such Subordinate Bond shall forthwith cease; (b) such Subordinate Bond shall forthwith cease to be entitled to any lien, benefit or security under this Indenture, the Loan Agreement, the Subordinate Mortgage, and any Collateral Document, and the Holder of such Subordinate 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 Subordinate 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 Subordinate 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 5.9, 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 Subordinate Bonds in trust for the benefit of the Holders of such Subordinate 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 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 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 as directed by the Borrower in Permitted Investments (including investments in securities through a common trust fund or similar fund maintained by a bank 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 applicable Minnesota Statutes as to the investment of sums (other than proceeds of the Subordinate Bonds) 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. 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. Any loss resulting from such investment shall be charged to the fund from which the investment was made. In no event shall the Trustee be deemed an investment manager or adviser in respect of any selection of investments 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.

(3) The Trustee may purchase from or sell to itself, or through any affiliated company, as principal or agent, securities herein authorized so long as such purchase or sale is at fair market value.

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 Subordinate Bonds or other sums pledged to the payment of the Subordinate Bonds, directly or indirectly, to acquire any securities or obligations the acquisition of which would cause any of the Subordinate Bonds to be “arbitrage bonds” 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 (and accordingly is hereby authorized to act as agent of the Issuer for such purpose). The Trustee shall be fully protected in relying on an opinion of Bond Counsel 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 Subordinate 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 Subordinate Bonds exceed, 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 Subordinate 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 Subordinate 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 Funding Loan Agreement.

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 Subordinate Bonds are subject to the rebate to the United States of earnings in excess of the yield on the Subordinate 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 5.7 hereof. The Trustee shall cooperate with the Borrower in the Borrower’s efforts to determine the amount of any rebate.

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ARTICLE 7

DISCHARGE OF LIEN

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

(1) either:

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

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

(ii) Subordinate 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 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 Trustee, 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 Subordinate 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 Subordinate 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 Loan Documents by the Trustee or the Borrower until the Subordinate Bonds are so paid; and

(3) if the funds for payment are provided under subsection (1)(b)(ii) above, the Borrower has delivered to the Trustee a report of an Independent Accountant or other nationally recognized verification agent stating that the payments to be made on the security referred to in subsection (1)(b) above will be sufficient to pay when due the principal of, premium, if any, and interest on the Subordinate Bonds to be

defeased; provided, however, when a defeasance escrow is gross funded or when the Subordinate Bonds mature or will be redeemed within ninety (90) days of the deposit referred to in subsection (1)(b)(ii) above, a report of an Independent Accountant shall not be required; and

(4) if discharge is to be effected under subsection (1)(b) 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 Subordinate 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 subsection (1)(a) or (b) above, and upon the Borrower's request the rights and interest hereby granted or granted by the Loan Agreement, the Subordinate Mortgage, 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 discharged 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 the 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 Subordinate 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 Subordinate 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 Subordinate 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 Subordinate Bond; or
- (2) default in the due and punctual payment of the principal of any Subordinate Bond at its Maturity; or
- (3) default 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 Subordinate Bonds; or
- (4) default 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 Subordinate Bonds, and such default shall have continued for a period of thirty (30) days after written notice thereof given in the manner provided in clause (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 the Issuer informs the Trustee at all times of its progress in curing the default, provided in no event shall such additional cure period extend beyond sixty (60) days; or
- (5) the occurrence of an Act of Bankruptcy; or
- (6) the occurrence of an “Event of Default” under the Loan Agreement or the Subordinate Mortgage.

The investor limited partner or the special 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 Subordinate Bonds shall, by notice in writing delivered to the Issuer and the Borrower declare the principal of all Subordinate Bonds immediately due and payable, whereupon the same shall become immediately due and payable any time herein or in the Subordinate 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 Subordinate 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 Subordinate Bonds.

Section 8.3. Remedies. The following remedies are all subject to the terms of the Subordination Agreement.

(1) Subject to the provisions of Section 8.2 hereof, upon the occurrence of an Event of Default and acceleration of the Subordinate Bonds, the Trustee may, subject to the terms of the Subordination Agreement, 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 Subordinate Bonds. Upon the occurrence of an Event of Default under the Loan Agreement, the Guaranty, the Security Agreement, or the Subordinate Mortgage (subject to the terms of the Subordination 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 under 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 a majority in aggregate principal amount of the then Outstanding Subordinate 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 (i) given to the Trustee or to the Holders hereunder or (ii) 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 Subordinate 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 Subordinate Mortgage, and 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, including attorneys' and agent's fees and expenses, be deposited in the Bond Fund. All money in the Bond Fund shall be applied, subject to the provisions of Article 5 hereof, as follows:

(1) Unless the principal of all the Subordinate 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 Subordinate 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; and

SECOND: To the payment to the Persons entitled thereto the unpaid principal of any of the Subordinate Bonds which shall have become due in the order of their due dates with interest on such Subordinate Bonds at the applicable rate and, if the amount available shall not be sufficient to pay in full the unpaid principal on Subordinate 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; and

(2) If the principal of all Subordinate 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 Subordinate 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 Subordinate Bond over any other Subordinate 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 Subordinate 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 Subordinate 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 Subordinate Bond until such Subordinate Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all Subordinate 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 Subordinate Bonds may be enforced by the Trustee without the possession of any of the Subordinate 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 Subordinate Bonds, and any recovery or judgment shall be for the equal benefit of the Holders of the Outstanding Subordinate 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 Subordinate Bonds.

Section 8.8 Rights and Remedies of Holders. No Holder of any Subordinate 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 a majority in aggregate principal amount of the Subordinate 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 9.1(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 Subordinate Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture, by its, his, her, 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 Subordinate 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 Subordinate 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 Subordinate 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 the 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. In case an Event of Default has occurred, 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. The Trustee shall not be liable for any action taken or omitted by it in the performance of its duties under this Indenture except for its own negligence or willful misconduct, 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 opinion or 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 Subordinate 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 Subordinate Bonds (except with respect to the certificate of the Trustee endorsed on the Subordinate Bonds) or for the investment of money as herein provided, except as may be provided in Section 6.1 hereof, 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 Subordinate 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 Subordinate 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 Subordinate 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 Subordinate Bond, shall be conclusive and binding upon all future Holders of the same Subordinate Bond and upon Subordinate 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 its Representative as sufficient evidence of the facts stated therein as the same appear from the books and records under the Representative's custody or control or are otherwise known to him or her. The Trustee may accept a certificate of the City Clerk of the Issuer under the seal of the Issuer, provided, however, that the seal of the Issuer may be a printed facsimile or may be omitted, 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 Subordinate 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 Subordinate 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 Subordinate 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 with an indemnity bond satisfactory to the Trustee for the reimbursement of all expenses to which it may be put and to protect it 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 Subordinate 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. The Trustee, the Paying Agent, and any Co-Paying Agent shall not 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 Subordinate Bonds, shall not be accountable for the Issuer's use of the proceeds of the Subordinate Bonds or any money paid to the Issuer or upon the Issuer's direction under any provision hereof, shall not be responsible for the use or application of any money received by any Paying Agent other than the Trustee, and shall not be responsible for any statement or recital herein or any statement in the Subordinate Bonds or any other document in connection with the sale of the Subordinate Bonds or pursuant to this Indenture other than its Certificate of Authentication.

(15) 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.

(16) The Trustee shall not be required to take notice or be deemed to have notice of any default, except an Event of Default under Section 8.01(1) and (2) hereof, unless the Responsible Officer shall be notified of such default in writing by the Issuer, the Borrower or by the holders of a majority in aggregate principal amount of the Subordinate Bonds then Outstanding and all notices required to be delivered to the Trustee 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 Subordinate 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 Subordinate 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 Subordinate 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 Subordinate 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 Subordinate 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. If no successor trustee is appointed within sixty (60) days of the Trustee's resignation, the Trustee may petition a court of competent jurisdiction to appoint a replacement.

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 Subordinate 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 Subordinate 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 \$50,000,000, 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 this 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 Subordinate 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 Subordinate 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 Subordinate 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 Subordinate 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 Subordinate 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 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 Trustee is entitled to require the Borrower to 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 the Trustee.

(1) At any time while Subordinate 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 Loan 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 Loan Document, or it is unclear whether the Indenture or other Related Loan 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 Loan 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 Loan 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 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 Loan Document but consent cannot be obtained because:

(i) it is not possible to comply with requirements of this Indenture or any other Related Loan 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 Loan 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 Subordinate Bonds shall, proceed in accordance with the provisions of Minnesota Statutes, Sections 501.33 through 501.38, 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 Loan Document upon a proper showing of the necessity therefor.

(2) In construing and interpreting the Indenture and any other Related Loan 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 Loan 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 Loan 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 indenture 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 indenture; (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 Subordinate 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 or which is necessary to reconcile the Indenture with the Related Loan 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 Subordinate 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 indenture by the Holders of not less than a majority of the aggregate principal amount of the then Outstanding Subordinate Bonds, shall join with the Issuer in the execution of such other indenture or indentures supplemental hereto as shall be deemed necessary and desirable for the purpose of modifying, altering, amending, adding to or rescinding, in any particular, any of the terms or provisions contained in this Indenture or in any supplemental indenture, 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 Subordinate Bond issued hereunder; (2) a reduction in the principal amount of any Subordinate Bond or the rate of interest thereon or any premium thereon; (3) a privilege or priority of any Subordinate Bond or Subordinate Bonds over any other Subordinate Bond or Subordinate Bonds except as may be otherwise expressly provided herein; (4) a reduction in the aggregate principal amount of the Subordinate Bonds required for consent to such supplemental indenture; or (5) modifying any of the provisions of this Section without the consent of the Holders of one hundred percent (100%) of the principal amount of all Subordinate Bonds adversely affected thereby (“100% Bondholders’ Consent”).

If at any time the Issuer shall request the Trustee to enter into any such supplemental indenture 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 indenture to be mailed by first class mail, postage prepaid, to the Holders of the Subordinate Bonds at the addresses shown on the Bond Register. Such notice shall briefly set forth the nature of the proposed supplemental indenture 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 indenture when consented to and approved as provided in this Section. If the Holders of not less than a majority in aggregate principal amount of the then Outstanding Subordinate 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 Subordinate 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 (either in writing or by inaction as provided below) 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 and the special limited partner at least thirty (30) days prior to the proposed date of execution and delivery of any such supplemental indenture. The Borrower shall be deemed to have consented to the execution and delivery of any such supplemental indenture if the Trustee does not receive (i) a letter signed by a Representative of the Borrower of protest or objection thereto or (ii) a letter signed by a representative of the investor limited partner of protest or objection thereto on or before 4:30 P.M., Minnesota time of the fifteenth day after the mailing of said notice and a copy of the proposed supplemental indenture to the Borrower unless such fifteenth day falls on a day which is not a Business Day, in which event the letter of objection must be received on the next succeeding Business Day.

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 hereunder. 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 RELATED LOAN 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 Loan Documents:

- (1) which may be required or permitted without Bondholder consent by the provisions of the Related Loan Documents or this Indenture;
- (2) for the purpose of curing any ambiguity or formal defect or omission;
- (3) to reconcile the Collateral Documents or Related Loan Documents with any amendment or supplement to the Indenture; or
- (4) to effect any other change to the Related Loan Documents which will not materially prejudice any non-consenting Holder of a Subordinate Bond.

Section 11.2 Amendments Requiring Bondholder Consent. Except for amendments, changes or modifications as provided in Section 11.1 hereof, neither the Issuer nor the Trustee shall consent to any other amendment, change or modification of the Related Loan Documents, without the giving of notice and the written approval or consent of the Holders of not less than a majority in aggregate principal amount of the Subordinate Bonds 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 Loan 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 Subordinate Bonds unless the consent of the Holders of all Subordinate 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 Loan Document, the Borrower shall request consent of the Trustee to any such proposed amendment, change or modification, 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 a majority in aggregate principal amount of the Subordinate 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 Subordinate 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 Loan 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 (i) by Section 4.2 of the Loan Agreement or (ii) permitting a reduction or change in the Stated Maturities of the Subordinate 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 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 Subordinate 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 or her the execution thereof, or by an affidavit of any witness to such execution.

(2) The fact of the ownership by any Person of Subordinate Bonds and the amounts and numbers of such Subordinate 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 Subordinate 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 Subordinate 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 Loan 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 Subordinate 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 Subordinate 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 Subordinate Bonds 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 Subordinate 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 Subordinate 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 Subordinate 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 Subordinate 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 Subordinate Bonds represented at the meeting and entitled to vote.

(b) At any meeting such Bondholder or proxy shall be entitled to one vote for each \$5,000 of principal amount of Outstanding Subordinate Bonds owned or represented by him or her, provided, however, that no vote shall be cast or counted at any meeting in respect of any Subordinate 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 Subordinate 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 Subordinate 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 Subordinate Bonds Outstanding held or represented by them. The permanent chairperson of the meeting shall appoint two (2) 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 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 (1) 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 Subordinate Bonds specified in this Indenture in connection with such action, any Holder of a Subordinate Bond the number of which is included in the Subordinate 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 Subordinate Bond. Except as aforesaid, any such consent given by the Holder of any Subordinate Bond shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Subordinate Bond and of any Subordinate 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 Subordinate Bond. Any action taken by the Holders of the percentage in aggregate principal amount of the Subordinate 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 Subordinate 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 phrase, sentence, clause or paragraph 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 follows:

To the Issuer: City of Minnetonka, Minnesota
14600 Minnetonka Boulevard
Minnetonka, MN 55345-1502
Attention: Community Development Director

To the Borrower: Minnetonka Leased Housing Associates III, LLLP
c/o Dominion Development and Acquisition, LLC
2905 Northwest Boulevard, Suite 150
Plymouth, MN 55441-7400
Attention: Ryan Lunderby

with copies to: Winthrop & Weinstine P.A.
225 South Sixth Street, Suite 3500
Minneapolis, Minnesota 55402-4629
Attention: John M. Stern, Esq.

and:

Citibank, N.A.
388 Greenwich Street, Eighth Floor
New York, NY 10013
Attention: Mark Sherman

and:

Nixon Peabody LLP
779 Ninth Street, NW, Suite 500
Washington, DC 20001-4501
Attention: Matthew W. Mullen, Esq.

and:

TCAM
186 Lincoln Street
Boston, MA 02111-2408
Attention: Jenny Netzer

To the Trustee: U. S. Bank National Association
60 Livingston Avenue, Third Floor
EP-MN-WS3C
Saint Paul, MN 55107-2292
Attention: Corporate Trust Services

To Underwriter : Dougherty & Company LLC
 90 South Seventh Street, Suite 4300
 Minneapolis, MN 55402
 Attention: Frank J. Hogan

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 and the same instrument.

Section 12.8 Limitation of Liability of Issuer and Its Officers, Employees and Agents. No covenant, provision or agreement of the Issuer herein or in the Subordinate Bonds or in any other document executed by the Issuer in connection with the issuance, sale and delivery of the Subordinate 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 a charge against its general credit or taxing powers or shall obligate the Issuer financially in any way except with respect to this Indenture and the application of revenues therefrom and the proceeds of the Subordinate 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 Subordinate 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. 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 Subordinate Bonds constitute special obligations of the Issuer, payable solely from the revenues pledged to the payment thereof pursuant to this Indenture, and does not now and shall never constitute an indebtedness or a loan of the credit of the Issuer or the State of Minnesota or any political subdivision thereof or a charge against general taxing powers 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 not 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 Subordinate 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 Subordinate 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 Electronic Signatures. The parties agree that the electronic signature of a party to this Indenture shall be as valid as an original signature of such party and shall be effective to bind such party to this Indenture. For purposes hereof, (i) “electronic signature” means a manually signed original signature that is then transmitted by electronic means; 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.

IN WITNESS WHEREOF, the Issuer and the Trustee have executed this Subordinate Indenture of Trust as of the date and year first written above.

CITY OF MINNETONKA, MINNESOTA

By _____
Its Mayor

By _____
Its City Manager

Execution page of the Trustee to the Subordinate Indenture of Trust, dated as of the date and year first written above.

U. S. BANK NATIONAL ASSOCIATION

By _____
Its Vice President

EXHIBIT A

FORM OF SUBORDINATE BOND

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF HENNEPIN
CITY OF MINNETONKA

No. R-_____

\$_____

TAX INCREMENT REVENUE AND
SUBORDINATE MULTIFAMILY HOUSING REVENUE BOND
(LEGENDS OF MINNETONKA PROJECT)
SERIES 2018C

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>	<u>CUSIP Number</u>
_____ %	_____ 1, 20__	September __, 2018	

REGISTERED HOLDER: CEDE & CO.

PRINCIPAL AMOUNT: _____ DOLLARS

(1) KNOW ALL PERSONS BY THESE PRESENTS that the City of Minnetonka, Minnesota, in the County of Hennepin and 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 maturity date 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, as defined below, semiannually on March 1 and September 1 (each an "Interest Payment Date") commencing March 1, 2019, 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 of twelve (12) thirty (30) day months.

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" hereof) 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 or her address as it appears on the Bond Register on the Record Date, except as otherwise provided in the Indenture (hereinafter defined).

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 \$500,000 may elect to be paid

the interest on such Bonds 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.

Capitalized terms used herein that are otherwise not defined shall have the meanings assigned such terms in the Indenture.

(2) This Bond is one of an issue designated as the “Tax Increment Revenue and Subordinate Multifamily Housing Revenue Bonds (Legends of Minnetonka Project), Series 2018C (the “Bonds”), in the original aggregate principal amount of \$4,090,000, all of like nominal date of original issue and tenor, except as to number, amount, rate, and redemption privilege, issued in accordance with a Subordinate Indenture of Trust, dated as of September 1, 2018 (the “Indenture”), between the Issuer and U.S. Bank National Association, a national banking association (the “Trustee”), setting forth the terms upon which the Bonds are issued. The Bonds are equally and ratably secured and entitled to the protection of the Indenture. The Bonds are issued for the purpose of financing a portion of the acquisition, construction, and equipping of a 262-unit senior housing project (the “Project”), in accordance with Minnesota Statutes, Chapter 462C, as amended (the “Act”), to be owned by Minnetonka Leased Housing Associates III, LLLP, a Minnesota limited liability limited partnership (the “Borrower”). The Borrower has agreed under a Subordinate Loan Agreement, dated as of September 1, 2018 (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”). 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. The Borrower has assigned to the Trustee the Borrower’s interest in the pay-as-you-go tax increment revenue note issued by the Economic Development Authority in and for the City of Minnetonka, Minnesota in the maximum principal amount of \$4,161,000 (the “TIF Note”). By a Subordinate Combination Mortgage, Security Agreement, Fixture Financing Statement, and Assignment of Leases and Rents, dated as of September 1, 2018 (the “Subordinate Mortgage”), from the Borrower in favor of the Issuer and assigned by the Issuer to the Trustee, the Borrower has granted to the Trustee a subordinate mortgage lien on and security interest in substantially all of the real and personal property comprising the Project (the “Mortgaged Property”). The Borrower, the Issuer, the Trustee, and U.S. Bank National Association, as fiscal agent (the “Fiscal Agent”) with respect to the Senior Notes, have entered into a Regulatory Agreement of even date herewith (the “Regulatory Agreement”) requiring the Borrower to comply with certain requirements of federal and state law relating to the operation of the Project as a multifamily rental housing project for seniors. 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 Indenture, the Subordinate Mortgage, the Regulatory Agreement, the TIF Note, and the Disbursing Agreement, including all indentures supplemental thereto, for a description of the Mortgaged Property, 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 is 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 Redemption. The Bonds are subject to redemption and prepayment upon request by the Borrower to the Trustee on _____ 1, 20__ and on any Business Day thereafter, in whole or in part, and if in part, in inverse order of maturity date, in principal increments of \$5,000 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 Upon Failure to Meet Disbursement Requirements. The Bonds are subject to mandatory redemption in whole but not in part on September 1, 2019 if the conditions set forth in Section 3.6 of the Loan Agreement for disbursement are not met on or before August 1, 2019.

(c) Mandatory Sinking Fund Redemption. The Bonds are subject to mandatory redemption by lot in the principal increments of \$5,000, at par and accrued interest without premium, on the dates and in the principal amounts set forth in the Indenture.

(d) Extraordinary Redemption. In the event of damage to or destruction of the Project or any part thereof or Condemnation of the Project or any part thereof to the extent provided in Section 8.4 of the Loan Agreement, or in the event of any changes in the Constitution or laws of the United States of America or the State as provided in Section 8.4 of the Loan Agreement and termination of the Loan Agreement upon the occurrence of one of those events, all Bonds shall be redeemed by the Issuer on the earliest date for which timely notice of call can be given, at a Redemption Price equal to the principal amount to be redeemed, without any premium, plus accrued interest to the Redemption Date.

(e) Tax Redemption. The Bonds are subject to mandatory redemption in whole on the first Business Day for which notice of redemption can properly be given as provided herein upon the occurrence of a Determination of Taxability (as such term is defined in the Indenture) at a Redemption Price equal to one hundred percent (100%) of the principal amount of the Bonds plus accrued interest thereon to the Redemption Date.

(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 redemption shall be mailed at least thirty (30) days but not more than sixty (60) days prior to the date fixed for redemption to each Registered Holder of a Bond to be redeemed. All Bonds so called for redemption, provided funds for their redemption have been duly deposited, will cease to bear interest on the specified Redemption Date and (except for the purpose of payment) shall no longer be protected by the Indenture and shall not be deemed Outstanding under the Indenture, and shall thereafter be payable solely from the funds provided for payment.

Notwithstanding the foregoing, notice of any redemption pursuant to subsection (a) above may provide that the redemption is conditioned on the deposit of sufficient moneys for payment of the Redemption Price on or prior to the Redemption Date. If the notice is conditioned upon moneys being on deposit with the Trustee in an amount sufficient to pay the Redemption Price on the Redemption Date, the notice shall state such condition and that such redemption shall not be effective unless such condition is met.

(8) In addition to the foregoing, if under certain circumstances an Event of Default, as defined in the Indenture, 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.

(9) This Bond and the series of which it forms a part are issued pursuant to and in full compliance with the Constitution and laws of the State, including the Act, and pursuant to a resolution adopted and approved by the governing body of the Issuer on August 27, 2018, which resolutions 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 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.

(10) 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 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 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. The provisions of this paragraph are controlling notwithstanding anything herein to the contrary.

(11) 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.

(12) 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 a majority in aggregate principal amount of the Bonds then Outstanding thereunder.

(13) 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.

(14) The Bonds are issued as fully registered Bonds without coupons in the Authorized Denominations. 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.

(15) 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 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.

(16) 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.

(17) 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.

(18) 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 City of Minnetonka, Minnesota, by its governing body, has caused this Bond to be executed in its name by the facsimile signatures of its Mayor and City Manager and by the manual signature of a Responsible Officer of the Trustee acting as authenticating agent.

CITY OF MINNETONKA, MINNESOTA

By _____
Its Mayor

By _____
Its City Manager

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the within-mentioned Indenture.

Date of Authentication: _____, 2018

U.S. BANK NATIONAL ASSOCIATION, as Trustee

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 Bond on the books kept for the registration thereof, with full power of substitution in the premises.

Dated: _____

Notice: The assignor's 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 any change whatever.

Signature Guaranteed:

Signature(s) must be guaranteed by a member of a Medallion Signature Program.

The Trustee will not effect transfer of this Bond unless the information concerning the transferee requested below is provided.

Name and Address: _____

(Include information for all joint owners if the
Bond is held by joint account)

Insert social security or
other identifying number of
Transferee
