

**CITY OF FALCON HEIGHTS**  
Regular Meeting of the City Council  
City Hall  
2077 West Larpenteur Avenue  
**AGENDA**  
June 10, 2020 at 7:00 P.M.

A. CALL TO ORDER:

B. ROLL CALL: GUSTAFSON \_\_\_ ANDREWS\_\_\_ LEEHY\_\_\_

MIAZGA \_\_\_ WEHYEE\_\_\_

STAFF PRESENT: THONGVANH\_\_\_

C. PRESENTATION

1. MS4 Permit - Required Annual Report for 2020
2. Falcon Heights Fire Department Audit

D. APPROVAL OF MINUTES:

1. May 27, 2020 Regular City Council Meeting

E. PUBLIC HEARINGS:

1. Conduit Bonding for Hampton Properties of Ramsey, LLC and Other

F. CONSENT AGENDA:

1. General Disbursements through: 6/03/20 \$36,818.52  
Payroll through: 5/31/20 \$19,068.85
2. Order Feasibility Report for the 2021 Pavement Management Program

G. POLICY ITEMS:

H. INFORMATION/ ANNOUNCEMENTS:

I. COMMUNITY FORUM:

*Please limit comments to 3 minutes per person. Items brought before the Council will be referred for consideration. Council may ask questions for clarification, but no council action or discussion will be held on these items.*

J. ADJOURNMENT:

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# MS4 Permit

Annual Report Required  
for the 2020 Permit

# Overview

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- Federal Clean Water Act:
  - Amended in 1987
  - A two-phase program
    - Phase I: Regulated large construction sites and major metropolitan areas
    - Phase II: Program broadened to include smaller construction sites and many more municipalities

# Overview

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- Overseen by the EPA and MPCA
- Regulated parties must develop storm water pollution prevention programs
- The permit holder is required to submit a Storm Water Pollution Prevention Program (SWPPP) that incorporates best management practices (BMPs)

# What is MS4?

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- A conveyance of system of conveyances (catch basins, curbs, gutters, ditches, man made channels)
- Designed or used for collecting or conveying storm water

# Mandatory MS4's

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- MS4's in urbanized areas are required to obtain a storm water permit
- Falcon Heights is considered an urbanized MS4 area
- The U of M and State Fair are permitted separately

# MS4 Permit Requirement

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- This program consists of six minimum Control Measures.



# Falcon Heights BMPs for each Control Measure Include:

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- Public Education and Outreach
- Public Involvement and Participation
- Illicit Discharge, Detection and Elimination
- Construction Site Runoff Control
- Post-construction Runoff Control
- Pollution Prevention and Good Housekeeping

# Progress to Date

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- Newsletters and flyers to residents
- Developed a storm sewer map
- Implemented the construction site runoff control measures
- Hendrickson Apartments over seen by Capital Region Watershed
- Inspected 100% of outfalls
- Implemented de-icing material controls

# Progress to Date

- Implemented storm drain system cleaning and rehabilitation of catch basin
- Reconstructed the Curtiss Field Pond
- Implemented vehicle maintenance program
- Purchased a street sweeper with the City of Little Canada, bought out Little Canada in December of 2016. more often street sweeping.
- Straight salt for road melt
- Storm sewer system cleaning program
- Added additional underground storage

# 2019 Goals

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- Continue a utility billing
- Continue educational flyers and newsletter
- Continue to sweep streets more often
- Rehab/Repair all catch basins related to each street project
- Continue to monitor Underground containment structure put into place at Curtiss Field Park.



Questions?

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***The City That Soars!***

## REQUEST FOR COUNCIL ACTION

<b>Meeting Date</b>	June 10, 2020
<b>Agenda Item</b>	Presentation C2
<b>Attachment</b>	Audit and Service Agreement
<b>Submitted By</b>	Sack Thongvanh, City Administrator

<b>Item</b>	Falcon Heights Fire Department Audit
<b>Description</b>	<p>On December 11, 2019, the City Council approved a professional services agreement with the City of Roseville for administrative direction and command services for fire service. The services also include the City of Roseville Fire Department conduct an audit of our Fire Department that include but not limited to training (which is now conducted by the City of Roseville), leadership structure, internal communications, equipment, gear, annual performance checks &amp; inspections, SOP &amp; SOG, personnel assessments, and officer development.</p> <p>In addition to administrative and command services, the City of Roseville was task to conduct an audit of the Fire Department. The purpose of the audit is to understand the current needs of the department.</p>
<b>Budget Impact</b>	This will have an impact on current 2020 budget and funds.
<b>Attachment(s)</b>	<ul style="list-style-type: none"> <li>• Presentation Slides</li> <li>• Falcon Heights Fire Department Audit</li> <li>• Approve Professional Service Agreement</li> </ul>
<b>Action(s) Requested</b>	This report will be presented at a regular council meeting. This document will be used during the 2021 Budget discussions.

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# City of Falcon Heights City Council

## Fire Department Update

June 10, 2020



# Fire Department Transition

- Administrative Transition
  - Roseville Command Staff
- December 2019
  - Unique situation for our command staff and for the firefighters.
  - Our focus is on building the organization up
  - Address any immediate issues and concerns
  - Develop new expectations
- Operational Back-Stop
  - 24/7 Monitoring and Support



# Fire Department Review

## The Review Process:

- Started Immediately
- Collaborative with staff
- Continuous engagement
- Compare and contrast services and options
- Work to meet the need and expectations of:
  - Firefighters
  - Community
  - City Leadership



# Fire Department Review

## Review Results and Priorities:

- Daytime Emergency Response
  - Focused recruitment effort with creativity and flexibility
- Capital Outlay and Needs
  - Some costly, but critical needs lie ahead
- Industry Standards and Compliance
  - NFPA, OSHA, and State Requirements
- Training
  - Core competencies
  - Engagement for all
- Organizational Culture Shift



# Questions

Thank you!

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# Falcon Heights Fire Department

Internal Review and Audit 2020

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## **Daytime Response**

The Falcon Heights Fire Department has a significant lack of daytime response availability. This, coupled with a firefighter recruitment need, is the most glaring need for the Falcon Heights Fire Department. In the past year, on three instances, the fire department has been unable to provide an emergency response vehicle for an emergency call. With the current administrative contract in place their response has a backstop from the Roseville Fire Department. However, this backstop is not a long-term fix. Assessing daytime availability of existing staff, recruiting daytime specific personnel, and potentially providing an incentive to daytime response are considerations that should be made to fill this gap.

Organizational changes may be necessary to meet the needs of an evolving fire department. An example of this would be to change the training structure (instituting daytime training) and the firefighter response tracking in regards to firefighters that work in the area and can respond during the day, but live outside the response time at night and on weekends.

The lack of daytime staffing and response availability is a long-term issue that should have been addressed in the department's past, and needs to be addressed rapidly going forward. As it takes 1-2 years, at a minimum, to hire and train a fully functional firefighter/emergency medical responder, true efforts to recruit and hire quality employees should have been done within the last 5 years in earnest to as not be in this position.

## **Personnel and Recruitment**

The fire department currently has 16 total firefighters, with one firefighter on an extended leave, one non-active for the past six months, and one with a pending retirement. This total amount of firefighters is down from previous years. In addition, there are several members that are at or near retirement age and have sufficient years of service credit in the Fire Relief Association for retirement. The combination of the total number and the potential for some retirements leads to a high priority for recruitment and refocused retention efforts.

## **Recruitment**

The recruitment of eligible and capable firefighters is a critical function facing the Falcon Heights Fire Department. Some recruitment has been done during the initial phases of the administrative contract; however, it is the goal of fire administration to ramp up recruitment efforts and start a recruitment committee that consists of:

- Fire Administration
- City Administrators
  - Falcon Heights
  - Lauderdale
- Three to four current firefighters

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The goal of this committee will be to brainstorm and discuss several different avenues for active recruitment that does not just meet the immediate approach to personnel levels, but is a long-term sustainable recruitment program that helps get the fire department to personnel levels consistently at the 20-25 firefighter mark going forward.

Any and all possible options to recruit should be assessed and vetted. This could include options and opportunities like:

- Expanding the response time to the fire station, allowing for a larger area to pull recruitment from.
- More focused recruitment at the University of Minnesota as well as local businesses in Falcon Heights and Lauderdale in pursuit of daytime available responders. A focused approach on daytime response and utilizing men and women that work in Falcon Heights or Lauderdale may be a focused recruitment that would be advantageous.

## **Retention**

The retention of firefighters is a vital task for any fire department, especially a paid on call fire department. As there are many different motivations and interests that keep firefighters involved, whether it be a retirement income and incentive, pay (secondary source of income), good training, camaraderie, preparation for a full-time fire service career, or giving back to the community. With this in mind, we have to approach retention as an important piece to our internal customer service.

### **Training**

One of these items has been addressed through training. Training is the bedrock of the organization and the one consistent item that brings firefighters to the fire station on a weekly basis. It is imperative to have focused, active, and engaging training that improves skill sets, increases teamwork, and provides motivation to be involved with the organization.

### **Firefighter Pay**

One area we would like to consider as part of our retention process is to elevate the hourly pay for the firefighters. While we understand this is a paid-on-call position and most firefighters are not with Falcon Heights to make a livable wage, a more suitable rate of pay for their job functions may improve participation and have an improvement in job satisfaction. As part of the 2021 budget process we plan to introduce a pay increase for all personnel to get them to a suitable level of pay that is comparable to their paid-on-call peers in the Twin Cities metro.

### **Strategic Planning**

A clear image of the future and goals is a profound and effective way to retain firefighters. A clear image, or strategic plan, assists firefighters in having a shared understanding of where the organization is currently at and what their goals are over the next 1-5 years. Improved roles and responsibilities, clear goals, and a path by which to take to get their can invigorate and motivate personnel to be a part of that goal and assist in the retention of firefighters.

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## **Effective Leadership**

Consistent and professional leadership is a significant factor when assessing personnel retention. The Fire Department has not had this in recent past. Consistent leadership and a command structure that is flexible to adapt to the needs of the department, coupled with a strategic plan will assist in retaining firefighters. In previous years, communication from Fire Administration down to the entire fire department was not common. It is imperative to develop transparent and effective leadership within the organization that allows the fire department to address operational and administrative goals and benchmarks. The fire department will have to be involved with developing this structure, though it may lead to changes in how the organization has been structured in the past.

## **Response Times and Call Volume**

In 2019 the fire department was dispatched and responded to 121 calls for service. Response times tend to vary depending on the time of day. As to be expected, daytime response times are slightly slower on the average versus night and weekend responses. Their overall response time for a fire suppression apparatus to arrive on scene is averaging around 10:00. A review of the 2019 call volume, call type, and response times are included in Appendix C.

It is important to note that the information provided in the 2012 audit and review of the Falcon Heights Fire Department had inaccurate information regarding response times. The 2012 audit noted the average response time was around six minutes. The six-minute response time that is noted is the arrival of a company or chief officer in their private vehicle responding directly to the scene. This is not the response time of an actual fire suppression and/or rescue apparatus. NFPA response time benchmarks measure and set goals for the response of a fire suppression apparatus as these units are required in order to mitigate an emergency. When looking at response times using proper NFPA guidance, 2012 response times are consistently comparable to what the current response times of Falcon Heights Fire.

## **Training, Certification Renewal, and Compliance**

Our assessment of the training division within the fire department showed gaps in hands-on and practical training for the firefighters to meet expectations of the Minnesota Fire Service Certification Board (MFSCB), Minnesota Board of Fire Training and Education (MBFTE), and Minnesota Emergency Services Regulatory Board (EMSRB). During the initial phase of our audit firefighters made mention they rarely, if ever, practiced actual fire tactics, like stretching hose-lines in an effective manner. We approached the first and second quarters of training in 2020 with an approach that utilized their interests and gaps we knew were present. Training is back on track with a “back to the basics” focus to improve competency and consistency.

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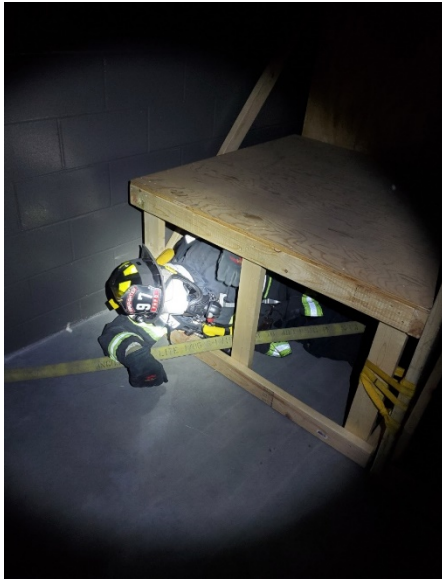
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Within the training we focused on the importance of having a FHFD member be a co-leader of the trainings. This could be the newest firefighter all the way up to the most senior firefighter.

This was established for two primary reasons:

1. To develop leadership and instruction skills for all firefighters and captains.
2. To allow them to be as autonomous as possible. Allow the RFD personnel to facilitate the training, but by leaving the majority of the instruction to the FHFD personnel it would allow for them to work better as a team.

With the first quarter of training complete and into the second quarter we are very pleased



with the progress of the firefighter's skill set as well as the willingness of all members to help teach and take ownership over their training program to assure a quality training experience for the fire department.

The fire department transitioned away from their previous emergency medical services (EMS) education provider and moved to Regions EMS. Regions EMS is a high quality education provider that provides education to more than 15 fire departments in the metro as well as western Wisconsin. They have a very hands-on focus to their fire departments they educate and we believe this will be an improved educational experience for the firefighters at a reduced cost from what the fire department was paying in the past. With the wide breadth of organizations that Regions EMS

provides education to, there is now an increase of opportunities to get in necessary training, as well as additional training opportunities that are multi-jurisdictional that the firefighters can participate in.

As part of a grant opportunity with the MBFTE we have implemented Target Solutions, an online training and tracking program to improve information sharing and training opportunities. This program will likely replace the existing SharePoint site that houses training information, standard operating procedures, calendars, and other departmental information.

All firefighters that were due for their bi-annual EMS certification renewal were recertified without issue.

## **Annual Equipment Testing Compliance**

Equipment testing and compliance is a vital piece to the safety of the firefighters as well as the longevity of the equipment. In the fire service there are several pieces of equipment and apparatus that need to be tested and evaluated on an annual basis:

1. Self-Contained Breathing Apparatus (SCBA)

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2. Apparatus Pump
3. Ground Ladders
4. Aerial Ladder Truck
5. Fire Hose

## Self-Contained Breathing Apparatus (SCBA)

The fire department currently uses a Mine Safety Appliances (MSA) Firehawk brand of SCBA. These SCBAs are seven years old (purchased in 2013). Per NFPA and OSHA regulations they have approximately three to eight years of time left of their adequate and appropriate use before consideration for replacement. This has been included in Appendix A, Capital Outlay. Per our records review and assessment, the SCBAs have received competent and appropriate testing in the last two years, with few repair issues or concerns.

Consideration for this equipment replacement should be a priority. Replacement for the SCBA and associated components should occur 2023-2028.

<b>SCBA</b>	Replacement Cost: <b>\$130,000</b>
SCBA's are a priority to budget for. They are currently sufficient, but per NFPA and OSHA regulations they should be replaced between 10-15 years (2023-2028).	

## Apparatus Pumps

The Fire Departments three large pieces of apparatus have received annual pump testing through Emergency Apparatus Maintenance (EAM). Minor repairs and maintenance needs for the fleet are performed EAM. Pump health and capacity appear to be adequate and appropriate.

The annual pump testing of three apparatus is an on-going annual cost of approximately \$2,000; without consideration of any maintenance work and follow ups on issues discovered during the testing process. Annual operational funds should be in place and considered for this test and maintenance needed.

## Ground Ladders and Aerial Ladder Truck

Through our evaluation and records review we found no results of any recent ground ladder and aerial testing. We believe the fire department may be several years behind with this annual test. Due to this concern, we believe this is a priority test and evaluation that needs to take place.

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The annual testing costs for FHFD's fleet is approximately: \$1,500. This includes 291 feet of ground ladder testing and the aerial ladder test.

<b>Ground Ladders</b>	Testing Cost: \$654.75
This is an annual requirement to test the safety and functionality of ground ladders in the fleet. Forgoing annual testing is a significant risk to personnel and dangerous. It is also a very effective way to discover the age and functionality of the ground ladders to better prepare the department for replacement.	

<b>Aerial Test</b>	Testing Cost: \$805.00
The usage and functionality of an aerial platform is critical for a fire department's fire-ground tactics and the safety of all firefighters working on or around this apparatus. From our records review we could not find any testing results or documentation for the 2014 Pierce Aerial ladder. It is overdue for testing and compliance.	

## **Fire Hose**

We were unable to locate annual hose testing results from our review; firefighters made mention that they have never tested their hose.

We recommend immediate testing of all fire hose this spring or early summer in an effort to assess the health and functionality of all fire hose. There is a potential, due to lack of testing, a significant amount of hose may fail and need to be replaced in an effort to maintain appropriate supply and Insurance Services Office (ISO) requirements and expectations. Once hose testing is completed we will have a better idea of replacement needs, if any.

<b>Fire Hose</b>	Annual Testing: \$2700
The current condition of the fire hose on the apparatus and in the fire station is in fair condition, replacement costs will be dependent on the success of the annual testing.	

## **Radios**

The current portable radio fleet for FHFD consists of 22 radios and the current mobile radio fleet for FHFD consists of 5 radios.

### **Portable Radio Analysis**

Nearly all (21 of 22) radios are from the original 2006 purchase process conducted by Ramsey County. These radios have reached the end of their effective life, and have officially reached end-of-life by Motorola. This means that repair or replacement parts are no longer available for these radios and their use as a life safety system for firefighting should be ended. FHFD currently has enough portable radios for all available riding seats on fire apparatus; NIOSH reports have indicated through post-incident analysis that every firefighter on the fire-ground should have a portable radio and be properly trained in its use as a firefighter safety component. It is our assessment that we should maintain the current number of portable radios at 22.

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We would recommend an aggressive replacement plan for the 21 portable radios over a 1-3 year timeframe. For long-term planning, a 12 year life-span for portable radios is suggested. Current per radio cost is **\$4,600.00**.

In Appendix A we noted to begin a capital investment of \$32,200 per year to begin the replacement of all radios (7 radios per year). This will allow a full replacement over the course of three years, then a process of replacing two radios per year starting in 2028. We believe a set amount annually in this line item will be the most advantageous to maintain a well-functioning radio fleet.

## **Mobile Radio Analysis**

All mobile radios installed in FHFD apparatus are from the original 2006 purchase conducted by Ramsey County. While these radios are important to the operations of the department, they do not share the same life safety concerns that a portable radio being utilized by an individual physically on the fire-ground. We recommend a phase-in replacement plan covering the next three years to replace the current mobile radios with newer models. **The current models utilized in FHFD apparatus no longer are able to be serviced if a failure does occur.**

Current Per Radio Cost: **\$5,000.00**

Installation per-vehicle: **\$775.00**

**Total: \$5,775.00 (x5) = \$28,875.00**

In total we have approximately **\$125,000** of radio costs that need to be addressed as a priority in the 3-4 years.

## **Annual Radio Maintenance**

To properly operate, 800Mhz radios need to be optimized annually and periodically require re-programming due to outside influences. Outlined below are operational costs for annual optimization, and costs associated with periodic programming.

Annual Optimization Costs (full radio fleet): **\$1,485.00**

Radio Programming (4 year cycles full fleet): **\$1,485.00**

These funds should be considered operational costs, not capital.

## **Personal Protective Gear**

A firefighter's personal protective gear is the absolute most important piece of equipment for a fire department to maintain and invest in. Turnout gear review was one of our first priorities under the new contract for administrative services.

As part of the 2020 budget we have funds available for new fire helmets; the current fire helmets are well beyond their useful life and current guidance of NFPA standards. In the first 120 days of this administrative contract new helmets will be purchased and likely already in service.

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In addition to the fire helmets is fire resistant hoods. These specially designed fire resistant hoods provide important heat and carcinogen protection to firefighters operating in a fire or other hazardous environment. The most recent hood replacement we could find were purchased more than 10 years ago and also past their useful and recommended life span. We have since replaced all hoods at a cost of approximately \$550.

Much of the existing turnout gear is near or beyond the NFPA standards and guidelines for firefighters and is an immediate replacement priority. With taking out a helmet and a hood (already replaced) a turnout gear ensemble will cost approximately \$2700 per firefighter. This includes a turnout jacket, pants, boots, and gloves. From our review we found the following immediate replacement needs (at or beyond 10 years):

7 Pants

6 Jackets

15 Boots

With current pricing Falcon Heights is looking at a minimum of \$16,850 to address the immediate gear replacement needs.

<b>Turnout Gear</b>	Replacement Cost: <b>\$16,850</b>
This is for all current boots in service, and any jacket or pant at 10 years of age or older. An additional concern is the fire department has no back-up gear available that is functional.	

Note that the total replacement costs associated with subsequent gear purchases will be an additional \$15,000-\$20,000 over the next 2-4 years (2021-2024). Also note that this replacement is for current staff. If we are to recruit and add an additional 3-6 members, it would increase by approximately \$2600 per firefighter.

## Apparatus

The Falcon Heights Fire Department currently maintains three large pieces of apparatus and one pick-up truck. Overall the apparatus fleet is in fair health. The department has two engines and one ladder truck. The engines are performing adequately however during recent pump testing some repairs were noted. However, Engine-752 is nearing the end of its useful life based on recommendations by NFPA. It is a 2001 Freightliner Custom Pumper. While this apparatus is still functioning appropriately as a back-up engine, a replacement should be considered by 2025 to assure reliable fire apparatus are available for emergency response.

Engine-753 acts as the first out engine for fire-related calls. It is a 2005 Sterling Custom Fire Pumper. It is functioning appropriately as a first-out engine, but will be in a good position to transition to a back-up engine after the replacement of Engine-752 is in place in the next 3-5 years.



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Ladder-757 is a 2014 Pierce Aerial ladder truck. It is utilized for most mutual and auto-aid responses, as well as rescue-related emergencies. This vehicle has passed recent pump tests. It is a well-functioning apparatus and, with proper care and maintenance, should remain in the fleet for another 15-20 years.

<u>Apparatus</u>	<u>Year</u>	<u>Needs/Concerns</u>
Engine-752	2001	Nearing the end of useful life, but likely still a functional apparatus for several more years in a back-up/reserve capacity.
Engine-753	2005	Functions well, but should be transitioned to a back-up apparatus in next 3-5 years.
Ladder-757	2014	In great condition, no significant needs or concerns at this time.
Utility 755		Operational and functional at this time, no immediate replacement needs.

## **Administrative Review**

### **Standard Operating Procedures/Guidelines (SOP/SOG) Review and Committee**

The Falcon Heights Fire Department has many outdated and obsolete SOPs, some are redundant as well as conflicting with each other. The initial review process and the subsequent committee development for review is a necessary step to improve clarity of job roles and responsibilities, response procedures, and department expectations. It is our goal to develop revised standards to meet the needs and expectations of the Falcon Heights Fire Department, the cities of Falcon Heights and Lauderdale, and the firefighters. We anticipate the committee review and development process to take 3-6 months with a goal of fall 2020 for completion.

### **Job Descriptions**

In the first 120 days of the administrative contract we created job descriptions for Firefighter and Captain. The evolution of these job descriptions was a group effort as we sought feedback, edits, and development from the firefighters and captains. These job descriptions are located in Appendix B. We will be working with staff on the development of a Fire Chief job description as well as other chief officer positions once we have a more defined organizational structure for the future.

### **Medical Examinations**

Per OSHA, firefighters are required to receive an annual medical examination that includes an SCBA mask fit testing and a certain list of functions to be tested and reviewed. As part of the leadership transition we have decided to work with a clinical vendor that better meets the needs of the fire service and works with many fire departments in the metro. Health Strategies will assist with the medical examinations for new hires, annual medical examinations, and any fit testing needed by the fire department. They are a reputable organization and have competitive pricing.

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As part of the leadership transition we will work with the firefighters to evaluate and address any additions we would like to add to the annual medical examination process. This is done in an effort to be proactive with health concerns for firefighters, especially as firefighters age.

## **Priority Summary**

1. Daytime (Weekday) Response
  - a. Firefighter Recruitment and Retention Efforts and Working Group
    - i. Immediate attention needs to be focused on recruitment and retention, especially daytime available firefighters.
    - ii. Effort should be placed on getting many into the testing phase and on-board prior to the start of the next Firefighter I program in late fall/winter 2020.
    - iii. Assess and evaluate organizational changes that will need to occur with the recruitment of daytime only responders that live outside of the response area, but can respond and lend aid during the day.
      1. Training times and attendance opportunities.
      2. Response requirements for good standing as an employee and Relief Association credit.
2. Capital Improvement Considerations
  - a. Assess 10-year capital improvement outlay
    - i. Turnout gear in 2021-2023: High Priority
    - ii. Radios in 2021-2023: High Priority
3. Operational Considerations
  - a. Improve and streamline annual testing requirements of hose testing, ground ladder testing, SCBA pack and bottle testing, and pump capacity.
  - b. Organizational development, structure, and leadership development.
  - c. Continue to upgrade training involvement, participation, and practicality to better meet the needs and expectations of the firefighters.

**City of Falcon Heights**

Capital Improvement Plan: **Fire Vehicle & Equipment Fund**

**Appendix A**

**Expenditure Detail**

Key	Description	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	
V	Engine 753	\$ -	\$ -	\$ -	\$ -	\$ 550,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 550,000
V	Engine 752	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	-
V	Ladder 757	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	-
V	Utility 755	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 45,000	\$ -	\$ -	45,000
E	Exercise room-fitness equipment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	-
E	Self contained breathing apparatus	\$ -	\$ -	\$ -	\$ -	\$ 130,000	\$ -	\$ -	\$ -	\$ -	\$ -	130,000
E	Ventilation fans	\$ -	\$ -	\$ 800	\$ -	\$ -	\$ 800	\$ -	\$ -	\$ -	\$ 800	2,400
E	Power equipment	\$ -	\$ -	\$ -	\$ 2,500	\$ -	\$ -	\$ -	\$ -	\$ 2,500	\$ -	5,000
E	Personal Protective Equipment-gear-boots-helmets	\$ 15,000	\$ 15,000	\$ 15,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	45,000
E	Exhaust system equipment	\$ -	\$ -	\$ -	\$ -	\$ 2,000	\$ -	\$ -	\$ -	\$ -	\$ 2,000	4,000
E	Medical bags and O2 bags	\$ -	\$ -	\$ 1,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,000	\$ -	2,000
E	Training equipment	\$ -	\$ -	\$ -	\$ 1,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	1,000
E	Camera to assist with rescue/firefighting	\$ 5,500	\$ -	\$ 5,500	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,500	\$ -	16,500
E	Portable radios- 3 per year replacement	\$ 45,000	\$ 45,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 13,800	\$ 13,800	117,600
	Mobile radios 1 per year	\$ 5,775	\$ 5,775	\$ 5,775	\$ 5,775	\$ 5,775	\$ -	\$ -	\$ -	\$ -	\$ -	28,875
E	Firefighting Equipment	\$ -	\$ 800	\$ -	\$ -	\$ 800	\$ -	\$ -	\$ 800	\$ -	\$ -	2,400
E	Response to water related emergencies	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	-
E	Apparatus Based IT Infrastructure	\$ 5,000	\$ -	\$ -	\$ -	\$ 5,000	\$ -	\$ -	\$ -	\$ 5,000	\$ -	15,000
E	Air monitoring equipment	\$ -	\$ 800	\$ -	\$ -	\$ 800	\$ -	\$ -	\$ 800	\$ -	\$ -	2,400
E	Rescue equipment	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 35,000	\$ -	\$ -	\$ -	35,000
E	Off-site paging equipment	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	\$ 800	8,000
E	Scene lighting	\$ -	\$ -	\$ -	\$ 400	\$ -	\$ -	\$ -	\$ 400	\$ -	\$ -	800
E	Hose	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	\$ 1,500	15,000
E	Ladders	\$ 5,000	\$ -	\$ -	\$ 5,000	\$ -	\$ -	\$ -	\$ 5,000	\$ -	\$ -	15,000
E	Nozzles	\$ -	\$ 3,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 3,000	6,000
F	Fire admin- office furniture	\$ -	\$ -	\$ -	\$ -	\$ 500	\$ -	\$ -	\$ -	\$ 500	\$ -	1,000
F	Training room tables & chairs	\$ -	\$ -	\$ 800	\$ -	\$ -	\$ -	\$ 800	\$ -	\$ -	\$ -	1,600
F	Day room furniture / TV	\$ -	\$ 2,000	\$ -	\$ -	\$ 2,000	\$ -	\$ -	\$ -	\$ 2,000	\$ -	6,000
F	Kitchen appliances	\$ -	\$ -	\$ -	\$ -	\$ 1,000	\$ -	\$ -	\$ -	\$ -	\$ 1,000	2,000
F	Kitchen table & chairs	\$ -	\$ 500	\$ -	\$ 500	\$ -	\$ -	\$ 500	\$ -	\$ -	\$ -	1,500
F	Computer equipment /printers office / training	\$ -	\$ 500	\$ -	\$ -	\$ -	\$ -	\$ 500	\$ -	\$ -	\$ -	1,000
F	AV equipment	\$ -	\$ -	\$ -	\$ -	\$ 500	\$ -	\$ -	\$ -	\$ -	\$ -	500
F	Washer & dryer	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 6,000	\$ -	\$ -	\$ -	6,000
F	Station Painting	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	-
F	Concrete repair /replacement	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	-
F	Bay lighting	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	-
F	SCBA compressor	\$ -	\$ -	\$ -	\$ -	\$ 30,000	\$ -	\$ -	\$ -	\$ -	\$ -	30,000
F	Carpet	\$ -	\$ 2,500	\$ -	\$ -	\$ -	\$ 2,500	\$ -	\$ -	\$ -	\$ 2,500	-
F	Overhead door replacement / openers	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	-
		\$ 83,575	\$ 78,175	\$ 31,175	\$ 17,475	\$ 730,675	\$ 5,600	\$ 45,100	\$ 54,300	\$ 32,600	\$ 25,400	\$ 1,104,075



# FALCON HEIGHTS FIRE DEPARTMENT

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2077 W. LARPELLE AVENUE FALCON HEIGHTS, MN 55113-5594 PHONE (651) 792-7635 FAX (651) 792-7610

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## **Job Summary:**

The Captain serves as a mid-level supervisor in the Fire Department. This position is paid on call, and assists the Chief Staff in providing leadership to the Fire Department staff and helps ensure the overall goals and objectives of the Fire Department are met.

The Captain is responsible for several areas within the Fire Department, including, but not limited to, fire apparatus, equipment, and personnel involved in the extinguishment, suppression, and prevention of fires. This position is responsible for the leadership and mentoring of firefighters and the proper maintenance of apparatus and equipment in accordance with standing orders and department standards. The primary duties include supervising firefighters performing fire prevention, fire suppression, training, public education, hazardous materials incident mitigation, rescue and emergency medical services to citizens and is responsible for helping to assure compliance with all legislative, judicial and administrative policy and procedures. At an emergency, unless working under a Chief Officer, the Captain is responsible for incident command and abatement of the emergency, including entering a burning building with the fire crew.

## **Scope of Responsibility:**

The Captain under direction of the Chief Staff is responsible for performing firefighting duties and supervising a variety of staff functions requiring administrative abilities. The Captain is assigned a direct area of administrative responsibility and is responsible for supervising firefighting personnel on the scenes of emergencies. Within an assigned area, a Captain could supervise 6-10 personnel.

The Captain is responsible in coordination with the Chief Staff for conducting training. While subject to the requirements of written orders, standards, and regulations as well as verbal directions of a Chief Officer, the Captain exercises great independence of judgment and action while in command at fires and other emergencies.

## **Essential Duties and Responsibilities:**

1. Using knowledge of the scope of services provided by the fire department and personal leadership skills the Captain communicates with the Chief's Staff to evaluate and report on the effectiveness of priorities and suggests new activities of the fire department.
2. Represents the City in the department's dealings with mutual aid departments and other government agencies in a manner that conveys a positive image of city government and that fosters cooperation and support.
3. Serves as a front-line supervisor in the technical operations of the Fire Department and is responsible for compliance with all legal and financial requirements. Ensures that Fire

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# FALCON HEIGHTS FIRE DEPARTMENT

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- Department staff under their direction follows appropriate procedures and complies with City policies and general government requirements.
4. Oversee the cleaning of quarters, equipment, and apparatus.
  5. Organizes duties and responsibilities including fire and EMS training.
  6. Compile and keep varied records, incident reports, and payroll documents as required.
  7. Perform related work as required.
  8. Directs the enforcement of all City codes and ordinances in a manner that protects and safeguards the welfare of the public and enhances quality of life in the City.

## **Knowledge, Skills, & Abilities:**

- Thorough knowledge of the operation and maintenance of all apparatus, and equipment and methods used in combating, extinguishing and preventing fires, as well emergency medical care.
- Thorough knowledge of rules and regulations governing the fire department, standards, and protocols of the department
- A knowledge of all federal state and local laws related to the activities of the fire department.
- Thorough knowledge of the principles and practices involved in training personnel.
- Ability to react quickly and remain calm under duress and strain.
- Ability to lead firefighters, effectively, maintain discipline, promote harmony, exercise sound judgment and cooperate with other officials.
- Ability to prepare clear and concise reports.
- Possess strong leadership, problem solving and interpersonal relationship skills including the ability to maintain effective working relationships with co-workers, supervisors, contractors, and the public; and can maintain confidentiality regarding investigations and inspections.
- Is able to regularly respond to emergency calls within established departmental time periods.
- Has ability and desire to project a professional image through knowledge of job, positive attitude, and accurate and timely completion of work.

## **Minimum Qualifications:**

Minimum job requirements are specialized training beyond high school of one year or less and at least 4 years of related experience. Meets all of the qualifications for the Firefighter plus meets or exceeds all recommended requirements for NFPA fire officer I (1021) and has some incident command training. *Must maintain a maximum response time to assigned fire station as defined in department policy.*

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# FALCON HEIGHTS FIRE DEPARTMENT

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## **Physical Demands & Working Conditions:**

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

A small portion of the work performed by the Captain is administrative in nature. Most work requires the Captain to meet and perform the requirements of a firefighter. Thus, the Captain may be required to: spend excessive time outside exposed to the elements; tolerate extreme fluctuations in temperature while performing firefighting duties; perform physically demanding work in hot (up to 400 degree Fahrenheit), humid (up to 100 %) atmospheres while wearing equipment that significantly impairs body-cooling mechanisms; experience frequent transition from hot to cold and from humid to dry atmospheres; work in wet, icy, muddy areas, and uneven terrain; perform a variety of tasks on slippery, hazardous surfaces such as on roof tops or from ladders; work in areas where sustaining traumatic or thermal injuries is possible; face exposure to carcinogenic dusts such as asbestos, toxic substances such as hydrogen cyanide, corrosives, carbon monoxide, or organic solvents either through inhalation or skin contact; face exposure to infectious biological agents such as hepatitis B or HIV; wear personal protective equipment that weighs approximately 50 pounds while performing firefighting tasks; perform physically demanding work while wearing positive pressure breathing equipment with resistance to exhalation and a flow rate specified by current SCBA manufacture; perform complex tasks during life-threatening emergencies; work for long periods of time, requiring sustained physical activity and intense concentration; make decisions that could have life or death consequences for employees and civilians under difficult and stressful conditions with limited information during emergency conditions; be exposed to grotesque sights and smells associated with major trauma and burn victims; make rapid transitions from rest to near maximal exertion without warm-up periods; operate in environments of high noise, poor visibility, limited mobility, at heights, and in enclosed or confined spaces; use manual and power tools in the performance of duties; rely on senses of sight, hearing, smell, and touch to help determine the nature of the emergency, maintain personal safety, and make critical decisions in a confused, chaotic, and potentially life-threatening environment through-out the duration of operation; encounter smoke filled environments, and a variety of physical hazards, damaged structures, moving mechanical equipment, electrical equipment, radiant energy, and possible exposure to explosives; meet the physical requirements outlined in NFPA 1582 (Medical requirements for fire fighters); and perform the tasks outlined in NFPA 1001 (Fire fighter professional qualifications).

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# FALCON HEIGHTS FIRE DEPARTMENT

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## **Job Summary:**

To protect life and property by performing fire suppression, hazardous materials incident mitigation, and rescue services. Maintains fire equipment, apparatus and facilities, participates in training, and carries out other duties as required. Works independently under readily available supervision to ensure the overall goals and objectives of the Fire Department are met. Carries a pager and responds to emergency calls as required by department policy.

## **Scope of Responsibility:**

The Firefighter's primary scope is the performance of fire suppression and rescue. A Firefighter may, on occasion, be assigned limited administrative responsibility and, on a limited basis, may mentor and assist in training less experienced firefighting personnel. Performs basic troubleshooting and decision making within established parameters that has limited financial impact, while working under direct supervision.

## **Essential Duties and Responsibilities:**

1. Performs firefighting activities including driving fire apparatus, operating pumps and related equipment, laying hose and performing fire suppression, containment, ventilation and extinguishing tasks.
2. May take a limited leadership role during calls for service, as assigned by a supervisor.
3. Serves as a representative of the City, performing duties in a courteous and professional manner that conveys a positive image of city government and that fosters cooperation and support with peers, superiors, citizens and other agencies.
4. Makes suggestions and participates in Fire Department training, operations, and initiatives as assigned.
5. Perform other related duties as apparent or assigned.



# FALCON HEIGHTS FIRE DEPARTMENT

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2077 W. LARPELLE AVENUE FALCON HEIGHTS, MN 55113-5594 PHONE (651) 792-7635 FAX (651) 792-7610

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## **Minimum Qualifications:**

Minimum job requirements include specialized training beyond high school that can be obtained in one year or less and six months or less of related experience, or equivalent. Key characteristics are knowledge of government and fire/rescue services, leadership, problem solving and interpersonal relationship skills. Must successfully pass City administered initial and periodic tests, which may include: physical agility test, physical examination, stress test, drug screen, pulmonary function test, and psychological evaluation. Must possess minimum certification equal to the State of Minnesota's equivalent for:

1. Firefighter I
2. Firefighter II
3. Hazardous Materials Operations
4. Emergency Medical Responder (EMR)

Must possess valid Minnesota driver's license and be insurable. *Must maintain a maximum response time to assigned fire station as defined in department policy.*

## **Physical Demands & Working Conditions:**

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. While performing the duties of this job, the employee regularly works in outside weather conditions. The employee occasionally works near moving mechanical parts and in high, precarious places or confined spaces, and is occasionally exposed to blood borne pathogens, wet and or humid conditions, fumes or airborne particles, toxic or caustic chemicals, risk of electrical shock and vibration. . Exposure to multiple disagreeable elements of at least three or more of which are intense occurs up to 15% of the time.

The noise level in the work environment is usually moderate, except during certain firefighting activities when noise levels may be loud.

The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position.

The Firefighter may be required to: spend excessive time outside exposed to the elements; tolerate extreme fluctuations in temperature while performing firefighting duties; perform physically demanding work in hot (up to 400 degree Fahrenheit), humid (up to 100 %) atmospheres while wearing equipment that significantly impairs body-cooling mechanisms; experience frequent

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# FALCON HEIGHTS FIRE DEPARTMENT

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transition from hot to cold and from humid to dry atmospheres; work in wet, icy, muddy areas, and uneven terrain; perform a variety of tasks on slippery, hazardous surfaces such as on roof tops or from ladders; work in areas where sustaining traumatic or thermal injuries is possible; face exposure to face exposure to smoke, noise and/or vibration exceeding 80 decibels (constant or intermittent) which may cause marked distraction or possible hearing loss, carcinogenic dusts such as asbestos, toxic substances such as hydrogen cyanide, corrosives, carbon monoxide, or organic solvents either through inhalation or skin contact; face exposure to infectious biological agents such as hepatitis B or HIV; wear personal protective equipment that weighs approximately 50 pounds while performing firefighting tasks; perform physically demanding work while wearing positive pressure breathing equipment with resistance to exhalation and a flow rate specified by current SCBA manufacture; perform complex tasks during life-threatening emergencies; work for long periods of time, requiring sustained physical activity and intense concentration; make decisions that could have life or death consequences for employees and civilians under difficult and stressful conditions with limited information during emergency conditions; be exposed to grotesque sights and smells associated with major trauma and burn victims; make rapid transitions from rest to near maximal exertion without warm-up periods; operate in environments of high noise, poor visibility, limited mobility, at heights, and in enclosed or confined spaces; use manual and power tools in the performance of duties; rely on senses of sight, hearing, smell, and touch to help determine the nature of the emergency, maintain personal safety, and make critical decisions in a confused, chaotic, and potentially life-threatening environment through-out the duration of operation; encounter smoke filled environments, and a variety of physical hazards, damaged structures, moving mechanical equipment, electrical equipment, radiant energy, and possible exposure to explosives; meet the physical requirements outlined in NFPA 1582 (Medical requirements for fire fighters); and perform the tasks outlined in NFPA 1001 (Fire fighter professional qualifications).

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# FALCON HEIGHTS FIRE DEPARTMENT

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## Incidents

Incident numbers created: 121  
Dispatched incidents: 112  
City receiving response: Falcon Heights- 60-54% Lauderdale-52-46%  
Number of day-time incidents (0700-1700) 56- 50%  
Number of non-daytime incidents (1700-0700) 56- 50%  
Number of times "unable to respond" 3 times - 2.7%  
Number of times Chief or Captain first to arrive 30- 27%  
Number of times engine or ladder first to arrive - 82- 73%  
Number of times dispatched and canceled prior to arrival: 17  
Average over-all response time: (Captain /Chief): 8 minutes 49 seconds  
Average response for supersession unit (engine or ladder): 9 minutes 54 seconds

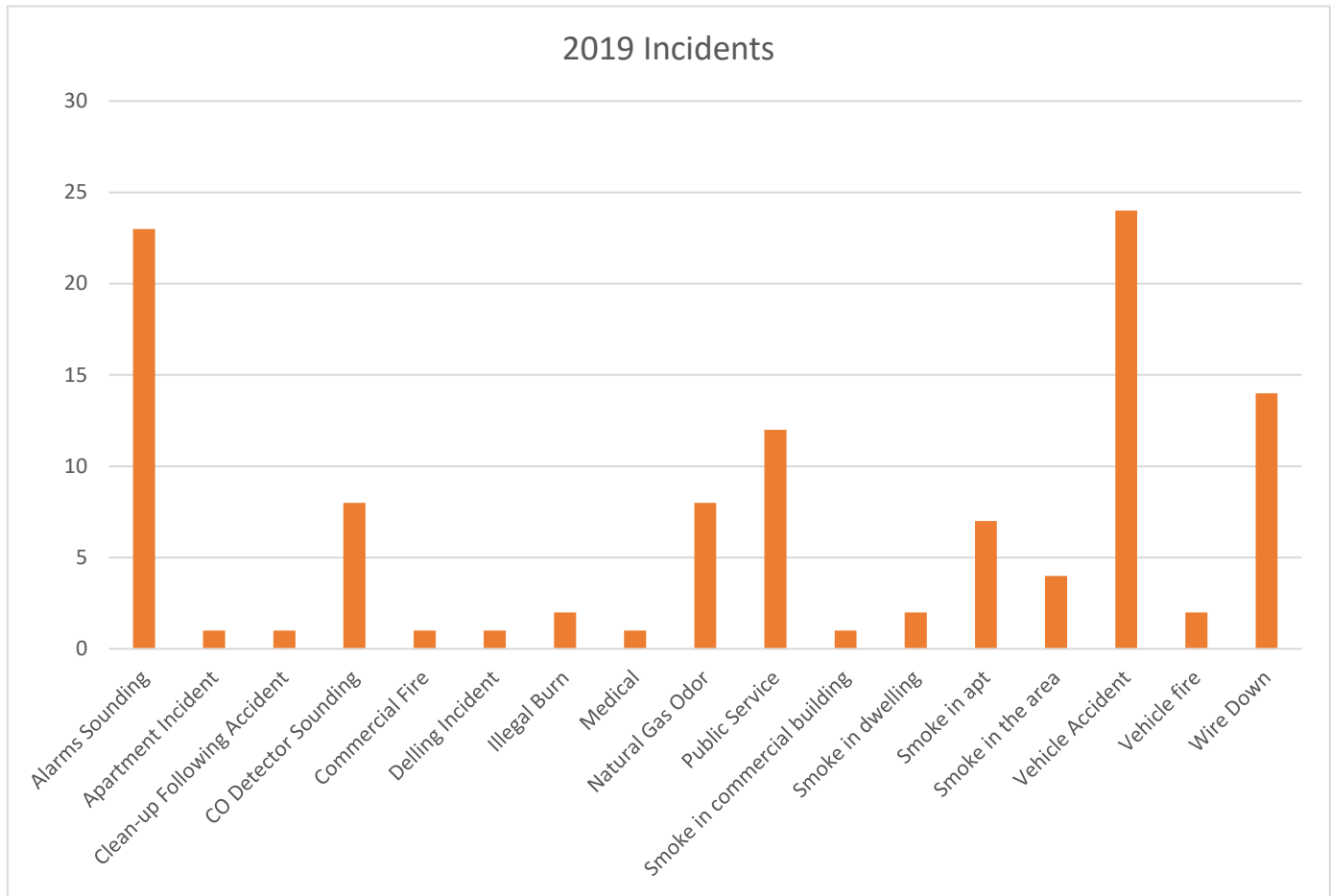
## Call types:

Alarms sounding: 23  
Apartment Incident: 1  
Clean-up following an accident: 1  
CO detector sounding: 8  
Commercial fire: 1  
Dwelling incident: 1  
Illegal burn: 2  
Medical: 1  
Natural gas odor: 8  
Public service: 12  
Smoke in a commercial building: 1  
Smoke in a dwelling: 2  
Smoke in an apartment: 7  
Smoke in the area: 4  
Vehicle Accident: 24  
Vehicle fire: 2  
Wire down: 14



# FALCON HEIGHTS FIRE DEPARTMENT

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HOME OF THE MINNESOTA STATE FAIR AND THE U OF M ST. PAUL



**PROFESSIONAL SERVICES AGREEMENT  
FOR  
FIRE SERVICE ADMINISTRATIVE DIRECTION AND COMMAND  
SERVICES**

This Agreement is made by and between the City of Roseville, a Minnesota municipal corporation (“Roseville”), and the City of Falcon Heights, a Minnesota municipal corporation (“Falcon Heights”), as of the \_\_\_\_ day of \_\_\_\_\_, 2019.

WHEREAS, the City of Falcon Heights possesses its own Fire Department;

WHEREAS, the City of Lauderdale contracts with Falcon Heights to provide fire service operations;

WHEREAS, Falcon Heights desires to contract with the City of Roseville to provide fire service administrative direction and command services over its fire department; and,

WHEREAS, the parties desire to memorialize in writing their respective obligations under such contractual relationship.

NOW, THEREFORE, intending to be bound by the consideration and obligations contained herein, the sufficiency of which is expressly acknowledged, the parties hereby agree to the following Agreement:

1. **Scope of Work.**

Roseville agrees to provide the professional services described in Exhibit “A” attached hereto (“Work”) and the audit described in Exhibit “B” attached hereto (“Audit”) in consideration for the compensation set forth in Provision 3 below.

2. **Term.**

The term of this Agreement shall be from \_\_\_\_\_, 2019, through \_\_\_\_\_, 2020, the date of signature by the parties notwithstanding. The parties may extend the term of this Agreement by mutual written consent of all parties.

3. **Compensation for Services.**

Falcon Heights agrees to pay the City of Roseville a total compensation of \$40,000.00 for the initial term of this Agreement. Roseville shall submit to Falcon Heights a quarterly written invoice for \$10,000.00, which shall be paid in the same manner as other claims made to the City of Falcon Heights.

4. **Termination.**

This Agreement may be terminated at any time by any party, with or without cause, by delivering to the all other parties a written notice at least sixty (60) days prior to the date of such termination. The date of termination shall be stated in the notice. Upon termination by any party, Roseville shall be paid for services rendered through and until the date of termination.

5. **Assignment.**

No party may assign this Agreement, nor its rights and/or obligations hereunder, without the prior written consent of all other parties.

6. **Waiver.**

Any waiver by any party of a breach of any provisions of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement or either parties' ability to enforce a subsequent breach.

7. **Workers' Compensation**

Each party shall be responsible for injuries or death of its own personnel. Each party will maintain workers' compensation insurance or self-insurance coverage, covering its own personnel while they are performing services pursuant to this Agreement. Each party waives the right to sue the other party for any workers' compensation benefits paid to its own employees or volunteer or their dependents, even if the injuries were caused wholly or partially by the negligence of the other Party or its officers, employees, or volunteers.

8. **Damage to Equipment**

Each party shall be responsible for damages to or loss of its own equipment. Each party waives the right to sue the other Party for any damages to or loss of its equipment, even if the damages or losses were caused wholly or partially by the negligence of the other Party or its officers, employees, or volunteers.

9. **Indemnification and Defense.**

Subject to the limitations and immunities in MN Statute Chapter 466, to the fullest extent permitted by law, Falcon Heights agrees to defend, indemnify and hold harmless Roseville and its mayor, council members, officers, agents, employees and representatives from and against all liability, claims, petitions, demands, damages, costs, judgments, losses and expenses of any kind and in any forum or process, including but not limited to attorney's fees and costs, arising out of or resulting from any actual or alleged negligent or wrongful act or omission of Roseville pertaining to the performance or failure to perform under this Agreement. This provision does not apply to willful, intentional, and tortious misconduct by Roseville personnel.

Subject to the limitations and immunities in MN Statute Chapter 466, to the fullest extent permitted by law, Falcon Heights agrees to defend, indemnify and hold harmless Roseville and its mayor, council members, officers, agents, employees and representatives from and against all liability, claims, petitions, demands, damages, costs, judgments, losses and expenses of any kind and in any forum or process, including but not limited to attorney's fees and costs, arising out of or resulting from any actions or omissions on the part of any officers, agents, employees and representatives of Falcon Heights and/or Lauderdale pertaining to the subject matter of this Agreement.

The parties agree that liability under this Agreement is controlled by Minnesota Statutes §471.58, subd. 1a, and that the total liability for the parties shall not exceed the limits on governmental liability for a single unit of government as specified in Minnesota Statutes §466.04, subd. 1(a). Nothing in this Agreement is intended to, nor shall be construed to, constitute a waiver of any liability limitations available to any party under Minnesota Statutes Chapter 466.

**10. Counterparts.**

This Agreement may be executed in multiple counterparts, each of which shall be considered an original.

**11. Governing Law; Venue.**

This Agreement shall be controlled by the laws of the State of Minnesota. Any legal action brought under this Agreement shall be venued in a court of competent jurisdiction located in Ramsey County, Minnesota.

**12. Severability.**

The provisions of this Agreement are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision shall not affect the remaining provisions of this Agreement.

**13. Notices.**

Any notice to be given by any party upon any other under this Agreement shall be properly given in writing either personally delivered or by e-mail or by U.S. mail to a party's City Manager or City Administrator as follows:

City of Roseville:

Patrick Trudgeon, City Manager  
[Pat.Trudgeon@cityofroseville.com](mailto:Pat.Trudgeon@cityofroseville.com)  
2660 Civic Center Drive  
Roseville, MN 55113

City of Falcon Heights:

Sack Thongvanh, City Administrator  
[Sack.Thongvanh@falconheights.org](mailto:Sack.Thongvanh@falconheights.org)  
2077 Larpenteur Avenue West  
Falcon Heights, MN 55113

The parties agree that delivering notices to the official successors of the above-named representatives shall be deemed sufficient under this Agreement.

Notices shall be deemed effective on the date of receipt if given personally, on the date of deposit in the U.S. mails if mailed, or on the date of delivery to an overnight courier if so delivered; provided, however, if notice is given by deposit in the U.S. mails or delivery to an overnight courier, the time for response to any notice by the other party shall commence to run one business day after the date of mailing or delivery to the courier. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified, 10 days prior to the effective date of such change

14. **Entire Agreement.**

Unless stated otherwise herein, the entire agreement of the parties is contained in this Agreement. This Agreement supersedes all prior oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by all parties.

**CITY OF ROSEVILLE**

Date: \_\_\_\_\_

\_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

\_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

\_\_\_\_\_  
Fire Chief

APPROVED AS TO FORM:

Date: \_\_\_\_\_

\_\_\_\_\_  
City Attorney



**CITY OF FALCON HEIGHTS**

Date: \_\_\_\_\_

\_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

\_\_\_\_\_  
City Administrator

APPROVED AS TO FORM:

Date: \_\_\_\_\_

\_\_\_\_\_  
City Attorney

## **EXHIBIT A (“Work”)**

### **Fire Service Administrative Direction and Command services**

#### **Scope of Services and General Program Structural Outline**

This is not a contract for fire suppression or medical related emergency incident response. Roseville Fire will respond to predetermined incident types, or requests based on pre-existing automatic/mutual/closest unit agreements in place.

“Roseville Fire Administration” personnel consist of a Fire Chief, Assistant Fire Chief, three Battalion Chiefs and one administrative coordinator.

The city of Roseville agrees to provide the City of Falcon Heights the personnel necessary to provide the below “Scope of Services;” the personnel will be available 24 hours per day.

Overall supervision and management of all emergency and non-emergency day-to-day department operations and tasks.

The city of Falcon Heights understands and acknowledges that Roseville Fire Administration is under the direction of the Falcon Heights City Administrator, and not subject to supervision or direction of existing Falcon Heights Fire Department leadership or personnel.

Incident command and resource support will be given to Falcon Heights Fire Department for structure fires or major incident types, as previous auto & mutual aid agreements dictate, as well as when necessary as determined by Falcon Heights personnel, or Roseville Fire.

Control and coordination of operations budget for expenditure and purchase applications. This includes, but is not limited to, invoices, payroll, membership fees, etc.

Review and implementation of Standard Operating Guidelines (SOG) and Standard Operating Policies (SOP) to assure compliance with Local, State, Federal, NFPA, and best practices to assure for the safety of Firefighters and the community.

Provide a safe, courteous, professional, and consistent level of service for the department and community.

The Roseville Fire Administration will provide new contract audit, and recommendations report to the Falcon Heights City Administration and City Council within 120 days of execution of contract. The Roseville Fire Administration will have full permission and access to Falcon Heights Fire Department facilities and equipment.

The Roseville Fire Administration will have full access to all training and personnel records.

Roseville Fire Administration will provide to the City of Falcon Heights, Falcon Heights Fire Department, and Firefighters:

- Organizational management
- Fire, hazardous materials, rescue, and emergency medical services training
  - Perform the duties of training chief
- Personnel development
- Fleet and equipment management
- Firefighter OSHA and medical examination requirement management
- Personal protective equipment (PPE) management
- Fire investigation
- Perform recommendations on hiring, demotions, promotions, all personnel management decisions with approval of City Manager
- Management of fire station activities and space

Roseville Fire Administration will be reasonably available for department head-level meetings and events within the Falcon Heights organizational structure. Roseville Fire Administration will make reports to the City Administrator regularly, and City Council as requested.

Expanded scope/additional work: The City of Falcon Heights and the City of Roseville agree that at any time during the term of the contract either party may initiate discussions regarding the expansion of the scope of this contract to include expanded or additional services provided by the Roseville Fire Department.

## EXHIBIT B (“Audit”)

1. Training
  - a. Calendar Review and Planning
    - i. 2018
    - ii. 2019
    - iii. 2020
  - b. Hours of training for each topic
    - i. MBFTE/MFSCB Compliant?
    - ii. EMSRB/NREMT Compliant?
  - c. Personnel files
    - i. All of these items organized and compiled correctly
    - ii. Any outstanding personnel issues or discipline currently
  - d. 2020 calendar
    - i. Training
    - ii. Community Events
2. Leadership Structure
  - a. Leadership Review and Assessment
    - i. Promotions
    - ii. Demotions
3. The right people in the right places
  - a. Assessing daytime, nighttime, and weekend availability
4. Meetings & Trainings
  - a. Nights/Days/When/why, etc.
5. Dispatch Work
  - a. Response Plan Review
  - b. Phoenix G2 Update
  - c. Pager/Everbridge Review
6. Internal Communications
  - a. Website or a Firewire-type program?
  - b. Image Trend?
  - c. How do they communicate?
    - i. Email?
    - ii. Text?
7. Reports and Report Writing
  - a. Image Trend- What version and how does it operate?
  - b. Firehouse?

## EXHIBIT B (“Audit”)

8. Uniform Assessment
  - a. What needs to be addressed?
9. Gear, Helmet and PPE Assessment
  - a. NFPA compliant?
  - b. OSHA Compliant?
10. Annual Performance Checks and Inspections
  - a. SCBAs
  - b. Engine pump
  - c. Ladder
  - d. Hose testing
  - e. Equipment
    - i. Saws
    - ii. Fans
    - iii. Extinguishers
11. Annual Medical Examinations
  - a. What do they currently perform?
  - b. Who performs the medical examinations?
12. SOP/SOG
  - a. Full review of any/all SOGs
  - b. What needs to be cleaned up?
  - c. What is missing?
13. Personnel Assessments
  - a. Company officer review
  - b. Years of service, training, experience
    - i. Long-mid-term range assessment on retirement/transient employment
14. Officer Development
15. Inspections
  - a. Fire and Life Safety Inspections Completed?
  - b. Plan Review?
  - c. Pre-Plans for CAD?

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F. CONSENT AGENDA:

1. General Disbursements through: 5/20/20 \$61,511.21  
Payroll through: 5/15/20 \$19,772.83

Council Member Leehy, Approved 5-0

G: POLICY ITEMS:

1. Temporary Outdoor Customer Service Areas

Mayor Gustafson

As businesses begin to re-open, some services inside the building are going to be limited. For example, restaurants and bars can open for sit-down outdoor service beginning on June 1. Other businesses are offering curbside services. To better facilitate business operations and attempt to provide flexibility, staff have drafted a Resolution that allows businesses to use outdoor service areas temporarily.

The Resolution allows any business to use outdoor parking space for their operations, so long as the area is maintained and does not impede traffic or pedestrians. It also allows temporary signage as necessary. No formal permits or application would be necessary.

Establishments with a liquor license have specific areas where it may be consumed. Guidance from the League of Minnesota Cities is that if there is outdoor seating that is not currently covered by the liquor license, a modification should be made to the license. Any additional area must be "compact and contiguous" to the primary business area.

The provisions established in the Resolution will remain in place until the Local Peace Time Emergency is terminated or are superseded by other City Council action.

Council Member Wehyee

Point 2- States businesses must establish a traffic management plan- Do businesses have to present the plan to the City for approval? How will the City verify if a plan exists or not? How formal of a plan should be developed?

Mayor Gustafson

No city permits are required prior to doing it. If the City goes to see how they are implementing it, they should already have a plan in place. This is in regards to traffic flow in the additional seating area. The intent would be that the businesses have their plan sketched out.

Council Member Leehy

Clarifying Council Member Wehyee's question- Should businesses drop off a plan to City Hall prior to opening?

City Administrator Thongvanh

The plan should be submitted in advance.

Council Member Wehyee

Is it the expectation that the outdoor seating should only be operating during standard business hours?



City Administrator Thongvanh

Yes - should be during their hours of operation. Stout's has an existing outdoor patio. This would allow Stout's or any other Falcon Heights business to utilize their parking space for outdoor seating. Businesses that serve liquor would need approval prior to utilizing the outdoor seating.

Council Member Wehyee

Point 3- Are there a maximum number of signs that would be sanctioned?

City Administrator Thongvanh

We will work with the businesses on what will work best for them. The signs that are allocated would be multiplied by 2 and allow for a couple more. We are not sure business to business how many signs would be needed. It is best to work with each business individually.

Council Member Leehy

Item 1- Council Member Leehy highlighted "without the need for variance" or "no city permits required". This shows that businesses can expedite opening and have some level of normalcy.

Council Member Wehyee

Clarify point 2- Have it clear that businesses need to submit a plan in advance. Will be made in the motion.

Council Member Andrews

Clarification needed for "drive-up"-Does this mean that Dino's can open their drive-through?

City Administrator Thongvanh

This means "curbside pick-up" or ordering inside, not drive-through.

Council Member Wehyee, Approved 5-0

2. Resolution Denouncing Hate Speech-Acts

City Administrator Thongvanh

The City of Falcon Heights is committed to cultivating a caring community and continues to value diversity. We the City, pride ourselves in our increasingly diverse population and value each and every one that lives in our community, but also the residents of the surrounding communities.

The resolution is intended to highlight our commitment with the main points:

- I. Affirm its commitment to denouncing all hate motivated actions and speech.
- II. Reaffirm its commitment to fostering a safe and welcoming community for all of its residents and visitors.
- III. Asserts its adherence to practices of human decency and respect in all conduct and interactions within the city's limits.

This was presented by Peter Lindstrom and Mark Miazga. The Community Engagement Commission reviewed the resolution and made changes. This then went to the workshop to discuss further changes. After the workshop it went back to Community Engagement Commission and is now at the meeting to be approved.

Council Member Leehy

Appreciative of the work that has been done on this resolution. It shows the continued progress of respect and care in our City.

Council Member Wehyee

This resolution comes at a time of heightened sensitivity and political discourse. This resolution shows our commitment to a caring community. It is one of the many efforts that the City has done to show the community they are valued.

Mayor Gustafson

The resolution goes beyond today's politics and shows the values of our community.

Council Member Wehyee, Approved 5-0

3. Request to Rescind Interim Ordinance 20-04 Prohibiting the Cultivation of Gardens in the Front Yards

City Administrator Thongvanh

I have received a formal request from Council Member Mark Miazga to rescind the interim ordinance prohibiting the cultivation of gardens in the front yard back.

In late February, a Falcon Heights property owner posted on social media the possibility of turning their front yard into a vegetable garden, in collaboration with neighbors and sharing the produce amongst those who helped.

In early March, it was brought to the attention of the City that a property owner was considering installing a community garden in his front yard. The residents express their concerns on the scale of the project, the fact that there are "No Parking" on the road, safety of their neighbors, and how it will be regulated.

Throughout the discussion of native landscaping, vegetable gardens were not considered, and these plants would not fit the definitions approved in the code changes. Gardening is classified as a permitted accessory use in the R-1 zone (so long as no retail sale of products is conducted on the premise). City staff visually surveyed the residential areas of the city and noticed a few small vegetable gardens in front yards, often in raised beds.

During the May City Council Workshop, staff stated that when the City was considering native landscaping (at the request of one property owner), vegetable gardens were not brought up and not considered. After discussion, staff was directed to draft an interim ordinance prohibiting the cultivation of gardens in the front yard to allow for further research, analysis, and create a forum for public feedback.

On May 13, 2020 the City Council discussed and approved the Interim Ordinance prohibiting the cultivation of Gardens in Front Yards. **The adoption of the interim ordinance does allow for property owners that have had gardens in their front yard in the past to be grandfathered in and be allowed to continue.**

Council Member Miazga

The community has been very engaged on this topic. Most concerns came from everyday gardeners. The process that the ordinance will go through will be with the Environment and Planning Commission. Everyone will be able to provide input, similar to the native landscaping ordinance. We always strive to cultivate a caring community but I think in retrospect we made a mistake and think we should have voted for research and ordinance creation first without banning vegetable gardens.

Marlene Vernon-1885 Snelling Ave

Marlene has had a lot of excitement about growth and gardening this year. She is in support for the front yard garden. Edible gardens provide a lot to the community.

Mary Rogers-1427 California Ave

Mary is an associate professor at the U of M. She would like the council to rescind the ordinance. Many people are not able to cultivate in their backyards because of size or shade. Allowing front yard gardens can allow for neighbors to build relationships and they are important during the global pandemic.

Alison Phillips-1911 Snelling Ave

Alison thinks the ordinance should stay in place. The impacts of the front yard gardens include increased traffic, parking issues and auto accidents. There is also the issue of normalizing people in front yards during all hours of the day. Another concern is liability; will the homeowner's insurance cover other gardeners on the property?

Scott Wilson-1889 Snelling Ave

Scott thinks the ordinance should stay in place, and he is on the Planning Commission. The City should set guidelines for community gardens (limit, size, hours of operation, etc.). Neighbors do not support. There is a process and this was done similar to the native landscaping ordinance.

Julie Ebbesen-1889 Snelling Ave

Julie does not think the ordinance should be rescinded. The scale and promotion of this project is large. Neighbors are unsure of the short- and long-term ramifications. The City should research residential front yard vegetable gardens and the effect of community gardens on private property zoned as single family.

Jim Ballentine-1893 Snelling Ave

Jim thinks the interim ordinance should stay in place. The City should follow through with the process. Planning and Environment Commission should research and allow for input from the community.

Marva Ballentine-1893 Snelling Ave

Marva initially heard that the garden would include flowers only. Traffic, hours of operation and parking are some concerns.

Quentin Nguyen-1875 Snelling Ave

Quentin has stated that the intent of the garden was not to be a community garden. Quentin wants to use the garden to give back to the community. The purpose is for him to do all of the garden maintenance and to give the vegetables back to neighbors/community.

David Greenwood- Sanchez-1111 Argyle St. St. Paul

David wants the ordinance rescinded. David thinks the ordinance was passed with discrimination based on a social media post and limited community input.

Jessica Wahto-1865 Simpson St

Jessica thinks the ordinance should be rescinded. Jessica said that other neighbors did not receive letters about their front-yard gardens. Jessica believes the community should be allowed to share their gardens.

Ruth Marston-1920 Roselawn Ave

Ruth thinks the garden should be rescinded. The ordinance can prevent future Falcon Heights residents that would like to have a front yard garden.

John Larkin-1725 St. Mary St

John is chairman of the Planning Commission. The Commissions have a process. John thinks the process that is currently in place is best. The Commissions can do research and allow public feedback. The ordinance should be kept in place so process can be followed.

Nina Semmelroth-1888 Arona St

Nina was on the Environment Commission in the previous years. The resolution to the issue should be win-win. Nina has a garden in her front yard and thinks the ordinance should be rescinded.

Rolf Olson-1859 Simpson St

Rolf is a Pastor at Roseville Lutheran Church. Rolf appreciates that the ordinance allows front yard gardens to be grand-fathered in. Hopes there will be some agreement made on the ordinance.

Haudy Kazemi-1879 Tatum St

Haudy thinks the process should include community input. Concerns about traffic and plants species are already addressed by other regulations. Edible gardens should be allowed based on our community. The ordinance should be rescinded.

Kristina Schatz-1892 Arona St

The ordinance should be rescinded because edible gardens are important. All Falcon Heights residents should grow their own food sources.

Serena Jones-1445 Larpenteur Ave

Serena would like the ordinance rescinded. Serena has vegetables in her front yard because her backyard is shaded. She did not receive a letter.

Jim Kielsmeier-1892 Tatum St

Jim thinks there is the opportunity to rescind the ordinance and provide the community with the opportunity to provide their own input. In 2006 Jim was part of the Community Garden feasibility study. Jim has left copies of the garden study from 2006 for City staff to look through.

Colin Cureton-1270 Van Buren Ave, St. Paul

Colin has worked in local food policy development for a decade. Colin thinks the ordinance should be rescinded so front gardens can be allowed in the community.

Beth Mercer Taylor-2231 Folwell Ave

Beth is a former City Council Member (2007-2015) and Planning Commission member. Community is committed to sustainability and their gardens/doing what is right for others. Food supplies are threatened and people should be allowed to garden.

Gary Kwong-1700 Fry St

Gary thinks the ordinance should be rescinded. He does not think the City should prohibit the number of plants allowed in the front yard. An ordinance should be developed with community input.

Mark & Millie Ascerno- 1871 Tatum St (Letter)

No objection to a homeowner growing vegetables in their front yard as long as they follow garden practices. Gardener should practice weed management, timely harvest, limiting hours of operation, avoiding damage and regular clean-up. The City should seek expert gardening advice to build an ordinance that will be fair to the community.

April & Brian Anderson- 1523 Hoyt Ave (Letter)

The ordinance should be rescinded. April & Brian think it is important to have gardens in front yards because it shows youth the importance of gardening. Gardens have many social-economic benefits. The City should conduct further research.

Ari Bargil Institute for Justice (Miami, FL)- Letter

Ari is an attorney. The ordinance should be rescinded. The State of Minnesota has rights to allow property owners to utilize their property to grow and share food (Minnesota Constitution Statute 13). It is healthy and economical and cultivates a stronger community.

Pam Harris- 1865 Snelling Ave (Letter)

The garden is extensive and seems to be more like a business rather than residential use. A business type land use seems to be happening on the property. The Planning Commission of the City should work on the process of developing an ordinance. Ordinance should remain.

#### Les Everett- 1794 Tatum St (Letter)

The ordinance should be rescinded. Some people have shaded backyards or minimal space in their back yards. General guidelines should be set for all gardens. The native landscaping ordinance should be reviewed.

#### Council Member Miazga

Council Member Miazga appreciates the public input. At the beginning, mediation should have been sought with the neighbors. Planning and Environment Commission have a process of researching and providing feedback from the community.

#### Council Member Wehyee

The community of Falcon Heights has the commitment to fostering inclusion and diversity. The garden ordinance should benefit all in the community. The ordinance should be rescinded as it places too broad of restriction at a time when community gardens are needed. The majority of the community does not support the ordinance. Staff should continue to conduct research for possible guidelines.

#### Council Member Leehy

When creating gardens, it is important to abide by codes and our fellow neighbors. The current ordinance puts a pause on the situation and will provide the opportunity for research and guidelines so that everyone can benefit. There have been concerns of traffic and hours of operation (someone should not always be on watch of who will be at the garden). The expectation is that research and guidelines won't take up to a year but rather a number of months.

#### Council Member Andrews

Council Member Andrews likes the level of community response that was provided on this topic. We have a community that is caring and welcoming. A temporary ordinance puts the issue in a time frame that will allow community input in a variety of ways including the process that is used through the Environment and Planning Commission. Before rescinding the ordinance there needs to be a better plan of what is going to happen (guidelines).

#### Mayor Gustafson

When a new ordinance goes into effect it cannot go back and change what is already in place. The grand-fathered clause allows front yard gardens that were in place before the ordinance. The code needs clarification as to what we are going to do and allow. Commercial gardens are currently not allowed (currently in code).

#### City Administrator Thongvanh

Native landscaping had a process from the various Commissions and included community input. From the staff's perspective, we value everyone's perspective.

#### Council Member Wehyee

Why was Mr. Nguyen the only one to receive the letter in regards to the front yard garden versus others that had gardens?

Mayor Gustafson stated that the notification was sent out perhaps because there was a public statement that he was going to institute a large project in contrast to what the City was doing. The project had attention drawn to it.

City Administrator Thongvanh stated that the claims addressed by the City are complaint based. Someone makes a comment/concern and we address it.

Grand-fathered clause is a statute.

Council Member Miazga

If we did not receive any complaints or pass the ordinance would we be on solid footing of saying this is a violation?

Once the ordinance was passed it allowed for the letter to be sent.

City Administrator Thongvanh states this is debatable. Garden ordinance does not provide specifics.

Council Member Leehy

Interim ordinance is different from final ordinance?

City Administrator Thongvanh states this is correct. Final ordinance will provide feedback.

Council Member Miazga moved to rescind Ordinance 20-04, Motion fails 2-3

H. INFORMATION/ ANNOUNCEMENTS:

Council Member Wehyee

- May 16<sup>th</sup> was the CEC meeting. Commission talked about events and social distancing events.
- Philando Castile Peace Garden has begun.
- The loss of George Floyd is tragic and change needs to be made.

Council Member Miazga

- UCC concert played hymns on Memorial Day. There were about 45 people that showed up.
- The Community Park building is still in line for the bonding bill.
- The loss of George Floyd is tragic and change needs to be made.

Council Member Leehy

- Ramsey County's Commission for Criminal Justice is collecting organizations and information for people while having to social distance.
- Sheriff's Office COVID-team is starting to see an increase in callers who need assistance. Team can be contacted at 651-448-3874 or by email at [helpteam@co.ramsey.mn.us](mailto:helpteam@co.ramsey.mn.us).

Monday- Friday 8AM-8PM and Saturday-Sunday 10AM-4PM. They coordinate food donations or with tasks that need to be completed. Open to everyone in Ramsey County.

- The loss of George Floyd is tragic and change needs to be made.

Council Member Andrews

- The loss of George Floyd is tragic and change needs to be made. Community will need time to recover.

Mayor Gustafson

- The loss of George Floyd is tragic and change needs to be made. Every person should feel safe in their community.
- Fire Relief Association owns the pop machine in the Fire Department.
- Fire Department audit was completed by Roseville Fire Department (see May 6 workshop).
- City of Lauderdale agreed to fire services with the City of St. Paul.
- Planning Commission will meet June 2 via zoom.

City Administrator Thongvanh

- Next council meeting will have conduit bonding (public hearing), pavement management program.
- State fair is not happening.
- Street patching has happened over the last couple of weeks. Streets that have been prolonged will need to be reconstructed.
- Basketball court is still on the agenda.

I. COMMUNITY FORUM:

*Please limit comments to 3 minutes per person. Items brought before the Council will be referred for consideration. Council may ask questions for clarification, but no council action or discussion will be held on these items.*

J. ADJOURNMENT: The meeting adjourned at 10:30 p.m.

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Randy Gustafson, Mayor

Dated this 27th day of May, 2020

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Sack Thongvanh, City Administrator



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**The City That Soars!**

## REQUEST FOR COUNCIL ACTION

<b>Meeting Date</b>	June 10, 2020
<b>Agenda Item</b>	Public Hearing E1
<b>Attachment</b>	Documents
<b>Submitted By</b>	Sack Thongvanh, City Administrator

<b>Item</b>	Resolution Authorizing the Issuance of Revenue Bonds to Finance and Refinance the Costs of Senior Housing Project for Hampton Properties of Ramsey, LLC and Other
<b>Description</b>	<p>The City received request from Hampton Properties of Ramsey, LLC to finance, in part, the acquisition, construction, and equipping of a facility through issuing conduit bonds. The project will include a 32 unit high-acuity assisted living and memory care senior housing facility the City of Ramsey and known as Suite Living Senior Care of Ramsey.</p> <p>The City of Falcon Heights may issue up to \$10,000,000 of its own 501(c) (3) bonds each year as bank-qualified bonds. Under the federal tax law, alternative issuers are permitted, but a “nexus” between the jurisdictional city and the issuers is preferred.</p> <p>The total requested from the City for conduit bonds not to exceed \$8,500,000.</p> <p>The Bonds will not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the Issuers, except the interests of the Issuers in payments to be made by the Borrower under the Loan Agreements. The Bonds are not moral obligations on the part of the State or its political subdivisions, including the Issuers, and the Bonds will not constitute a debt of the Issuers within the meaning of any constitutional or statutory limitation.</p>
<b>Budget Impact</b>	The City will receive 1/2 of 1% of the principal amount for the issuance of the conduit bond.
<b>Attachment</b>	<ul style="list-style-type: none"> <li>• Taft Letters</li> <li>• Resolution 20-25 Authorizing the Issuance of Revenue Bonds to Finance and Refinance the Cost of a Senior Housing Project for Hampton Properties of Ramsey, LLC and Other</li> <li>• Trust Indenture</li> <li>• Joint Powers Agreement</li> <li>• Loan Agreement</li> <li>• Purchase Contract</li> </ul>

<b>Action(s) Requested</b>	Motion to approve attached resolution authorizing the Issuance of Revenue Bonds to Finance and Refinance the Cost of a Senior Housing Project for Hampton Properties of Ramsey, LLC and Other.
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**Catherine J. Courtney**  
(612) 977-8765  
ccourtney@taftlaw.com

April 16, 2020

Hampton Properties of Ramsey, LLC  
Attn: Tim Eppler  
3005 Douglas Blvd., Suite 200  
Roseville, CA 95661

City of Falcon Heights  
Attn: Sack Thongvanh  
2077 Larpenteur Avenue West  
Falcon Heights, MN 55113-5551

**Re: Senior Housing Revenue Bonds (Suite Living of Ramsey Project), Series 2020**

Dear Gentlemen:

We have been asked to serve as Bond Counsel in connection with the proposed issuance of senior housing revenue bonds by the City of Falcon Heights, Minnesota (the "Issuer"). The Bonds will be purchased from the Issuer by Zions Bank (the "Underwriter") pursuant to a Bond Purchase Agreement. The proceeds of the Bonds will be loaned to Hampton Properties of Ramsey, LLC, a Minnesota limited liability company (the "Borrower"), the sole member of which is Suburban Housing and Community Services Corporation, a California nonprofit, public benefit corporation and a 501(c)(3) organization (the "Sole Member"), and used to pay certain costs to be incurred by the Borrower in connection with the acquisition and construction of a 32-unit assisted living and memory care facility located in Ramsey, Minnesota (the "Project").

In performing our services as Bond Counsel, our client will be the Issuer. Our principal responsibility as Bond Counsel is to provide the Issuer, the Borrower and the Underwriter an expert opinion (the "Bond Opinion"), upon which each of them and the holder of the Bonds may rely, as to (i) the validity and enforceability of the Bonds and the Issuer's obligations under the financing documents, and (ii) exemption of interest on the Bonds from federal income taxes. We will also assume principal responsibility for drafting the financing documents and any security documents agreed to by the parties. You are also in agreement that we will not be acting as a municipal advisor in regards to this transaction.

The Bond Opinion will be executed and delivered by us in written form on the date the Bonds are purchased and will be based on facts and law existing as of that date. Upon delivery of the Bond Opinion, our responsibilities as Bond Counsel will be concluded with respect to this financing.

In rendering the Bond Opinion, we will rely upon representations of the Issuer, the Borrower, and the Underwriter set forth in the financing documents, the certified proceedings, and other certifications of public officials, officials of the Borrower and other persons (including

Hampton Properties of Ramsey, LLC  
City of Falcon Heights  
April 16, 2020  
Page 2

certifications as to the use of Bond proceeds and various tax matters) without undertaking to verify the same by independent investigation. As Bond Counsel, we do not review the financial condition of the Borrower or the financial feasibility of the financing, and we will express no opinion relating to the foregoing. We do not expect to give any opinion with respect to the Borrower's participation in the financing or the status of title or the priority of any mortgage lien or security interest securing the Bonds. As to these and other matters the parties will be relying upon the opinion to be given by counsel for the Borrower or upon a policy of title insurance.

We understand that the Borrower will be responsible for payment of our fees and disbursements as Bond Counsel. Our fee will be based upon our current understanding of the terms, structure, size and schedule of the financing represented by the Bonds and the time we anticipate devoting to the financing, plus out-of-pocket disbursements. Such fee may vary: (i) if the principal amount of Bonds actually issued differs significantly from the amount currently anticipated, (ii) if the manner in which the Bonds are marketed (private placement, public offering, etc.) changes, (iii) if material changes in the structure of the financing occur, or (iv) if unusual or unforeseen circumstances arise which require a significant increase in our time or responsibility. If the Bonds are in fact issued we will submit our statements for services and disbursements to the Borrower at or promptly after the closing.

If the transaction is cancelled before closing for whatever reason, we would then submit our bill to the Borrower for the time expended and disbursements made by us to the date of termination at our standard hourly rates.

If the foregoing omits or misstates any item, please contact me. Otherwise, we will assume our participation as Bond Counsel and the scope of our engagement as Bond Counsel are acceptable to you. We are pleased to be working on this matter and look forward to bringing it to a successful conclusion.

Very truly yours,



Catherine J. Courtney

CJC/pmr  
cc: Susan Winshall



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**Catherine J. Courtney**  
(612) 977-8765  
ccourtney@taftlaw.com

April 23, 2020

**BY E-MAIL**

Sack Thongvanh  
City Administrator  
City of Falcon Heights  
2077 Larpenteur Ave. W  
Falcon Heights, MN 55113-5551

**Re: Issuance of Conduit Revenue Bonds by the City of Falcon Heights for Suite Living Senior Care of Ramsey**

Dear Mr. Thongvanh:

This letter is provided at your request and is to follow-up on correspondence that we have had regarding the City of Falcon Heights (“Falcon Heights” or the “Issuer”) acting as issuer of 501(c)(3) bonds (the “Bonds”) at the request of Hampton Properties of Ramsey, LLC, a Minnesota limited liability company (the “Borrower”), whose sole member is Suburban Housing and Community Services Corporation, a California nonprofit corporation and 501(c)(3) organization. The City of Ramsey (“Ramsey”) will act as the host jurisdiction. Taft Stettinius & Hollister LLP (formerly known as Briggs and Morgan P.A.) will act as bond counsel on the issuance of such Bonds. It is anticipated that Zions Bank, N.A. will be the underwriter for the Bonds.

The Bonds will be used for the purpose of financing and refinancing the acquisition, construction, and equipping of a 32-unit high-acuity assisted living and memory care senior housing facility currently under in the City of Ramsey and known as Suite Living Senior Care of Ramsey (the “Project”).

State and federal laws allow local government units to enter into arrangements to issue bonds and loan the proceeds to nonprofit corporations to finance or refinance capital expenditures. This assistance reduces borrowing costs for nonprofit corporations and enables them to provide their services more cost effectively. It is a fairly common means of obtaining necessary financing for all nonprofit entities, including senior housing and health care facilities.

To accomplish this purpose, the Issuer will enter into a Loan Agreement with the Borrower under which the Borrower will agree to pay all principal and interest on the Bonds. The Issuer will assign all of their rights to payments under the Loan Agreement to Wilmington Bank, N.A. as the trustee (the “Trustee”) under an Indenture of Trust between the Issuer and the Trustee. The

Issuer is merely a conduit and the money and obligations flow only between the Trustee and the Borrower.

The Bonds and the resolutions adopted by the Issuer will recite that the Bonds, if and when issued, will not be payable from or charged upon any of the Issuer's funds, other than the revenues received under the Loan Agreement and pledged to the payment of the Bonds, and the Issuer is not subject to any liability on the Bonds. No holder of the Bonds will ever have the right to compel any exercise by the Issuer of its taxing powers to pay any of the principal of the Bonds or the interest or premium thereon, or to enforce payment of the Bonds against any property of the Issuer except the interests of the Issuer in payments to be made by the Borrower under the Loan Agreement. The Bonds will not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the Issuer, except the interests of the Issuer in payments to be made by the Borrower under the Loan Agreement. The Bonds are not moral obligations on the part of the State or its political subdivisions, including the Issuer, and the Bonds will not constitute a debt of the Issuer within the meaning of any constitutional or statutory limitation.

The issuance of the Bonds will not affect the Issuer's credit rating on bonds it issues for municipal purposes.

Each city may issue up to \$10,000,000 of its own and 501(c)(3) bonds each calendar year as bank-qualified bonds. Although the Borrower is not requesting that the Bonds be designated as bank-qualified, they will still count against that limit. Ramsey anticipates issuing bank-qualified bonds on its own behalf in 2020 and, therefore, does not have sufficient bank qualification capacity on its own to accommodate the Bonds, which are anticipated to be issued by Falcon Heights in the amount of approximately \$8,200,000. Therefore, an alternative city was sought to act as the Issuer for the Bonds. It is my understanding that Falcon Heights does not anticipate issuing bonds on its own behalf in 2020 and has not been approached by another 501(c)(3) to issue bonds in 2020. Under the federal tax law, an alternative Issuer is permitted, but a "nexus" between the jurisdictional city and the Issuer is preferred. In this case, the Issuer is geographically proximate to Ramsey. And, given the unique nature of the Project, residents of Falcon Heights could potentially use the services provided by the Project.

The Issuer has agreed to and will receive a one-time issuer administration fee equal to ½ of 1% of the principal amount of the Bonds ultimately issued.

The Bonds will be issued in accordance with Minnesota Statutes, Chapter 462C. A city may not issue bonds for a project located outside of its jurisdiction, as is requested in this case. However, the city in which a project is located may give permission for the issuance of bonds by another city. This is commonly referred to as "host approval." Under Minnesota Statutes, Section 471.656, subdivision 2(2), host approval may be given for a project located in the host city, by resolution of the host city. However, because housing is involved, there will also be a joint powers agreement between Falcon Heights and Ramsey.

City of Falcon Heights  
April 23, 2020  
Page 3

Similarly, under the federal tax code, before a city can issue bonds for a project located outside of its jurisdiction, the host city must give its approval. Such approval can only be given following the holding of a public hearing.

This requires that Ramsey hold a public hearing and approve issuance of the Bonds by the Issuer. We have tentatively scheduled Ramsey to hold a public hearing and give host approval to the actual issuance of the Bonds by the Issuer on June 9th.

The Issuer will also hold a public hearing. It is currently anticipated that Falcon Heights' public hearing will be held on June 10<sup>th</sup>. The resolution that calls for public hearing will be provided to you in anticipation of being adopted at the City Council's meeting on May 13th. Taft will be responsible for submitting the public hearing notice to the newspaper. A closing as soon as possible after the June 10<sup>th</sup> meeting is anticipated.

I have previously sent you an email regarding the holding of public hearings during our current health pandemic. It is my understanding that Falcon Heights is currently holding its City Council meetings remotely. To that end, I will need the information requested in that email and the City will need to follow the procedures described therein regarding providing for members of the public to attend in person.

Please feel free to contact me if you have any further questions or comments. The Borrower appreciates the consideration of the City in this matter.

Very truly yours,



Catherine J. Courtney

CJC  
Enclosure



Extract of Minutes of a Meeting of the  
City Council of the  
City of Falcon Heights, Minnesota

Pursuant to due call and notice thereof, a regular or special meeting of the City Council of the City of Falcon Heights, Minnesota, was duly held at the City Hall in such City on Wednesday, the 10th day of June, 2020 at 7:00 o'clock p.m.

The following Council members were present:

and the following Council members were absent:

Member \_\_\_\_\_ introduced the following resolution and moved its adoption:

RESOLUTION NO. 20-25

CITY OF FALCON HEIGHTS, MINNESOTA

A RESOLUTION AUTHORIZING  
THE ISSUANCE OF REVENUE BONDS  
IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$25,500,000  
TO FINANCE AND REFINANCE  
THE COSTS OF A SENIOR HOUSING PROJECT FOR  
HAMPTON PROPERTIES OF RAMSEY, LLC AND OTHER  
MATTERS RELATING THERETO

WHEREAS, the City of Falcon Heights, Minnesota (the "Issuer") is a municipal corporation existing under the laws of the State of Minnesota;

WHEREAS, the Issuer is authorized and empowered under Minnesota Statutes, Chapter 462C (the "Act") to, among other things, issue bonds, notes or other evidences of indebtedness in connection with, and to make loans to assist in the financing or refinancing of, multifamily housing developments located in the State of Minnesota (the "State");

WHEREAS, the Borrower (as defined below) has requested that the Issuer issue conduit revenue bonds, in one or more series, as taxable and tax-exempt obligations (the "Bonds"), in an aggregate principal amount not to exceed \$8,500,000;

WHEREAS, Hampton Properties of Ramsey, LLC, a Minnesota limited liability company or any of its affiliates (collectively, the "Borrower"), the sole member of which is Suburban Housing & Community Services Corporation (the "Sole Member"), a California nonprofit, public

benefit corporation and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), wishes to finance and refinance all or part of the costs of the acquisition, construction, and equipping of a senior living facility known as Suite Living Senior Care of Ramsey, to be located at 139<sup>th</sup> Lane Northwest at the intersection of Jasper Street Northwest in Ramsey, Minnesota, and consisting of an approximately 32-unit high acuity assisted living and memory care facility (the "Project"), and the Borrower is requesting the assistance of the Issuer in financing and refinancing the Project;

WHEREAS, the Project is located in the City of Ramsey, County of Anoka, State of Minnesota (the "Project Jurisdiction"), and will be initially owned and operated by the Borrower;

WHEREAS, the Borrower has also proposed to use the proceeds of the Bonds (as defined herein) to finance capitalized interest during the construction of the Project, fund required reserves, and pay costs of issuance of the Bonds;

WHEREAS, pursuant to a Trust Indenture (the "Indenture") between the Issuer and Wilmington Trust, National Association, as trustee (the "Trustee"), the Issuer will issue the Bonds for the Project;

WHEREAS, pursuant to a Loan Agreement (the "Loan Agreement") between the Borrower and the Issuer, the Issuer will loan the proceeds of the Bonds to the Borrower for the purpose of, among others, financing and refinancing the Project;

WHEREAS, pursuant to a purchase contract (the "Bond Purchase Agreement"), by and among Zions Bancorporation, N.A. d/b/a Zions Bank, as underwriter (the "Underwriter"), the Issuer and the Borrower, the Bonds will be sold to investment accounts managed by Greenwich Investment Management, Inc. (the "Bondholder Representative"), and the proceeds of such sale will be used as set forth in the Indenture to finance and refinance the Project, fund any required reserve funds relating to the Bonds, pay capitalized interest on the Bonds, and pay costs incurred in connection with the issuance of the Bonds;

WHEREAS, in connection with the issuance of the Bonds, the Borrower and the Sole Member will execute and deliver a Tax Certificate of the Borrower and the Sole Member (the "Tax Certificate"), which will include an endorsement of the Issuer, setting forth certain representations, expectations, and covenants of the Borrower and the Sole Member pertaining to the tax-exempt status of the Bonds;

WHEREAS, the issuance of the Bonds has been approved (i) by the appropriate elected official of the Project Jurisdiction and by the governing body or the highest-ranking executive or administrator of the Project Jurisdiction for purposes of and in accordance with the Act on June 9, 2020, after appropriate notice and a hearing on such date conducted by the governing body of the Project Jurisdiction as required by Section 147(f) of the Code, and (ii) on behalf of the Issuer by its City Council, after appropriate notice and a hearing on June 10, 2020, as required by Section 147(f) of the Code, and the Issuer has been furnished with evidence of such approvals;

WHEREAS, the City Council of the Issuer (the "Council"), based on representations of the Borrower, without independent investigation, finds and determines: (a) that issuance of the Bonds and financing and refinancing of the Project will further its public purposes, inside and outside of

the State, by promoting economic, cultural and community development, including, without limitation, the promotion of opportunities for the creation or retention of employment, the stimulation of economic activity and the increase of the tax base; and (b) that the financing and refinancing of the Project will promote significant economic and community development opportunities, including the creation or retention of employment, the stimulation of economic activity and the promotion of improvements in the health, safety and welfare of the persons in the political subdivision constituting the Project Jurisdiction; and

WHEREAS, there have been made available to the Council the following documents and agreements:

- (1) the proposed form of the Indenture (including the proposed forms of the Bonds);
- (2) the proposed form of the Loan Agreement (including the proposed forms of promissory notes from the Borrower to the Issuer in the principal amount of the Bonds to be assigned by the Issuer to the Trustee);
- (3) a proposed form of the Bond Purchase Agreement;
- (4) a proposed preliminary form of the Limited Public Offering Memorandum to be used by the Underwriter in connection with the offering and sale of the Bonds (the "Offering Document"); and
- (5) a proposed form of joint powers agreement between the Issuer and the Project Jurisdiction (the "Joint Powers Agreement").

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Falcon Heights, Minnesota, as follows:

**Section 1.** The Council hereby finds and declares that the issuance of the Bonds to assist in the financing and refinancing of the Project is, as hereinabove recited, in furtherance of the public purposes of the Act and is within the powers conferred upon the Issuer by the Act.

**Section 2.** Pursuant to the Act and the Indenture, the Issuer is hereby authorized to issue its revenue bonds for the Project such bonds expected to be designated as the "Senior Housing Revenue Bonds (Suite Living Senior Care of Ramsey Project), Series 2020A" (the "Series A Bonds") and the "Taxable Senior Housing Revenue Bonds (Suite Living Senior Care of Ramsey Project), Series 2020B" (the "Series B Bonds," and, together with the Series A Bonds, the "Bonds") in the approximate aggregate principal amount not to exceed \$8,500,000.

The Bonds shall be issued under and secured in accordance with the terms of the Indenture and the Loan Agreement and shall be substantially in the forms contained in the Indenture presented at this meeting. The final maturity of the Series A Bonds shall not be later than 30 years after the date of issuance, and the maximum interest rate to be borne by the Series A Bonds (including any "penalty" or "default" or "taxable" rate) shall not exceed 12% per annum. The final maturity of the Series B Bonds shall not be later than 5 years after the date of issuance, and the maximum interest rate to be borne by the Series B Bonds (including any "penalty" or "default")

shall not exceed 12% per annum. The Bonds shall be issuable as fully registered bonds without coupons in the minimum denomination of \$5,000 and shall initially be registered in the name of Cede & Co., as the nominee of DTC, and the ownership of beneficial interests in the Bonds shall be by book-entry on the book-entry system maintained and operated by DTC. The Bonds and the interest thereon shall be transferable by and shall be payable to the registered owners thereof in the manner and with the effect provided in the Indenture. The principal of and interest on the Bonds shall be payable in lawful money of the United States of America at the designated corporate trust office of the Trustee, as paying agent and registrar, or at the office of any successor or additional paying agent and registrar in accordance with the Indenture. The Bonds shall be subject to mandatory and optional redemption prior to maturity as provided in the Indenture, as finally executed.

**Section 3.** The Bonds shall be executed on behalf of the Issuer by the Mayor and the City Administrator or any member of the Council (such officers and directors being referred to herein individually as an "Authorized Signatory" and collectively as the "Authorized Signatories"). The facsimile, electronic or digital signature of any Authorized Signatory shall be deemed to be the legal equivalent of a manual signature on specified documents or on all documents and valid and binding for all purposes. If any Authorized Signatory whose signature, countersignature or attestation appears on a Bond or Bond-related document ceases to be an officer or director before delivery of the Bonds, his or her signature, countersignature or attestation appearing on the Bonds and any Bond-related document (regardless of whether any such Bond-related document is specifically identified in the within Resolutions) shall nonetheless be valid and sufficient for all purposes to the same extent as if he or she had remained in office until delivery of the Bonds. The Indenture may contain such other provisions related to the effectiveness of signatures, countersignatures, or attestations on the Bonds as may be deemed to be approved by the Authorized Signatory's execution thereof in accordance with Section 4 hereof.

**Section 4.** The proposed form of the Indenture, including the proposed forms of the Bonds, as presented to this meeting, is hereby approved. Any Authorized Signatory is hereby authorized and directed, for and on behalf of the Issuer, to execute and deliver the Indenture in substantially said form, with such changes and insertions therein as such Authorized Signatory, with the advice of counsel to the Issuer, may approve, such approval to be conclusively evidenced by the execution and delivery thereof. The dated date, maturity date or dates, interest rate or rates, interest and principal payment date or dates, denominations, forms, registration privileges, manner of execution, place or places of payment, terms of redemption and other terms of the Bonds shall be as provided in the Indenture, as finally executed.

**Section 5.** The proposed form of the Loan Agreement (including an assignment thereof by the Issuer to the Trustee of its rights and obligations thereunder, other than Unassigned Rights as defined in the Indenture, and the forms of promissory note contained therein), as presented to this meeting, is hereby approved. Any Authorized Signatory is hereby authorized and directed, for and on behalf of the Issuer, to execute and deliver the Loan Agreement and assignment in substantially said form, with such changes and insertions therein as such Authorized Signatory, with the advice of counsel to the Issuer, may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 6.** The Bonds shall be sold in an underwritten limited public offering to investment accounts managed by the Bondholder Representative. The proposed form of the Bond Purchase Agreement, as presented to this meeting, is hereby approved. Any Authorized Signatory is hereby authorized and directed, for and on behalf of the Issuer, to execute and deliver the Bond Purchase Agreement, in substantially said form, with such changes and insertions therein as such Authorized Signatory, with the advice of counsel to the Issuer, may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 7.** The disclosures in the proposed preliminary form of Offering Document, as presented to this meeting, under the captions "*SHORT STATEMENT - The Issuer,*" "*THE ISSUER*" and "*LITIGATION - The Issuer*" are hereby approved, with such changes and insertions in such disclosures as may be approved by an Authorized Signatory; provided, that the foregoing does not constitute approval by the Issuer of, and the Issuer assumes no responsibility for, the accuracy and completeness of any other disclosures therein other than as are identified above.

**Section 8.** The Issuer consents to the distribution by the Underwriter of the Offering Document to persons who may be interested in the purchase of the Bonds and its delivery of the Offering Document in final form to the purchasers of the Bonds, in each case with such changes as may be approved as aforesaid.

**Section 9.** An Authorized Signatory is hereby authorized and directed, for and on behalf of the Issuer, to execute and deliver an endorsement of the Issuer to the Tax Certificate, in such form as such Authorized Signatory, with the advice of Taft Stettinius & Hollister LLP, as bond counsel with respect to the Bonds, may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 10.** The Bonds, when executed as provided in Section 3 hereof and the Indenture, shall be delivered to the Trustee for authentication by the Trustee. The Trustee is hereby requested and directed to authenticate the Bonds by executing the Trustee's Certificate of Authentication appearing thereon, and to deliver or retain the Bonds, when duly executed and authenticated, to or for the benefit of investment accounts managed by the Bondholder Representative in accordance with written instructions to be executed on behalf of the Issuer by an Authorized Signatory. Such instructions shall provide for the delivery or retention by the Trustee of the Bonds to or for the benefit of such accounts, upon payment of the purchase price thereof by the Underwriter.

**Section 11.** The appropriate officers and agents of the Issuer, including each Authorized Signatory, are hereby authorized and directed, jointly and severally, for and in the name and on behalf of the Issuer, to execute and deliver any and all documents, including, without limitation, any and all documents and certificates to be executed in connection with securing credit support, if any, for the Bonds, and as may be required under the Code and the Act, and to do any and all things and take any and all actions which may be necessary or advisable, in their discretion, to effectuate the actions which the Issuer has approved in this Resolution and to consummate by the Issuer the transactions contemplated by the documents approved hereby, including any subsequent amendments, waivers or consents entered into or given in accordance with such documents. It is not necessary that the Bonds and various documents authorized hereby or otherwise relating to the Bonds all be signed by the same Authorized Signatory.

**Section 12.** All actions heretofore taken by the Mayor or City Administrator and other appropriate officers and agents of the Issuer with respect to the issuance of the Bonds are hereby ratified, confirmed and approved.

**Section 13.** Further, specifically but without limitation, there is hereby delegated to the Mayor or City Administrator, or any member of the Council the Issuer to determine the matters specified under the Act and any and all other matters not inconsistent with these Resolutions, for inclusion in the Indenture, the Loan Agreement, the Bond Purchase Agreement, the Joint Powers Agreement, or any other document, certificate or instrument executed in connection with the issuance of the Bonds, as finally executed; provided, that the foregoing shall not constitute a grant of Issuer to modify or consent to the modification of the maximum aggregate principal amount of, the maximum term of, or the maximum interest rate to be borne by the Bonds, each as stated in Section 2 above, without the further express resolution of this Council.

**Section 14.** Under the provisions of the Act and as provided in the Indenture and Loan Agreement, the Bonds are not to be payable from or charged upon any funds other than the revenue pledged to the payment thereof; the Issuer is not subject to any liability thereon; no holder of the Bonds shall ever have the right to compel any exercise by the Issuer of its taxing powers to pay the Bonds or the interest or premiums thereon, or to enforce payment thereof against any property of the Issuer except the interests of the Issuer in the Loan Agreement which have been assigned to the Trustee under the Indenture; the Bonds shall not constitute a charge, lien, or encumbrance, legal or equitable upon any property of the Issuer except the interests of the Issuer in the Loan Agreement which have been assigned to the Trustee under the Indenture; the Bonds shall recite that the Bonds are issued without moral obligation on the part of the Issuer, the State or its political subdivisions, and that the Bonds, including interest thereon, are payable solely from the revenues pledged to the payment thereof; and, the Bonds shall not constitute a debt of the Issuer within the meaning of any constitutional or statutory limitation.

**Section 15.** The Housing Program, in the form attached hereto as Exhibit A, is hereby approved in accordance with the Act.

**Section 16.** This Resolution shall take effect from and after its adoption.

Adopted by the City Council of the City of Falcon Heights, Minnesota, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Administrator

The motion for the adoption of the foregoing resolution was duly seconded by member \_\_\_\_\_, and after full discussion thereof and upon vote being taken thereon, the following voted in favor thereof:

and the following voted against the same:

whereupon said resolution was declared duly passed and adopted.

STATE OF MINNESOTA  
COUNTY OF RAMSEY  
CITY OF FALCON HEIGHTS

I, the undersigned, being the duly qualified and acting City Administrator of the City of Falcon Heights, Minnesota, DO HEREBY CERTIFY that I have compared the attached and foregoing extract of minutes with the original thereof on file in my office, and that the same is a full, true and complete transcript of the minutes of a meeting of the City Council of said City duly called and held on the date therein indicated, insofar as such minutes relate to authorizing the issuance of revenue bonds for the Suite Living Senior Care of Ramsey Project.

WITNESS my hand and the seal of said City this \_\_\_\_ day of \_\_\_\_\_, 2020.

---

City Administrator

(SEAL)



EXHIBIT A

**PROGRAM FOR FINANCING  
A MULTIFAMILY RENTAL HOUSING DEVELOPMENT**

Proposal Authority. Pursuant to Minnesota Statutes, Chapter 462C (the "Act"), the City of Falcon Heights, Minnesota (the "City") is authorized to develop and administer programs of multifamily senior housing developments and facilities for seniors who need additional special services under the circumstances and within the limitations set forth in the Act, specifically Minnesota Statutes, Section 462C.05, subdivision 7. Minnesota Statutes, Section 462C.07 provides that such programs for Minnesota multifamily housing and health care developments may be financed by revenue bonds issued by the City. This housing and health care finance program (this "Program") is undertaken by the City to finance a Project (as hereafter described) owned and operated by Hampton Properties of Ramsey, LLC, a Minnesota limited liability company (the "Borrower"), whose sole member is Suburban Housing & Community Services Corporation, a California nonprofit corporation. The City expects to issue revenue bonds (the "Bonds") pursuant to the Act to assist in financing the Project.

General Description of the Project and Location. The Project is located on 139<sup>th</sup> Land Northwest at the junction of Jasper Street Northwest, in the City of Ramsey, Minnesota. The City anticipates loaning the proceeds of the Bonds to the Borrower to (i) finance, in part, the acquisition, construction, and equipping of an approximately 32-unit high acuity assisted living and memory care senior housing facility located on approximately 1.75 acres (the "Facility"); (ii) fund capitalized interest on the Bonds; (iii) fund required reserve funds; and (iv) pay all or a portion of the costs of issuance (collectively, the "Project"). The Facility is and will be owned and operated by the Borrower.

The Facility consists of one contiguous one-story building with approximately 21,363 gross square feet. The assisted living units include:

<u>Unit Description</u>	<u>Number of Units</u>	<u>Average Sq. Feet/Unit</u>	<u>Approximate Base Fee*</u>
Studio	20	300	\$6,050-7,300

\*Fees include rent, meals, and assistance with daily living

The memory care units include:

<u>Unit Description</u>	<u>Number of Units</u>	<u>Average Sq. Feet/Unit</u>	<u>Approximate Base Fee*</u>
Studio	12	280	\$6,700-7,600

\*Fees include rent, meals, and assistance with daily living

Operation of the Project. The Borrower will operate the Project in accordance with applicable development restrictions, and all construction was and is subject to applicable state and local building codes. The Project is and will be available for rental to the general public. The Borrower is and will be required to operate the Project in accordance with state and local anti-discrimination laws and ordinances.

Revenue Bonds. The Borrower has indicated that the amount of Bonds required to finance the Project is not to exceed \$8,500,000 and will mature in approximately 30 years. The proceeds will finance the construction of the Facility, fund certain reserves, pay capitalized interest, and pay certain costs of issuing the Bonds.

Allocation of Issuance Authority. Because the Borrower is treated as a nonprofit entity and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, no allocation of authority to issue tax-exempt bonds is required pursuant to Minnesota Statutes, Chapter 474A. The Bonds will be issued pursuant to Section 462C.07, Subd 1 of the Act and shall be payable primarily from revenues of the Program. Issuance of the Bonds is anticipated to occur in the summer of 2020.

Monitoring. The Borrower expects to enter into suitable agreements with necessary parties to ensure consistent compliance with the objectives of this Program, as well as with the requirements of applicable law. The City will enter into a joint powers agreement with the City of Ramsey, Minnesota to provide for the adoption of this Program and the issuance of the Bonds.

Use of Bond Proceeds. The proceeds of the Bonds will be loaned to the Borrower pursuant to a revenue agreement (the "Loan Agreement") by and between the City and the Borrower. The

Borrower will be required, pursuant to the Loan Agreement, to make payments sufficient to pay when due the principal of, premium, if any, and interest on the Bonds.

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**TRUST INDENTURE**

between

**CITY OF FALCON HEIGHTS, MINNESOTA,**

as Issuer

and

**WILMINGTON TRUST, NATIONAL ASSOCIATION,**

as Trustee

Securing:

\$7,680,000

City of Falcon Heights, Minnesota  
Senior Housing Revenue Bonds  
(Suite Living Senior Care of Ramsey Project)  
Series 2020A

\$335,000

City of Falcon Heights, Minnesota  
Taxable Senior Housing Revenue Bonds  
(Suite Living Senior Care of Ramsey Project)  
Series 2020B

Dated as of June 1, 2020

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## TABLE OF CONTENTS

	Page
ARTICLE I	DEFINITIONS AND RULES OF CONSTRUCTION ..... 5
Section 1.01	Definitions..... 5
Section 1.02	Rules of Construction ..... 30
Section 1.03	Contents of Certificates or Opinions..... 31
ARTICLE II	AUTHORIZATION, EXECUTION, AUTHENTICATION, REGISTRATION AND DELIVERY OF BONDS ..... 32
Section 2.01	Authorization of Bonds..... 32
Section 2.02	Details of Bonds..... 32
Section 2.03	Execution of Bonds; Limited Obligations ..... 33
Section 2.04	Authentication of Bonds ..... 34
Section 2.05	Form of Bonds ..... 34
Section 2.06	Delivery of Bonds..... 34
Section 2.07	Exchange of Bonds; Persons Treated as Holders ..... 36
Section 2.08	Charges for Exchange of Bonds; Negotiability; Registration, Transfer, Exchange ..... 36
Section 2.09	Temporary Bonds..... 38
Section 2.10	Mutilated, Lost or Destroyed Bonds..... 38
Section 2.11	Cancellation and Disposition of Bonds..... 38
Section 2.12	Book-Entry Provisions..... 39
ARTICLE III	REDEMPTION OF BONDS..... 41
Section 3.01	Redemption Dates and Prices ..... 41
Section 3.02	Purchase in Lieu of Redemption..... 42
Section 3.03	Notice of Redemption..... 42
Section 3.04	Mandatory Sinking Fund ..... 43
Section 3.05	Special Mandatory Redemption..... 45
ARTICLE IV	GENERAL COVENANTS AND PROVISIONS ..... 45
Section 4.01	Payment of Bonds..... 45
Section 4.02	Covenants and Representations of the Issuer..... 45
Section 4.03	Instruments of Further Assurance..... 46
Section 4.04	Reserved..... 46
Section 4.05	Rights Under the Bond Documents ..... 46

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Section 4.06 Compliance with Code.....	46
Section 4.07 Reports by Trustee .....	47
Section 4.08 Letter of Representations .....	47
Section 4.09 Loan of Bond Proceeds.....	47
Section 4.10 Continuing Disclosure .....	47
<b>ARTICLE V CUSTODY AND APPLICATION OF BOND PROCEEDS; PROJECT FUND; COST OF ISSUANCE FUND .....</b>	<b>48</b>
Section 5.01 Application of Bond Proceeds .....	48
Section 5.02 Project Fund.....	48
Section 5.03 Cost of Issuance Fund.....	49
<b>ARTICLE VI OTHER REVENUES AND FUNDS .....</b>	<b>50</b>
Section 6.01 Establishment of Funds.....	50
Section 6.02 Revenue Fund .....	50
Section 6.03 Bond Fund.....	52
Section 6.04 Rebate Fund .....	53
Section 6.05 Administration Fund .....	54
Section 6.06 Working Capital Fund.....	55
Section 6.07 Repair and Replacement Reserve Fund .....	56
Section 6.08 Reserved.....	56
Section 6.09 Surplus Fund .....	56
Section 6.10 Insurance and Tax Escrow Fund.....	57
Section 6.11 Accounts Within Funds.....	58
Section 6.12 Non-Presentation of Bonds .....	58
Section 6.13 Trustee’s Fees, Costs and Expenses.....	59
Section 6.14 Moneys to be Held in Trust .....	59
Section 6.15 Final Balances .....	59
Section 6.16 Repayment to the Borrower from Funds .....	59
<b>ARTICLE VII INVESTMENTS .....</b>	<b>60</b>
Section 7.01 Investment of Funds.....	60
Section 7.02 Brokerage Confirmations.....	61

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Section 7.03 Investment of Rebate Fund .....	61
Section 7.04 Investments through Trustee’s Bond Department .....	61
Section 7.05 Investment Records.....	61
<b>ARTICLE VIII DISCHARGE OF INDENTURE .....</b>	<b>62</b>
Section 8.01 Discharge of Indenture.....	62
<b>ARTICLE IX DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND     BONDHOLDERS .....</b>	<b>64</b>
Section 9.01 Events of Default .....	64
Section 9.02 Acceleration .....	64
Section 9.03 Other Remedies; Rights of Bondholders .....	65
Section 9.04 Right to Direct Proceeding.....	65
Section 9.05 Application of Moneys .....	66
Section 9.06 Remedies Vested in Trustee.....	68
Section 9.07 Limitation on Suits.....	68
Section 9.08 Reserved.....	69
Section 9.09 Termination of Proceedings.....	69
Section 9.10 Waiver of Events of Default .....	69
Section 9.11 Notice of Failures; Opportunity of the Borrower to Cure Failures.....	70
<b>ARTICLE X THE TRUSTEE.....</b>	<b>70</b>
Section 10.01 Acceptance of Trusts and Obligations .....	70
Section 10.02 Fees, Charges, and Expenses of Trustee.....	74
Section 10.03 Notice Required of Trustee.....	74
Section 10.04 Intervention by Trustee .....	75
Section 10.05 Merger or Consolidation of Trustee.....	75
Section 10.06 Resignation by Trustee .....	75
Section 10.07 Removal of Trustee.....	76
Section 10.08 Appointment of Successor Trustee; Temporary Trustee .....	76
Section 10.09 Concerning any Successor Trustee .....	76
Section 10.10 Right of Trustee to Pay Taxes and Other Charges.....	77
Section 10.11 Trustee Protected in Relying on Resolutions, Etc .....	77

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Section 10.12 Successor Trustee as Bond Registrar, Custodian of Funds and Paying Agent.....	77
Section 10.13 Removal and Resignation not to Affect Fees .....	77
Section 10.14 Trustee Article Controlling.....	78
Section 10.15 Additional Payments.....	78
ARTICLE XI SUPPLEMENTAL INDENTURES.....	78
Section 11.01 Supplemental Indentures Not Requiring Consent of Bondholders.....	78
Section 11.02 Supplemental Indentures Requiring Consent of Bondholders.....	79
Section 11.03 Opinion of Bond Counsel Required.....	80
ARTICLE XII AMENDMENTS OF LOAN AGREEMENT .....	80
Section 12.01 Amendments of Loan Agreement Not Requiring Consent of Bondholders .....	80
Section 12.02 Amendments of Bond Documents Requiring Consent of Bondholders .....	81
Section 12.03 Limitation on Amendments .....	81
Section 12.04 Opinion of Counsel Required .....	81
Section 12.05 Supplement or Amendment to Bond Documents .....	81
ARTICLE XIII MISCELLANEOUS.....	82
Section 13.01 Consents of Bondholders .....	82
Section 13.02 Limitation of Rights.....	82
Section 13.03 Non-Liability of the Issuer and Other Issuer Provisions .....	82
Section 13.04 Notices .....	85
Section 13.05 Payments/Actions Due on Holidays, Etc .....	87
Section 13.06 Notices to Effect of Actions by Bondholder Representative .....	87
Section 13.07 Reserved.....	87
Section 13.08 Information to Bondholder Representative.....	87
Section 13.09 Amendments to Project Documents.....	88
Section 13.10 Successors and Assigns.....	88
Section 13.11 Severability .....	88
Section 13.12 Applicable Law; Venue .....	88
Section 13.13 Counterparts .....	88



**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Section 13.14 Filing Continuation Statements.....	88
Section 13.15 Contractual Interpretation .....	89
Section 13.16 Reserved.....	89
Section 13.17 Acceptance and Acknowledgement by Each Beneficial Owner.....	89
Section 13.18 Patriot Act Requirements of Trustee.....	89
Section 13.19 No Obligation to Enforce Assigned Rights .....	89
Section 13.20 No Impairment of Rights .....	89
Section 13.21 The Issuer’s Performance .....	90
EXHIBIT A FORM OF SERIES 2020A BOND .....	1
EXHIBIT B FORM OF SERIES 2020B BOND .....	1
EXHIBIT C FORM OF REQUISITION FROM THE COST OF ISSUANCE FUND .....	1
EXHIBIT D [RESERVED].....	1
EXHIBIT E REQUISITION FROM WORKING CAPITAL FUND .....	1
EXHIBIT F REQUISITION FROM REPAIR AND REPLACEMENT RESERVE FUND .....	1
EXHIBIT G FORM OF INSURANCE AND TAX ESCROW FUND REQUISITION .....	1
EXHIBIT H OFFICER’S CERTIFICATE.....	1
EXHIBIT I FORM OF WEEKLY DIRECTION TO TRUSTEE AS TO TRANSFERS TO ADMINISTRATION FUND, INSURANCE AND TAX ESCROW FUND, AND OPERATING ACCOUNT HELD BY BORROWER; AND STATEMENT AND ACCOUNTING OF HOLDBACK AMOUNT HELD IN HOLDBACK ACCOUNT.....	1
EXHIBIT J CERTIFICATE OF BONDHOLDER REPRESENTATIVE .....	1

j-1

## TRUST INDENTURE

This Trust Indenture, dated as of June 1, 2020 (this “*Indenture*”), between the **CITY OF FALCON HEIGHTS, MINNESOTA**, a municipal corporation existing under the laws of the State of Minnesota (the “*Issuer*”), and **WILMINGTON TRUST, NATIONAL ASSOCIATION**, a national banking association chartered under the laws of the United States of America and duly authorized and empowered to accept and execute trusts of the character herein set out under and by virtue of the laws of the United States of America, as trustee (the “*Trustee*”);

### WITNESSETH:

**WHEREAS**, Hampton Properties of Ramsey, LLC, a Minnesota limited liability company (the “*Borrower*”), the sole member of which is Suburban Housing & Community Services Corporation, a California nonprofit, public benefit corporation that has been determined to be an exempt organization within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “*Sole Member*”), has applied for the financial assistance of the Issuer in the financing and refinancing of costs of the acquisition, construction, and equipping of a senior living facility known as Suite Living Senior Care of Ramsey, to be located at 139th Lane Northwest at the intersection of Jasper Street Northwest in Ramsey, Minnesota, and consisting of an approximately 32-unit high acuity assisted living and memory care facility (the “*Project*”); and

**WHEREAS**, pursuant to Minnesota Statutes, Section 471.656, as amended, a municipality may issue obligations to finance the acquisition or improvement of property located outside of the corporate boundaries of such municipality if the obligations are issued under a joint powers agreement in which one or more of the parties to the joint powers agreement issue such obligations and the property is located entirely within the boundaries of one or more of the parties to the joint powers agreement; and

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

**WHEREAS**, the City of Ramsey, Minnesota (the “*Host City*”) and the Issuer shall enter into a Joint Powers Agreement pursuant to which the Host City will consent to the issuance of such revenue obligations and the financing of the Project located in the Project Jurisdiction (as defined below) by the Issuer and the Issuer will agree to issue such revenue obligations to finance the Project;

**WHEREAS**, Minnesota Statutes, Chapter 462C (the “*Act*”) authorizes the Host City and the Issuer to issue bonds authorized by a bond resolution and to loan the proceeds thereof to provide funds to finance and refinance the costs of multifamily housing developments, as defined in the Act; and

**WHEREAS**, by Resolution No. \_\_\_\_\_, duly adopted by the City Council of the Host City on June 9, 2020, and Resolution No. \_\_\_\_\_, duly adopted by the City Council of the Issuer on June 10, 2020 (the “*Bond Resolution*”), approvals have been duly and validly provided pursuant to the Act to issue revenue bonds for the purpose of providing funds to finance or refinance all or any part of the cost of the Project (as defined herein) which constitutes a “project” as defined in the Act; and

**WHEREAS**, the Act further authorizes the Issuer to assign and pledge any portion of its interests in projects and agreements made in connection with bonds it issues; and

**WHEREAS**, the Issuer has adopted the Bond Resolution, authorizing the issuance of its Senior Housing Revenue Bonds (Suite Living Senior Care of Ramsey Project), Series 2020A (the “*Series 2020A Bonds*”), in the original aggregate principal amount of \$7,680,000, and Taxable Senior Housing Revenue Bonds (Suite Living Senior Care of Ramsey Project), Series 2020B (the “*Series 2020B Bonds*” and together with the Series 2020A Bonds, the “*Series 2020 Bonds*”), in the original aggregate principal amount of \$335,000, for the purpose of providing funds to (i) finance and refinance, including repayment of the Prior Obligations (as defined below) and through reimbursement, all or part of the costs of the acquisition, construction, and equipping of the Project, (ii) finance capitalized interest during the construction of the Project; (iii) fund required reserves; and (iv) pay certain costs of issuance of the Series 2020 Bonds; and

**WHEREAS**, the Issuer has entered into a Loan Agreement with the Borrower, dated as of June 1, 2020 (the “*Loan Agreement*”), specifying the terms and conditions of a loan by the Issuer to the Borrower of the proceeds of the Series 2020 Bonds to provide for financing or refinancing of the Project and the payment by the Borrower to the Issuer of amounts sufficient for the payment of the principal of, premium, if any, or interest on the Bonds and costs incidental thereto; and

**WHEREAS**, the Project will be owned by the Borrower; and

**WHEREAS**, the Project is to be located within the territorial limits of the City of Ramsey, County of Anoka, Minnesota (the “*Project Jurisdiction*”), and the Issuer and the Host City, based on representations of the Borrower but without independent investigation, have found and determined that the financing and refinancing of the Project will promote significant economic, cultural and community development opportunities, including the creation or retention of employment, the stimulation of economic activity and the promotion of improvements in the health, safety and welfare of persons in the Project Jurisdiction; and

**WHEREAS**, simultaneously with the issuance of the Series 2020A Bonds and the Series 2020B Bonds, the Borrower will execute and deliver to the Trustee a Series 2020A Promissory Note in the principal amount of \$7,680,000 (the “*Series 2020A Note*”) and a Series 2020B Promissory Note in the principal amount of \$335,000 (the “*Series 2020B Note*” and together with the Series 2020A Note, the “*Series 2020 Notes*”); and

**WHEREAS**, the Issuer is entering into this Indenture for the purpose of authorizing the Series 2020 Bonds and securing the payment thereof by assigning its rights as registered owner of the Series 2020 Notes and certain of its rights under the Loan Agreement to the Trustee; and

**WHEREAS**, the Series 2020 Bonds and the Trustee’s certificate of authentication thereon are to be in substantially the forms attached hereto as Exhibit A, with appropriate variations, omissions and insertions as permitted or required by this Indenture; and

**WHEREAS**, all things necessary to make the Series 2020 Bonds, when authenticated by the Trustee and issued as provided in this Indenture, valid, binding and legal limited obligations of the Issuer and to constitute this Indenture a valid and binding agreement securing the payment of the principal of, and premium, if any, and interest on, all Series 2020 Bonds issued and to be issued hereunder have been done and performed, and the execution and delivery of this Indenture and the execution and issuance of the Series 2020 Bonds, subject to the terms hereof, have in all respects been duly authorized;

**NOW, THEREFORE, THIS INDENTURE FURTHER WITNESSETH:**

**GRANTING CLAUSES:**

(a) That, as security for payment of the principal of, and premium, if any, and interest on the Bonds when due, and for the funds that may be advanced by the Trustee pursuant hereto, the Issuer does hereby pledge and assign to, and grant a security interest to the Trustee in, the following described property in this subsection (a), except in all cases for the Unassigned Rights (collectively, the “*Trust Estate*”):

(i) All rights, title and interest of the Issuer under, in and to the Loan Agreement, the Series 2020 Notes, and all revenues and receipts receivable by the Issuer therefrom and the security therefor including, without limitation, the Pledged Assets that have been pledged therefor pursuant to the terms and conditions set forth in the Bond Documents.

(ii) All funds (except the Rebate Fund), including moneys, investment income and investments therein (except for moneys deposited with or paid to the Trustee for the redemption of Series 2020 Bonds, notice of the redemption of which has been duly given, the lien upon which shall be solely for the benefit of the Holders of the Bonds to be redeemed or paid with said moneys) held by the Trustee pursuant to the terms of this Indenture, and any other moneys payable to the Trustee by or for the account of the Issuer pursuant to the Notes and this Indenture, excluding rebatable arbitrage whether or not deposited in the Rebate Fund, subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth in this Indenture.

(iii) Any and all other interests in real or personal property of every name and nature from time to time hereafter by delivery or by writing of any kind specifically mortgaged, pledged or hypothecated, as and for additional security hereunder by the Issuer or by anyone on its behalf or with its written consent in favor of the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

(b) In order to secure, for the benefit of the Bondholders of the Series 2020 Bonds, the payment of amounts required to be paid to the United States of America under Section 148(f) of

the Code, the Issuer does hereby transfer to and grants a lien and security interest in favor of the Trustee for the benefit of the United States Treasury, on the account, if any, created for the Bonds in the Rebate Fund and all money and investments credited thereto, which amounts are to be used solely as herein provided and not to pay principal of, and premium, if any, and interest on, the Bonds.

**SUBJECT ONLY TO THE RIGHTS OF THE ISSUER TO APPLY AMOUNTS UNDER THE PROVISIONS OF THIS INDENTURE, THE PLEDGE AND ASSIGNMENT OF THE TRUST ESTATE HEREBY MADE SHALL IMMEDIATELY ATTACH THERETO AND SHALL BE EFFECTIVE, BINDING AND ENFORCEABLE FROM AND AFTER THE TIME OF THE DELIVERY BY THE TRUSTEE OF THE FIRST BONDS AUTHENTICATED AND DELIVERED UNDER THIS INDENTURE. THE SECURITY SO PLEDGED AND ANY ASSIGNMENT THEN OR THEREAFTER RECEIVED BY TRUSTEE FROM THE ISSUER AS SECURITY FOR THE BONDS SHALL IMMEDIATELY BE SUBJECT TO THE LIEN OF SUCH PLEDGE AND ASSIGNMENT AND THE LIEN OF SUCH PLEDGE AND ASSIGNMENT SHALL BE VALID AND BINDING AGAINST THE ISSUER, THE BENEFICIAL OWNERS OF THE BONDS, CREDITORS AND ALL OTHER PARTIES HAVING CLAIMS AGAINST THE ISSUER IRRESPECTIVE OF WHETHER SUCH PARTIES HAVE NOTICE THEREOF AND WITHOUT THE NEED FOR ANY PHYSICAL DELIVERY, RECORDATION, FILING, OR FURTHER ACT.**

**TO HAVE AND TO HOLD** all the same with all privileges and appurtenances hereby conveyed and assigned, or agreed or intended to be, to the Trustee and its assigns forever;

**IN TRUST, HOWEVER,** for the equal and proportionate benefit and security of the Holders from time to time of the Bonds issued under and secured by this Indenture, without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the others except as on the terms and conditions hereinafter stated;

**PROVIDED, HOWEVER,** that if the Issuer, its successors or assigns, shall well and truly pay, or cause to be paid, the principal of the Bonds and the premium, if any, and the interest due or to become due thereon, at the times and in the manner mentioned in the Bonds according to the true intent and meaning thereof, and shall cause the payments to be made into the Principal Account and Interest Account in the Bond Fund as hereinafter required or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee the entire amount due or to become due thereon, or certain securities as herein permitted, 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 or cause to be paid to the Trustee and the Bondholder Representative, all sums of money due or to become due to it in accordance with the terms and provisions hereof, or provision for such payment shall have been made in accordance with the provisions of this Indenture, and all other sums payable under this Indenture shall have been paid or provided for as required in this Indenture, then this Indenture and the rights hereby granted shall cease, terminate, and be void; otherwise this Indenture remains in full force and effect.

**THIS INDENTURE FURTHER WITNESSETH** and it is expressly declared, that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all said

property, rights, interests and revenues and funds hereby pledged and assigned are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses, and purposes as hereinafter expressed, and the Issuer has agreed and covenanted, and does hereby agree and covenant with the Trustee and with the respective Holders from time to time of the Bonds as follows:

## ARTICLE I

### DEFINITIONS AND RULES OF CONSTRUCTION

#### Section 1.01 Definitions.

Unless otherwise required by the context, all words and terms defined in the whereas clauses of or otherwise in the hereinafter defined Loan Agreement shall have the same meaning in this Indenture. In addition, the following words and terms shall have the following meanings in this Indenture unless the context otherwise requires:

“*Accountant*” means a firm of independent certified public accountants with experience and expertise in auditing assisted living facilities or other similar housing or healthcare facilities specifically designed for the aged.

“*Act*” means Minnesota Statutes, Chapter 462C, as amended.

“*Additional Bonds*” means any additional bonds issued pursuant to Section 2.01 hereof.

“*Additional Indebtedness*” means any Indebtedness incurred by the Borrower subsequent to the issuance of the Series 2020 Notes issued under the Loan Agreement, and permitted to be incurred thereunder.

“*Additional Payments*” means the payments payable by the Borrower, described under Section 3.02(b) of the Loan Agreement.

“*Administration Expenses*” means (a) the Issuer’s Fees and Expenses, (b) the Trustee’s Fees and Expenses, (c) the Dissemination Agent Fee, (d) the Rebate Analyst Fee, (e) any fee of the Disbursing Agent, and (f) any Rating Agency Fee.

“*Administration Fund*” means the Administration Fund established by Section 6.01 hereof.

“*Affiliate*” means (a) any Person organized on a for-profit basis under the laws of any state, of which the Borrower (or the Sole Member) possesses, directly or indirectly, in excess of fifty percent (50%) of the voting rights with respect thereto, provided that the ability to acquire voting rights shall not be treated as possession of such rights until the rights are acquired, (b) any other Person organized on a nonprofit basis under the laws of any state, the articles of incorporation, by-laws, articles of association or similar organizational documents of which require or expressly permit the Borrower (or the Sole Member) to exercise control thereof, whether through (i) appointment of officers or employees of the Borrower (or the Sole Member) to a majority of its governing body on an ex-officio basis (with voting rights), (ii) appointment of a majority of

members of such governing body by the Borrower (or the Sole Member) or (iii) authority of the Borrower (or the Sole Member) to remove a majority of members of such governing body.

“*Annual Budget*” means the annual budget of the Borrower for the Fiscal Year described in Section 5.26 of the Loan Agreement.

“*Annual Evaluation Date*” has the meaning given such term in Section 5.18 of the Loan Agreement.

“*Architect*” means Lars Architectural Services, LLC, a \_\_\_\_\_ limited liability company, and its successors and assigns or any other consultant engaged pursuant to the Architect Agreement to provide design services with respect to the Project and approved by the Bondholder Representative.

“*Architect Agreement*” means that certain Letter of Agreement Design Fees, dated August 21, 2019 between the Borrower and the Architect.

“*Assignment of Contract Documents*” means the Assignment of Contract Documents, dated as of June \_\_, 2020, from the Borrower to the Trustee.

“*Authorized Borrower Representative*” means the person or persons designated to act on behalf of the Borrower by certificate containing the specimen signature(s) of such person or persons signed on behalf of the Borrower by an authorized officer and filed with the Issuer and the Trustee. Such certificate or any supplemental certificate so executed may designate an alternate or alternates. If a person ceases to be an Authorized Borrower Representative, the Borrower shall promptly notify the Issuer and the Trustee of such fact, and in the absence of such notice, the Issuer and the Trustee may continue to rely upon such Authorized Borrower Representative maintaining its status as such.

“*Authorized Denomination*” means with respect to the Bonds, while registered as a Greenwich Investor Bond, \$5,000 or any integral multiple of \$5,000 in excess thereof. At such time as a Bond is no longer a Greenwich Investor Bond, Authorized Denomination means \$100,000 and any integral multiples of \$5,000 in excess thereof; provided that, a Bond may be (i) purchased, sold or transferred in multiples of \$5,000 so long as, upon completion of such purchase, transfer or sale, each Beneficial Owner owns at least the applicable Authorized Denomination in aggregate principal amount of the Bonds, and (ii) exchanged after mandatory redemption for a Bond in a denomination of less than \$100,000 but in \$5,000 integral multiples to the extent necessary to represent the unredeemed portion of any Bond.

“*Authorized Signatory*” means any officer, director or other Person designated by resolution of the Board of Directors of the Issuer (whether such resolution is adopted in connection with the issuance of the Bonds or otherwise) or by the Issuer’s Bylaws as an “Authorized Signatory” empowered to, among other things, execute and deliver on behalf of the Issuer the Loan Agreement, this Indenture, the other Issuer Documents, and the Bonds.

“*Available Reserves*” means the fair market value of all unrestricted and liquid cash and investments of the Borrower determined as set forth in an Officer’s Certificate, plus the amounts on deposit in the Working Capital Fund, the Surplus Fund and any special trust fund with respect

to insurance or condemnation proceeds established pursuant to this Indenture, but excluding the amounts on deposit in any bond payment, debt service or similar fund pledged for the payment of principal or interest due on the Series 2020 Bonds.

“*Available Units*” means the assisted living and memory care units which the Borrower is allowed to lease or have occupied at the date of determination under the Legal Requirements applicable to the Project (or any portion thereof), including without limitation the laws, rules and regulations of the State of Minnesota regarding homes for the aged and skilled nursing facilities and the licensing thereof.

“*Balloon Indebtedness*” means Long-Term Indebtedness, twenty-five percent (25%) or more of the principal of which is due in a single period of twelve (12) consecutive months, which portion of principal is not required by the documents pursuant to which such Long-Term Indebtedness is issued to be reduced by amortization or redemption prior to the beginning of such period to an amount less than twenty-five percent (25%) of the principal amount.

“*Beneficial Owners*” means the beneficial owners under the rules of DTC or any successor securities depository.

“*Bond*” or “*Bonds*” means the Series 2020A Bonds and the Series 2020B Bonds and, as the context requires, any Additional Bonds.

“*Bond Counsel*” means Taft Stettinius & Hollister LLP, Minneapolis, Minnesota, or any other attorney or firm of attorneys nationally recognized on the subject of municipal bonds and reasonably acceptable to the Bondholder Representative and the Issuer.

“*Bond Documents*” means this Indenture, the Loan Agreement, the Series 2020 Bonds, the Series 2020 Notes, the Mortgage, the Disbursing Agreement, the Continuing Disclosure Agreement, the Assignment of Contract Documents, the Bond Purchase Agreement, the Joint Powers Agreement, the Project Documents, the Borrower Documents, the Tax Certificate, the Title Policy, and any other agreement entered into in connection therewith or otherwise securing the Series 2020 Bonds or the Series 2020 Notes.

“*Bond Fund*” means the Bond Fund established by Section 6.01 hereof.

“*Bond Payment Dates*” means, collectively, the Interest Payment Dates and all dates on which principal or redemption price of, or interest on any of the Series 2020 Bonds shall be payable according to their terms and the terms of this Indenture, including without limitation, scheduled mandatory sinking fund redemption dates, unscheduled mandatory redemption dates, dates of acceleration of the Series 2020 Bonds pursuant to Section 9.02 hereof, optional redemption dates, extraordinary optional redemption dates, and stated maturity dates, so long as any Series 2020 Bonds shall be Outstanding (each, a “*Bond Payment Date*”).

“*Bond Purchase Agreement*” means the Purchase Contract entered into in connection with the sale of the Series 2020 Bonds.

“*Bond Register*” means the books for the registration of the Bonds and for the registration of the transfer of the Bonds kept and maintained by the Trustee as bond registrar.



“*Bondholder*,” “*bondholder*,” “*Holder*,” or “*holder*” means the registered owner of any Bond.

“*Bondholder Representative*” shall mean GIM, a registered investment adviser under the Investment Advisers Act of 1940, as amended, so long as a majority in aggregate principal amount of the Outstanding Bonds are beneficially owned by persons for whom GIM serves as investment advisor as evidenced by a certificate of GIM delivered to the Trustee. If GIM is no longer serving as the Bondholder Representative, the term Bondholder Representative shall be disregarded and all references herein to the consent of, or the giving of notice to, the Bondholder Representative shall be null and void; provided, all notices and consents shall continue to be given to and by, respectively, the other parties referenced in this Indenture and the Loan Agreement.

“*Book Value*” when used in connection with Property, Plant and Equipment or other Property of any Person, means, at the option of the Borrower, either (a) the value of such Property, net of accumulated depreciation, as it is set forth in the most recent Financial Statements of such Person in conformity with GAAP, or (b) the current fair market value of such Property as of the date of determination, in either case evidenced by an Officer’s Certificate. In preparation of such certificate pursuant to (b) above, current fair market value shall be assigned to Property or any portion thereof only on the basis of an appraisal completed within two years of the date of such Officer’s Certificate by an independent MAI appraiser or, with respect to Property other than real property and fixed assets on the basis of an Officer’s Certificate, if such certificate is accompanied by appropriate documentation indicating the basis of such valuation. When used in connection with Property, Plant and Equipment or other Property of the Borrower, Book Value means the aggregate of the values so determined in compliance with this definition of “Book Value” with respect to such Property, Plant and Equipment or other Property of the Borrower determined in such a manner that no portion of Property, Plant and Equipment or other Property is included more than once.

“*Borrower*” means Hampton Properties of Ramsey, LLC, a limited liability company duly organized and existing under the laws of the State of Minnesota, whose sole member is the Sole Member, and its successors and assigns.

“*Borrower Distribution Account*” means that certain Borrower Distribution Account created within the Surplus Fund in Section 6.09 hereof.

“*Borrower Distribution Date*” means March 1, June 1, September 1 and December 1, as described in Section 6.09 hereof.

“*Borrower Documents*” means the instruments and documents to which the Borrower is a party in connection with the issuance of the Series 2020 Bonds, including, but not limited to, the Loan Agreement, the Mortgage, the Series 2020 Notes, the Tax Certificate, the Bond Purchase Agreement, the Disbursing Agreement, the Continuing Disclosure Agreement and the Project Documents.

“*Business Day*” means any day other than (i) a Saturday, a Sunday or, in the City of New York, New York (or, if different, in the city in which the designated corporate trust office of the Trustee is located), a day on which banking institutions are authorized or required by law or

executive order to close, or (ii) a day on which the New York Stock Exchange or the payment system of the Federal Reserve System is closed.

“*Cash Available for Debt Service*” means, with respect to the Borrower for any date of determination, the difference of Total Operating Revenues less Total Cash Operating Expenses to which shall be added interest expense on Indebtedness and from which shall be excluded (a) any extraordinary items, (b) any gain or loss resulting from the extinguishment of Indebtedness or the sale, exchange or other disposition of assets not made in the ordinary course of business, and (c) unrealized gains or losses on securities.

“*Closing Date*” means the date on which the Issuer delivers the Series 2020 Bonds to the purchasers thereof and payment of the purchase price for the Series 2020 Bonds is received by the Trustee.

“*Code*” or “*Internal Revenue Code*” means the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder, or any successor to the Internal Revenue Code of 1986, as amended. Reference to any particular Code section shall, in the event of such successor Code, be deemed to be a reference to the successor to such Code section.

“*Completion Certificate*” means a certificate signed by the Borrower,

- (a) stating the Completion Date;
- (b) stating that all costs and expenses incurred in connection with the Project have been paid except for specified amounts either which are not yet due and payable or which the Borrower is contesting in good faith by appropriate proceedings;
- (c) attaching an affidavit of the General Contractor to the effect that such contractor and all of its subcontractors and suppliers of labor and materials have been paid in full (other than retainage);
- (d) attaching copies of the final certificates of approval from the various governmental authorities having jurisdiction over the construction and operation of the Project, including a final certificate of occupancy or a temporary certificate of occupancy for any improvements, and other necessary operating permits, along with a certificate of the Borrower that the same constitute all the certificates of approval necessary for operation of the respective phase of the Project; and
- (e) listing the items to be completed or corrected, if any, and the amounts to be withheld therefor, signed by an Authorized Borrower Representative stating that, except for amounts retained by the Trustee, where appropriate, for costs of the construction not then due and payable, (i) construction of the Project has been completed substantially in accordance with the Plans and Specifications, (ii) all other facilities necessary in connection with the construction of the respective phase of the Project have been constructed, acquired, and installed substantially in accordance with the Plans and Specifications therefor and all costs and expenses incurred in connection therewith have been paid or provided for, (iii) all labor, services, materials, and supplies used in such construction have been paid or provided for, (iv) according to the “as built” survey of the land or a certificate of the surveyor, any improvements do not encroach on any other property or violate any setback or sideline requirements applicable to the land, and (v) an

endorsement to the Title Policy removing the pending disbursements clause and updating the coverage date.

“*Completion Date*” means the date specified in the Completion Certificate.

“*Completion Indebtedness*” means any Long-Term Indebtedness (a) incurred by any Person for the purpose of financing the completion of constructing or equipping property with respect to which Long-Term Indebtedness was theretofore incurred in accordance with the provisions hereof, and (b) in a principal amount not in excess of the amount required (i) to provide a completed and equipped property of substantially the type and scope contemplated at the time such prior Long-Term Indebtedness was incurred, (ii) to provide for capitalized interest during the period of construction, (iii) to capitalize a reserve with respect to such Completion Indebtedness, and (iv) to pay the costs and expenses of issuing such Completion Indebtedness.

“*Condemnation*” or the phrase “*eminent domain*” as used herein shall include the taking or requisition of Property by a Governing Authority or by a person, firm or corporation acting under a Governing Authority or a conveyance made under threat of such taking or requisition.

“*Condemnation Award*” means payment for property condemned or conveyed under Condemnation or threat of Condemnation.

“*Construction Account*” means the account by that name established in the Project Fund.

“*Construction Contract*” means that certain Standard Form of Agreement between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, dated October 10, 2019, between the Borrower and the General Contractor, acceptable to the Bondholder Representative.

“*Consultant*” means a Person or firm selected by the Borrower that is not (and no member, stockholder, director, officer or employee of which is) an officer or employee of the Borrower or an Affiliate, that is a professional consultant with substantial experience and recognized expertise in the operation and management of assisted living communities or other similar housing or healthcare facilities specifically designed for the aged. The selection of any Consultant herein shall also require the approval in writing of the Bondholder Representative, which approval shall not be unreasonably withheld.

“*Continuing Disclosure Agreement*” means the Continuing Disclosure Agreement, dated June \_\_, 2020, between the Borrower and the Dissemination Agent.

“*Corporate Trust Office*” means the designated corporate trust office of the Trustee which, on the date hereof, is in Baltimore, Maryland.

“*Costs of Issuance*” means all items of expense, directly or indirectly payable by or reimbursable to the Borrower, related to the authorization, sale and issuance of the Series 2020 Bonds.

“*Cost of Issuance Fund*” means the Cost of Issuance Fund established by Section 5.03 hereof.

“*Costs of the Project*” means all costs of constructing, equipping and improving the Project, including without limitation: (i) the cost of labor, materials, and supplies furnished or used in the acquisition, construction, and installation of the improvements and the costs of acquiring and installing equipment; (ii) acquisition, transportation, and installation costs for personal property and fixtures; (iii) fees for architectural, engineering, developmental, and supervisory services to such architects, engineers, developers, and construction supervisors as the Borrower shall approve; (iv) expenses incurred in the enforcement of any remedy against any contractor, subcontractor, materialmen, vendor, supplier, or surety; (v) expenses incurred by the Issuer, the Trustee, the Borrower and the Bondholder Representative in connection with the financing of the Project, including legal, consulting, and accounting fees; (vi) repayment of indebtedness incurred to pay any of the foregoing costs, fees, and expenses set forth in (i) through (v); (vii) reimbursement to the Borrower for any of the foregoing costs, fees, and expenses set forth in (i) through (vi) above, paid by it with its own funds; and (viii) repayment of the Prior Obligations.

“*Counsel*” means an attorney-at-law or law firm (who may be counsel for the Borrower) which is not unsatisfactory to the Bondholder Representative.

“*Days’ Cash on Hand*” means, as of any date of determination, as derived from the quarterly financial statements for the immediately preceding quarter delivered pursuant to the Loan Agreement, the product of (i) three hundred sixty-five (365) **[IT IS 365 IN LEAP YEARS TOO?]**, and (ii) the Available Reserves, divided by Total Cash Operating Expenses of the Borrower, including interest expense.

“*Defeasance Obligations*” means:

- (i) noncallable Government Obligations;
- (ii) Government Participations;
- (iii) noncallable obligations of state or local government municipal bond issuers that are rated in the highest rating category established by both Moody’s and S&P, without regard to any refinement or gradation of such rating category by numerical modifier or otherwise, provision for the payment of the principal of and interest on which shall have been made by deposit with a trustee or escrow agent of (a) noncallable Government Obligations or (b) Government Participations, the maturing principal of and interest on which Government Obligations or Government Participations, when due and payable, shall provide sufficient money to pay the principal of, and premium, if any, and interest on, such obligations of state or local government municipal bond issuers;
- (iv) Evidences of noncallable ownership of a proportionate interest in specified obligations described in item (iii) above, which obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian; and
- (v) cash.

“*Determination of Taxability*” means a determination that interest accrued or paid on any Series 2020A Bonds is included in gross income for federal income tax purposes, which

determination shall be deemed to have been made upon the occurrence of the first to occur of the following: (a) the date on which any Owner is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that the interest on the Series 2020A Bonds is included in gross income for federal income tax purposes; (b) the date on which the Issuer or the Borrower receives notice from an Owner that the Owner has been advised (i) in writing that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to such Owner which asserts, in effect, that interest on the Series 2020A Bonds received by such Owner is included in the gross income of such Owner for federal income tax purposes, or (ii) by an Opinion of Counsel (approved by the Issuer) received by the Owner which concludes, in effect, that interest on the Series 2020A Bonds is included in gross income for federal income tax purposes; (c) the day on which the Issuer is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that there has been issued a public or private ruling of the Internal Revenue Service that the interest on the Series 2020A Bonds is included in gross income for federal income tax purposes; or (d) the day on which the Issuer is advised in writing by counsel to an Owner that a final determination, from which no further right of appeal exists, has been made by a court of competent jurisdiction in the United States of America in a proceeding with respect to which the Issuer and the Borrower have been given written notice and an opportunity to participate and defend that the interest on the Series 2020A Bonds is included in gross income for federal income tax purposes.

“*Developer*” means Lando Investments of Ramsey, LLC, a Minnesota limited liability company, and its successors and assigns or any other entity engaged to provide developer services to the Borrower and approved by the Bondholder Representative.

“*Developer Fee*” means the amount payable to the Developer pursuant to the Development Agreement in accordance with Section 5.37 of the Loan Agreement.

“*Development Agreement*” means the Development Services Agreement, dated as of \_\_\_\_\_, 20\_\_, between the Developer and the Borrower, as amended and supplemented from time to time, and acceptable to the Bondholder Representative.

“*Development Budget*” means the hard and soft costs budget for the Project relating to the design, construction and pre-opening activities.

“*Disbursement Request*” means the disbursement request substantially in the form attached as Exhibit A to the Disbursing Agreement, signed by the Borrower.

“*Disbursing Agent*” means Custom Home Builders Title, LLC, a Minnesota limited liability company and its successors and assigns.

“*Disbursing Agreement*” means the Disbursing Agreement, dated as of June 1, 2020, between the Borrower, the Trustee, and the Disbursing Agent, as amended and supplemented from time to time, and acceptable to the Bondholder Representative.

“*Dissemination Agent*” means Zions Public Finance, Inc., and its successors and assigns.

“*Dissemination Agent Fee*” means an annual fee payable to the Dissemination Agent so long as the Series 2020 Bonds remain Outstanding as compensation for its services and expenses in performing its obligations under the Continuing Disclosure Agreement.

“*DTC*” means The Depository Trust Company, New York, New York, the securities depository for the Bonds held in book-entry form pursuant to Section 2.12 hereof.

“*DTC Participant*” means any direct or indirect participant in DTC in accordance with DTC’s customary practices.

“*EMMA*” means the Electronic Municipal Market Access System, or any successor depository or system, designated and/or maintained by the Municipal Securities Rulemaking Board and its successors.

“*Environmental Law*” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Public Law No. 96-510, 94 Stat. 1613; the Resource Conservation and Recovery Act; the National Environmental Policy Act of 1969, as amended (42 U.S.C. § 4321 et seq.); the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.); the Hazardous Material Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.); the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. § 136 et seq.); the Toxic Substance Control Act, as amended (15 U.S.C. § 2601 et seq.); the Clean Water Act; the Clean Air Act, as amended (42 U.S.C. § 7401 et seq.); the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.); the Federal Coastal Zone Management Act, as amended (16 U.S.C. § 1451 et seq.); the Occupational Safety and Health Act, as amended (29 U.S.C. § 651 et seq.); the Safe Drinking Water Act, as amended (42 U.S.C. § 300(f) et seq.); and any other federal, state or local law, statute, ordinance and regulation, now or hereafter in effect, and in each case as amended or supplemented from time to time, and any applicable judicial or administrative interpretation thereof, including, without limitation, any applicable judicial or administrative order, consent decree or judgment applicable to the Facilities relating to the regulation and protection of human health and safety and/or the environment and natural resources (including, without limitation, ambient air, surface water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and/or vegetation), including all amendments to such Acts, and any and all regulations promulgated thereunder, and all analogous local or state counterparts or equivalents, and any transfer of ownership notification or approval statutes, and any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Materials, as may now or at any time hereafter be in effect.

“*Event of Default*” means any of the events enumerated in Section 9.01 of the Indenture and Section 6.01 of the Loan Agreement.

“*Facilities*” means, collectively, the real and personal properties owned and operated by the Borrower and all leasehold interests of the Borrower, from time to time.

“*Financial Statements*” means, as the case may be, and as applicable, (a) the audited consolidated or combined financial statements of the Borrower for the applicable Fiscal Year that are prepared under GAAP and certified by an Accountant selected by the Borrower, or (b) the

unaudited financial statements of the Borrower delivered to the Trustee in accordance with the Loan Agreement.

“*Fiscal Year*” means, for the Borrower, initially January 1 through December 31, or such other Fiscal Year adopted by the Borrower.

“*Fitch*” means Fitch, Inc., doing business as Fitch Ratings, or its successors in the business of providing investment rating services, provided that if neither Fitch nor any such successor is then in such business the references to Fitch and ratings thereof shall no longer be requirements of this Indenture or the Loan Agreement.

“*Fixed Rate Indebtedness*” means any portion of Indebtedness the interest rate on which is established at the time of incurrence at a fixed or constant rate.

“*GAAP*” means those principles of accounting set forth in pronouncements of the Financial Accounting Standards Board and its predecessors or pronouncements of the American Institute of Certified Public Accountants as of the date of application, as such principles are from time to time supplemented or amended.

“*General Contractor*” means Hampton Construction, LLC, a Minnesota limited liability company, and its successors and assigns or any other entity engaged to provide design, construction and related services to the Borrower and approved by the Bondholder Representative.

“*GIM*” means Greenwich Investment Management, Inc.

“*Governing Authority*” means the United States, the State of Minnesota and any political subdivision, agency, department, commission, board, bureau, authority or instrumentality of either of them, including any local authorities, or any other entity exercising executive, legislative, judicial, regulatory or administrative functions of government, which has jurisdiction over the Mortgaged Property or the construction, equipping and operation of the Project thereon.

“*Governing Body*” means, when used with respect to the Borrower or any Affiliate, its members, managing member or group of individuals that has the power to manage the affairs of the Borrower or such Affiliate.

“*Government Obligations*” means direct obligations of, or obligations the timely payment of the principal of and interest on which are fully and unconditionally guaranteed by, the United States of America.

“*Government Participations*” means evidences of noncallable ownership of a proportionate interest in specified noncallable Government Obligations, which Government Obligations are held by a bank or trust company organized and existing under the laws of the United States of America or any state thereof in the capacity of custodian.

“*Greenwich Investor Bond*” means Bonds which are beneficially owned by the following persons for whom GIM serves as investment advisor as evidenced by a certificate of GIM: (a) a “qualified institutional buyer” under Rule 144A promulgated under the Securities Act; (b) an “accredited investor” under Section 501 of Regulation D promulgated under the Securities Act; or

(c) the trustee of a trust whose securities are registered pursuant to an effective registration statement under the Securities Act.

“*Gross Receipts*” means all income, revenues, and proceeds for any applicable period (whether in cash or on credit) directly or indirectly received by Borrower for the use, occupancy or enjoyment of the Project, or any part thereof, or received by Borrower for the sale of any goods, services or other items sold on or provided from the Project in the ordinary course of the Project operation, including without limitation: (a) all rents and leases; (b) all income and proceeds received from food and beverage operations and from catering services conducted from the Project even though rendered outside of the Project; (c) all income and proceeds from business interruption, rental interruption and use and occupancy insurance with respect to the operation of the Project (after deducting therefrom all necessary costs and expenses incurred in the adjustment or collection thereof) applied to the applicable period to which such amounts relate; (d) all condemnation awards for temporary use (after deducting therefrom all costs incurred in the adjustment or collection thereof and in restoration of the Project); (e) all income and proceeds from judgments, settlements and other resolutions of disputes with respect to matters which would be includable in this definition of “*Gross Receipts*” if received in the ordinary course of the Project operation (after deducting therefrom all necessary costs and expenses incurred in the adjustment or collection thereof); (f) interest on credit accounts; (g) all health care or personal goods and services, including, without limitation, dietician services, massages, medical exams, dental services, meals, cleaning services, non-prescription drugs, nursing care, entertainment services, transportation services and travel services; and (h) reimbursements or payments for all of the above (a) through (g) including, without limitation, reimbursements or payments from insurance companies, Centers for Medicare & Medicaid Services (CMS), Social Security, any governmental entity, private payments, trusts, annuities, health care accounts or other sources (provided in all events any payments by CMS and Social Security will be subject to applicable law, including any anti-assignment rules); but excluding, (1) gross receipts received by lessees, licensees or concessionaires of the Project or by Borrower on behalf of such parties or on behalf of other third parties; (2) consideration received at the Project for accommodations, goods and services to be provided at other facilities, although arranged by, for or on behalf of Borrower; (3) income and proceeds from the sale or other disposition of Property, Plant and Equipment, goods, capital assets and other items not in the ordinary course of the Project operation (but such exclusion does not extend to income and proceeds from the sale or other disposition of Property, Plant and Equipment, goods, capital assets or other items if those items were replaced in the ordinary course of the Project operation); (4) federal, state and municipal excise, sales and use taxes collected directly from patrons or residents of the Project as a part of or based on the sales price of any goods, services or other items, such as gross receipts, room, admission, or equivalent taxes; (5) awards (except to the extent provided in clause (d) above); (6) refunds of amounts not included in Total Cash Operating Expenses at any time and uncollectible accounts; (7) gratuities collected by Borrower and payable to employees; (8) the proceeds of any financing; (9) non-recurring income or proceeds resulting other than from the use or occupancy of the Project, or any part thereof, or other than from the sale of goods, services or other items sold on or provided from the Project in the ordinary course of business; (10) any credits or refunds made to residents or patrons in the form of allowances or adjustments to previously recorded revenues; (11) rent concessions or credits and other required pass through and interest on the Bonds and any funds and accounts created under the Indenture; (12) Net Proceeds of insurance (other than business interruption or other loss of income insurance); (13) unforfeited security deposits under any leases; and (14) the amount of any discount actually



given by Borrower to residents and users with respect to discounted rooms, food, beverage, amenities or use of facilities.

“*Guaranty*” means any obligation of the Borrower guaranteeing in any manner, directly or indirectly, any obligation of any other Person that, if such obligation were the obligation of the Borrower, would constitute Indebtedness hereunder.

“*Hazardous Materials*” means petroleum, petroleum byproducts (including, but not limited to, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge and all other liquid hydrocarbons, regardless of specific gravity), natural or synthetic gas products and/or any hazardous substance or material, toxic or dangerous waste, substance or material, pollutant or contaminant, defined as such in (or for the purposes of) the Environmental Laws.

“*Holdback Account*” means a deposit account held by the Borrower, separate from all other accounts, into which the Borrower shall deposit Gross Receipts retained by the Borrower from time to time and which shall not exceed the Holdback Amount in accordance with Section 6.02(a) hereof.

“*Holdback Amount*” means the amount not to exceed \$100,000 on deposit in the Holdback Account, to be used solely for the payment of Total Cash Operating Expenses of the Borrower.

“*Host City*” means the City of Ramsey, Minnesota, a municipal corporation and political subdivision of the State.

“*Indebtedness*” means (a) all liabilities or obligations of the Borrower for borrowed money, (b) all installment sales and capital lease obligations incurred or assumed by the Borrower, and (c) all Guaranties. Indebtedness shall not include (i) any portion of any liabilities of the Borrower for which there is on deposit with the Trustee, or a successor or temporary Trustee meeting the requirements of Section 10.08(b) hereof, cash or Defeasance Obligations registered in the name of the Trustee or such third party escrow agent, as appropriate, that are irrevocably pledged to payment of either or both principal of and interest on such liabilities of such Borrower and that are sufficient, together with investment earnings thereon, to provide for payment for that portion of such liabilities for which they are pledged, or (ii) obligations of the Borrower under a line of credit, letter of credit, standby bond purchase agreement or similar facility (and any reimbursement agreement relating thereto) established in connection with the issuance of any other indebtedness of the Borrower permitted hereunder or under the Loan Agreement. Nothing in this definition or otherwise shall be construed to count Indebtedness more than once.

“*Indenture*” means this Trust Indenture, including any supplements and/or amendments hereto.

“*Insurance and Condemnation Fund*” means the Insurance and Condemnation Fund established by Section 6.01 hereof.

“*Insurance and Tax Escrow Fund*” means the Insurance and Tax Escrow Fund established by Section 6.01 hereof.

“*Insurance Consultant*” means a Person or firm selected by the Borrower that is not a member, stockholder, director, officer or employee of the Borrower or an Affiliate, that is nationally recognized as qualified to survey risks and to recommend insurance coverage for assisted living facilities or other similar housing or healthcare facilities specifically designed for the aged that is reasonably acceptable to the Bondholder Representative.

“*Interest Account*” means each Interest Account for each series of Bonds established in the Bond Fund.

“*Interest Payment Date*” means each date on which an installment of interest on the Bonds shall become due, which shall be March 1, June 1, September 1 and December 1 of each year, commencing on September 1, 2020.

“*Issuance Fee*” means any fee payable to the Issuer that is due on the date of issuance of the Series 2020 Bonds, together with the fees and expenses of the Issuer’s attorneys, financial advisors and agents.

“*Issuer*” means the City of Falcon Heights, Minnesota, a municipal corporation and political subdivision of the State.

“*Issuer Documents*” means this Indenture, the Loan Agreement, the Bond Purchase Agreement, the Joint Powers Agreement and all other documents relating to the issuance of the Bonds to which the Issuer is a party.

“*Issuer Indemnified Persons*” means, collectively, each and all of the Issuer’s past, present and future directors, board members, governing members, trustees, commissioners, elected or appointed officials, officers, employees, Authorized Signatories, attorneys, contractors, subcontractors, agents and advisers (including, without limitation, counsel and financial advisers) and each of their respective heirs, successors and assigns.

“*Issuer’s Fees and Expenses*” means the fees and expenses, if any, payable to or incurred by the Issuer under or in connection with the Series 2020 Bonds or any of the other Bond Documents, and including but not limited to Additional Payments, indemnification payments, and any fees and expenses of counsel to the Issuer.

“*Joint Powers Agreement*” means the Joint Powers Agreement, dated June \_\_, 2020, by and between the Issuer and the Host City.

“*Legal Requirements*” means any legal requirements, including any local, state or federal statute, law, ordinance, code, rule or regulation, now or hereinafter in effect (including environmental laws) or order, judgment, decree, injunction, permit, license, authorization, certificate, franchise, approval, notice, demand, direction or determination, of any Governing Authority, and all legal requirements imposed upon the Mortgaged Property, or upon the owner(s) of the Mortgaged Property from time to time, pursuant to any applicable covenants, conditions, easements, servitudes and restrictions and any applicable ground lease.

“*Letter of Representations*” means the Blanket Letter of Representations from the Issuer to the Securities Depository and any amendments thereto or successor agreements between the Issuer

and any successor Securities Depository, relating to a book-entry system to be maintained by the Securities Depository with respect to the Series 2020 Bonds. Notwithstanding any provision of this Indenture regarding amendments, the Trustee may enter into any such amendment or successor agreement without the consent of Bondholders.

“*Liabilities*” has the meaning set forth in Section 5.06 of the Loan Agreement.

“*Lien*” means any mortgage, deed of trust, or pledge of, security interest in, or encumbrance or other lien on, any Property of any Person.

“*Liquidity Testing Date*” means June 30 and December 31 of each year, commencing December 31, 2020.

“*Loan*” means the loan to the Borrower referenced in Section 3.01 of the Loan Agreement.

“*Loan Agreement*” means the Loan Agreement dated as of the date hereof, between the Borrower and the Issuer as amended and supplemented from time to time.

“*Loan Payments*” has the meaning given such term in Section 3.02(a) of the Loan Agreement.

“*Long-Term Debt Service Coverage Ratio*” means, for any period of determination, the ratio determined by dividing the Cash Available for Debt Service by the Maximum Annual Debt Service for Indebtedness, but excluding Subordinate Indebtedness.

“*Long-Term Debt Service Requirement*” means, for any date of determination, the aggregate of the payments to be made in respect of principal and interest on Outstanding Long-Term Indebtedness of the Borrower during the previous twelve (12)-month rolling period, with the special rules identified in paragraphs (a), (b) and (c) below to apply in respect of Balloon Indebtedness, Variable Rate Indebtedness and Guaranties. In such determination:

(a) there shall be taken into account, with respect to Balloon Indebtedness, the amount of principal that would be payable in such previous twelve (12)-month rolling period if such principal were amortized from the date of the balloon payment on a level debt service basis for the shorter of (i) fifteen (15) years from the date of the balloon payment and (ii) thirty (30) years from the date of actual calculation, except that if the date of calculation is within twelve (12) months of the actual maturity of such indebtedness, the full amount of principal payable at maturity shall be included in such calculation;

(b) the interest on Variable Rate Indebtedness shall be calculated at the average interest rate in effect with respect to such Variable Rate Indebtedness for the rolling twelve (12)-month period immediately preceding the date of calculation, provided that if such average rate cannot be calculated for such entire rolling twelve (12)-month period but can be calculated for a shorter period, then such interest shall be calculated at the average interest rate in effect for such shorter period, provided further, however, that if such average rate cannot be calculated for any preceding period of time, then such interest shall be calculated at the SIFMA municipal swap index (or any successor or similar index) as most recently published on or prior to such date of calculation; and

(c) the annual principal and interest payments on any Indebtedness represented by a Guaranty shall be taken into account with an amount based on the percentages set forth in the definition of “Long-Term Indebtedness”;

provided, however, that notwithstanding the foregoing paragraphs (a) through (c): (1) interest shall be excluded from the determination of the Long-Term Debt Service Requirement to the extent the same is funded with the proceeds of any Long-Term Indebtedness and (2) principal and interest on Subordinate Indebtedness shall be excluded when calculating the Long-Term Debt Service Requirement.

“*Long-Term Indebtedness*” means all Indebtedness incurred or assumed by the Borrower, including Guaranties, Balloon Indebtedness, Variable Rate Indebtedness, Completion Indebtedness and Fixed Rate Indebtedness; and also including Short-Term Indebtedness if a commitment by a financial lender exists to provide financing to retire such Short-Term Indebtedness and such commitment provides for the repayment of principal on terms that would, if such commitment were implemented, constitute Long-Term Indebtedness, but excluding Subordinate Indebtedness; and the current portion of Long-Term Indebtedness, for any of the following:

- (a) money borrowed for an original term, or renewable at the option of the Borrower for a period from the date originally incurred, longer than one year;
- (b) leases required to be capitalized in accordance with GAAP that have an original term, or are renewable at the option of the lessee for a period from the date originally incurred, longer than one year; and
- (c) installment sale or conditional sale contracts having an original term in excess of one year;

provided, however, that any Guaranty by the Borrower of any obligation of any Person, which obligation would, if it were a direct obligation of the Borrower, constitute Short-Term Indebtedness, shall be excluded. A Guaranty of an obligation of another entity (for purposes of this definition, the “*Obligor*”) qualifying as Long-Term Indebtedness hereunder shall be deemed Long-Term Indebtedness of the Borrower in accordance with the following schedule:

<b>Long-Term Debt Service Coverage Ratio of the Borrower (calculated as set forth herein for the most recent fiscal year of the Borrower for which audited financial statements are available)</b>	<b>Percentage of the principal amount of the guaranteed indebtedness deemed to be Long-Term Indebtedness of the Borrower</b>
greater than 2.0	0%
to and including 2.0	20
to and including 1.49	50
to and including 1.24	75
less than 1.10 (or no available financial statements)	100

Notwithstanding the foregoing, if the Borrower is required to make a debt service payment pursuant to any Guaranty, one hundred percent (100%) of the principal amount of the guaranteed

indebtedness shall be deemed Long-Term Indebtedness of the Borrower for a period of twenty-four (24) months following the most recent draw on the Guaranty.

“*Majority of the Bondholders*” or “*Majority of the Holders*” means the Beneficial Owners of more than fifty percent (50%) in aggregate principal amount of Bonds then Outstanding.

“*Management Agreement*” means (a) that certain Agreement to Provide Management Services, dated as of May 25, 2020, between the Borrower and the Manager as the same may be amended and supplemented, with the consent of the Bondholder Representative, and (b) any other management agreement between the Borrower and a Manager with respect to the Facilities entered into with the consent of the Bondholder Representative.

“*Management Fees*” means the fees and expenses due the Manager pursuant to the Management Agreement, in accordance with Section 5.36 of the Loan Agreement.

“*Manager*” means Suite Living Senior Care of Ramsey, LLC, a \_\_\_\_\_ and its successors and assigns or any other manager selected by the Borrower and approved by the Bondholder Representative.

“*Maximum Annual Debt Service*” means, at the time of calculation, the largest Long-Term Debt Service Requirement for the current or any future Fiscal Year, which calculation shall not include Subordinate Indebtedness.

“*Maximum Rate*” means the not to exceed interest rate stated in the Bond Resolution.

“*Moody’s*” means Moody’s Investors Service, Inc. or its successors in the business of providing investment rating services, provided that if neither Moody’s nor any successor is then in such business the reference to Moody’s and ratings thereof shall no longer be requirements of the Bond Documents for the Series 2020 Bonds.

“*Mortgage*” means the Mortgage with Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of June 1, 2020, by the Borrower in favor of the Trustee, as the same may from time to time be replaced, amended or supplemented as provided therein and in the Loan Agreement, which may include a new mortgage in favor of the Trustee on property which is added to the Mortgaged Property, in all cases with the consent of the Bondholder Representative.

“*Mortgaged Property*” means the Facilities subject to the Liens of the Mortgage, as they may at any time exist, and subject to Permitted Liens.

“*Net Proceeds*,” when used with respect to any insurance or condemnation award or with respect to any other recovery on a contractual claim or claim for damage to or for taking of property, means the gross proceeds from the insurance or condemnation award or recovery remaining after payment of all expenses (including attorneys’ fees and any expenses of the Trustee) incurred in the collection of such gross proceeds.

“*Non-Recourse Indebtedness*” means any Indebtedness secured by a Lien, the liability for which is effectively limited to a security interest in, or Lien on, Property purchased or acquired

utilizing the proceeds of such Non-Recourse Indebtedness with no recourse, directly or indirectly, to the Borrower or any other Property of the Borrower.

“*Note*” or “*Notes*” means the Series 2020A Note and the Series 2020B Note and, as the context requires, any additional notes issued in connection with Additional Indebtedness.

“*Obligation*” means the Indebtedness of the Borrower.

“*Officer’s Certificate*” means a certificate signed by the Borrower which shall state that such certificate is being delivered pursuant to (and shall identify the Section or subsection of) this Indenture or the Loan Agreement. Each Officer’s Certificate shall state that (a) the terms thereof are in compliance with the requirements of the Section or subsection pursuant to which such Officer’s Certificate is delivered, or shall state in reasonable detail the nature of any non-compliance and the steps being taken to remedy such non-compliance, and (b) it is being delivered together with any opinions, schedules, statements, pro forma financial statements or other documents required in connection therewith.

“*Opinion of Bond Counsel*” means a written opinion of Taft Stettinius & Hollister LLP, its successor, or any other nationally recognized bond counsel firm acceptable to the Issuer experienced in matters relating to the exclusion from gross income for federal income tax purposes of interest payable on obligations of state and political subdivisions.

“*Opinion of Counsel*” means a written opinion of legal counsel, acceptable to the recipient(s) of such opinion. If the opinion is with respect to an interpretation of federal tax laws or regulations or bankruptcy matters, such legal counsel also must be an attorney or firm of attorneys experienced in such matters.

“*Outstanding*” or “*Bonds outstanding*” means all Bonds that have been authenticated and delivered by the Trustee under this Indenture, except the following:

- (i) Bonds canceled or purchased by or delivered to the Trustee for cancellation pursuant to the provisions of this Indenture;
- (ii) Bonds that have become due (at maturity or on redemption, acceleration or otherwise) and for the payment, including interest accrued to the due date, of which sufficient moneys are held by the Trustee;
- (iii) Bonds deemed paid pursuant to Section 8.01 of this Indenture; and
- (iv) Bonds that have been authenticated under Section 2.08 of this Indenture (relating to registration and exchange of Bonds) or Section 2.10 of this Indenture (relating to mutilated, lost, stolen, destroyed or undelivered Bonds) in lieu of other Bonds.

“*Outstanding Indebtedness*” means, as of any date of determination, all Indebtedness previously issued or incurred and not paid and discharged other than (a) the Note previously canceled by the Trustee or delivered to the Trustee for cancellation, (b) Indebtedness deemed paid and no longer outstanding pursuant to the terms of the instruments evidencing such Indebtedness, and (c) the Note in lieu of which any other Note has been authenticated and delivered or have been

paid pursuant to the provisions hereof regarding a mutilated, destroyed, lost or stolen Note unless proof satisfactory to the Trustee has been received that any such Note is held by a bona fide purchaser.

“*Owner*” or “*Registered Owner*” means the person or persons in whose name or names a Bond shall be registered on the books of the Issuer kept by the Trustee for that purpose in accordance with the terms of this Indenture.

“*Permitted Indebtedness*” has the meaning set forth in Section 5.17 of the Loan Agreement.

“*Permitted Investments*” means and include any of the following, which at the time are legal investments under the laws of the State of Minnesota for moneys held hereunder and then proposed to be invested therein:

- (a) United States Government Obligations (“*Government Obligations*”); or
- (b) direct obligations and fully guaranteed certificates of beneficial interest of the Export-Import Bank of the United States; consolidated debt obligations and letter of credit-backed issues of the Federal Home Loan Banks; participation certificates and senior debt obligations of the Federal Home Loan Mortgage Corporation (“*FHLMCs*”); debentures of the Federal Housing Administration; mortgage-backed securities (except stripped mortgage securities which are valued greater than par on the portion of unpaid principal) and senior debt obligations of the Federal National Mortgage Association (“*FNMA*s”); participation certificates of the General Services Administration; guaranteed mortgage-backed securities and guaranteed participation certificates of the Government National Mortgage Association (“*GNMA*s”); guaranteed participation certificates and guaranteed pool certificates of the Small Business Administration; debt obligations and letter of credit-backed issues of the Student Loan Marketing Association; local authority bonds of the U.S. Department of Housing & Urban Development; guaranteed Title XI financings of the U.S. Maritime Administration; and other Resolution Funding Corporation securities or other similar governmental sponsored entities;
- (c) direct obligations of any state of the United States of America or any subdivision or agency thereof whose unsecured, uninsured and unguaranteed general obligation debt is rated, at the time of purchase, “A-” or better by Moody’s and “A3” or better by S&P or any obligation fully and unconditionally guaranteed by any state, subdivision or agency whose unsecured, uninsured and unguaranteed general obligation debt is rated, at the time of purchase, “A” or better by Moody’s and “A” or better by S&P;
- (d) commercial paper (having original maturities of not more than two hundred seventy (270) days) rated, at the time of purchase, “P-1” by Moody’s and “A-1” or better by S&P;
- (e) federal funds, unsecured certificates of deposit, time deposits or bankers acceptances (in each case having maturities of not more than three hundred sixty-five (365) days) of any domestic bank including a branch office of a foreign bank which branch office is located in the United States, which, at the time of purchase, has a short-term “Bank Deposit” rating of “P-1” by Moody’s and a rating of “A-1” or better by S&P;

(f) investments in money-market funds rated in the highest rating category for such funds by Moody's or S&P;

(g) repurchase agreements collateralized by Government Obligations, Federal Securities, GNMA's, FNMA's or FHLMC's with any registered broker/dealer subject to the Securities Investors' Protection Corporation jurisdiction or any commercial bank insured by the Federal Deposit Insurance Corporation, if such broker/dealer or bank has an uninsured, unsecured and unguaranteed obligation rated "P-1" or "A3" or better by Moody's and "A-1" or "A-" or better by S&P, provided: (a) a master repurchase agreement or specific written repurchase agreement governs the transaction; and (b) the securities are held free and clear of any lien by an independent third party acting solely as agent ("*Agent*") and such third party is (i) a Federal Reserve Bank, (ii) a bank which is a member of the Federal Deposit Insurance Corporation and which has combined capital, surplus and undivided profits of not less than Fifty Million Dollars (\$50,000,000), or (iii) a bank approved in writing for such purpose by the Borrower shall have received written confirmation from such Agent that it holds such securities, free and clear of any lien, as agent for the Borrower; and (c) will value the collateral securities no less frequently than weekly and will liquidate the collateral securities if any deficiency in the required collateral percentage is not restored within two business days of such valuation; and (e) the fair market value of the securities in relation to the amount of the repurchase obligation, including principal and interest, is equal to at least one hundred three percent (103%); and

(h) Investment agreements with banks that at the time such agreement is executed are rated by any Rating Agency in one of the three highest rating categories assigned by such Rating Agency (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) or investment agreements with non-bank financial institutions which, (1) all of the unsecured, direct long-term debt of either the non-banking financial institution or the related guarantor of such non-bank financial institution is rated by any Rating Agency at the time such agreement is executed in one of the three highest rating categories (without regard to any refinement or gradation of rating category by numerical modifier or otherwise) for obligations of that nature; or (2) if such non-bank financial institutions have no outstanding long-term debt that is rated, all of the short-term debt of either the non-banking financial institution or the related guarantor of such non-bank financial institution is rated by any Rating Agency in the highest rating category (without regard to any refinement or gradation of the rating category by numerical modifier or otherwise) assigned to short term indebtedness by such Rating Agency.

The Officer's Certificate from the Borrower to the Trustee directing an investment shall constitute a representation to the Trustee, as applicable, upon which the Trustee may rely, that such investment directed by the Borrower is permitted hereunder.

*"Permitted Liens"* shall have the meanings given in Section 5.16 of the Loan Agreement.

*"Person"* means any individual, association, unincorporated organization, corporation, limited liability company, partnership, joint venture, business trust, or a government or an agency or a political subdivision thereof, or any other entity.



“*Plans and Specifications*” means the detailed plans and specifications for the construction of the Project, prepared by the Architect or by architects and engineers acceptable to the Architect, as amended from time to time by the Borrower and the Architect.

“*Pledged Assets*” means (a) the Mortgaged Property and the Property, (b) the Gross Receipts of the Borrower and all personal property, inventory, accounts (including accounts receivable and contract rights), documents, instruments, other moneys, chattel paper and general intangibles, now owned or hereafter acquired by the Borrower, and all proceeds thereof, all as may be defined in the UCC, (c) the moneys on deposit in the funds and accounts created hereunder, and (d) the property and assets pledged to the Trustee under the Mortgage and the other Bond Documents.

“*Principal Account*” means each Principal Account for each series of Bonds established in the Bond Fund.

“*Prior Obligations*” means the SAP Note.

“*Project*” has the meaning set forth in the WHEREAS clauses hereto.

“*Project Approvals*” means all approvals, consents, waivers, orders, agreements, authorizations, permits and licenses required under applicable Legal Requirements or under the terms of any restriction, covenant or easement affecting a project, or otherwise necessary or desirable for the ownership, acquisition, construction and equipping, use and operation of the Project, whether obtained from a Governing Authority or any other Person.

“*Project Documents*” means all construction, development and design documents executed and delivered by the Borrower in connection with the acquisition, construction, development and equipping of the Project, including but not limited to, the Construction Contract, the Architect Agreement, the Disbursing Agreement, the Development Agreement, and the Management Agreement.

“*Project Fund*” means the Project Fund established by Section 5.02 hereof.

“*Project Jurisdiction*” means the territorial limits of the Host City.

“*Property*” means any and all rights, titles and interests in and to any and all assets of the Borrower, whether real or personal, tangible or intangible and wherever situated and whether now owned or hereafter acquired and including, without limitations, all Property, Plant and Equipment. Notwithstanding the previous sentence, Property shall include any property financed in whole or in part with a Note.

“*Property, Plant and Equipment*” means all Property of the Borrower that is property, plant and equipment under GAAP.

“*Purchase Money Lien*” means (a) a Lien on Property to secure the initial financing of the acquisition or construction of such Property by the Borrower, provided such Lien attaches within one hundred twenty (120) days after the date such Property was acquired or construction thereof was completed, which initial financing may include the refinancing of advances of the funds of

the Borrower if such refinancing occurs within one hundred twenty (120) days after such date of acquisition or completion of construction, and (b) any Lien on Property subject to a Purchase Money Lien to secure the refinancing of Indebtedness secured with such Purchase Money Lien.

“*Qualified Costs of the Project*” means the actual costs incurred to acquire, construct and equip the Project which (i) are incurred not more than sixty (60) days prior to the date the issuer (defined in Treasury Regulations Section 1.150-2 to mean the conduit borrower in a qualified 501(c)(3) bond financing) first declared its “official intent” (within the meaning of Treasury Regulations Section 1.150-2) with respect to the Project (other than preliminary expenditures with respect to the Project in an amount not exceeding twenty percent (20%) of the aggregate principal amount of the Series 2020 Bonds), (ii) are chargeable to the Project’s capital account or would be so chargeable either with a proper election by the Project, or but for a proper election by the Borrower to deduct such costs, within the meaning of Treasury Regulation Section 1.103-8(a)(1), and if charged or chargeable to the Project’s capital account are or would have been deducted only through an allowance for depreciation, and (iii) are made exclusively with respect to a “qualified residential rental project” within the meaning of Section 142(d) of the Code; provided, however, that (i) costs of issuance shall not be deemed to be Qualified Costs of the Project; (ii) fees, charges or profits payable to the Borrower or a “related person” (within the meaning of Section 147 of the Code) shall not be deemed to be Qualified Costs of the Project; (iii) interest during the construction of the Project shall be allocated between Qualified Costs of the Project and other costs and expenses of the Project; (iv) interest following the construction and licensing of the Project shall not constitute Qualified Costs of the Project; (v) letter of credit fees and municipal bond insurance premiums which represent a transfer of credit risk shall be allocated between Qualified Costs of the Project and other costs and expenses to be paid from the proceeds of the Series 2020 Bonds; and (vi) letter of credit fees and municipal bond insurance premiums which do not represent a transfer of credit risk (including, without limitation, letter of credit fees payable to a “related person” to the Borrower) shall not constitute Qualified Costs of the Project. As used herein, the term “preliminary expenditures” includes architectural, engineering, surveying, soil testing and similar costs that were incurred prior to commencement of acquisition and construction of the Project, but does not include land acquisition, site preparation or similar costs incident to commencement of construction of the Project.

“*Quarterly Evaluation Date*” has the meaning given such term in Section 5.18 of the Loan Agreement.

“*Rating Agency*” means each of Fitch, Moody’s and S&P.

“*Rating Agency Fee*” means any fee required to be paid to a Rating Agency to maintain a rating on the Bonds.

“*Rebate Analyst*” means, initially, Hilltop Securities Asset Management, and thereafter, an Independent certified public accountant, financial analyst or Bond Counsel, or any firm of the foregoing, or financial institution, experienced in making the arbitrage and rebate calculations required pursuant to Section 148(f) of the Code, selected and compensated by the Borrower to make the computations and give the directions required under Section 6.04 of this Indenture.

“*Rebate Analyst Fee*” means a fee paid for each rebate calculation (which are to be made every fifth year, if required).

“*Rebate Fund*” means the Rebate Fund established by Section 6.01 hereof into which the Trustee shall deposit amounts paid by the Borrower pursuant to the Tax Certificate.

“*Record Date*” shall have the meaning ascribed to it in Section 2.02(b) hereof.

“*Repair and Replacement Fund*” means the Repair and Replacement Reserve Fund established by Section 6.01 hereof.

“*Required Information Recipient*” means the Trustee, the Underwriter, the Bondholder Representative and all Holders of Bonds who hold \$500,000 or more in principal amount of Bonds and request such reports in writing (which written request shall include a certification as to such ownership).

“*Requisite Number of Bondholders*” means the Beneficial Owners of not less than twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding.

“*Revenue Fund*” means the Revenue Fund created pursuant to Section 6.01 herein.

“*Rule*” means Rule 15c2-12 of the United States Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“*S&P*” means S&P Global Ratings or its successors in the business of providing investment rating services, provided that if neither S&P nor any successor is then in such business, the references to S&P and ratings thereof shall no longer be requirements of the Bond Documents for the Series 2020 Bonds.

“*SAP Note*” means, collectively, the First Mortgage Note dated October 16, 2019 by the Borrower to SAP Properties, LLC, as amended, currently outstanding in the aggregate principal amount of \$\_\_\_\_\_ and the Second Mortgage Note dated October 16, 2019 by the borrower to SAP Properties, LLC, as amended, currently outstanding in the aggregate principal amount of \$\_\_\_\_\_.

“*Securities Depository*” means DTC and its successors and assigns.

“*Series 2020 Bonds*” means collectively, the Series 2020A Bonds and the Series 2020B Bonds.

“*Series 2020A Bonds*” means the City of Falcon Heights, Minnesota Senior Housing Revenue Bonds (Suite Living Senior Care of Ramsey Project) Series 2020A in the aggregate principal amount of \$7,680,000, issued, authenticated and delivered under and pursuant to this Indenture.

“*Series 2020B Bonds*” means the City of Falcon Heights, Minnesota Taxable Senior Housing Revenue Bonds (Suite Living Senior Care of Ramsey Project) Series 2020B in the

aggregate principal amount of \$335,000, issued, authenticated and delivered under and pursuant to this Indenture.

“*Series 2020 Notes*” means collectively, the Series 2020A Note and the Series 2020B Note.

“*Series 2020A Note*” means the Borrower’s Series 2020A Promissory Note assigned by Issuer to the Trustee in the aggregate principal amount of the Series 2020A Bonds.

“*Series 2020B Note*” means the Borrower’s Series 2020B Promissory Note assigned by Issuer to the Trustee in the aggregate principal amount of the Series 2020B Bonds.

“*Short Term Indebtedness*” means all Indebtedness, other than the current portion of Long-Term Indebtedness, incurred or assumed by the Borrower with respect to any of the following:

(a) payments of principal and interest with respect to money borrowed for an original term, or renewable at the option of the Borrower for a period from the date originally incurred, of one year or less;

(b) payments under leases that are capitalized in accordance with GAAP having an original term, or are renewable at the option of the lessee for a period from the date originally incurred, of one year or less; and

(c) payments under installment purchase or conditional sale contracts having an original term of one year or less.

“*Sole Member*” means Suburban Housing & Community Services Corporation, a nonprofit, public benefit corporation duly organized and existing under of the laws of the State of California and a Tax-Exempt Organization, and its successors and assigns.

“*Stable Occupancy*” means the first ninety (90) consecutive days in which the average occupancy of the units in the Project is equal to or greater than ninety percent (90%), and the Long-Term Debt Service Coverage Ratio (based on the trailing twelve month period) is at least 1.15:1.00 on the latest Annual Evaluation Date or the Quarterly Evaluation Date, as evidenced by a certificate executed by the Borrower and delivered to the Trustee and the Bondholder Representative.

“*State*” means the State of Minnesota.

“*Subordinate Indebtedness*” means Indebtedness which meets the requirements set forth in Exhibit B of the Loan Agreement.

“*Surplus Fund*” means the fund created pursuant to Section 6.09 of this Indenture.

“*Tax Certificate*” means the Tax Certificate of the Borrower and the Sole Member dated the date of issuance of the Series 2020A Bonds including an endorsement of the Issuer, with respect to the Series 2020A Bonds.

“*Taxable Bonds*” means the Series 2020B Bonds any other Bonds the interest on which is taxable for federal income tax purposes.

“*Taxable Proceeds Account*” means the account by that name established in the Working Capital Fund.

“*Tax-Exempt Bonds*” means the Series 2020A Bonds and any other Bonds that are not Taxable Bonds.

“*Tax-Exempt Organization*” means a Person organized under the laws of the United States of America or any state thereof that is an organization described in Section 501(c)(3) of the Code, which Person is exempt from federal income taxation under Section 501(a) of the Code, and which Person is not a “private foundation” within the meaning of Section 509(a) of the Code, or corresponding provisions of federal income tax laws from time to time in effect.

“*Tax-Exempt Proceeds Account*” means the account by that name established in the Working Capital Fund.

“*Title Policy*” means title insurance in the form of an ALTA mortgagee’s title policy issued by a title insurance company acceptable to the Underwriter and the Bondholder Representative in the face amount of the Series 2020 Bonds insuring that the Trustee has a valid lien on the Mortgaged Property and the Project, subject only to Permitted Liens and designating the Trustee as the insured named in Schedule A thereto.

“*Total Cash Operating Expenses*” means, with respect to the Borrower, as of any date of determination, and for the applicable period of determination, total cash operating expenses for such period, as determined in accordance with GAAP consistently applied, including legal and accounting fees and expenses and the reasonable fees and expenses of the Trustee, the fees, expenses and indemnity payment owing to the Issuer pursuant to the Loan Agreement, but excluding (i) non-cash expenses such as depreciation, amortization and other non-cash operating expenses and (ii) except for purposes of the Long-Term Debt Service Coverage Ratio calculation, the Developer Fees.

“*Total Operating Revenues*” means, with respect to the Borrower, as of any date of determination, and for the applicable period of determination, total operating revenues of the Borrower for such period, as determined in accordance with GAAP consistently applied.

“*Treasury*” means the United States Department of the Treasury, and any successor to its functions.

“*Treasury Regulations*” means all temporary or final federal income tax regulations issued or amended with respect to the Code by the Treasury or the Internal Revenue Service.

“*Trust Estate*” means the Trust Estate as defined and set forth in the Granting Clauses hereof.

“*Trustee*” means Wilmington Trust, National Association, its successors and assigns, or any successor Trustee under this Indenture.

“*Trustee Indemnified Party*” means the Trustee and each of its directors, officers, employees, counsel and any agents thereof.

“*Trustee’s Fees and Expenses*” means the fees, expenses and disbursements payable to or incurred by the Trustee for services rendered in the ordinary course of business in connection with the Series 2020 Bonds or any of the other Bond Documents.

“*UCC*” means the Uniform Commercial Code as in effect in the State of Minnesota or other applicable state.

“*Underwriter*” means Zions Bancorporation, N.A. dba Zions Bank, and its successors and assigns.

“*Unassigned Rights*” means the rights of the Issuer under Sections 3.02(b), 5.03, 5.06, 5.27, 6.04, 9.07, 9.19, 9.20, and 9.21 of the Loan Agreement and, to the extent not expressly provided in said sections (or in any other sections hereof or in the Loan Agreement) the Issuer’s rights under the Loan Agreement and hereunder to (i) inspect books and records; (ii) give or receive notices, approvals, consents, requests, and other communications; (iii) receive payment or reimbursement for expenses, including, without limitation, Additional Payments, and the Issuer’s Annual Fee; (iv) immunity from and limitation of liability; (v) indemnification by the Borrower or any other Person; and (vi) enforce, in its own name and on its own behalf, those provisions of this Indenture and the Loan Agreement and any other document, instrument or agreement entered into with respect to the Bonds that provides generally for the foregoing enumerated rights or any similar rights of the Issuer or any Issuer Indemnified Person. For avoidance of doubt, the “Unassigned Rights” referenced in clauses (iv), (v), and (vi) above shall include (but not be limited to) the rights of the Issuer Indemnified Persons to immunity from and limitation of liability and indemnification by the Borrower as provided in the Loan Agreement and the right of any such Issuer Indemnified Person to enforce such rights in his, her or its own name.

“*Unsecured Indebtedness*” means any Indebtedness not secured by any Lien.

“*Variable Rate Indebtedness*” means any portion of Indebtedness the interest rate on which is determined by a formula.

“*Weekly Disbursement Date*” means the first (1<sup>st</sup>) Business Day of each calendar week.

“*Working Capital Fund*” means the Working Capital Fund created pursuant to Section 6.01 of this Indenture.

“*Working Capital Reserve Requirement*” means \$\_\_\_\_\_.

## **Section 1.02 Rules of Construction.**

The following rules shall apply to the construction of this Indenture unless the context otherwise requires:

(a) Singular words shall connote the plural number as well as the singular and vice versa.

(b) Words importing the redemption or calling for redemption of Bonds shall not be deemed to refer to the payment of Bonds at their stated maturity.

(c) All references herein to particular Articles or Sections are references to Articles or Sections of this Indenture unless otherwise indicated.

(d) Any headings preceding the texts of the several Articles and Sections of this Indenture, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Indenture, nor shall they affect its meaning, construction or effect.

(e) All references herein to the payment of Bonds are references to payment of principal of and interest on Bonds.

(f) All accounting terms used herein that are not otherwise expressly defined in this Indenture shall have the meanings respectively given to them in accordance with GAAP. Except as otherwise expressly provided herein, all financial computations made pursuant to this Indenture shall be made in accordance with GAAP and all balance sheets and other financial statements shall be prepared in accordance with GAAP.

(g) Unless otherwise specified, the interest rate applicable to all Bonds shall be calculated based on a year consisting of 360 days comprised of twelve 30-day months.

(h) Capitalized terms used herein but not defined shall have the meanings applied to them in the Loan Agreement.

(i) Every “request,” “order,” “demand,” “application,” “appointment,” “notice,” “statement,” “certificate,” “consent,” “direction” or similar action under this Indenture by any party must be in writing and signed by a duly authorized representative of such party with a duly authorized signature.

(j) All references in this Indenture to “counsel fees,” “attorneys’ fees” or the like mean and include fees and disbursements allocable to in-house or outside counsel, whether or not suit is instituted, and including fees and disbursements preparatory to and during any proceedings of a governmental or regulatory body, judicial or administrative hearing, trial and appeal and in any bankruptcy or arbitration proceedings.

(k) Whenever the word “includes” or “including” is used, such word means “includes or including by way of example and not limitation.”

(l) All approvals, consents and acceptances required to be given or made by any person or party hereunder shall be at the reasonable discretion of the party whose approval, consent or acceptance is required except to the extent otherwise specified herein.

(m) For purposes hereof, the Issuer shall not be deemed to have knowledge of any fact or the occurrence of any event unless and until an Authorized Signatory has written notice thereof or actual knowledge thereof.

### **Section 1.03 Contents of Certificates or Opinions.**

Every certificate or opinion with respect to the compliance with a condition or covenant provided for in this Indenture and which is precedent to the taking of any action by the Trustee under this Indenture must include a statement (i) that the person making or giving such certificate or opinion has read such covenant or condition herein and the definitions herein relating thereto, (ii) as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based, (iii) that, in the opinion of the signers, they have made or caused to be made such examination or investigation as is necessary to enable them to express an informed opinion as to whether or not such covenant or condition has been complied with, and (iv) as to whether, in the opinion of the signers, such condition or covenant has been complied with.

Any such certificate or opinion made or given by an Authorized Signatory of the Issuer or an officer or authorized signatory of the Borrower may be based, insofar as it relates to legal or accounting matters, upon a certificate or an opinion of Counsel or an Accountant, which certificate or opinion has been given only after due inquiry of the relevant facts and circumstances, unless such officer or authorized signatory knows that the certificate or opinion with respect to the matters upon which such officer's or authorized signatory's certificate or opinion may be based as aforesaid is erroneous or in the exercise of reasonable care should have known that the same was erroneous. Any such certificate or opinion made or given by Counsel or an Accountant may be based (insofar as it relates to factual matters with respect to information which is in the possession of an Authorized Signatory of the Issuer or an officer or authorized signatory of the Borrower or any third party) upon the certificate or opinion of or representations by an Authorized Signatory of the Issuer or an officer or authorized signatory of the Borrower or any third party on whom Counsel or an Accountant could reasonably rely, unless such Counsel or such Accountant knows that the certificate or opinion or representations with respect to the matters upon which such Counsel's or Accountant's certificate or opinion may be based as aforesaid are erroneous or in the exercise of reasonable care should have known that the same were erroneous. The same Authorized Signatory of the Issuer or officer or authorized signatory of the Borrower or the same Counsel or Accountant, as the case may be, need not certify or opine to all of the matters required to be certified or opined under any provision of this Indenture, but different officers, authorized signatories, Counsel, or Accountant may certify or opine to different matters, respectively.

Notwithstanding any other provision hereof to the contrary, whenever any certificate or opinion is required by the terms of this Indenture to be given by the Issuer on its own behalf, any such certificate or opinion may be made or given by an Authorized Signatory (and in no event individually) and may be based (1) insofar as it relates to factual matters, upon a certificate of or representation by the Trustee or the Borrower; and (ii) insofar as it relates to legal or accounting matters, upon a certificate or opinion of or representation by Counsel or an Accountant, in each case under clauses (i) and (ii) of this paragraph without further investigation or inquiry by such Authorized Signatory or otherwise on behalf of the Issuer.

## **ARTICLE II**

### **AUTHORIZATION, EXECUTION, AUTHENTICATION, REGISTRATION AND DELIVERY OF BONDS**

#### **Section 2.01 Authorization of Bonds.**



The Issuer hereby authorizes the issuance of the Series 2020A Bonds in the aggregate principal amount of \$7,680,000 and the Series 2020B Bonds in the aggregate principal amount of \$335,000. Subject to the consent of the Bondholder Representative, or if none, a Majority of the Holders, the Issuer may, in the Issuer's sole and exclusive discretion, but shall not be obligated to, issue Additional Bonds from time to time payable and secured on a parity with or subordinate to (but not senior to) the Series 2020 Bonds and lend the proceeds thereof to the Borrower under the Loan Agreement to provide funds for any purpose permitted under the Act. Such Additional Bonds shall be issued pursuant to a supplemental indenture and must meet the conditions for Permitted Indebtedness as set forth in Section 5.17 of the Loan Agreement.

## **Section 2.02 Details of Bonds.**

(a) The Series 2020 Bonds shall be issued as registered bonds without coupons in Authorized Denominations, shall be dated their date of delivery, shall be numbered consecutively from R-1 upwards, or in such other manner as the Issuer, with the concurrence of the Trustee, determines, and shall be designated "Senior Housing Revenue Bonds (Suite Living Senior Care of Ramsey Project), Series 2020A" and "Taxable Senior Housing Revenue Bonds (Suite Living Senior Care of Ramsey Project), Series 2020B." The Series 2020A Bonds shall bear interest at a rate equal to \_\_\_\_\_% per annum payable quarterly commencing on September 1, 2020, and on each Interest Payment Date and shall mature on June 1, 2050. The Series 2020B Bonds shall bear interest at a rate equal to \_\_\_\_\_% per annum payable quarterly commencing on September 1, 2020, and on each Interest Payment Date and shall mature on December 1, 2022.

(b) Principal of, and premium, if any, and interest on, the Bonds shall be payable in lawful money of the United States of America, but only from the revenues and receipts derived from the Trust Estate and the security therefor and pledged to the payment thereof as hereinafter provided. Subject to Section 2.12, principal of and premium, if any, on the Bonds shall be payable upon presentation and surrender of the Bonds as they become due at the principal office of the Trustee. Interest on the Bonds shall be payable to the Holders by check or draft mailed to such Holders at their addresses as they appear on the Bond Register. At the option of the Holder of not less than One Million Dollars (\$1,000,000) in aggregate principal amount of Bonds Outstanding, interest will be paid by wire transfer in immediately available funds to a bank within the continental United States in accordance with written wire transfer instructions filed by such Holder with the Trustee prior to the close of business on the Business Day which is fifteen (15) days preceding an Interest Payment Date (the "*Record Date*"). Interest will continue to be paid in accordance with such instructions, until revoked in writing, except for the final payment of interest upon maturity or redemption prior to maturity, which will be paid only upon presentation of the Bond to the Trustee, subject to Section 2.12 hereof.

(c) If any principal of, or premium, if any, or interest on, any Bond is not paid when due (whether at maturity, upon acceleration or call for redemption or otherwise), then commencing on the fifteenth (15<sup>th</sup>) day following the date on which such payment was due, the overdue installments of principal, premium, and, to the extent permitted by law, interest shall bear interest until paid at the same rate set forth in such Series 2020 Bonds. Notwithstanding anything herein to the contrary, at no time shall the Bonds bear interest at a rate in excess of the Maximum Rate.

(d) Nothing herein shall be construed as prohibiting the Issuer from issuing the Bonds as one fully registered bond for each maturity for the purpose of qualifying such Bonds for book entry registration by the Securities Depository or any similar arrangement whereby investors may hold a participation interest in such Series 2020 Bonds.

(e) Notwithstanding any other provision hereof to the contrary, each Beneficial Owner of the Bonds shall be, and by acceptance or purchase of a Bond or a beneficial interest therein and pursuant to a “Certificate of Bondholder Representative” in the form of Exhibit J hereto provided to the Issuer and the Trustee, shall be deemed to have certified that it is, and acknowledged that the Bond may only be transferred to, (a) a “qualified institutional buyer” under Rule 144A promulgated under the Securities Act; or (b) an “accredited investor” under Section 501 of Regulation D promulgated under the Securities Act or (c) the trustee of a trust whose securities are registered pursuant to an effective registration statement under the Securities Act. The Issuer, in its sole discretion, may remove such limitation without notice to or consent of any Holder.

### **Section 2.03 Execution of Bonds; Limited Obligations.**

The Bonds may be executed on behalf of the Issuer by an Authorized Signatory with his or her manual or facsimile signature. All such facsimile signatures will have the same force and effect as if such officers had manually signed each of the Bonds. In case any officer whose signature or a facsimile of whose signature appears on any Bonds ceases to be such officer before the delivery of such Bonds, such signature or such facsimile will nevertheless be valid and sufficient for all purposes, and Bonds may be issued and delivered as if such officer had remained in office until delivery. The Bonds shall then be delivered to the Trustee for authentication by it as provided in Section 3.01 hereof.

The Bonds are special, limited obligations of the Issuer payable solely from the Trust Estate for the Bonds and, except from such source, none of the Issuer, any Issuer Indemnified Person, the State, or any political subdivision or agency thereof or any political subdivision approving the issuance of the Bonds shall be obligated to pay the principal thereof or premium, if any, or interest thereon or any costs incidental thereto. The Bonds are not a debt of the State and do not, directly, indirectly or contingently, obligate in any manner the State or any political subdivision or agency thereof or any political subdivision approving the issuance of the Bonds to levy any tax or to make any appropriation for payment of the principal of or premium, if any, or interest on, the Bonds or any costs incidental thereto. Neither the faith and credit nor the taxing power of the State, or any political subdivision or agency thereof or any political subdivision approving the issuance of the Bonds, nor the faith and credit of the Issuer or any Issuer Indemnified Person, shall be pledged to the payment of the principal of or premium, if any, or interest on, the Bonds or any costs incidental thereto. The Issuer has no taxing power.

### **Section 2.04 Authentication of Bonds.**

The Trustee’s authentication certificate upon the Series 2020A Bonds and the Series 2020B Bonds shall be substantially in the forms set forth in Exhibit A and Exhibit B, respectively. No Bond shall be secured hereby or entitled to the benefit hereof, or shall be valid or obligatory for any purpose, unless the certificate of authentication, substantially in such form, has been duly executed by the Trustee; and such certificate of the Trustee upon any Bond shall be conclusive

evidence and the only competent evidence that such Bond has been authenticated and delivered hereunder. The Trustee's certificate of authentication shall be deemed to have been duly executed by it if manually signed by an authorized officer of the Trustee, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

### **Section 2.05 Form of Bonds.**

The Series 2020A Bonds and the Series 2020B Bonds shall be substantially in the forms set forth in Exhibit A and Exhibit B, respectively, with such appropriate variations, omissions and insertions as permitted or required by this Indenture or which may be consistent with this Indenture and necessary or appropriate to conform to the rules and requirements or the laws of the State or any usage or requirement of law with respect thereto. The Bonds may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any custom, usage or requirement of law with respect thereto.

### **Section 2.06 Delivery of Bonds.**

(a) The Trustee shall authenticate and deliver the Series 2020A Bonds in the aggregate principal amount of \$7,680,000 and the Series 2020B Bonds in the aggregate principal amount of \$335,000 when there has been filed with it and the Bondholder Representative, in form acceptable to the Underwriter, the following:

(i) A certified copy of the Bond Resolution of the Issuer authorizing (A) the execution and delivery of the Loan Agreement and assignment of the Series 2020 Notes, (B) the execution and delivery of the other Bond Documents, (C) the execution and delivery of the Bond Purchase Agreement and (D) the issuance, sale, execution and delivery of the Series 2020 Bonds;

(ii) An original executed counterpart of this Indenture, the Loan Agreement, the Notes, and other Bond Documents;

(iii) A commitment to issue the Title Policy;

(iv) An Opinion of Counsel to the Borrower, in form and substance satisfactory to the Underwriter and the Bondholder Representative;

(v) Internal Revenue Service Form 8038 completed by the Issuer with respect to the Series 2020A Bonds, together with a certificate of the Borrower with respect to the information contained therein;

(vi) Payment of the Issuance Fee or evidence that such payment has been made to the Issuer and the initial fees and expenses of the Trustee;

(vii) An opinion of Bond Counsel that (x) the Series 2020 Bonds have been properly issued under the laws of the State and are binding obligations of the Issuer in accordance with their terms and (y) the interest on the Series 2020A Bonds is excludible from gross income for federal income tax purposes under existing law;

(viii) A request and authorization of the Issuer, signed by its Authorized Signatory, to the Trustee to authenticate and deliver the Series 2020A Bonds in the aggregate principal amount of \$7,680,000 and the Series 2020B Bonds in the aggregate principal amount of \$335,000 to such person or persons named therein upon payment to the Trustee for the account of the Issuer of a specified sum plus accrued interest to the date of delivery, if any. The delivery of the specified sum to the Trustee shall evidence that the foregoing are in form acceptable to the Underwriter;

(ix) A certificate from GIM, as the Bondholder Representative, substantially in the form attached as Appendix G to the Official Statement; and

(x) Such other opinions, certificates or documents as may reasonably be requested by the Underwriter, Bond Counsel, the Bondholder Representative or the Issuer.

(b) Payment of the purchase price for the Series 2020 Bonds and delivery of an Opinion of Bond Counsel to the Trustee shall be conclusive evidence to the Trustee of the delivery of the items set forth in (a) above to the satisfaction of the Underwriter, Bond Counsel, the Bondholder Representative and the Issuer.

(c) The proceeds of the Series 2020 Bonds and the Borrower's contribution shall be deposited and applied by the Trustee as follows:

(i) Proceeds of the Series 2020 Bonds in the amount of \$8,015,000.00, shall be deposited as follows:

(A) to the Construction Account of the Project Fund, an amount equal to \$\_\_\_\_\_ from proceeds of the Series 2020A Bonds and \$0.00 from proceeds of the Series 2020B Bonds;

(B) to the Capitalized Interest Account of the Project Fund an amount equal to \$\_\_\_\_\_ from proceeds of the Series 2020A Bonds and \$\_\_\_\_\_ from proceeds of the Series 2020B Bonds;

(C) to the Tax-Exempt Proceeds Account of the Working Capital Fund an amount equal to \$\_\_\_\_\_ from proceeds of the Series 2020A Bonds and to the Taxable Proceeds Account of the Working Capital Fund an amount equal to \$\_\_\_\_\_ from proceeds of the Series 2020B Bonds;

(D) to the Cost of Issuance Fund, an amount equal to \$\_\_\_\_\_ from proceeds of the Series 2020A Bonds and \$\_\_\_\_\_ from proceeds of the Series 2020B Bonds; and

(E) to the holder of the SAP Note, an amount equal to \$\_\_\_\_\_ from proceeds of the Series 2020A Bonds and \$0 from proceeds of the Series 2020B Bonds.

(ii) [Intentionally Omitted]

(iii) The Trustee is hereby directed to make all disbursements from the Construction Account of the Project Fund and the Cost of Issuance Fund as set forth in the closing memorandum and settlement statement each dated as of the Closing Date executed by the Borrower and delivered to the Trustee without any further disbursement requests or approvals.

**Section 2.07 Exchange of Bonds; Persons Treated as Holders.**

(a) The Trustee shall maintain the Bond Register. Upon surrender of any Bond at the designated corporate trust office of the Trustee, together with an assignment duly executed by the Holder or its duly authorized attorney or legal representative in such form as shall be satisfactory to the Trustee, such Bond may be exchanged for an equal aggregate principal amount of Bonds of Authorized Denominations of the same series, form and maturity, bearing interest at the same rate as the Bonds surrendered, and registered in the name or names requested by the Holder. The Issuer executes and the Trustee shall authenticate any Bonds necessary to provide for exchange of Bonds pursuant to this Section.

(b) Prior to due presentment for registration of transfer of any Bond, the Trustee shall treat the Holder as the person exclusively entitled to payment of principal, premium, if any, and interest and the exercise of all other rights and powers of the Holder, except that interest payments shall be made to the Holder registered on the Record Date.

**Section 2.08 Charges for Exchange of Bonds; Negotiability; Registration, Transfer, Exchange.**

Except as otherwise provided in this Section 2.08, any exchange of Bonds shall be at the expense of the Borrower, except that the Trustee as bond registrar shall make a charge to any Bondholder requesting such exchange in the amount of any tax or other governmental charge required to be paid with respect thereto.

The Bonds shall be and shall have all the qualities and incidents of negotiable instruments under the laws of the State, and Bondholders, in accepting any Bonds, shall be conclusively deemed to have agreed that the Bonds shall be and have all of said qualities and incidents of negotiable instruments.

The Issuer shall cause books for the registration of the Bonds and for the registration of transfer and exchange of the Bonds as provided in this Indenture to be kept by the Trustee, which is hereby appointed the Issuer's bond registrar and agent for the transfer and exchange of the Bonds and as such shall maintain the books of the Issuer for the registration, transfer and exchange of ownership of each Bond as provided in this Indenture. The Trustee, for and on behalf of the Issuer, shall keep the Bond registration record, in which shall be recorded any and all transfers of ownership of Bonds. No Bonds shall be registered to bearer. Subject to the transfer restrictions with respect to the Bonds set forth in this Section 2.08 and on any Bond, any Bond may be transferred or exchanged for a Bond of the same series upon the registration books upon surrender thereof by the registered Bondholder in person or by its attorney-in-fact or legal representative duly authorized in writing together with a written instrument of transfer in form and with guarantee of signature satisfactory to the Trustee duly executed by the registered Bondholder or its attorney-

in-fact or legal representative duly authorized in writing. Upon any such registration of transfer, the Issuer shall cause to be executed and the Trustee shall authenticate and deliver in the name of the transferee a new fully registered Bond or Bonds of Authorized Denominations and of the same series, maturity or maturities, and interest rate(s) and in the same aggregate principal amount(s), and the Trustee shall enter the transfer of ownership in the registration books. Notwithstanding the foregoing, any Beneficial Owner of the Bonds shall be allowed to purchase, transfer, redeem, or sell such Bonds in multiples of \$5,000 as long as, upon completion of such purchase, transfer, redemption or sale, such Beneficial Owner owns at least the applicable Authorized Denomination in principal amount of the Bonds. No transfer of any Bond shall be effective until entered on the registration books.

There shall be no charge to any Bondholder for the registration, exchange, or transfer of Bonds, although in each case the Trustee may require the payment by the Bondholder requesting exchange or transfer of any tax, fee or other governmental charge required to be paid with respect thereto and may require that such amount be paid before any such new Bond shall be delivered.

The Issuer and the Trustee may deem and treat the Holder of any Bond as the absolute Holder of such Bond for the purpose of receiving any payment on such Bond and for all other purposes of this Indenture and the Loan Agreement, whether such Bond shall be overdue or not, and neither the Issuer nor the Trustee shall be affected by any notice to the contrary. Payment of, or on account of, the principal of and interest and redemption premium, if any, on any Bond shall be made to or upon the written order of such registered Bondholder or its attorney-in-fact or legal representative duly authorized in writing. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

The execution of any Bond of any Authorized Denomination or as otherwise permitted hereunder by the manual or facsimile signature of the Authorized Signatory in accordance with Section 2.03 hereof shall constitute full and due authorization of such denomination, and the Trustee shall thereby be authorized to authenticate and deliver such Bond. New Bonds delivered upon any transfer or exchange shall be valid limited obligations of the Issuer, evidencing the same obligation as the Bonds surrendered, shall be secured by this Indenture, and shall be entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered. The Trustee shall not be required to transfer or exchange any Bond (a) after the notice calling such Bond for redemption has been given as herein provided or (b) during a period beginning on the Record Date next preceding either any Interest Payment Date or any date of selection of Bonds to be redeemed and ending at the close of business on the Interest Payment Date or day on which the applicable notice of redemption is given.

Notwithstanding anything hereof to the contrary, each Beneficial Owner of any Bonds issued and secured hereunder shall be, and by acceptance or purchase of a Bond or a beneficial interest therein and pursuant to a "Certificate of Bondholder Representative" in the form of Exhibit I hereto provided to the Issuer and the Trustee, shall be deemed to have certified that it is, and acknowledged that the Bond may only be transferred to (i) a "Qualified Institutional Buyer" (as defined in Rule 144A of the Securities Act), (ii) an "Accredited Investor" (as defined in Rule 501(a) of Regulation D promulgated under the Securities Act) or (iii) the trustee of a trust whose securities are registered pursuant to an effective registration statement under the Securities

Act. The Issuer, in its sole discretion, may remove such limitation without notice to or consent of any Holder.

### **Section 2.09 Temporary Bonds.**

Prior to the preparation of Bonds in definitive form the Issuer may issue temporary Bonds in such denominations as the Issuer may determine, but otherwise in substantially the form hereinabove set forth with appropriate variations, omissions and insertions. The Bonds may have endorsed thereon such legends or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any custom, usage or requirement of law with respect thereto. The Issuer shall, at the Borrower's expense, promptly prepare, execute and deliver to the Trustee before the first Interest Payment Date the Bonds in definitive form and thereupon, upon presentation and surrender of Bonds in temporary form, the Trustee shall authenticate and deliver in exchange therefor Bonds in definitive form of the same series and maturity for the same aggregate principal amount. Until exchanged for Bonds in definitive form, Bonds in temporary form shall be entitled to the lien and benefit of this Indenture.

### **Section 2.10 Mutilated, Lost or Destroyed Bonds.**

If any Bond has been mutilated, lost or destroyed, the Issuer shall execute, and the Trustee shall authenticate and deliver, a new Bond of like date and tenor in exchange and substitution for, and upon cancellation of, such mutilated Bond or in lieu of and in substitution for such lost or destroyed Bond; provided, however, that the Issuer and the Trustee shall so execute, authenticate and deliver such new Bond only if the Holder has paid the expenses and charges of the Issuer and the Trustee in connection therewith and, in the case of a lost or destroyed Bond, (a) shall have filed with the Issuer and the Trustee evidence satisfactory to them that such Bond was lost or destroyed and that the Holder was the owner thereof and (b) shall have furnished to the Issuer and the Trustee indemnity satisfactory to them. If any such Bond has matured, instead of issuing a new Bond, the Trustee may pay the same without surrender thereof.

### **Section 2.11 Cancellation and Disposition of Bonds.**

All Bonds that have been paid (whether at maturity, upon acceleration or call for redemption or otherwise) or delivered to the Trustee by the Borrower for cancellation shall not be reissued, and the Trustee shall, unless otherwise directed by the Issuer, cremate, shred or otherwise dispose of such Bonds in accordance with the standard procedures of the Trustee. The Trustee shall deliver to the Issuer a certificate of any such cremation, shredding or other disposition.

### **Section 2.12 Book-Entry Provisions.**

(a) When the Bonds are held in book-entry form, the provisions of this Section 2.12 shall be applicable, anything else in this Indenture to the contrary notwithstanding. The Bonds will be registered in the name of Cede & Co., a nominee of DTC, and immobilized in DTC's custody. One Bond for the original principal amount of each maturity will be registered to Cede & Co. Beneficial Owners of the Bonds will not receive physical delivery of the Bonds. Individual purchases of the Bonds may be made in book-entry form only in Authorized Denominations. Payments of principal of, and premium, if any, and interest on, the Bonds will be made to DTC or

its nominee as the sole Bondholder on the date such interest, principal, premium, if any, or purchase price on such Bonds becomes due.

(b) DTC is responsible for the transfer of the payments of the principal of, and premium, if any, and interest on, the Bonds to its participants, which include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations (the “*Participants*”) and selection of Bonds to be redeemed in the case of a partial redemption. Transfer of the payments of the principal of, and premium, if any, and interest on, the Bonds to Beneficial Owners of the Bonds is the responsibility of the Participants and other nominees of such Beneficial Owners.

(c) Transfer of the beneficial ownership interests in the Bonds shall be made by DTC and its Participants, acting as nominees of the Beneficial Owners of the Bonds, in accordance with rules specified by DTC and its Participants. Neither the Issuer nor the Trustee makes any assurances that DTC, its Participants or other nominees of the Beneficial Owners of the Bonds will act in accordance with such rules or on a timely basis.

(d) THE ISSUER AND THE TRUSTEE DISCLAIM ANY RESPONSIBILITY OR OBLIGATION TO THE PARTICIPANTS OR THE BENEFICIAL OWNERS WITH RESPECT TO (I) THE ACCURACY OF ANY RECORDS MAINTAINED BY DTC OR ANY PARTICIPANT, (II) THE PAYMENT BY DTC TO ANY PARTICIPANT OR BY ANY PARTICIPANT TO ANY BENEFICIAL OWNER OF ANY AMOUNT DUE TO ANY BENEFICIAL OWNER IN RESPECT OF THE PRINCIPAL OF, AND PREMIUM, IF ANY, AND INTEREST ON, THE BONDS, (III) THE DELIVERY BY DTC TO ANY PARTICIPANT OR BY ANY PARTICIPANT TO ANY BENEFICIAL OWNER OF ANY NOTICE TO ANY BENEFICIAL OWNER THAT IS REQUIRED OR PERMITTED UNDER THE TERMS OF THIS INDENTURE TO BE GIVEN TO BONDHOLDERS, (IV) THE SELECTION OF THE BENEFICIAL OWNERS TO RECEIVE PAYMENT IN ANY PARTIAL REDEMPTION OF THE BONDS, OR (V) ANY OTHER ACTION TAKEN BY DTC AS BONDHOLDER.

IF THERE IS A SECURITIES DEPOSITORY FOR THE BOOK-ENTRY BONDS, TRANSFERS OF OWNERSHIP AND EXCHANGES FOR THE BOOK-ENTRY BONDS SHALL BE EFFECTED ON THE RECORDS OF THE SECURITIES DEPOSITORY AND ITS PARTICIPANTS PURSUANT TO RULES AND PROCEDURES ESTABLISHED BY THE SECURITIES DEPOSITORY AND ITS PARTICIPANTS. IN SUCH CASE, THE TRUSTEE SHALL DEAL WITH THE SECURITIES DEPOSITORY AS REPRESENTATIVE OF THE BENEFICIAL OWNERS OF THE BOOK-ENTRY BONDS FOR PURPOSES OF EXERCISING THE RIGHTS OF HOLDERS HEREUNDER, AND THE RIGHTS OF THE BENEFICIAL OWNERS OF SUCH BOOK ENTRY BONDS HELD BY THE SECURITIES DEPOSITORY SHALL BE LIMITED TO THOSE ESTABLISHED BY LAW AND AGREEMENTS BETWEEN SUCH BENEFICIAL OWNERS AND THE SECURITIES DEPOSITORY AND ITS PARTICIPANTS. REQUESTS, CONSENTS AND DIRECTIONS FROM, AND VOTES OF, THE SECURITIES DEPOSITORY AS REPRESENTATIVE SHALL NOT BE DEEMED INCONSISTENT IF THEY ARE MADE WITH RESPECT TO DIFFERENT PARTICIPANTS OR BENEFICIAL OWNERS.



(e) So long as Cede & Co. (or any other DTC nominee), as nominee of DTC, is the sole Bondholder, references in this Indenture to the Bondholders, Holders, or registered owners of the Bonds shall mean Cede & Co. and not the Beneficial Owners of the Bonds. Any notice to or consent requested of Bondholders under this Indenture shall be given to or requested of Cede & Co.

(f) Replacement Bonds (the “*Replacement Bonds*”) will be registered in the name of and be issued directly to Beneficial Owners of the Bonds rather than to DTC, or its nominee, but only if:

(i) DTC determines not to continue to act as Securities Depository for the Bonds;  
or

(ii) The Trustee, with the consent of the Bondholder Representative, has advised DTC of the Trustee’s determination that DTC is incapable of discharging its duties or that it is otherwise in the best interests of the Beneficial Owners of the Bonds to discontinue the book-entry system of transfer.

Upon the occurrence of an event described in clause (i) or (ii) (and the Trustee and the Issuer undertake no obligation to make any investigation regarding the matters described in clause (ii)), the Trustee or Borrower may attempt to locate another qualified Securities Depository acceptable to the Bondholder Representative. If the Trustee or Borrower fails to locate another qualified Securities Depository acceptable to the Bondholder Representative to replace DTC, the Issuer shall execute, at the Borrower’s written direction and expense, and the Trustee shall authenticate and deliver to the Participants the Replacement Bonds (substantially in the form set forth in Exhibit A, with such appropriate variations, omissions and insertions as are permitted or required by this Indenture) to which the Participants are entitled for delivery to the Beneficial Owners of the Series 2020 Bonds. The Trustee shall be entitled to rely on the records provided by DTC as to the Participants entitled to receive Replacement Bonds. The Holders of the Replacement Bonds shall be entitled to the lien and benefits of this Indenture available to the Holders of the Bonds.

## ARTICLE III

### REDEMPTION OF BONDS

#### Section 3.01 Redemption Dates and Prices.

The Series 2020 Bonds may not be called for redemption by the Issuer except as provided below:

(a) ***Extraordinary Mandatory Redemption.*** The Series 2020 Bonds shall be subject to redemption by the Issuer at the written direction of the Authorized Borrower Representative, in whole or in part, at a redemption price equal to one hundred percent (100%) of the principal amount thereof, without premium, plus accrued interest to, but not including, the redemption date, on the earliest date for which notice of redemption can be given, (i) to the extent the Borrower makes a

prepayment on a Series 2020 Note in the event of any casualty loss of any Mortgaged Property or Condemnation of any Mortgaged Property pursuant to Sections 5.05, 5.14 and 5.15 of the Loan Agreement, and (ii) under the circumstances set forth in Section 5.02(f) hereof. In the event of a partial extraordinary or optional redemption, an Authorized Borrower Representative may direct the Trustee to redeem the Series 2020 Bonds from each maturity then outstanding, to the extent practicable, in the proportion that the principal amount of Bonds of such maturity bears to the total principal amount of Outstanding Bonds or in inverse order of maturity, and the Trustee shall redeem in accordance with such instructions.

(b) **Optional Redemption of Series 2020 Bonds.** The Series 2020A Bonds are not subject to optional redemption prior to June 1, 2025. The Series 2020A Bonds are subject to redemption in whole or in part on any date from an optional prepayment in the event the Borrower exercises its right to prepay all or a portion of the Series 2020A Bonds, the maturities of such Series 2020A Bonds to be redeemed to be selected by the Borrower, with less than all of a single maturity or sinking fund payment of Series 2020A Bonds to be selected by lot by the Trustee in such manner as may be designated by the Trustee, at the redemption prices (expressed as percentages of principal amount) plus accrued interest to the date of redemption, as follows:

<b>Redemption Period (Dates Inclusive)</b>	<b>Redemption Prices</b>
June 1, 2025 through May 31, 2030	103%
June 1, 2030 and thereafter	100%

The Series 2020B Bonds are subject to optional redemption at any time prior to maturity in whole or in part, at a redemption price equal to one hundred percent (100%) of the principal amount thereof, plus accrued interest to the date of redemption.

(c) If less than all of the Series 2020 Bonds of any maturity are called for redemption, the Series 2020 Bonds to be redeemed shall be selected by DTC or any successor securities depository in accordance with its procedures, or if the Series 2020 Bonds are not in book-entry form, then by lot in such manner as the Trustee in its discretion may determine; provided, in no event shall Bonds be redeemed in amounts other than whole multiples of Authorized Denominations.

(d) On or prior to each redemption date, the Trustee will make provision for the payment of the Series 2020 Bonds to be redeemed by setting aside and holding in trust an amount of available funds from the applicable accounts in the Bond Fund sufficient to pay the (i) principal of and interest on such Series 2020 Bonds, and (ii) premium, if any, on such Series 2020 Bonds. If the Series 2020 Bonds are not held in book-entry form, upon presentation and surrender of any such Series 2020 Bond at the designated corporate trust office of the Trustee on or after the date fixed for redemption, the Trustee will pay the principal of and premium, if any, and interest on such Series 2020 Bond from the moneys set aside for such purpose.

(e) Notice of redemption having been given as provided in Section 3.03 hereof, the Series 2020 Bonds or portions thereof designated for redemption will become and be due and payable on the date fixed for redemption at the redemption price provided for herein, provided immediately available funds for their redemption are on deposit at the place of payment at that time, and such Series 2020 Bonds or portions thereof will cease to bear interest from and after the

date fixed for redemption, whether or not such Series 2020 Bonds are presented and surrendered for payment on such date.

(f) All Series 2020 Bonds which have been purchased, redeemed, paid or retired, or received by the Trustee for exchange, will not be reissued but will be canceled and destroyed by the Trustee, in accordance with Section 2.11 hereof.

### **Section 3.02 Purchase in Lieu of Redemption.**

The Series 2020 Bonds are subject to purchase in lieu of redemption by the Borrower prior to their respective maturity dates, at any time, in whole or in part, with the written consent of the Bondholder Representative with respect to all or a portion of the Series 2020 Bonds, or written consent of the applicable Bondholder, with respect to such Bondholders' Series 2020 Bonds, from money available for such redemption under this Indenture or other money provided to the Trustee by the Borrower and deposited by the Trustee in a separate account hereunder to be established by the Trustee at such time and such Series 2020 Bonds shall be cancelled upon purchase. The Series 2020 Bonds to be purchased shall be selected by the Bondholder Representative, with respect to all or a portion of the Series 2020 Bonds, or the applicable Bondholder with respect to such Bondholder's Series 2020 Bonds. The purchase price of such Series 2020 Bonds shall be negotiated and determined by the Borrower and the Bondholder Representative or the Bondholder, as applicable. The principal amount of Series 2020 Bonds purchased pursuant to this Section shall be credited against the latest scheduled mandatory sinking fund payment for such Series 2020 Bonds, unless otherwise directed by the Bondholder Representative. Written notice of such election must be given to the Trustee not less than fifteen (15) Business Days prior to the date the Trustee is directed to send a notice of redemption. If only a portion of a Series 2020 Bond is purchased pursuant to this Section, the Trustee shall issue a new Series 2020 Bond with respect to the unpurchased portion of such Series 2020 Bond, in accordance with the provisions hereof. Once purchased, such portions of the Series 2020 Bonds shall be delivered to the Trustee and cancelled.

### **Section 3.03 Notice of Redemption.**

(a) For any redemption under Section 3.01 and Section 3.05, the Borrower shall give to the Trustee notice of such redemption at least forty-five (45) days prior to the date of redemption. Upon the delivery of such written request by the Borrower to the Trustee, the Issuer shall be deemed, without any action on the Issuer's part, to have exercised its option to redeem the Bonds under Sections 3.01 and 3.05. The Trustee shall cause notice of the call for any redemption under Section 3.01 and Section 3.05 identifying the Series 2020 Bonds to be redeemed to be sent by first class mail not less than thirty (30) nor more than sixty (60) days prior to the redemption date to the Bondholder Representative and the Holder of each Series 2020 Bond to be redeemed at his, her or its address as it appears on the Bond Register. Failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings for the redemption of any Bond with respect to which no such failure or defect shall have occurred.

(b) Any notice of redemption mailed as specified in this Section shall be deemed to have been duly given when mailed by first class mail by the Trustee. Any such notice shall be given in the Issuer's name, identify the Series 2020 Bonds to be redeemed by name, certificate number, CUSIP number, interest rate, maturity date and any other descriptive information

determined by the Trustee to be needed to identify the Series 2020 Bonds subject to redemption. All such notices shall also state that on the redemption date the Series 2020 Bonds called for redemption will be payable at the Trustee’s designated corporate trust office and that from that date interest will cease to accrue. Such notice shall further state that payment of the applicable redemption price plus accrued interest to the date fixed for redemption, if any, will be made with respect to any Series 2020 Bond not then held in book-entry format upon presentation and surrender of the Series 2020 Bonds to be redeemed, and that on the redemption date, the redemption price will become due and payable upon each Series 2020 Bond to be redeemed and that interest thereon will cease to accrue on and after such date.

(c) In the case of an optional redemption under Section 3.01(b) hereof, the notice may state that it is conditioned upon the deposit of moneys, in an amount equal to the amount necessary to effect the redemption, with the Trustee no later than the redemption date and if such amounts have not been so received, the notice will be of no further force and effect, the Issuer will not be required to redeem such Series 2020 Bonds and such Series 2020 Bonds will not be due and payable.

(d) Subject to Section 3.03(c) hereof, on or before the date fixed for redemption, funds shall be deposited with the Trustee by the Borrower to pay the principal of, and premium, if any, and interest on, the Series 2020 Bonds called for redemption. Upon the happening of the above conditions, the Series 2020 Bonds or portions thereof thus called for redemption shall cease to bear interest from and after the redemption date, shall no longer be entitled to the benefits provided by this Indenture, and shall not be deemed to be Outstanding under the provisions of this Indenture.

**Section 3.04 Mandatory Sinking Fund.**

The Series 2020 Bonds shall be subject to mandatory redemption prior to maturity, in part, at a redemption price equal to 100% of the principal amount of the Series 2020 Bonds to be redeemed plus accrued interest thereon to the redemption date, on the dates and in the principal amounts as follows:

**Series 2020A Bonds Maturing June 1, 2050**

<b>Date</b>	<b>Amount</b>	<b>Date</b>	<b>Amount</b>
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<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
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\* Final maturity.

**Series 2020B Bonds Maturing December 1, 2022**

<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>
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\* Final maturity.

There shall be a reduction against sinking fund redemption requirements in chronological order as set forth in a certification provided by an Accountant at least forty-five (45) days prior to any sinking fund redemption date, to the extent Bonds have been purchased and cancelled or surrendered for cancellation and which have not previously been applied as a credit against any sinking fund redemption requirement. If such certification is provided less than forty-five (45) days prior to the next sinking fund redemption date, such reduction should apply to the immediately following sinking fund redemption date.

**Section 3.05 Special Mandatory Redemption.**

The Series 2020 Bonds are also subject to mandatory redemption in whole on the earliest practicable date for which notice can be given in accordance with this Indenture at 105%, with respect to the Series 2020A Bonds, and at 100%, with respect to the Series 2020B Bonds, of the principal amount Outstanding plus accrued interest to the redemption date following a Determination of Taxability.

**ARTICLE IV**

**GENERAL COVENANTS AND PROVISIONS**

**Section 4.01 Payment of Bonds.**

(a) The Issuer solely from and to the extent of the Trust Estate shall promptly pay when due the principal (whether at maturity, upon acceleration or call for redemption or otherwise) of, and premium, if any, and interest on, the Bonds at the places, on the dates, and in the manner provided herein and in the Bonds; provided, however, that such obligations are not a debt, liability or general obligation of the Issuer, the State or any political subdivision thereof or a pledge of the faith and credit of the Issuer, the State or any political subdivision thereof, but shall be payable solely as provided herein, which revenues and receipts are hereby specifically pledged to such purposes in the manner and to the extent provided herein. Neither the members, officers, employees or agents of the Issuer nor any persons executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof. The Bonds are issued pursuant to the Act and shall not constitute an indebtedness of the Issuer within the meaning of any State debt limitation or restriction.

(b) No Holder of the Bonds shall have the right to compel the exercise of the taxing power, if any, of the Issuer, the State or any political subdivision or agency of the State, to pay any principal of, or redemption premium, if any, or interest on, the Bonds.

#### **Section 4.02 Covenants and Representations of the Issuer.**

(a) The Issuer is a municipal corporation existing under the laws of the State.

(b) The Issuer has full power and authority under the Act to adopt the Bond Resolution, to enter into and to perform its obligations under the Issuer Documents.

(c) When executed and delivered by the respective parties thereto, the Issuer Documents will constitute the legal, valid, and binding obligations of the Issuer enforceable in accordance with their respective terms, except as enforcement thereof and hereof may be limited by bankruptcy, insolvency, moratorium, reorganization, arrangement, fraudulent conveyance and other similar laws affecting the rights of creditors; by the application of general principles of equity, by the exercise of judicial discretion in appropriate cases and by the limitation on legal remedies against municipal corporations, political subdivisions or governmental units of the State.

(d) By official action of the Issuer prior to or concurrently herewith, the Issuer has authorized and approved the execution and delivery of the Issuer Documents and the consummation by the Issuer of the transactions contemplated thereby.

(e) To the knowledge of the Issuer, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending against the Issuer seeking to restrain or enjoin the sale or issuance of the Bonds, or in any way contesting or affecting any proceedings of the Issuer taken concerning the sale thereof, the pledge or application of any moneys or security provided for the payment of the Bonds, in any way contesting the validity or enforceability of the Issuer Documents or contesting in any way the existence or powers of the Issuer relating to the authorization, issuance and sale of the Bonds.

(f) The execution and delivery by the Issuer of the Issuer Documents and compliance with the provisions on the Issuer's part contained therein will neither (i) conflict with or constitute a material breach of or default under any law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Issuer is

a party or is otherwise subject, nor (ii) result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the Issuer under the terms of any such law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, except as provided by the Issuer Documents.

#### **Section 4.03 Instruments of Further Assurance.**

The Issuer, at the Borrower's expense, shall do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better assuring, transferring, conveying, pledging and assigning to the Trustee of all the rights assigned hereby and the revenues and receipts pledged hereby to the payment of the principal of, and premium, if any, and interest on, the Series 2020 Bonds. The Issuer, at the Borrower's expense, shall cooperate with the Trustee and with the Bondholders in protecting the rights and security of the Bondholders.

#### **Section 4.04 Reserved**

#### **Section 4.05 Rights Under the Bond Documents.**

Subject to the consent or direction of the Bondholder Representative, the Trustee in its own name or in the name of the Issuer may enforce all of the rights of the Issuer (other than the Unassigned Rights of the Issuer) and all obligations of the Borrower under and pursuant to the Loan Agreement, the Series 2020 Notes and the other Bond Documents for and on behalf of the Holders in accordance with the terms of this Indenture.

#### **Section 4.06 Compliance with Code.**

(a) Subject to Section 13.21 below, the Issuer covenants and agrees that it will not knowingly take any action with respect to the funds held in accordance with this Indenture that is inconsistent with the provisions of this Indenture or that would adversely affect the excludability of interest for federal income tax purposes of the Series 2020A Bonds within the meaning of Section 148(a) of the Code.

(b) Subject to Section 13.21 below, the Issuer covenants that, at Borrower's expense, it will comply with the Tax Certificate. Proceeds of the Series 2020 Bonds shall be invested at the direction of the Borrower pursuant to Article VII hereof. The Issuer further covenants that it will make no investments or other use of the proceeds of the Series 2020A Bonds which would cause the Series 2020A Bonds to be "arbitrage bonds" as defined in Section 148 of the Code. The Issuer further covenants to comply with the rebate requirements (including the payment provisions) contained in Section 148(f) of the Code and any Treasury Regulations thereunder, to the extent applicable.

(c) The Issuer shall not be responsible for the Borrower's actions. At the request of the Issuer, the Borrower will obtain at the Borrower's expense an Opinion of Bond Counsel with respect to action proposed that the Issuer take. The Issuer further covenants and agrees, at the expense of the Borrower, to comply with and take all actions required of it by the Tax Certificate

and not delegated to or assumed by the Borrower and to continue to do so as specified therein notwithstanding any satisfaction or discharge of this Indenture.

**Section 4.07 Reports by Trustee.**

The Trustee shall make monthly reports to the Borrower of all fund balances hereunder and moneys received and expended by it under this Indenture. Upon request therefor, the Issuer and the Bondholder Representative shall be entitled to copies of such reports from the Trustee.

**Section 4.08 Letter of Representations.**

The Issuer and the Trustee agree that, so long as Cede & Co. or some other nominee of DTC is the sole Bondholder, they each will give notices, make payments, establish record dates for consents and similar purposes with respect to the Bonds, and select Bonds for redemption as set forth in the Letter of Representations. Any actions that the Issuer is required to undertake pursuant to the Letter of Representations shall be at the sole cost and expense of the Borrower.

**Section 4.09 Loan of Bond Proceeds.**

Subject to the provisions of Section 4.01 hereof and pursuant to the Loan Agreement, the Issuer shall make a loan to the Borrower with the proceeds of the Bonds for purposes of financing the Project. The Issuer shall not knowingly create or suffer to be created any lien on the revenues with respect to the loan to the Borrower, except the pledge made pursuant to this Indenture.

**Section 4.10 Continuing Disclosure.**

Pursuant to the Continuing Disclosure Agreement under the Rule, the Borrower has undertaken all responsibility for compliance with continuing disclosure requirements, and the Issuer shall have no liability to the Bondholder Representative or the Holders of the Series 2020 Bonds or any other person with respect to such disclosure matters. The Borrower covenants and agrees in the Loan Agreement that it will comply with and carry out all of its obligations under the provisions of the Continuing Disclosure Agreement, to the extent provided therein. Notwithstanding any other provision of this Indenture, failure of the Borrower or the Dissemination Agent to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default.

**ARTICLE V**

**CUSTODY AND APPLICATION OF BOND PROCEEDS; PROJECT FUND; COST OF ISSUANCE FUND**

**Section 5.01 Application of Bond Proceeds.**

Simultaneously with the issuance of the Series 2020 Bonds, funds of the Borrower and the proceeds of the Series 2020 Bonds shall be applied by the Trustee as provided in Section 2.06(c) hereof and a closing memorandum dated as of the Closing Date executed by the Borrower and delivered to the Trustee.



## **Section 5.02 Project Fund.**

(a) There is hereby established with the Trustee a trust fund designated “Project Fund: Suite Living Senior Care of Ramsey.” Within the Project Fund, there is hereby created (i) a Construction Account (the “*Construction Account*”) and (ii) a Capitalized Interest Account (the “*Capitalized Interest Account*”). Prior to receipt of Gross Receipts deposited pursuant to Section 6.02 hereof, the Trustee shall use amounts in the Capitalized Interest Account to pay capitalized interest on the Series 2020 Bonds. Under no circumstances shall the Borrower requisition moneys in the Project Fund to be used to pay Cost of Issuance. All investment earnings on amounts held in the Project Fund shall be retained therein.

(b) Amounts in the Construction Account of the Project Fund shall be used and withdrawn by the Trustee, as directed by a Disbursement Request. The Trustee may conclusively rely upon the receipt of the Disbursement Request as evidence that all conditions precedent required in the Disbursement Agreement, including any additional documentation required pursuant thereto, have been met. In no event shall the Trustee be obligated to make disbursements from the Construction Account of the Project Fund until it has received the Disbursement Request.

(c) Upon receipt of each such Disbursement Request, the Trustee shall within five (5) Business Days, make payment from the Construction Account of the Project Fund in accordance with such disbursement request; provided, however, that if the Trustee has been notified that an Event of Default has occurred and is continuing, the Trustee shall only make payment upon written direction of the Bondholder Representative. All such payments shall be made by check or draft payable either (i) directly to the person, firm, or corporation to be paid, (ii) to both the Borrower and such person, firm, or corporation, or (iii) upon receipt of evidence that the Borrower has previously paid such amount, to the Borrower. Copies of disbursement requests will be provided by the Borrower to the Issuer upon request.

(d) In no event shall the Trustee be obligated to make disbursements from the Construction Account of the Project Fund until it has received the Disbursement Request signed by the Borrower in accordance with the Disbursing Agreement, other than in respect of Disbursing Agent fees, as described in the Disbursing Agreement.

(e) Capitalized interest on the Series 2020 Bonds shall be transferred by the Trustee from the Capitalized Interest Account, without any disbursement request, from time to time in a timely manner from the Capitalized Interest Account to the applicable Interest Account of the Bond Fund in an amount equal to the interest accruing on the applicable series of Series 2020 Bonds through the next immediate Interest Payment Date. Additionally, the Trustee shall use amounts in the Capitalized Interest Account to pay any Issuer’s Annual Fee then due and payable prior to receipt of Gross Receipts deposited pursuant to Section 6.02 hereof, without any disbursement request.

(f) All proceeds of the Series 2020 Bonds remaining in the Construction Account of the Project Fund on the Completion Date, less amounts that the Borrower has directed the Trustee to retain or set aside to meet Costs of the Project not then due and payable or which are being contested (i) shall be transferred to the Series 2020 Subaccount of the Principal Account of the Bond Fund by the Trustee and used for the redemption of Series 2020 Bonds pursuant to

Section 3.01(a) hereof, or (ii) if the Trustee receives an Opinion of Bond Counsel, transferred to the Bond Fund by the Trustee and used to pay principal of or interest on the Series 2020 Bonds. The amount placed in the Bond Fund may be invested at the written direction of the Borrower, who shall request that an investment be made which would produce a yield which is not greater than the yield on the Series 2020 Bonds, or shall otherwise request that such investments shall consist solely of bonds that do not constitute specified private activity bonds within the meaning of Section 57(a)(5)(C) of the Code.

### **Section 5.03 Cost of Issuance Fund.**

(a) There is hereby established with the Trustee a trust fund designated “Cost of Issuance Fund: Suite Living Senior Care of Ramsey” (the “*Cost of Issuance Fund*”).

(b) The Borrower shall request that amounts in the Cost of Issuance Fund be used for payment of Costs of Issuance for the Series 2020 Bonds. All investment earnings on amounts held in the respective accounts of the Cost of Issuance Fund shall be retained therein. Amounts on deposit in the Cost of Issuance Fund shall be requisitioned in accordance with the requisition form attached hereto as Exhibit C.

(c) Upon receipt of each Costs of Issuance requisition substantially in the form of Exhibit C, the Trustee shall within two (2) Business Days, make payment from the applicable account in the Cost of Issuance Fund in accordance with such requisition. All such payments shall be made by wire transfer, check or draft payable either (i) directly to the Person to be paid, (ii) to both the Borrower and such Person, or (iii) upon receipt of evidence that the Borrower previously paid such amount, to the Borrower. Copies of requisitions will be provided to the Issuer and the Bondholder Representative on request.

(d) When the Trustee shall have received a certificate of the Borrower signed by an Authorized Borrower Representative, stating that all Costs of Issuance have been paid, the balance of any moneys remaining in the Cost of Issuance Fund shall be transferred to the Construction Account of the Project Fund.

## ARTICLE VI

### OTHER REVENUES AND FUNDS

#### Section 6.01 Establishment of Funds.

The following trust funds, all to be held by the Trustee, are hereby established hereunder:

- (a) “Bond Fund: Suite Living Senior Care of Ramsey” (the “*Bond Fund*”) in which there shall be established the following accounts for each series of Bonds: (i) Interest Account (the “*Interest Account*”) and (ii) Principal Account (the “*Principal Account*”).
- (b) “Rebate Fund: Suite Living Senior Care of Ramsey” (the “*Rebate Fund*”).
- (c) “Project Fund: Suite Living Senior Care of Ramsey” (the “*Project Fund*”) in which there shall be the accounts set forth in Section 5.02(a) hereof.
- (d) “Revenue Fund: Suite Living Senior Care of Ramsey” (the “*Revenue Fund*”).
- (e) “Working Capital Fund: Suite Living Senior Care of Ramsey” (the “*Working Capital Fund*”).
- (f) “Surplus Fund: Suite Living Senior Care of Ramsey” (the “*Surplus Fund*”), and within such fund, a “*Borrower Distribution Account*.”
- (g) “Insurance and Tax Escrow Fund: Suite Living Senior Care of Ramsey” (the “*Insurance and Tax Escrow Fund*”).
- (h) “Administration Fund: Suite Living Senior Care of Ramsey” (the “*Administration Fund*”).
- (i) “Repair and Replacement Reserve Fund: Suite Living Senior Care of Ramsey” (the “*Repair and Replacement Fund*”).

#### Section 6.02 Revenue Fund.

(a) The Borrower, on each Friday during the term hereof, shall by wire transfer, transmit all Gross Receipts to the Trustee or cause all Gross Receipts to be transmitted to the Trustee for deposit into the Revenue Fund; provided that the Borrower may retain Gross Receipts from time to time for deposit in the Holdback Account in an amount necessary to establish or maintain a balance in the Holdback Account not exceeding the Holdback Amount to be used solely for the payment of Total Cash Operating Expenses of the Borrower. The Borrower on each Friday during the term hereof, shall present to the Trustee written direction in the form attached hereto as Exhibit I setting forth the amounts required to be transferred to the Administration Fund, the Insurance and Tax Escrow Fund, and the operating account held by the Borrower in accordance with clauses First, Second, and Fourth of this Section 6.02(a), which direction shall also provide for a weekly balance statement with respect to the Holdback Account and an accounting of any Gross Receipts retained for deposit therein and any portion of the Holdback Amount spent in the

prior week. On each Weekly Disbursement Date beginning the first (1<sup>st</sup>) week after which moneys are deposited in the Revenue Fund and on each Weekly Disbursement Date thereafter, the Trustee shall make the following transfers from the Revenue Fund in the following order of priority, provided that (1) funds in the Revenue Fund shall be applied on a weekly basis on each Weekly Disbursement Date and shall be calculated and applied on the basis of one-fourth (1/4<sup>th</sup>) or one-fifth (1/5<sup>th</sup>) increments (except with respect to the deposit in TENTH below, into which all remaining funds shall be deposited), depending on the number of weeks or parts of a week in a month, of the monthly amounts described below, (2) in the event funds on any Weekly Disbursement Date shall be insufficient to make any one or more of such transfers, any and all of such deficiencies shall be remedied prior to making any transfers to any subordinated funds (based on the following order of priority) in such month or any future month and (3) during any occurrence of an Event of Default, the Trustee, at the written direction of the Bondholder Representative as set forth in Section 4.02 of the Loan Agreement, or, if no Bondholder Representative, a Majority of the Bondholders, with the exception of the payment of the Issuer's Fees and Expenses, may modify the application of this Section as provided in Article IX hereof:

- FIRST:** to the Administration Fund, an amount necessary to accumulate, during the month in which the transfer is made, the Issuer's Annual Fee, any remaining Issuer's Fees and Expenses then due, and one-twelfth (1/12<sup>th</sup>) of the amount for the current year for payment of any remaining Administration Expenses then due and payable, taking into account amounts already on deposit in the Administration Fund to pay such amounts, if any, including but not limited to any amounts transferred from the Capitalized Interest Account to pay the Issuer's Annual Fee in accordance with Section 5.02 hereof, all pursuant to the provisions of Section 6.05 hereof;
- SECOND** to the Insurance and Tax Escrow Fund, an amount necessary to accumulate, during the month in which the transfer is made, an amount equal to one-twelfth (1/12<sup>th</sup>) of the amount for the current year for annual premiums for property insurance required to be maintained pursuant to the Loan Agreement and for annual real estate taxes, or other charges for governmental services for the current year, as provided in the Annual Budget;
- THIRD:** to the Rebate Fund, to the extent of any deposit required to be made thereto pursuant to the Tax Certificate;
- FOURTH:** to the operating account held by the Borrower, the amount for (a) Total Cash Operating Expenses (including the salaries, benefits and related taxes for all employees or contracted professionals employed in the operation of the Facilities, exclusive of Management Fees, except those Management Fees that are more than four (4) years past due), for the month in which such transfer is to be made by the Trustee and for payroll due during the first five (5) Business Days of the following month, as set forth in the then current Annual Budget and (b) unpaid Total Cash Operating Expenses (exclusive of Management Fees, except those Management Fees that are more than four (4) years past due) from any prior month;

- FIFTH:** to the Bond Fund, an amount necessary to accumulate, during the month in which the transfer is made, an amount equal to one-third (1/3<sup>rd</sup>) of the interest on the Bonds payable on the next Interest Payment Date shall be transferred to the Interest Account, so that there shall be accumulated on such Interest Payment Date taking into account interest earnings on amounts held in the Interest Account for interest on the Bonds, an amount not less than the interest on such Bonds coming due on the immediately succeeding Interest Payment Date;
- SIXTH:** to the Bond Fund, an amount necessary to accumulate, during the month in which the transfer is made, an amount equal to one-sixth (1/6<sup>th</sup>) of the principal amount of such Bonds, coming due by maturity or mandatory redemption on the next principal payment, maturity or mandatory redemption date shall be transferred to the Principal Account, so that there shall be accumulated in the Principal Account, taking into account interest earnings on amounts held therein, an amount not less than the principal of such Bonds, coming due by maturity or mandatory redemption on the immediately succeeding principal payment, maturity or mandatory redemption date;
- SEVENTH:** commencing upon achieving Stabilized Occupancy, to the Repair and Replacement Fund, one-twelfth (1/12 of \$75,000, plus one-twelfth (1/12) of the amount of any draw requiring replenishment in accordance with Section 6.07 hereof;
- EIGHTH:** to the Manager, the Management Fee and any deferred portion of the Management Fee in accordance with Section 5.36 of the Loan Agreement;
- NINTH:** to the Working Capital Fund, any deficiency in the Working Capital Reserve Requirement; and
- TENTH:** to the Surplus Fund the balance (if any) remaining after the payments identified above have been made for application pursuant to Section 6.09 hereof, subject to the conditions set forth in Section 5.31 of the Loan Agreement.

**Section 6.03 Bond Fund.**

(a) ***Interest Account.*** The Trustee shall use moneys in each Interest Account solely to pay interest on the respective series of Bonds as the same shall become due.

(b) ***Principal Account.*** The Trustee shall use moneys in each Principal Account solely to pay the principal of, and premium, if any, on, the respective series of Bonds whether at maturity, by acceleration, call for redemption, or otherwise. The Trustee shall provide for redemption of Bonds in accordance with the mandatory sinking fund redemption schedule set forth in Section 3.04 hereof. Each Bond so redeemed shall be credited by the Trustee at one hundred percent (100%) of the principal amount thereof against amounts required to be transferred to such Principal Account on account of such Bonds, and the principal amount of Bonds to be redeemed

on such Bond Payment Date shall be reduced by the amount of Bonds so purchased, delivered, or previously redeemed. Any principal amount of such Bonds in excess of the principal amount required to be redeemed on such Bond Payment Date shall be similarly credited in chronological order against future transfers to the Principal Account and shall similarly reduce the principal amount of Bonds to be redeemed on the next Bond Payment Date.

(c) Investment earnings on amounts in each Interest Account shall be retained in such Interest Account. If the balance in any Interest Account on any Interest Payment Date (before the transfers to be made to such account on such date) shall exceed the amount payable on the Bonds on such date, the excess shall be retained in the Interest Account and used as a credit against required transfers to the Interest Account during the following months preceding the next Interest Payment Date. Investment earnings on amounts in each Principal Account shall be credited thereto as earned. In the event the balance in any Principal Account on any payment date shall exceed the amount necessary on such date to pay principal of the applicable Bonds at maturity, the excess shall be retained therein and used to pay principal of the applicable Bonds due and to the extent not so used, credited against required transfers thereto.

(d) If on any Interest Payment Date, the amount on deposit in an Interest Account or a Principal Account is insufficient to make the payments or deposits described in (a) or (b) above, the Trustee shall make up any such shortfall by transferring or demanding amounts from the following sources in the following order automatically without the requirement of any requisition from the Borrower or the Bondholder Representative:

- (i) the Surplus Fund;
- (ii) the Working Capital Fund; and
- (iii) the Repair and Replacement Fund.

#### **Section 6.04 Rebate Fund.**

The Rebate Fund shall be used solely for the purposes set forth in this Section. The Trustee shall maintain the Rebate Fund at all times prior to the final payment to the United States of America of the amounts described herein and in the Tax Certificate, which fund shall not be part of the Trust Estate established hereunder. The money deposited to the Rebate Fund, together with all investments thereof and investment income therefrom, shall be held in trust separately and apart from the other funds held under this Indenture and applied solely as provided in this Section and the Tax Certificate, unless, in the Opinion of Bond Counsel, failure to make such application will not adversely affect any excludability from gross income of interest on the Series 2020A Bonds under the Code.

The Trustee shall deposit or transfer to the credit of the account of the Rebate Fund each amount paid to the Trustee by the Borrower pursuant to the Loan Agreement, this Indenture or moneys from other funds or accounts that the Trustee is authorized to transfer to the Rebate Fund. The Trustee shall credit all earnings and debit all losses from the investment of money held for the account of the Rebate Fund to such fund.

The Trustee, on behalf of the Issuer at the written direction of the Borrower, shall withdraw from the Rebate Fund and pay to the United States of America the appropriate portion of the Rebate Amount (determined by the Rebate Analyst) in the amount, to the place and in the manner required by Section 148(f) of the Code, the Regulations, and rulings thereunder. All such payments shall be made by the Trustee for the account and in the name of the Issuer and shall be paid by check mailed by certified United States mail (return receipt requested), addressed to the appropriate Internal Revenue Service Center (and, if appropriate, accompanied by Internal Revenue Service Form 8038-T as prepared by the Borrower on behalf of the Issuer and executed by the Issuer and such other statements, explanations or forms required pursuant to the Regulations or other Internal Revenue Service promulgations provided to it by or on behalf of the Borrower).

The Trustee shall preserve all statements, forms and explanations received from the Borrower, the Rebate Analyst or the Issuer pursuant to this Section and all records of transactions in the Rebate Fund until six (6) years after the discharge of the Series 2020A Bonds.

The Trustee may conclusively rely on the information provided and the instructions and forms prepared by or on behalf of the Borrower with regard to any actions to be taken by it, including payments to be made, pursuant to this Section and shall have no liability for any consequences of any failure of the Borrower to supply accurate or sufficient instructions or to compute correctly any payment due pursuant to this Section. The Trustee and the Issuer shall have no responsibility or duty to perform any rebate calculation or to expend its own funds to make any rebate payments. The Borrower has assumed the obligation to calculate and pay rebate amounts.

If at any time during the term of this Indenture the Borrower, the Issuer or the Trustee shall desire to take any action that would otherwise be prohibited by the terms of this Section, such person shall be permitted to take such action if it shall first obtain and provide at the expense of the Borrower to the other persons named herein an Opinion of Bond Counsel to the effect that such action shall not adversely affect the excludability of interest on the Series 2020A Bonds from gross income of the owners of any such Bond for federal income tax purposes and shall be in compliance with any applicable state laws.

Notwithstanding any other provision of this Indenture, the obligation to pay rebatable arbitrage to the United States of America and to comply with all other requirements of this Section shall survive the defeasance or payment in full of the Series 2020A Bonds until such obligation is fully discharged. Any amounts remaining after such obligation is fully discharged shall be transferred to the Borrower Distribution Account.

#### **Section 6.05 Administration Fund.**

The Trustee shall deposit in the Administration Fund (i) money deposited into such account pursuant to Section 6.02 hereof, (ii) money transferred from the Revenue Fund pursuant to Section 6.02 hereof, and (iii) any other amounts required to be deposited in the Administration Fund hereunder or under the Loan Agreement or the Mortgage with instructions to deposit the same therein. The Trustee shall disburse amounts in the Administration Fund necessary for payment of Administration Expenses then due automatically to the parties due such payment upon presentation of an invoice for payment from such requesting party without any approval of the Borrower, except that the Trustee shall disburse amounts in the Administration Fund necessary for

payment of the Issuer's Annual Fee then due automatically to the Issuer semi-annually, pursuant to Section 3.02(b) of the Loan Agreement, without the presentation of any requisition or invoice for payment by the Issuer or any approval or direction of the Borrower. If the total amount on deposit in the Administration Fund shall not be sufficient to pay any Administration Expenses or Issuer's Annual Fee then due, then the Borrower shall pay the excess amount of any such Administration Expenses or Issuer's Annual Fee directly.

#### **Section 6.06 Working Capital Fund.**

The Working Capital Fund shall be used solely for the purposes set forth in this Section. Within the Working Capital Fund, there is hereby created (i) a Tax-Exempt Proceeds Account (the "*Tax-Exempt Proceeds Account*") and (ii) a Taxable Proceeds Account (the "*Taxable Proceeds Account*"). On the Closing Date the Tax-Exempt Proceeds Account of the Working Capital Fund will be funded in the amount of \$\_\_\_\_\_ from proceeds of the Series 2020A Bonds and the Taxable Proceeds Account will be funded in the amount of \$\_\_\_\_\_ from proceeds of the Series 2020B Bonds, as provided in the closing memorandum to be delivered to the Trustee pursuant to Section 5.01 hereof. Thereafter, the Trustee shall deposit in the Taxable Proceeds Account of the Working Capital Fund money as provided in Section 6.02(a), clause Ninth hereof in an amount equal to the Working Capital Reserve Requirement. Until Stable Occupancy, amounts on deposit in the Working Capital Fund shall be disbursed, first from the Tax-Exempt Proceeds Account until all amounts in such account are depleted and then from the Taxable Proceeds Account, to the Borrower upon written request of the Borrower to the Trustee stating that such amounts will solely be used for Total Cash Operating Expenses directly related to the Project, such as operating losses during the construction and lease up of the Project and, following application of funds in the Capitalized Interest Account of the Project Fund, to make payments on the Bonds to the extent the amount in the Bond Fund is insufficient to pay the principal of, and premium, if any, and interest on the Bonds when due. Moneys in the Working Capital Fund for the purpose described herein shall be disbursed upon receipt of a requisition for payment substantially in the form attached hereto as Exhibit E executed by the Borrower (with the exception of withdrawals to make payments on the Bonds in accordance with Section 6.03(d)), and the Trustee is hereby authorized and directed to issue its checks or transmit wires for each disbursement described herein upon receipt of such a requisition. The Trustee shall have no duty to verify the purposes for which such moneys are requisitioned.

After Stable Occupancy, and only upon written direction of the Borrower, the Trustee may withdraw funds from the Working Capital Fund to allow the Borrower to pay (a) the maintenance and repair costs related to the Facilities, (b) the principal of, premium, if any, and interest on the Bonds to the extent the amount in the Bond Fund is insufficient for such purpose and (c) Total Cash Operating Expenses not directly paid out of the Revenue Fund. Moneys in the Working Capital Fund for the purpose described in the preceding sentence shall be disbursed upon receipt of a requisition, with the exception of (b) above, for payment substantially in the form attached hereto as Exhibit E executed by the Borrower (except withdrawals by the Trustee to make payments on the Bonds in accordance with Section 6.03(d)) and the Trustee is hereby authorized and directed to issue its checks or transmit wires for each disbursement described in the preceding paragraph upon receipt of such a requisition. The Trustee shall have no duty to verify the purposes for which such amounts are requisitioned



All investment earnings on amounts held in the Working Capital Fund shall be credited to the Working Capital Fund.

It has been established that for purposes of federal arbitrage limitations sums in the Working Capital Fund are reasonably required in the amount of the Working Capital Reserve Requirement. If at any time the balance in the Working Capital Fund exceeds the Working Capital Reserve Requirement, plus a sum which, together with sums in any other fund created pursuant to this Indenture not entitled to a temporary period, exceed a minor portion equal to \$100,000 (which is the lesser of 5% of the proceeds of the Series 2020A Bonds or \$100,000), the excess over such amount shall be invested only to the extent and within the limitations permitted by Sections 148 and 149(b) of the Code. The amount on deposit in the Working Capital Fund shall be maintained at the Working Capital Reserve Requirement; provided, however, that such level shall be tested by the Trustee no more frequently than each June 1 and December 1 (each a “Testing Date”), and it shall not be an Event of Default under this Indenture or the Loan Agreement if the amount on deposit in the Working Capital Fund is less than the Working Capital Reserve Requirement on any date other than a Testing Date.

#### **Section 6.07 Repair and Replacement Reserve Fund.**

The Repair and Replacement Fund shall be used solely for the purposes set forth in this Section. The Trustee shall deposit in the Repair and Replacement Fund money as provided in Section 6.02(a), clause Seventh. Amounts on deposit in the Repair and Replacement Fund shall be used for \_\_\_\_\_ and shall be disbursed upon receipt of a requisition for payment substantially in the form attached hereto as Exhibit F executed by the Borrower, and the Trustee is hereby authorized and is directed to issue its checks or transmit wires for each disbursement described herein upon receipt of such a requisition. The Trustee shall have no duty to verify the purposes for which such moneys are requisitioned. The Trustee may also make withdrawals in accordance with Section 6.03(d), in which case, no requisition form is required and replenishment of such amounts shall be made monthly in accordance with Section 6.02(a), Seventh. All investment earnings on amounts held in the Repair and Replacement Fund shall be credited thereto.

#### **Section 6.08 Reserved.**

#### **Section 6.09 Surplus Fund.**

The Surplus Fund shall be used solely for the purposes set forth in this Section. There shall be deposited in the Surplus Fund the excess of Gross Receipts after the deposits required in Section 6.02 hereof. Moneys in the Surplus Fund shall be used on the fifth (5th) Business Day of each month to make the following payments in the following order of priority, at the written direction of the Borrower:

(a) to pay the Developer Fee to the extent set forth in Section 5.37 of the Loan Agreement; then

(b) to pay any of the Total Cash Operating Expenses included in the Annual Budget, incurred during the month before which such payment is made if there are insufficient amounts held in the operating account of the Borrower on such date; then

(c) to pay, without the need for requisition, interest on the Bonds on any Interest Payment Date, and then to pay or principal of the Bonds at any maturity or mandatory redemption date if there are insufficient moneys otherwise available to pay such amounts; then

(d) to pay Total Cash Operating Expenses of the Borrower then due or will be due in the month the payment is made but not included in the Annual Budget; then

(e) to the Borrower Distribution Account, such remaining moneys.

To the extent that the moneys are available to make a partial payment of any of the items in this Section, the Trustee shall make such partial payment to the extent moneys are available. The Trustee may, without the consent of the Borrower, disburse funds from the Surplus Fund to pay principal, premium, if any, and interest on the Bonds then due on any Interest Payment Date or principal payment date of any Bonds at any maturity or mandatory redemption date if there are insufficient moneys otherwise available to pay such amounts.

When all payments required to be made under (a) through (d) above into the funds and accounts held under this Indenture as of the applicable Borrower Distribution Date have been made and the items in this Section which are due and payable as of the applicable Borrower Distribution Date have been paid, and provided no Event of Default has then occurred and is then continuing and provided further after taking into account such distribution the Borrower is in compliance with the Long-Term Debt Service Coverage Ratio provisions of the Loan Agreement and Days' Cash on Hand is at least 45, on the date of each proposed distribution, moneys on deposit in the Borrower Distribution Account shall be distributed to the Borrower on each Borrower Distribution Date upon written certification by an Authorized Borrower Representative of compliance with the foregoing conditions. Unless and until such conditions are met, amounts on deposit in the Surplus Fund shall remain on deposit therein. All investment earnings on amounts held in the Surplus Fund shall be retained in the Surplus Fund and used for the purposes set forth in this section.

#### **Section 6.10 Insurance and Tax Escrow Fund.**

The Insurance and Tax Escrow Fund shall be used solely for the purposes set forth in this Section. The Trustee shall deposit in the Insurance and Tax Escrow Fund (i) money transferred from the Revenue Fund in the amounts and on the dates described in this Indenture, and (ii) any other amounts required to be deposited into the Insurance and Tax Escrow Fund hereunder or under the Mortgage or otherwise and delivered to the Trustee with instructions to deposit the same therein. Money on deposit in the Insurance and Tax Escrow Fund shall be disbursed by the Trustee to the Borrower to pay, or as reimbursement for the payment of, taxes, assessments, insurance premiums, with respect to the Project, as hereinafter provided. On an annual basis, excess amounts shall be disbursed to the Revenue Fund, if actual costs are below budgeted amounts upon the written direction of the Borrower.

Upon presentation to the Trustee by the Borrower of a requisition in the form attached hereto as Exhibit G accompanied by copies of bills or statements for the payment of such taxes, assessments, and insurance premiums, when due, the Trustee will, not more frequently than once a month, pay to the Borrower to provide for the payment of, or as reimbursement for the payment of, such taxes, assessments, and insurance premiums, from money then on deposit in the Insurance

and Tax Escrow Fund. Upon the occurrence and continuance of an Event of Default hereunder or if so requested by the Borrower, the Trustee shall make such payments from the Insurance and Tax Escrow Fund to the designated payee and not to the Borrower. If the total amount on deposit in the Insurance and Tax Escrow Fund shall not be sufficient to pay to or to pay or reimburse the Borrower in full for the payment of such taxes, assessments, and insurance premiums, then the Borrower shall pay the excess amount of such taxes, assessments, and insurance premiums directly.

All investment earnings on amounts held in the Insurance and Tax Escrow Fund shall be retained in the Insurance and Tax Escrow Fund.

#### **Section 6.11 Accounts Within Funds.**

The Trustee shall, at the direction of the Borrower, create accounts within any fund established by this Indenture and shall deposit amounts transferred to such fund in accounts therein and invest the same as directed by the Borrower. Subject to the terms of Sections 6.03(d) and 6.05 hereof, except for draws required to pay the Issuer's Annual Fee and payments made pursuant to 6.03(d), in making transfers from any fund, the Trustee shall draw on accounts therein as directed by the Borrower, so long as required transfers can be made consistent with such directions and in accordance with the terms of this Indenture.

#### **Section 6.12 Non-Presentation of Bonds.**

(a) If any Bond not in book entry form shall not be presented for payment when the principal thereof shall become due (whether at maturity, upon acceleration or call for redemption, or otherwise), all liability of the Issuer to the Holder thereof for the payment of such Bond shall forthwith cease, determine and be completely discharged if funds sufficient to pay such Bond and interest due thereon shall be held by the Trustee for the benefit of the Holder thereof, and thereupon it shall be the duty of the Trustee to hold such funds, without liability for interest thereon, for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on the part of the Holder under this Indenture or on, or with respect to, such Bond.

(b) Any moneys that have been set aside by the Trustee for the payment of the principal of, and premium, if any, and interest on, the Bonds and that shall remain unclaimed by the Holder of any of the Bonds for a period of five (5) years after the date on which such principal and interest on the Bonds shall have become payable, shall, unless otherwise required by law, be paid to the Borrower, and thereafter the Holders of such Bonds shall look only to the Borrower as unsecured creditors for the payment thereof and then only to the extent of the amount so received, without any interest thereon, and the Issuer and the Trustee shall have no responsibility with respect to such money or other payment of such Bonds. In the event of the repayment of any such money to the Borrower as aforesaid, the Holder of the Bonds in respect of which such money was deposited shall thereafter be deemed to be unsecured creditors of the Borrower for amounts equivalent to the respective amounts deposited for the payment of such Bonds and so repaid to the Borrower (without interest thereon).

### **Section 6.13 Trustee's Fees, Costs and Expenses.**

The initial administrative and acceptance fees and expenses, including reasonable legal fees and expenses, of the Trustee relating to the Bonds shall be paid from the Cost of Issuance Fund as and when the same shall become due. Fees and expenses not paid from the proceeds of the Bonds shall be paid by the Borrower from its own funds. All other fees and expenses of the Trustee, the Bondholder Representative and the Issuer, including (but not limited to) fees and expenses of their agents (including fees of their attorneys) described in the Loan Agreement shall be paid by the Borrower in accordance with the provisions of this Indenture and including Articles IX and X hereof.

### **Section 6.14 Moneys to be Held in Trust.**

All moneys required to be deposited with or paid to the Trustee for the account of any of the funds created by this Indenture shall be held by the Trustee in trust, and except for moneys deposited with or paid to the Trustee for the redemption of Bonds, notice of the redemption of which shall have been duly given, shall, while held by the Trustee, constitute part of the Trust Estate (other than the Rebate Fund) and be subject to the lien hereof.

### **Section 6.15 Final Balances.**

Upon the deposit with the Trustee of money sufficient to pay all principal of, and premium, if any, and interest on, the Bonds, and upon written notice from an Authorized Signatory of the Issuer and an Authorized Borrower Representative to the Trustee of satisfaction of all claims against the Issuer and the Borrower hereunder and under the Loan Agreement, including any rebate obligations under Section 6.04 hereof, all fees, charges, indemnity payments to and expenses of the Trustee, the Bondholder Representative, the Bond Registrar, the Issuer and any paying agent that are properly due and payable hereunder and any other amounts required to be paid by the Borrower hereunder or under the Loan Agreement, or upon written notice to the Trustee of the making of adequate provisions for the payment of such amounts as permitted hereby, all money remaining in all funds shall be remitted to the Borrower; except (a) money necessary to pay principal of, and premium, if any, and interest on, the Bonds shall be held by the Trustee and paid to the Bondholders or to the Borrower pursuant to Section 6.12 hereof, and (b) money, if any, set aside in the Rebate Fund shall be applied pursuant to Section 6.04 hereof.

### **Section 6.16 Repayment to the Borrower from Funds.**

Subject to any applicable laws concerning escheat or unclaimed moneys, all amounts remaining in any of the funds created by this Indenture shall be paid to the Borrower after payment in full of the Bonds and the fees, charges, and expenses of the Trustee, the Bondholder Representative and their respective agents and counsel and as evidenced by a certificate of an Authorized Borrower Representative any other paying agent and other amounts required to be paid hereunder, and the fees, charges and expenses of the Issuer and its counsel and financial advisor and any other amounts required to be paid by the Borrower under the Notes or the Loan Agreement.

## ARTICLE VII

### INVESTMENTS

#### Section 7.01 Investment of Funds.

(a) The Trustee shall separately invest and reinvest any moneys held in the funds and accounts hereunder in Permitted Investments upon direction given or confirmed in writing (which direction shall specify the amount thereof to be so invested) of an Authorized Borrower Representative. Such direction may be in the form of a standing direction. Such direction shall constitute a representation by the Borrower that such investment is permitted hereunder. Any investment directed hereunder shall mature or be subject to redemption by the owner thereof prior to the date such funds are expected to be needed under this Indenture.

(b) All interest accruing from investments of moneys in the Project Fund and the Cost of Issuance Fund shall be retained therein. All interest accruing from investments of moneys in the Revenue Fund, Bond Fund, Working Capital Fund, Surplus Fund, reserve, other special trust fund, including all accounts or subaccounts therein, and other accounts or funds and any profit realized from the foregoing as determined as of each June 30 and December 31 shall be allocated as follows:

(i) Interest and profits from the investments of moneys in the Revenue Fund shall be credited to the Revenue Fund.

(ii) Interest and profits from the investment of moneys in the Insurance and Tax Escrow Fund shall be credited to the Insurance and Tax Escrow Fund.

(iii) Interest and profits from the investment of moneys in the Working Capital Fund shall be credited to the Working Capital Fund.

(iv) Interest and profits from the investment of moneys in any other reserves, other special trust funds or accounts or funds shall remain in such reserves, funds or accounts.

Notwithstanding the foregoing to the contrary, any interest or other gain realized as a result of any investments or reinvestments of moneys in funds or accounts shall first be deposited into the Rebate Fund to the extent amounts are required to be deposited therein pursuant to the Tax Certificate shall not have been so deposited.

(c) Notwithstanding anything contained herein to the contrary, the Trustee shall have no obligation to enter into any investment contract, forward delivery investment agreement, or any similar agreements with respect to the investment of any moneys held under this Indenture unless (i) any liability of the Trustee under such agreement is limited to loss occasioned by the gross negligence or willful misconduct of the Trustee, (ii) the Trustee is not liable under any circumstances for any termination or similar amount under such agreement, and (iii) the Borrower shall pay to the Trustee an additional fee and expenses established by the Trustee in accordance with the customary practices.

(d) The Trustee shall have no liability for making any investment requested in writing by the Authorized Borrower Representative. In the absence of any instructions by the Authorized Borrower Representative, the Trustee shall hold any moneys held under this Indenture uninvested in cash. At the request of the Borrower, but no more than monthly, the Trustee shall provide the Authorized Borrower Representative with reports in reasonable detail regarding the investment of the funds held by the Trustee.

(e) For the purpose of determining the amount on deposit to the credit of any such fund or account, as reflected by annual accounting statements, obligations purchased as an investment of moneys therein shall be valued as of June 1 of each year at the cost or market price thereof if such investments are traded on a recognized securities exchange and at their cost in the case of investments not so traded, whichever is lower, inclusive of accrued interest.

### **Section 7.02 Brokerage Confirmations.**

The parties acknowledge that to the extent regulations of the Comptroller of Currency or other applicable regulatory entity grant a right to receive brokerage confirmations of security transactions, the parties waive receipt of such confirmations, to the extent permitted by law. The Trustee shall furnish a statement of security transactions on its regular monthly reports to the Bondholder Representative and the Borrower. This language eliminates the need to send investment confirmations each time a trade is executed, and also eliminates the need for a separate letter from the parties waiving this requirement.

### **Section 7.03 Investment of Rebate Fund.**

The Borrower shall request that moneys on deposit in the Rebate Fund be invested only in Permitted Investments described in (a) and (b) of the definition of Permitted Investments, and otherwise in accordance with the provisions of the Tax Certificate, all as shall be directed by the Borrower in writing; provided, however, that in the event of a conflict in said provisions, the Borrower acknowledges that the provisions of the Tax Certificate shall control.

### **Section 7.04 Investments through Trustee's Bond Department.**

The Trustee may make investments permitted by Section 7.01 hereof through its own bond department.

### **Section 7.05 Investment Records.**

The Trustee will keep or cause to be kept proper and detailed books of record and account containing complete and correct entries of all transactions relating to the receipt, investment, disbursement, allocation, and application of the moneys held under this Indenture. The Trustee will make copies of such records available to the Borrower, upon its reasonable written request. The Trustee agrees to retain investment records relating to the moneys held under this Indenture until six (6) years after the Bonds are no longer Outstanding.

## ARTICLE VIII

### DISCHARGE OF INDENTURE

#### Section 8.01 Discharge of Indenture.

(a) Bonds shall be deemed paid for all purposes of this Indenture when: (i) payment of the principal of and the maximum amount of interest that may become due on such Bonds to the due date of such principal and interest (whether at maturity, upon redemption, acceleration, or otherwise) either (A) shall have been made in accordance with the terms of Article III hereof or (B) shall have been provided for by depositing with the Trustee (1) moneys (meeting the requirements of Section 7.05 of the Loan Agreement) sufficient to make such payment, or (2) noncallable Defeasance Obligations maturing as to principal and interest in such amounts and at such times as will ensure the availability of sufficient moneys to make such payment without regard to the reinvestment thereof and (ii) all compensation, expenses and the amounts owing to the Issuer, the Bondholder Representative and the Trustee (as well as the fees and expenses of their counsel), pertaining to each such Bond in respect of which such payment or deposit is made have been paid or provided for to their respective satisfaction. When a Bond is deemed paid, it shall no longer be secured by or entitled to the benefits of this Indenture, except for payment from moneys or Defeasance Obligations under item (i) above and except that it may be transferred, exchanged, registered, discharged from registration or replaced as provided in Article II.

(b) Notwithstanding the foregoing, no deposit under item (i) of subsection (a) of this Section made for the purpose of paying the redemption price of such Bond shall be deemed a payment of such Bond as aforesaid until the earlier of (i) notice of redemption of such Bond shall have been given in accordance with Article III hereof or, if such Bond is not to be redeemed within the next sixty (60) days, until the Borrower shall have given the Trustee, in form satisfactory to the Trustee, irrevocable written instructions to notify, as soon as practicable, the Holder of such Bond, in accordance with Article III hereof, that the deposit required by item (i) of subsection (a) of this Section has been made with the Trustee and that such Bond is deemed to be paid under this Article and stating the redemption date upon which moneys are to be available for the payment of the principal of such Bond, or (ii) the maturity of such Bond. Additionally, and while the deposit under item (i) of subsection (a) of this Section made for the purpose of paying the final payment of a Bond upon its maturity shall be deemed a payment of such Bond as aforesaid, the Trustee shall mail notice to the Holder of such Bond, as soon as practicable stating that the deposit required by item (i) of subsection (a) of this Section has been made with the Trustee and that such Bond is deemed to be paid under this Article.

(c) With respect to such Bonds that are not to be redeemed within the next sixty (60) days, there must be submitted to the Issuer and the Trustee (i) an Opinion of Bond Counsel to the effect that the defeasance of any Series 2020A Bonds in accordance with this Article will not cause interest on any of such Series 2020A Bonds, the interest on which is excludible from the gross income of the Holders thereof for federal income tax purposes, to become includable in gross income for federal income tax purposes and (ii) a certificate of an Accountant (the “*Accountant’s Verification*”) to the effect that the deposit required by above will provide funds sufficient to pay when due the principal or redemption price, if applicable, and interest due and to become due on such Bonds on and prior to the redemption date or maturity date thereof, as the case may be.

The items required by this Section 8.01 may be submitted with respect to any particular Bonds or series of Bonds (whether upon or prior to the maturity or the redemption date of such Bonds), in which case such Bonds will no longer be deemed to be Outstanding and will be deemed to be paid within the meaning of this Article, and the Holders of such Bonds will be secured only by such deposit and not by any other part of the Trust Estate.

If such moneys or Defeasance Obligations have been deposited or set aside with the Trustee pursuant to this Article for the payment of Bonds and interest and premium thereon, if any, and such Bonds will not have in fact been actually paid in full, no amendment to the provisions of this Article will be made without the consent of the Holder of each Bond affected thereby.

The escrow agreement for any defeasance of the Bonds must provide that:

(i) Any substitution of securities will require a verification report by an independent certified public accountant; and

(ii) The Issuer and/or the Borrower will not exercise any optional redemption of Bonds secured by the escrow agreement or any other redemption other than mandatory sinking fund redemptions unless the right to make any such redemption has been expressly reserved in the escrow agreement and such reservation has been disclosed in the official statement (or other disclosure documents) for the refunding bonds.

(d) When Bonds shall be deemed paid under the foregoing provisions of this Section and other sums due hereunder and under the Loan Agreement shall have been paid, the Issuer's obligations under this Indenture with respect to such Bonds shall be discharged, except for obligations under Article II hereof in respect of the transfer, exchange, registration, discharge from registration, and replacement of Bonds, and obligations stated herein to survive. Any moneys remaining in the funds and accounts hereunder after such payments have been made shall be paid to the Borrower, in accordance with Section 6.16 hereof. Bonds delivered to the Trustee for payment shall be cancelled pursuant to Section 2.11 hereof.

(e) An Authorized Borrower Representative shall direct the deposit, investment and use of the moneys and securities described in this Section such that no deposit will be made and no use made of any such deposit that would cause any Series 2020 Bonds (including Series 2020 Bonds deemed paid pursuant to this Section) to be treated as "arbitrage bonds" within the meaning of Section 148 of the Code. Before accepting or using any such deposit, the Authorized Borrower Representative shall provide the Trustee an Opinion of Bond Counsel as to whether such use or acceptance would cause the Series 2020 Bonds (including Series 2020 Bonds deemed paid pursuant to this Section) to be so treated and, that all conditions hereunder have been satisfied, and the Trustee may conclusively rely on such Opinion with regard thereto.

(f) The Trustee or the Issuer may request and shall be fully protected in relying upon a report of an independent certified public accountant to the effect that a deposit will be sufficient to defease such Bonds as provided in this Section 8.01.



## ARTICLE IX

### DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS

#### Section 9.01 Events of Default.

Each of the following events shall be an Event of Default:

- (a) failure by the Issuer to make due and punctual payment of any interest on any Bond;
- or
- (b) failure by the Issuer to make due and punctual payment of the principal of any Bond (whether at maturity, upon acceleration, or call for redemption or otherwise); or
  - (c) the occurrence of an Event of Default under the Loan Agreement and such Event of Default shall not have been remedied or waived to the satisfaction of the Bondholder Representative; or
  - (d) subject to the provisions of Section 9.11 hereof, failure by the Issuer to observe or perform any other covenant, condition, or agreement on its part to be performed or observed under this Indenture or in the Series 2020 Bonds.

Upon its knowing of the occurrence of an Event of Default hereunder, the Trustee shall promptly notify the Borrower, the Issuer and the Bondholder Representative if there is then a designee acting as Bondholder Representative, by facsimile or electronic mail, confirmed by overnight mail or courier, of such occurrence, which notification shall set forth the specific nature of the Event of Default. The Trustee may also provide notices as set forth in Section 10.03 hereof. Except with respect to any Event of Default under Section 6.01(c) of the Loan Agreement, the Bondholder Representative may waive any Event of Default hereunder or the occurrence of any Event of Default.

#### Section 9.02 Acceleration.

If an Event of Default shall occur and be continuing, the Trustee may, with the consent of the Bondholder Representative, and if requested by the Bondholder Representative or, if there is no Bondholder Representative, the Majority of the Holders, shall, by notice to the Issuer and the Borrower, declare the entire unpaid principal of and interest on the Bonds due and payable and, thereupon, the entire unpaid principal of and interest on the Bonds shall forthwith become due and payable. Upon any such declaration the Issuer through the Trustee shall forthwith pay to the Holders of the Bonds the entire unpaid principal of and accrued interest on the Bonds and shall pay the Issuer, the Bondholder Representative and the Trustee all fees and expenses (including, but not limited to, the fees and expenses of their counsel) due in accordance with the provisions of the Loan Agreement, but only from the Trust Estate. Upon the occurrence of an Event of Default and a declaration of acceleration hereunder, the Trustee, as assignee of the Issuer, with the written consent of the Bondholder Representative, shall immediately exercise its option under Section 6.02(a) of the Loan Agreement to declare all payments on the Notes to be immediately due and payable.

### **Section 9.03 Other Remedies; Rights of Bondholders.**

(a) Upon the occurrence of an Event of Default, the Trustee, with the written consent of the Bondholder Representative may, or at the direction of the Bondholder Representative and, if there is not a Bondholder Representative, if requested to do so by the Majority of the Bondholders, shall proceed to protect and enforce its rights as the holder of the Notes and the rights of the Bondholders by mandamus by the appointment of a receiver, or other action, suit, or proceeding at law or in equity for specific performance of any agreement herein contained or in the Loan Agreement. Upon the occurrence of an Event of Default, the Bondholder Representative may require that all Gross Receipts be deposited pursuant to a deposit account control agreement or other lockbox arrangement acceptable to the Bondholder Representative and approved by the Trustee prior to their disbursement by the Trustee.

(b) Upon the occurrence of an Event of Default the Trustee may, with the written consent of the Bondholder Representative, or at the direction of the Bondholder Representative and, if there is not a Bondholder Representative, if requested to do so by the Majority of the Bondholders and if provided security and indemnity pursuant to Section 10.01(k) hereof, the Trustee, subject to the written consent of the Bondholder Representative, shall exercise such one or more of the rights and powers conferred by this Article as the Trustee, upon being advised by counsel, shall deem most expedient in the interests of the Bondholders.

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

(d) 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.

(e) No waiver of any Event of Default hereunder, whether by the Trustee pursuant to Section 9.10 hereof or by the Bondholder Representative or the Bondholders, shall extend to or shall affect any subsequent failure or Event of Default or shall impair any rights or remedies consequent thereon.

### **Section 9.04 Right to Direct Proceeding.**

Anything in this Indenture to the contrary notwithstanding the Bondholder Representative or, if there is no Bondholder Representative, a Majority of the Bondholders, shall have the right, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture, or the appointment of a receiver, or any other proceedings hereunder; provided, however, that such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture.

**Section 9.05 Application of Moneys.**

(a) All moneys held by the Trustee or received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after application to the following:

(i) FIRST to the payment of the cost and expenses of the proceedings resulting in the collection of such moneys,

(ii) SECOND, to the payment of the expenses, liabilities, and advances incurred or made by the Trustee and the Bondholder Representative, the fees and reasonable legal expenses and other advances of the Trustee and the Bondholder Representative,

(iii) THIRD, to the payment of the fees, costs and expenses of the Issuer and the Issuer Indemnified Persons and any other payments due them in respect of the Unassigned Rights (including, without limitation, indemnification payments); provided that payment of amounts due to the Issuer or the Issuer Indemnified Persons under this Section shall not absolve the Borrower from liability thereof except to the extent of the amounts received from the Trustee;

be deposited in the Bond Fund and thereafter shall be deposited, to the extent of any deficiency of required amounts in the Rebate Fund, in the Rebate Fund. All moneys so deposited in the Bond Fund and all moneys held or deposited in the Bond Fund during the continuance of an Event of Default shall (after payment of the reasonable fees and expenses of the Trustee and the Bondholder Representative) be applied as follows, unless otherwise directed by the Bondholder Representative:

(i) Unless the principal of all the Bonds shall have become or shall have been declared due and payable, all such moneys shall be applied:

**FIRST:** If directed by the Bondholder Representative or the Majority of the Bondholders, as applicable, pursuant to Section 9.04 hereof, to the payment of operating expenses and for reasonable renewals, repairs, and replacements of the Project necessary to prevent impairment of the Trust Estate and to the payment of the costs and compensation of any advances made by the Issuer and the attorneys' fees of the Issuer, the Trustee or the Bondholder Representative, compensation of any advances made by the Issuer, the Trustee or the Bondholder Representative, and related attorneys' fees;

**SECOND:** To the payment to the persons entitled thereto of all installments of interest then due on the Bonds, in the order of the maturity of the installments of such interest and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds;

**THIRD:** To the payment to the persons entitled thereto of the unpaid principal of any of the Bonds that shall have become due (other than Bonds called for redemption for the payment of which moneys are held pursuant to the provisions of this Indenture), in the order of their due dates, with interest on such Bonds at the respective rates specified therein from the respective dates on which they became due and, if the amount available shall not be sufficient to pay in full Bonds due on any particular date, together with such interest, then first to the payment of such interest, ratably, according to the amount of such interest due on such date, and then to the payment of such principal, ratably, according to the amount of such principal due on such date, to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds; and

**FOURTH:** To the extent permitted by law, to the payment to persons entitled thereto of the unpaid interest on overdue installments of interest [**AT WHAT RATE?**] ratably, according to the amount of such interest due on such date, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds.

**FIFTH:** After payment in full of the Bonds, any other fees and expenses due under the Mortgage, the Loan Agreement or any other documents to which the Borrower is a party, then to the Borrower.

(ii) If the principal of all the Bonds shall have become due or shall have been declared due and payable, all such moneys shall be applied to the payment of the principal of and interest then due and unpaid on the Bonds, as soon as practicable, including, to the extent permitted by law, interest on overdue installments of interest, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest to the persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds. To the extent that operation of any of the Project continues after the principal of the Bonds shall become due and payable, during such time all moneys shall be applied in accordance with the provisions of Section 9.05(a) and item (i) of this subsection.

(iii) If the principal of all the Bonds shall have been declared due and payable and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article, then, subject to the provisions of item (ii) of this subsection in the event that the principal of all the Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of Section 9.05(a) and item (i) of this subsection.

(b) Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys shall be applied at such times and from time to time as the Trustee shall determine, with the consent of the Bondholder Representative, having due regard to the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall so apply such moneys, it shall fix the date (which shall be an Interest Payment Date unless it shall deem another date more suitable) on which such application is to be made and on such date interest on the amounts of principal to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder of any Bond until such Bond shall have been presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

#### **Section 9.06 Remedies Vested in Trustee.**

All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee, to the extent permitted by law and subject to the written consent of the Bondholder Representative, without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto and any such suit or proceeding instituted by the Trustee may be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any Holders of the Bonds, and any recovery of judgment shall be for the equal benefit of the Holders of the Outstanding Bonds; provided, however, that the Trustee shall not be obligated to do any act permitted by this Indenture unless furnished compensation and reimbursement for the reasonable fees and expenses of its counsel and indemnity for reasonable expenses and liability.

#### **Section 9.07 Limitation on Suits.**

Except to enforce the rights given under Article IX hereof, no Holder of any Bond shall have any right to institute any action, suit, or proceeding at law or in equity for the enforcement of this Indenture or for the execution of any trust thereof or any other remedy hereunder, unless (a) a failure shall have occurred and be continuing of which the Trustee has been notified as provided in Section 10.01(h) hereof, or of which by such Section it is deemed to have notice, (b) such failure shall have become an Event of Default and the Bondholder Representative or, if there is no Bondholder Representative, the Requisite Number of Bondholders shall have made written request to the Trustee and offered it reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit, or proceeding in its own name, (c) the Bondholder Representative or the Requisite Number of Bondholders, as applicable, shall have offered to the Trustee indemnity as provided in Section 10.01(k) hereof, (d) the Trustee shall have, for thirty (30) days after such notice, failed or refused to exercise the powers hereinbefore granted, or to institute such action, suit, or proceeding in its own name, (e) no direction inconsistent with such written request shall have been given to the Trustee during such thirty (30) day period by the Bondholder Representative, or if there is no Bondholder Representative, a Majority of the Bondholders, or the Bondholder Representative, as applicable and (f) prior notice of such proposed action, suit, or proceeding shall have been given to the Trustee; it being understood and intended that no one or more Holders of the Bonds shall have any right in any manner whatsoever to affect, disturb, or prejudice this Indenture by his, her, its, or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted

and maintained in the manner herein provided and for the equal benefit of the Holders of all Bonds then Outstanding. The notification, request, and offer of indemnity set forth above, at the option of the Trustee, shall 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 or for any other remedy hereunder.

**Section 9.08 Reserved.**

**Section 9.09 Termination of Proceedings.**

In case the Trustee or the Bondholder Representative shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Trustee or the Bondholder Representative, then and in every such case the Issuer, the Borrower, the Bondholder Representative and the Trustee shall be restored to their former positions and rights hereunder, and all rights, remedies, and powers of the Trustee and the Bondholder Representative shall continue as if no such proceedings had been taken.

**Section 9.10 Waiver of Events of Default.**

The Trustee, with the prior written consent of the Bondholder Representative, shall waive the occurrence of any, or an Event of Default hereunder and/or its consequences and/or rescind any declaration of maturity of principal of and interest on the Series 2020 Bonds, on the written request of the Bondholder Representative (except with respect to the Unassigned Rights, which may only be waived with the Issuer's written consent) or, if there is no Bondholder Representative, a Majority of the Holders; provided, however, that:

(i) there shall not be waived without the consent of the Bondholder Representative or, if there is no Bondholder Representative, the Holders of sixty-seven percent (67%) of the Bonds then Outstanding any Event of Default described in Section 9.01(a) or (b) hereof unless, prior to such waiver or rescission there shall have been paid or provided for all arrears of interest with interest (to the extent permitted by law) at the rate borne by the Bonds on overdue installments of interest, all arrears of principal and all expenses of the Trustee in connection with such failure; and

(ii) in case of any such waiver or rescission or in case of any discontinuance, abandonment or adverse determination of any proceeding taken by the Trustee or the Bondholder Representative on account of any such failure, the Issuer, the Trustee, the Bondholder Representative and the Bondholders shall be restored to their former positions and rights hereunder respectively.

No delay or omission of the Trustee, the Bondholder Representative, or of any Holder of the Bonds to exercise any right or power arising upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such power or right, or an acquiescence to any or omission taken by the Issuer or the Borrower, and every power and remedy given by this Indenture to the Trustee, the Bondholder Representative or to the Holders of the Series 2020 Bonds may be exercised from time to time and as often may be deemed expedient.

### **Section 9.11 Notice of Failures; Opportunity of the Borrower to Cure Failures.**

(a) Anything herein to the contrary notwithstanding, no failure specified in Section 9.01(d) hereof on the part of the Issuer shall constitute an Event of Default until (i) notice of such failure shall be given (A) by the Trustee to the Issuer, the Bondholder Representative and the Borrower or (B) by the Bondholder Representative or, if there is no Bondholder Representative, the Requisite Number of Bondholders, as applicable, to the Trustee, the Issuer, and the Borrower, and (ii) the Issuer and the Borrower shall have had sixty (60) days after such notice to correct such failure or cause such failure to be corrected, and shall not have corrected such failure or caused such failure to be corrected within such period; provided, however, that if any failure specified in Section 9.01(d) hereof shall be such that it cannot be corrected within such period, it shall not constitute an Event of Default if corrective action is instituted by the Issuer or the Borrower within such period and diligently pursued until such failure is corrected, as long as such failure is corrected within one hundred eighty (180) days.

(b) With regard to any alleged failure concerning which notice is given to the Borrower under this Section, the Borrower may perform any covenant, condition, or agreement the nonperformance of which is alleged in such notice to constitute a failure, 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.

## **ARTICLE X**

### **THE TRUSTEE**

#### **Section 10.01 Acceptance of Trusts and Obligations.**

The Trustee hereby accepts the trusts and obligations imposed upon it by this Indenture and the Loan Agreement and agrees to perform such trusts and obligations, but only upon and subject to the following express terms and conditions, and no implied covenants or obligations shall be read into this Indenture or the Loan Agreement against the Trustee:

(a) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and the Loan Agreement. In case an Event of Default has occurred (that has not been cured or waived) the Trustee shall exercise such 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 his or her own affairs. The Trustee shall not be responsible for or charged with knowledge of (A) any events or other information, or (B) any default under this Indenture or any other agreement, instrument, or document (other than this Indenture) unless a responsible officer of the Trustee shall have actual knowledge thereof. Neither the Trustee nor any of its directors, officers, employees, agents or affiliates shall be responsible for nor have any duty to monitor the performance or any action of the Issuer, the Borrower, the Bondholder Representative, or any other Person, or any of their directors, members, officers, agents, affiliates or employee, nor shall it have any liability in connection with the malfeasance or nonfeasance by such Person. The Trustee may assume performance by all such Persons of their respective obligations. The Trustee shall have no

enforcement or notification obligations relating to breaches of representations or warranties of any other Person.

(b) 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 act or refrain from acting on the written direction of an Authorized Borrower Representative, or of the Bondholder Representative, or if no Bondholder Representative, the Requisite Number of Bondholders, or on the opinion or advice of its counsel concerning all matters of trust hereof and the duties hereunder, and shall be fully protected in acting upon such advice and may in all cases pay reasonable compensation to all such attorneys, agents, receivers, and employees as may reasonably be employed in connection with the trust hereof. As a condition to the taking, suffering, or omission of any action hereunder, the Trustee may demand and act on an Opinion of Counsel and shall not be responsible for any loss or damage resulting from any action or non-action by it taken or omitted to be taken which are reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture or in reliance on such written direction or Opinion of Counsel.

(c) The Trustee shall not be responsible for any recital herein or in the Bonds (except in respect to the certificate of the Trustee endorsed on the Bonds) or for the initial recording, re-recording, other filing or re-filing of the Mortgage and financing statement or any other document or instrument, or for insuring the Project, or collecting any insurance moneys, or for the validity of the execution by the Issuer of this Indenture or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value of or title to the Mortgaged Property or otherwise as to the maintenance of the security hereof. The Trustee shall not be liable for any debts contracted or for damages to persons or to personal property insured or damaged, or for salaries or nonfulfillment of contracts during any period in which it may be in possession of or managing the Mortgaged Property; except that in the event the Trustee takes possession of any part of the Mortgaged Property pursuant to any provision of this Indenture or the other Bond Documents it shall use due diligence in preserving such part. The Trustee shall not be bound to ascertain or inquire as to the observance or performance of any covenants, conditions, or agreements on the part of the Issuer or on the part of the Borrower under the Loan Agreement, the Mortgage or other Borrower Documents, but the Trustee may reasonably require of the Issuer (at the sole cost and expense of the Borrower) or the Borrower full information and advice as to the observance or performance of such covenants, conditions or agreements. The Trustee shall not be responsible or liable for any loss suffered in connection with any investment of moneys made by it in accordance with Section 7.01 hereof.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder. The bank or trust company acting as Trustee and its directors, officers, employees, or agents may in good faith buy, sell, own, hold, and deal in the Bonds and may join in any action that any Bondholder or the Bondholder Representative may be entitled to take with like effect as if such bank or trust were not the Trustee. To the extent permitted by law, such bank or trust company may also purchase in good faith Bonds from itself, including any department, affiliate, or subsidiary, with like effect as if it were not the Trustee.



(e) The Trustee may, at the expense of the other Person, request, shall be entitled to conclusively rely on, and shall be fully protected in acting on any notice, request, requisition, consent, certificate, order, 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 on 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 Bondholder Representative or is the Holder of any Bond shall be conclusive and binding on all future Holders of the same Bond and on Bonds issued in exchange therefor or in place thereof.

(f) As to the existence or non-existence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to conclusively rely and shall be protected in acting or refraining from acting upon on a certificate signed on behalf of the Issuer by an Authorized Signatory, or a certificate signed on behalf of the Borrower by an Authorized Borrower Representative, as sufficient evidence of the facts therein contained, and prior to the occurrence of a failure of which the Trustee has been notified as provided in subsection (h) of this Section, or of which by said subsection it is deemed to have notice, may also accept a similar certificate to the effect that any particular dealing, transaction, or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of an Authorized Signatory or any member authorized by the Issuer for such purpose of the Issuer under its seal to the effect that a resolution in the form therein set forth has been adopted by the Issuer as conclusive evidence that such resolution has been duly adopted and is in full force and effect.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty, and the Trustee shall not be answerable for other than its gross negligence or willful default. The Trustee undertakes to perform such duties and only such duties as are specifically and expressly set forth in this Indenture. These duties shall be deemed purely ministerial in nature, and the Trustee shall not be liable except for the performance of such duties, and no implied covenants or obligations shall be read into this Indenture against the Trustee.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder or under any other Borrower Document or Issuer Document, except failure by the Issuer to cause to be made any of the payments to the Trustee required to be made by Article VI hereof or failure by the Issuer or the Borrower to file with the Trustee any document required to be periodically filed with the Trustee by this Indenture, the Loan Agreement, or the Mortgage, unless the Trustee shall be notified of such failure by the Issuer, the Bondholder Representative or, if there is no Bondholder Representative, by the Requisite Number of Bondholders delivered to the corporate trust address specified in accordance with Section 13.04 hereof and, in the absence of such notice or delivery, the Trustee may conclusively assume no default exists.

(i) The Trustee shall not be required to give any bond or surety with respect to the execution of its rights and obligations hereunder, and nothing in 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 or in the exercise of any of its rights or powers hereunder.

(j) Notwithstanding any other provision of this Indenture, the Trustee shall have the right, but shall not be required, to demand, as a condition of any action by the Trustee in respect

of the authentication of any Bonds, the withdrawal of any cash, the release of any property, or any action whatsoever within the purview of this Indenture, any showings, certificates, opinions, appraisals, or other information, or corporate action or evidence thereof, in addition to that required by the terms hereof.

(k) Before taking any action under this Indenture or the Loan Agreement at the direction or request of Bondholders, including the Bondholder Representative, the Trustee may require that satisfactory security and indemnity be furnished to it for the reimbursement of all expenses to which it may be put (including counsel fees and expenses) and to protect it against all liability by reason of any action so taken including reasonable costs (including counsel fees and expenses) incurred in defending itself against any and all changes, claims, complaints, allegations, assertions, or demands of any nature whatsoever, except liability that is adjudicated to have resulted from its gross negligence or willful misconduct.

(l) All moneys received by the Trustee shall, until used or applied or invested as herein provided, be held in trust in the manner and for the purposes for which they were received but need not be segregated from other funds except to the extent required by this Indenture or law.

(m) The Trustee shall cooperate with the Borrower in the contest, at the expense of the Borrower, of any condemnation proceeding or contest over title with respect to the Mortgaged Property. In no event shall the Trustee voluntarily settle, or consent to the settlement of, any condemnation proceeding or contest over title with respect to the Mortgaged Property without the consent of the Borrower and prior written notice to the Issuer.

(n) The Trustee shall not be responsible for the federal tax-exempt status of the interest on the Series 2020A Bonds, provided that the Trustee shall not knowingly take any action that it knows will have the result of causing (i) any Series 2020A Bond to become an “arbitrage bond” within the meaning of Section 10.3(b)(2) of the Code or (ii) the interest on any Series 2020A Bond otherwise to become taxable to the recipients thereof under the federal income tax laws, unless the Trustee shall determine that such action is required by other provisions of this Indenture or by the Loan Agreement or by law. Notwithstanding anything to the contrary herein, the Trustee shall have no duty to prepare or file any Federal or state tax report or return with respect to any funds held pursuant to this Indenture or any income earned thereon, except for the delivery and filing of tax information reporting forms required to be delivered and filed with the Internal Revenue Service.

(o) The Trustee shall not be liable for any action it takes or omits to take that in good faith, absent gross negligence, it reasonably believes to be authorized or within its powers hereunder.

(p) The Trustee may confirm each funds transfer instructions by a telephone call-back procedure (or such other security procedure then in effect). The parties understand that the Trustee’s inability to receive or confirm funds transfer instructions pursuant to the security procedure selected by such party may result in a delay in accomplishing such funds transfer, and agree that the Trustee shall not be liable for any loss caused by any such delay.

(q) To the fullest extent permitted by law and notwithstanding anything in this Indenture to the contrary, the Trustee shall not be personally liable for (i) special, indirect, incidental, consequential or punitive damages, however styled, including, without limitation, lost profits, or (ii) the acts or omissions of any nominee, correspondent, clearing agency, or securities depository through which it holds securities or assets.

(r) The Trustee shall be entitled to rely on and shall not be liable for any action taken or omitted to be taken by the Trustee in accordance with the advice of counsel or other professionals retained or consulted by the Trustee. The Trustee may act through attorneys or agents and shall not be responsible for the acts or omissions of any such attorney or agent appointed with due care; provided that, subject to Section 10.01(k) hereof, nothing in this Section shall preclude any other rights that the parties may have.

(s) The Trustee shall not be responsible or liable for any failure or delay in the performance of its obligations under this Indenture arising out of or caused, directly or indirectly, by circumstances beyond its control, including without limitation, any act or provision of any present or future law or regulation or governmental authority; acts of God; earthquakes; fires; floods; wars; terrorism; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility.

#### **Section 10.02 Fees, Charges, and Expenses of Trustee.**

Absent a specific written agreement as to payment of such fees, charges and expenses, the Trustee, the Bondholder Representative or any paying agents shall be entitled to payment and reimbursement for reasonable fees for services rendered hereunder and all advances, counsel fees and disbursements and other expenses reasonably made or incurred by the Trustee, the Bondholder Representative or any paying agent in connection with such services from the Borrower pursuant to the Loan Agreement, provided that the Trust Estate shall not be liable for costs or expenses of the Trustee, Bondholder Representative or any paying agent other than reasonable costs and expenses. 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 principal of, or premium, if any, and interest on, any Bond upon the Trust Estate created by this Indenture for the foregoing fees, charges and expenses incurred by the Trustee. When the Trustee incurs expenses or renders services after the occurrence of an Event of Default, the expenses and the compensation for the services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law. The provisions of this Section 10.02 shall survive a termination of this Indenture and as to the Trustee any removal or replacement.

#### **Section 10.03 Notice Required of Trustee.**

If the Borrower shall fail to make any payment on the Notes on the day such payment shall be due and payable, the Trustee shall give notice thereof by telephone or electronic mail to the Borrower and the Bondholder Representative on the immediately succeeding Business Day and shall confirm such notice in writing by first class mail with certified receipt or by overnight

delivery. In the event of (a) failure of the Issuer to cause any of the payments to be made to the Trustee as required by Article VI hereof, (b) notification to the Trustee by the Bondholder Representative or, if there is no Bondholder Representative, the Requisite Number of Bondholders of any Event of Default hereunder, or (c) if the Trustee determines it is appropriate to so send, the Trustee shall give notice thereof to the Holder of each Bond then Outstanding. The notice to the Holders may be made by posting to EMMA.

#### **Section 10.04 Intervention by Trustee.**

In any judicial proceeding to which the Issuer is a party and that in the opinion of the Trustee has a substantial bearing on the interests of the Bondholders, the Trustee may intervene on behalf of the Bondholders and, subject to Section 10.01(k) hereof, shall do so if requested by the Bondholder Representative or, if there is no Bondholder Representative, by the Requisite Number of Bondholders.

#### **Section 10.05 Merger or Consolidation of Trustee.**

Any corporation or association 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 corporate 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 shall be and become successor Trustee hereunder and vested with all the trusts, powers, discretion, 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 10.06 Resignation by Trustee.**

No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee under Section 10.08.

The Trustee may at any time resign and be discharged from its duties and obligations hereunder and from the trusts hereby created by giving thirty (30) days' notice to the Issuer, the Borrower, the Bondholder Representative and each Holder of Bonds then Outstanding. Such resignation shall take effect upon the appointment of a successor or temporary Trustee by the Bondholder Representative, or, if there is no Bondholder Representative, by the Requisite Number of Bondholders or the Borrower. In the event that no successor or temporary Trustee shall be appointed within thirty (30) days of the Trustee giving of notice of its resignation, the Trustee shall be entitled, at its sole discretion (at the sole cost and expense of the Borrower, including with respect to reasonable attorneys' fees and expenses) to petition any court of competent jurisdiction for such court's appointment of a temporary Trustee or for other appropriate relief, and any such resulting appointment or relief shall be binding upon all of the parties to this Indenture, provided, however, that nothing in this sentence shall be deemed to authorize appointment of any Trustee other than in accordance with the requirements of Section 10.08 hereof.

### **Section 10.07 Removal of Trustee.**

The Trustee may be removed at any time (a) by an instrument or concurrent instruments in writing delivered to the Trustee and to the Issuer and signed by the Bondholder Representative or, if there is no Bondholder Representative, a Majority of the Bondholders, or (b) provided no Event of Default shall have occurred and be continuing, by any instrument signed by an Authorized Borrower Representative. The removal shall take effect upon the appointment of a temporary or successor Trustee by the Bondholder Representative, or, if there is no Bondholder Representative, the Requisite Number of Bondholders, the Borrower or a court of competent jurisdiction.

### **Section 10.08 Appointment of Successor Trustee; Temporary Trustee.**

(a) In case the Trustee hereunder shall resign, be removed, be dissolved, 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 (i) the Bondholder Representative or, if there is no Bondholder Representative, a Majority of the Bondholders, by an instrument or concurrent instruments in writing signed by such Bondholder Representative or Holders, if not so appointed, or (ii) provided no Event of Default shall have occurred and be continuing, the Borrower by an instrument signed by an Authorized Borrower Representative with the written consent of the Issuer; provided, however, that in case of such vacancy the Issuer by an instrument signed by an Authorized Signatory may appoint a temporary Trustee to fill such vacancy until a successor Trustee shall be appointed by the Bondholder Representative or Bondholders or the Borrower in the manner provided above; and any such temporary Trustee so appointed shall immediately and without further act be superseded by the Trustee so appointed by such Bondholder Representative, Bondholders or the Borrower.

(b) Every such Trustee appointed pursuant to this Section shall be, if there be such an institution willing, qualified and able to accept the trust upon reasonable or customary terms, a bank or trust company organized under the laws of the United States of America or one of the states thereof or located in one of the states thereof, in good standing, having a combined capital, surplus and undivided profits of not less than Fifty Million Dollars (\$50,000,000) or be a wholly owned subsidiary or affiliate of a bank holding company, or a wholly owned subsidiary or affiliate of a company that is a wholly owned subsidiary or affiliate of a bank holding company, which bank holding company shall have a combined capital, surplus and undivided profits of not less than Fifty Million Dollars (\$50,000,000).

(c) If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign promptly in the manner and with the effect specified in this Article.

### **Section 10.09 Concerning any Successor Trustee.**

Except as provided in Section 10.05 hereof, every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer an instrument in writing accepting such appointment hereunder, and thereafter such successor, without any further act, deed or conveyance, shall become fully vested with all the properties, rights, powers, trusts, duties and obligations of its predecessor except as provided in Section 10.02 hereof; but such

predecessor shall, nevertheless, on the written request of the Issuer or its successor, execute and deliver an instrument transferring to such successor Trustee all the properties, rights, powers and trusts of such predecessor hereunder, except for such predecessor's rights under Section 10.07 hereunder; and every predecessor Trustee shall, after payment of fees and expenses, deliver all securities and moneys 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 properties, rights, powers and duties hereby vested or intended to be vested in the predecessor, 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 filed and/or recorded by the successor Trustee in each recording office where this Indenture may have been filed and/or recorded.

#### **Section 10.10 Right of Trustee to Pay Taxes and Other Charges.**

In case any tax, assessment or governmental or other charge on any part of the property conveyed pursuant to the Bond Documents shall not be paid as required herein, the Trustee may, but shall not be obligated to, pay such tax, assessment or governmental charge, without prejudice, however, to any rights of the Trustee or the Bondholders hereunder arising in consequence of such failure. Any amount at any time so paid under this Section, with interest accrued thereon from the date of payment, shall become additional indebtedness secured by this Indenture, and such indebtedness shall be given a preference in payment over any of the Series 2020 Bonds, and shall be paid out of the proceeds of revenues and receipts collected from the property herein conveyed, if not otherwise caused to be paid; but the Trustee shall be under no obligation to make any such payment unless it shall have been requested to do so by the Bondholder Representative or if there is no Bondholder Representative, the Requisite Number of Bondholders and shall have been provided with adequate funds for the purpose of such payment.

#### **Section 10.11 Trustee Protected in Relying on Resolutions, Etc.**

The resolutions, 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 for the release of property, the withdrawal of cash hereunder, or the taking of any other action by the Trustee as provided hereunder.

#### **Section 10.12 Successor Trustee as Bond Registrar, Custodian of Funds and Paying Agent.**

In the event of a change in the office of Trustee, the predecessor Trustee that has resigned or been removed shall cease to be Bond Registrar, custodian of the several funds created under this Indenture and paying agent for principal of and interest on the Series 2020 Bonds, and the successor Trustee shall become such Bond Registrar, custodian and paying agent.

#### **Section 10.13 Removal and Resignation not to Affect Fees.**

No resignation or removal of the Trustee shall affect the obligation of the Borrower to pay the Trustee its fees, expenses and any indemnity due hereunder that shall have accrued prior to the

effective date of such resignation or removal or the reasonable expenses of transferring funds, records and other necessary items and information to the successor trustee hereunder.

#### **Section 10.14 Trustee Article Controlling.**

Regardless of whether expressly so provided therein, every provision of this Indenture and all other Bond Documents relating to the conduct or affecting the liability of the Trustee shall be subject to the provisions of this Article X.

#### **Section 10.15 Additional Payments.**

The Trustee shall transfer promptly upon receipt thereof all Additional Payments made by the Borrower that may come into its possession to the Issuer at the address specified in Section 13.04(a) hereof or as otherwise directed in writing by the Issuer; except that payments of the Issuer's Annual Fee shall be remitted to the Issuer at the times specified in the Loan Agreement.

### **ARTICLE XI**

#### **SUPPLEMENTAL INDENTURES**

#### **Section 11.01 Supplemental Indentures Not Requiring Consent of Bondholders.**

The Issuer and the Trustee may, with the consent of the Bondholder Representative but without the consent of, or notice to, any of the Bondholders, enter into such indenture or indentures supplemental to this Indenture as shall not be inconsistent with the terms and provisions hereof for any one or more of the following purposes:

- (a) to cure any ambiguity or formal defect or omission in this Indenture;
- (b) to grant to or confer on the Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred on the Bondholders or the Trustee or either of them;
- (c) to subject to the lien of this Indenture additional revenues, properties or collateral;
- (d) to modify, amend or supplement this Indenture in such manner as required to permit the qualification hereof and thereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect or any state securities (Blue Sky) law, and, if they so determine, to add to this Indenture such other terms, conditions and provisions as may be required by said Trust Indenture Act of 1939, as amended, or similar federal statute or state securities law;
- (e) to modify, amend or supplement this Indenture in such manner to assure the continued exclusion from gross income of the Owners thereof for federal income tax purposes of interest on any Bonds which is excludable from the gross income of the Owners thereof for federal income tax purposes; or
- (f) to make any other change herein that shall not materially adversely affect the rights of the Holders of the Bonds then Outstanding.

After an amendment under this Section becomes effective, the Borrower shall mail or cause the Trustee to mail notice of such amendment to the Bondholder Representative and the affected Holders.

### **Section 11.02 Supplemental Indentures Requiring Consent of Bondholders.**

(a) Exclusive of supplemental indentures covered by Section 11.01 hereof and subject to the terms and provisions contained in this Section, the Bondholder Representative or, if there is not a Bondholder Representative, a Majority of the Bondholders, shall have the right from time to time, notwithstanding any other provision of this Indenture, to consent to and approve the execution by the Issuer and the Trustee of such other indenture or indentures supplemental hereto as shall be deemed necessary or desirable by the Issuer 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 in this Indenture shall permit, or be construed as permitting (i) an extension of the maturity of the principal of or the interest on any Bond, or (ii) a reduction in the principal amount of any Bond or the rate of interest thereon, or (iii) an extension of time or a reduction in amount of any payment required by any sinking fund that may be applicable to any Bond, or (iv) a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (v) a reduction in the aggregate principal amount of Bonds required for consent to such supplemental indenture, without the consent and approval of the Bondholder Representative or, if there is no Bondholder Representative, the Holders of all (sixty-seven percent (67%) if an Event of Default has occurred and is continuing with respect to (i), (ii), (iii) or (v) above) of the Bonds then outstanding, provided, however, no such amendment shall become effective unless the Trustee shall have obtained an Opinion of Bond Counsel to the effect that any such amendment will not adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Series 2020 Bonds.

(b) 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, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental indenture to be sent to the Bondholder Representative and each Holder of Bonds then outstanding by registered or certified mail to the address of the Bondholder Representative and such Bondholder as it appears on the Bond Register; provided, however, that failure to give such notice by mailing, or any defect therein, shall not affect the validity of any proceedings pursuant hereto. Such notice shall briefly set forth the nature of the proposed supplemental indenture and shall state that copies thereof are on file at the designated corporate trust office of the Trustee for inspection by the Bondholder Representative and all Bondholders. If, within sixty (60) days or such longer period as shall be prescribed by the Issuer following the giving of such notice, the Bondholder Representative or, if none, a Majority of the Bondholders, shall have consented to and approved the execution thereof as herein provided, no Bondholder Representative nor Holder of any Bond shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing such supplemental indenture 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 be deemed to be modified and amended in accordance therewith.



(c) Bonds known by the Trustee to be owned or held by or for the account of the Issuer or the Borrower or any person controlling, controlled by, or under common control with either of them shall not be deemed Outstanding for the purpose of consent or any calculation of Outstanding Bonds provided for in this Article XI or in Article XII hereof. At the time of any such calculation, the Borrower shall furnish the Trustee a certificate of an Authorized Borrower Representative, upon which the Trustee may rely, describing all Bonds so to be excluded.

After an amendment under this section becomes effective, the Borrower shall mail notice of such amendment to the affected Holders.

### **Section 11.03 Opinion of Bond Counsel Required.**

Notwithstanding any other provision of this Indenture, the Trustee (a) shall not execute any supplemental indenture to this Indenture unless there shall have been filed with the Trustee an Opinion of Bond Counsel stating (i) that such supplemental indenture is authorized or permitted by this Indenture and complies with its terms and that upon execution it will be valid and binding on the Issuer in accordance with its terms, and (ii) that such supplemental indenture will not have an adverse effect on the excludability of interest on the Series 2020A Bonds from gross income for federal income tax purposes, and (b) shall not, without the consent of the Borrower if there is not then an Event of Default, execute any supplemental indenture to this Indenture that will adversely affect any rights of the Borrower and shall in all events give the Borrower at least fifteen (15) days' prior notice (which may be waived) of any proposed supplemental indenture.

## **ARTICLE XII**

### **AMENDMENTS OF LOAN AGREEMENT**

#### **Section 12.01 Amendments of Loan Agreement Not Requiring Consent of Bondholders.**

(a) The Issuer and the Trustee may, with the consent of the Bondholder Representative, but without the consent of or notice to the Bondholders, consent to any amendment, change, or modification of the Loan Agreement as may be required:

(i) by the provisions of the Loan Agreement or this Indenture;

(ii) for the purpose of curing any ambiguity or formal defect or omission therein;

or

(iii) in connection with additional real estate, furnishings, machinery or equipment that is to become part of the Project pursuant to the Loan Agreement so as to identify the same more precisely.

(b) The Issuer and the Trustee shall, without the consent of or notice to the Bondholders, but with the consent of the Bondholder Representative, consent to any such amendment, change or modification made in connection with any modification or amendment of, or supplement to, this Indenture pursuant to Section 11.01(e) hereof.

(c) The Trustee shall, upon approval by the Bondholder Representative, release the Lien of the Mortgage from real and personal property transferred in accordance with this Section at the request of the Borrower accompanied by an Officer's Certificate setting forth that the conditions for such a permitted transfer under a specifically referred to subsection of this Section have been satisfied, and together with a survey of any real property proposed to be released and to remain under the Lien of the Mortgage and endorsement of any Title Policy relating thereto.

#### **Section 12.02 Amendments of Bond Documents Requiring Consent of Bondholders.**

Except for amendments, changes or modifications as provided in Section 12.01 hereof and subject to Section 12.04 hereof, neither the Issuer nor the Trustee shall consent to any amendment, change or modification of the Bond Documents or the Series 2020 Notes without the written approval or consent of the Bondholder Representative or, if there is not a Bondholder Representative, a Majority of the Bondholders given and procured as provided in Section 11.02 hereof. If at any time the Issuer and the Borrower shall request the consent of the Trustee to any such proposed amendment, change or modification, the Trustee shall, upon being satisfactorily indemnified by the Borrower with respect to expenses, cause notice of such proposed amendment, change or modification to be given in the same manner as provided by Section 11.02 with respect to supplemental indentures. Such notice shall briefly set forth the nature of such proposed amendment, change, or modification and shall state that a copy of the instrument embodying the same is on file at the designated corporate trust office of the Trustee for inspection by all Bondholders and the Bondholder Representative.

#### **Section 12.03 Limitation on Amendments.**

Except as provided in Section 11.02 hereof, no amendment, change or modification may decrease the obligation of the Borrower under the Bond Documents (other than this Indenture) to pay amounts sufficient to pay principal of, or premium, if any, or interest on, the Bonds as the same become due, or change, modify, increase the obligation or decrease the right of the Issuer, unless consented to by the Bondholder Representative.

#### **Section 12.04 Opinion of Counsel Required.**

The Trustee shall not consent to any amendment, change or modification of the Loan Agreement or the Series 2020 Notes unless there shall have been filed with the Trustee, the Issuer and the Bondholder Representative, an Opinion of Counsel that such amendment, change or modification is authorized or permitted by this Indenture and complies with its terms and that on execution it will be valid and binding on the party or parties executing it in accordance with its terms, and an Opinion of Bond Counsel stating that such amendment, change or modification will not have an adverse effect on the excludability of interest on the Series 2020A Bonds from gross income for federal income tax purposes.

#### **Section 12.05 Supplement or Amendment to Bond Documents.**

Anything contained herein or in the other Bond Documents or Project Documents to the contrary notwithstanding, any supplement or amendment to, or any waiver or consent provided with respect to, any of the Bond Documents or Project Documents will not be effective unless consented to in writing by the Bondholder Representative.

## ARTICLE XIII

### MISCELLANEOUS

#### **Section 13.01 Consents of Bondholders.**

(a) Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Bondholders may be in any number of concurrent writings of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed in writing or by the Bondholder Representative and by their attorneys 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 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 under such request or other instrument, if the fact and date of the execution by any person of any such writing is proved by the certification of any officer in any jurisdiction who by law has power to take acknowledgments within such jurisdiction that the individual signing such writing acknowledged before such officer the execution thereof, or by affidavit of any witness to such execution.

(b) For all purposes of this Indenture and of the proceedings for its enforcement, such person shall be deemed to continue to be the Holder of such Bond until the Trustee shall have received notice in writing to the contrary.

#### **Section 13.02 Limitation of Rights.**

With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the parties hereto, the Bondholder Representative and the Holders of the Bonds any legal or equitable right, remedy, or claim under or in respect to this Indenture or any covenants, conditions, and agreements herein contained; it being intended that this Indenture and all of the covenants, conditions, and agreements hereof be for the sole and exclusive benefit of the parties hereto, the Bondholder Representative and the Holders of the Bonds as herein provided. Notwithstanding any provision herein to the contrary, it is specifically acknowledged and agreed that, to the extent of their rights hereunder (including, without limitation, their rights to immunity and exculpation from pecuniary liability) each Issuer Indemnified Person is a third-party beneficiary of this Indenture entitled to enforce such rights in his, her, its or their own name.

#### **Section 13.03 Non-Liability of the Issuer and Other Issuer Provisions.**

No recourse under or upon any obligation, covenant, or agreement contained in this Indenture, or in the Series 2020 Bonds, or for any claim based thereon, or under any judgment obtained against the Issuer, or by the enforcement of any assessment or penalty or otherwise or by any legal or equitable proceeding by virtue of any constitution, rule of law or equity, or statute or otherwise or under any other circumstances, under or independent hereof, shall be had against any incorporator, member, director, officer, employee, agent or counsel, as such, past, present, or future of the Issuer, or any incorporator, member, or officer of any successor corporation, as such, either directly or through the Issuer or any successor corporation, or otherwise, for the payment

for or to the Issuer or any receiver thereof of any sum that may be due and unpaid by the Issuer upon the Series 2020 Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director, officer, employee, agent or counsel, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Issuer or any receiver thereof, of any sum that may remain due and unpaid upon the Series 2020 Bonds, is hereby expressly waived and released as a condition of and in consideration for the execution hereof and the issuance of the Series 2020 Bonds.

The Issuer shall not be obligated to pay the principal of or premium, if any, or interest on the Bonds or any costs incidental thereto, except from the Trust Estate. The Issuer shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Indenture, the Bonds or the Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under the Loan Agreement.

The Trustee hereby acknowledges that the Issuer's sole source of moneys to repay the Bonds will be provided by the Trust Estate for the Bonds, and hereby agrees that if such amounts shall ever prove insufficient to pay all principal of and premium, if any, and interest on the Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise) or any costs incidental thereto, then the Trustee, with the consent or at the direction of the Bondholder Representative, shall give notice to the Borrower in accordance with Section 9.11 hereof to pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal, premium, if any, or interest, or costs incidental thereto including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Trustee, the Issuer, the Borrower or any third party, subject to any right of reimbursement from the Trustee, the Issuer or any such third party, as the case may be, therefor.

No Issuer Indemnified Person shall be individually or personally liable for the payment of any principal of or premium, if any, or interest on the Bonds or any costs incidental thereto or any sum hereunder or under the Loan Agreement or any claim based hereon or thereon, or be subject to any personal liability or accountability by reason of the execution and delivery of this Indenture or the Loan Agreement.

Notwithstanding anything to the contrary contained herein or in any of the Bonds or the Bond Documents, or in any other instrument or document executed by or on behalf of the Issuer in connection herewith, (a) the Issuer shall have no obligation to take action under the Loan Agreement, this Indenture, the Bonds, or such other instruments or documents, unless the Issuer is reasonably requested in writing by an appropriate person to take such action and is provided with indemnity and assurances satisfactory to it of payment of or reimbursement for any indemnity to persons identified by the Issuer, and expenses (including attorneys' fees) in such action, (b) neither the Issuer nor any member of the Issuer or any officer, employee, attorney or agent of the Issuer shall be personally liable to the Borrower, the Trustee, the Bondholders or any other person for any action taken by the Issuer or by its officers, agents, or employees or for any failure to take action under this Indenture, the Loan Agreement, the Bonds, or such other instruments or documents, except that, subject to Section 13.21 below, the Issuer agrees to take, or to refrain from taking, any action if so required by an injunction or if required to comply with any final judgment

for specific performance, and (c) any judgment rendered against the Issuer for breach of its obligations under this Indenture, the Loan Agreement, the Bonds, or such other instruments or documents, shall be payable solely from the revenues derived by the Issuer under the Loan Agreement and this Indenture, and no personal liability or charge payable directly or indirectly from the general funds of the Issuer shall arise therefrom.

No agreements or provisions contained in this Indenture nor any agreement, covenant, or undertaking by the Issuer contained in any document executed by the Issuer in connection with the Project or the issuance, sale, and delivery of the Bonds shall give rise to any pecuniary liability of the Issuer or a charge against its general credit, or shall obligate the Issuer financially in any way except with respect to the application of revenues therefrom and the proceeds of the Bonds. No failure of the Issuer to comply with any term, condition, covenant, or agreement herein shall subject the Issuer, its incorporators, members, directors, officers, employees, agents, and counsel to liability for any claim for damages, costs, or other financial or pecuniary charge except to the extent that the same can be paid or recovered from the Loan Agreement or revenues therefrom that have been pledged to payment of the Bonds or proceeds of the Bonds. Nothing herein shall preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant, or agreement herein; provided, that (i) prior to the official filing of any petition or complaint against the Issuer, provision shall have been made in an manner satisfactory to the Issuer, for payment of its costs and expenses relating to any such petition or complaint and (ii) no costs, expenses, damages, or other monetary relief shall be recoverable from the Issuer or its officers, directors, employees, agent, and counsel except as may be payable from the Loan Agreement or revenues therefrom that have been pledged to payment of the Bonds or the proceeds of the Bonds.

The Issuer shall be under no obligation to institute any suit or to take any remedial proceeding in the event of an Event of Default or to enter any appearance or in any way defend in any suit in which it may be made defendant, or to take any steps in the execution of any of the trusts hereby created or in the enforcement of any rights and powers hereunder, including, without limitation, its acceptance or possession of a Project or any component thereof, until it shall be indemnified to its satisfaction against any and all costs, expenses, outlays, and counsel fees and other disbursements, and against all liability. The Issuer nevertheless may, in its sole discretion, but is not required to, begin suit, or appear in and defend suit, or do anything else in its judgment proper to be done by it as such Issuer, without indemnity, and in such case the Issuer shall be entitled to reimbursement from any money under this Indenture and, subject to the prior rights of the Trustee, shall be entitled to a preference therefor over any Bonds Outstanding hereunder.

The Issuer shall be entitled to advice of counsel concerning all matters under this Indenture and its duties under this Indenture, the other Bond Documents. The Issuer may in all cases pay such compensation to such attorneys, agents, and receivers and shall be entitled to reimbursement from the Borrower for all such compensation paid. The Issuer may act upon the opinion or advice of counsel, accountants, or such other professionals as the Issuer deems necessary and selected by it in the exercise of reasonable care. The Issuer shall not be responsible for any loss or damage resulting from any action or nonaction based on its good faith reliance upon such opinion or advice.

The permissive right of the Issuer to do things enumerated in this Indenture or in the other Issuer Documents shall not be construed as duties until specifically undertaken by the Issuer. The Issuer shall only be responsible for the performance of the duties expressly set forth in this Indenture and in the other Issuer Documents and shall not be answerable for other than its willful misconduct in the performance of those express duties.

The Issuer shall be protected in acting upon any Opinion of Counsel, notice, request, consent, direction, requisition, certificate, order, affidavit, letter, or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons and which is not contrary to the express terms of this Indenture or the other Bond Documents. Any action taken by the Issuer pursuant thereto 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 owner of any Bond as shown on the Bond Register will be conclusive and binding upon all future owners or holders of the same Bonds and upon Bonds issued in exchange therefor or in place of such Bonds.

#### **Section 13.04 Notices.**

(a) Unless otherwise provided herein, all demands, notices, approvals, consents, requests, opinions, and other communications hereunder shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class mail, postage prepaid, addressed:

To the Issuer:	City of Falcon Heights, Minnesota 2077 Larpenteur Avenue W Falcon Heights, MN 55113 Attention: City Administrator Email: sack.thongvanh@falconheights.org
To the Trustee:	Wilmington Trust, National Association Institutional Client Services 1 Light Street, 14 <sup>th</sup> Floor Baltimore, MD 21202 Attn: Jay Smith Telephone: (401) 545-2193 Email: jhsmith@wilmingtontrust.com
Delivery of securities for transfer or for payment of Bonds:	Manufacturers and Traders Trust Company c/o Wilmington Trust Corporate Trust Operations Attn: Work Flow Management 1100 N. Market Street Wilmington, DE 19890

To the Borrower:

Hampton Properties of Ramsey, LLC  
1824 Buerkle Road  
White Bear Lake, Minnesota 55150  
Attention: Tim C. Eppler  
Telephone: (916) 390-0016  
Email: [tim@cofcapital.com](mailto:tim@cofcapital.com)

With copies to:

Huffman, Usem, Crawford & Greenberg, P.A.  
5101 Olson Memorial Highway, Suite 1000  
Golden Valley, Minnesota 55422  
Attention: Richard Huffman  
Email: [rwhuf@aol.com](mailto:rwhuf@aol.com)

and

Barton Klugman & Oetting, LLP  
350 South Grand Avenue, Suite 2200  
Los Angeles, California 90071-3454  
Attention: Allan N. Lowy  
Email: [alow@bkolaw.com](mailto:alow@bkolaw.com)

If to the Bondholder Representative:

Greenwich Investment Management, Inc.  
200 First Stamford Place, 2 East  
Stamford, Connecticut 06902  
Attention: Drew Collins, Managing Director  
Telephone: (203) 625-5316  
Facsimile: (203) 862-4527

With a copy to:

Bryant Rabbino LLP  
650 Fifth Avenue, Suite 3300  
New York, NY 10019  
Attention: Sani Williams  
Telephone: (212) 967-1800 x136  
Email: [swilliams@bryantrabbino.com](mailto:swilliams@bryantrabbino.com)

(b) A duplicate copy of each demand, notice, approval, request, consent, opinion, or other communication given hereunder by either the Issuer or the Trustee to the other shall also be given to the Borrower and the Bondholder Representative. The Issuer, the Borrower, the Bondholder Representative and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent demands, notices, approvals, consents, requests, opinions, or other communications shall be sent or persons to whose attention the same shall be directed.

(c) Any such communication also may be transmitted to the appropriate party by telephone, facsimile, or other electronic transmission and shall be deemed given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing sent as specified above.

The Trustee shall accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission, or other similar unsecured electronic methods, provided, however, that the Issuer, the Borrower and the Bondholder Representative shall provide to the Trustee an incumbency certificate listing the names of the individuals who are designated and authorized to sign for the Issuer, the Borrower and the Bondholder Representative or in the name of such party, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If any party elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs, or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Borrower agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation, the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

#### **Section 13.05 Payments/Actions Due on Holidays, Etc.**

If any date specified herein for the payment of the Bonds or the performance of any act shall not be a Business Day, such payment or performance shall be made on the immediately succeeding Business Day with the same effect as if made on such date, and in case any payment of the principal or redemption price of or interest on the Bonds shall be due on a date that is not a Business Day, interest on such principal amount shall cease to accrue on the date on which such payment was due if such payment is made on the immediately succeeding Business Day.

#### **Section 13.06 Notices to Effect of Actions by Bondholder Representative.**

Notwithstanding any provision to the contrary contained herein, any notice, request, consent, direction, waiver, approval, agreement, or other action of the Bondholder Representative shall constitute and have the same effect as a notice, request, consent, direction, waiver, approval, agreement, or other action of the beneficial owners of the Series 2020 Bonds and, so long as there is a Bondholder Representative with respect to a Bond, notices shall be given to such Bondholder Representative and not to the registered owners (except that the Trustee may send routine balancing and payment processing notices to DTC at such time as DTC is the registered Owner of the Series 2020 Bonds) or to the beneficial owners represented by such Bondholder Representative, other than any notices of redemption. A copy of any notice given to or sent by the Trustee or any person hereunder shall also be provided to the Bondholder Representative.

#### **Section 13.07 Reserved.**

#### **Section 13.08 Information to Bondholder Representative.**

Any notice required to be delivered to the Trustee hereunder, or under any of the other Bond Documents, shall also be delivered by the Borrower or Issuer to the Bondholder Representative, if any. Additionally, the Trustee shall promptly deliver to the Bondholder Representative copies of any certificates, reports or directions delivered to the Trustee pursuant to



the Loan Agreement, the Mortgage, this Indenture, the Disbursing Agreement and any other Bond Document.

### **Section 13.09 Amendments to Project Documents.**

The Trustee shall not agree to any amendments to the Project Documents without the prior written consent of the Bondholder Representative.

### **Section 13.10 Successors and Assigns.**

This Indenture shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

### **Section 13.11 Severability.**

If any provision of this Indenture shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof.

### **Section 13.12 Applicable Law; Venue.**

This Indenture shall be governed and construed in accordance with the laws of the State, without regard to its conflicts of laws principles. All claims of whatever character arising out of this Indenture, or under any statute or common law relating in any way, directly or indirectly, to the subject matter hereof or to the dealings between the Issuer and any other party hereto, if and to the extent that such claim potentially could or actually does involve the Issuer or any Issuer Indemnified Person, shall be brought in any state or federal court of competent jurisdiction located in Ramsey County, Minnesota. By executing and delivering this Indenture, each party hereto irrevocably: (i) accepts generally and unconditionally the exclusive jurisdiction and venue of such courts; (ii) waives any defense of *forum non conveniens*; and (iii) agrees not to seek removal of such proceedings to any court or forum other than as specified above. The foregoing shall not be deemed or construed to constitute a waiver by the Issuer of any prior notice or procedural requirements applicable to actions or claims against or involving municipal corporations, political subdivisions or governmental units of the State that may exist at the time of and in connection with such matter.

### **Section 13.13 Counterparts.**

This Indenture may be executed in several counterparts, each of which shall be an original and all of which together shall constitute but one and the same instrument.

### **Section 13.14 Filing Continuation Statements.**

Continuation statements in connection with the security interests identified in the Loan Agreement or otherwise sufficient to perfect such security interests under applicable law shall be filed by the Borrower as provided in the Loan Agreement.

### **Section 13.15 Contractual Interpretation.**

The parties acknowledge that they have read and fully understand the terms of this Indenture, have consulted with such attorneys, accountants, advisors, or other professionals as they have deemed appropriate prior to executing this Indenture with adequate opportunity and time for review thereof, and are fully aware of its contents and of its legal effect. Accordingly, this Indenture shall not be construed against any party on the grounds that such party drafted this Indenture and instead, this Indenture shall be interpreted as though drafted equally by all parties.

### **Section 13.16 Reserved.**

### **Section 13.17 Acceptance and Acknowledgement by Each Beneficial Owner.**

By acceptance of the Series 2020 Bonds, each Beneficial Owner of such Bonds acknowledges and agrees that (i) the Bondholder Representative will act on its behalf with respect to all matters arising under or in connection with the Series 2020 Bonds as provided herein, and (ii) the Trustee shall have no obligation or liability as a result of following the direction of the Bondholder Representative, except for its gross negligence or intentional or willful misconduct.

### **Section 13.18 Patriot Act Requirements of Trustee.**

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and report information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust, or other legal entity, the Trustee will ask for documentation to verify such non-individual person's formation and existence as a legal entity. The Trustee may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

### **Section 13.19 No Obligation to Enforce Assigned Rights.**

Notwithstanding anything to the contrary in this Indenture or the Loan Agreement, the Issuer shall have no obligation to and instead the Trustee, with the consent of or at the direction of the Bondholder Representative, in accordance with this Indenture or the Loan Agreement, shall have the right, without any direction from or action by the Issuer, to take any and all steps, actions and proceedings, to enforce any or all rights of the Issuer (other than the Unassigned Rights) under this Indenture or the Loan Agreement, including, without limitation, the rights to enforce the remedies upon the occurrence and continuation of an Event of Default and the obligations of the Borrower under the Loan Agreement.

### **Section 13.20 No Impairment of Rights.**

Nothing herein shall be deemed or construed to limit, impair or affect in any way the Issuer's (or any the Issuer Indemnified Person's) right to enforce the Unassigned Rights, regardless of whether there is then existing an Event of Default (including, without limitation, a payment default), or any action based thereon or occasioned by an Event of Default or alleged Event of Default, and regardless of any waiver or forbearance granted by the Trustee or the Bondholder

Representative in respect thereof. Any default or Event of Default in respect of the Unassigned Rights may only be waived with the Issuer's written consent.

### **Section 13.21 The Issuer's Performance.**

None of the provisions of this Indenture or the Loan Agreement shall require the Issuer to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder or thereunder, unless payable from the Trust Estate for the Bonds, or unless the Issuer shall first have been adequately indemnified to its satisfaction against the cost, expense, and liability which may be incurred thereby. The Issuer shall not be under any obligation hereunder to perform any administrative service with respect to the Bonds or the Project (including, without limitation, record keeping and legal services), it being understood that such services shall be performed or provided by the Trustee or the Borrower. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions expressly contained in this Indenture, the Loan Agreement, and any and every Bond executed, authenticated and delivered under this Indenture; *provided*, however, that the Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof unless and until it shall have (i) been directed to do so in writing by the Borrower, the Trustee, or the Bondholder Representative (including reference to the provisions of this Indenture or the Loan Agreement authorizing such direction); (ii) received from the Person requesting such action or execution assurance satisfactory to the Issuer that the Issuer's expenses incurred or to be incurred in connection with taking such action or executing such instrument have been or will be paid or reimbursed to the Issuer; and (iii) if applicable, received in a timely manner the instrument or document to be executed, in form and substance satisfactory to the Issuer.

In complying with any provision herein or in the Loan Agreement, including, but not limited to, any provision requiring the Issuer to "cause" another Person to take or omit any action, the Issuer shall be entitled to rely conclusively (and without independent investigation or verification) (i) on the faithful performance by the Trustee or the Borrower, as the case may be, of their respective obligations hereunder and under the Loan Agreement and (ii) upon any written certification or opinion furnished to the Issuer by the Trustee or the Borrower, as the case may be. In acting, or in refraining from acting, under this Indenture or the Loan Agreement, the Issuer may conclusively rely on the advice of its counsel. The Issuer shall not be required to take any action hereunder or under the Loan Agreement that it reasonably believes to be unlawful or in contravention hereof or thereof.

**IN WITNESS WHEREOF**, the Issuer has executed this Trust Indenture by causing its name to be hereunto subscribed by its Authorized Signatories; and the Trustee has executed this Trust Indenture by causing its name to be hereunto subscribed by its authorized signatory, all being done as of the date and year first written above.

**CITY OF FALCON HEIGHTS,  
MINNESOTA**

By: \_\_\_\_\_  
Name: Randy Gustafson  
Its: Mayor

By: \_\_\_\_\_  
Name: Sack Thongvanh  
Its: City Administrator

[Signature page to Trust Indenture]

**WILMINGTON TRUST, NATIONAL  
ASSOCIATION**

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

[Signature page to Trust Indenture]

**EXHIBIT A**

**FORM OF SERIES 2020A BOND**

**THIS BOND HAS BEEN AUTHORIZED AND ISSUED PURSUANT TO THE LAWS OF THE STATE OF MINNESOTA, INCLUDING PARTICULARLY CHAPTER 462C, AS AMENDED, OF THE MINNESOTA STATUTES. BONDS ISSUED UNDER CHAPTER 462C SHALL NOT BE INVALID FOR ANY IRREGULARITY OR DEFECT IN THE PROCEEDINGS FOR THEIR SALE OR ISSUANCE.**

**THIS BOND IS SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND UNLESS THE TRUSTEE AND THE ISSUER HAVE RECEIVED AN INVESTMENT GRADE NOTICE, AND THE ISSUER HAS GIVEN ITS WRITTEN CONSENT, MAY NOT BE REOFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT TO A PERSON WHO IS (I) A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED UNDER RULE 144A PROMULGATED BY THE SECURITIES ACT, OR (II) AN “ACCREDITED INVESTOR” UNDER REGULATION D PROMULGATED PURSUANT TO THE SECURITIES ACT, OR (III) THE TRUSTEE OF A TRUST WHOSE SECURITIES ARE REGISTERED PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT. EACH BENEFICIAL OWNER HEREOF AGREES TO PROVIDE ADVANCE WRITTEN NOTICE OF THE RESTRICTION ON TRANSFERS TO ANY PROPOSED TRANSFEREE OF A BENEFICIAL OWNERSHIP INTEREST IN THE PURCHASED BOND.**

**UNLESS THE RESTRICTIONS TO TRANSFER DESCRIBED ABOVE HAVE BEEN WAIVED AS PROVIDED UNDER THE INDENTURE, EACH TRANSFEREE OF THIS BOND, BY ITS PURCHASE HEREOF, REPRESENTS THAT SUCH TRANSFEREE IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED UNDER RULE 144A PROMULGATED BY THE SECURITIES ACT, OR AN “ACCREDITED INVESTOR” UNDER REGULATION D PROMULGATED PURSUANT TO THE SECURITIES ACT OR THE TRUSTEE OF A TRUST WHOSE SECURITIES ARE REGISTERED PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND WILL ONLY TRANSFER, RESELL, REOFFER, PLEDGE OR OTHERWISE TRANSFER THIS BOND TO A SUBSEQUENT TRANSFEREE WHO IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED UNDER RULE 144A PROMULGATED BY THE SECURITIES ACT, AN “ACCREDITED INVESTOR” UNDER REGULATION D PROMULGATED PURSUANT TO THE SECURITIES ACT, OR THE TRUSTEE OF A TRUST WHOSE SECURITIES ARE REGISTERED PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT.**

**UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, NEW YORK, NEW YORK (“DTC”), TO THE ISSUER OR ITS AGENT FOR REGISTRATION OR TRANSFER, EXCHANGE, OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO**

**SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.**

**UNITED STATES OF AMERICA**

**STATE OF MINNESOTA  
COUNTY OF RAMSEY**

**CITY OF FALCON HEIGHTS, MINNESOTA  
SENIOR HOUSING REVENUE BONDS  
(SUITE LIVING SENIOR CARE OF RAMSEY PROJECT)  
SERIES 2020A**

**Registered Number: R-1**

**Registered Dollars: \$7,680,000**

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Issue Date</u>	<u>CUSIP No.</u>
_____ %	June 1, 2050	June __, 2020	

**REGISTERED OWNER: CEDE & Co.**

**PRINCIPAL AMOUNT: SEVEN MILLION SIX HUNDRED EIGHTY THOUSAND DOLLARS**

The **CITY OF FALCON HEIGHTS, MINNESOTA**, a municipal corporation existing under the laws of the State of Minnesota (the “Issuer”), for value received, hereby promises to pay, upon presentation and surrender hereof at the corporate trust office of **WILMINGTON TRUST, NATIONAL ASSOCIATION**, as Trustee, or its successor in trust (the “Trustee”), solely from the sources and as hereinafter provided, to the registered owner hereof, or registered assigns or legal representative, the principal sum set forth above on the maturity date set forth above, subject to prior redemption as described below, and to pay, solely from such sources, on September 1, 2020, and on each March 1, June 1, September 1, and December 1 thereafter (each, an “Interest Payment Date”, interest hereon at the interest rate per year specified above, from the interest payment date next preceding the date on which this Bond is authenticated. Notwithstanding anything herein to the contrary, at no point shall this Bond bear interest at a rate in excess of the Maximum Rate.

Interest hereon shall be paid to the person in whose name this Bond is registered prior to the close of business on the Record Date by wire transfer in immediately available funds to a bank within the continental United States in accordance with written wire transfer instructions filed by such Holder with the Trustee.

Notwithstanding the foregoing, if and for so long as Cede & Co. or any other nominee of DTC is registered owner of all of the Series 2020A Bonds (hereinafter defined), the principal of and premium, if any, on this Bond shall be paid to Cede & Co. or such other nominee as provided under the Indenture (hereinafter defined). The principal, premium, if any, and interest are payable in lawful money of the United States of America.

Undefined capitalized terms used herein shall have the meanings assigned to such terms in the Indenture.

THIS BOND IS A SPECIAL LIMITED, OBLIGATION OF THE ISSUER PAYABLE SOLELY FROM THE TRUST ESTATE, AND EXCEPT FROM SUCH SOURCE, NONE OF THE ISSUER, ANY ISSUER INDEMNIFIED PERSON, THE STATE OF MINNESOTA, OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF OR PREMIUM, IF ANY, OR INTEREST HEREON OR ANY COSTS INCIDENTAL HERETO. THIS BOND IS NOT A DEBT OF THE STATE OF MINNESOTA AND DOES NOT DIRECTLY, INDIRECTLY OR CONTINGENTLY OBLIGATE, IN ANY MANNER, THE STATE OF MINNESOTA, THE ISSUER, OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF TO LEVY ANY TAX OR TO MAKE ANY APPROPRIATION FOR PAYMENT OF THE PRINCIPAL OF OR PREMIUM, IF ANY, OR INTEREST ON THIS BOND OR ANY COSTS INCIDENTAL HERETO. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE ISSUER, THE STATE OF MINNESOTA OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF, NOR THE FAITH AND CREDIT OF THE ISSUER OR ANY ISSUER INDEMNIFIED PERSON, SHALL BE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM, IF ANY, OR INTEREST ON, THIS BOND OR ANY COSTS INCIDENTAL HERETO.

This Bond is one of an issue of \$7,680,000 City of Falcon Heights, Minnesota Senior Housing Revenue Bonds (Suite Living Senior Care of Ramsey Project), Series 2020A (the “*Series 2020A Bonds*” or “*Bonds*”). The Series 2020A Bonds are being issued simultaneously with the \$335,000 City of Falcon Heights, Minnesota Taxable Senior Housing Revenue Bonds (Suite Living Senior Care of Ramsey Project), Series 2020B (the “*Series 2020B Bonds*”). The Series 2020A Bonds and the Series 2020B Bonds (collectively, the “*Series 2020 Bonds*”) are being issued for the purpose of providing funds to (i) finance and refinance, including repayment of the Prior Obligations (as defined in the Indenture) and through reimbursement, all or part of the costs of the acquisition, construction, and equipping of a senior living facility known as Suite Living Senior Care of Ramsey, to be located at 139th Lane Northwest at the intersection of Jasper Street Northwest in Ramsey, Minnesota, and consisting of an approximately 32-unit high acuity assisted living and memory care facility (the “*Project*”), (ii) finance capitalized interest on the Series 2020 Bonds, (iii) fund required reserves, and (iv) pay certain costs of issuing the Series 2020 Bonds.

The Series 2020 Bonds are issued under and secured by a Trust Indenture, dated as of June 1, 2020 (the “*Indenture*”), between the Issuer and the Trustee, which assigns to the Trustee, as security for the Series 2020 Bonds, certain rights of the Issuer under the Loan Agreement, dated as of June 1, 2020 (the “*Loan Agreement*”), between the Issuer and Hampton Properties of Ramsey, LLC, a Minnesota limited liability company (the “*Borrower*”), the sole member of which is Suburban Housing & Community Services Corporation, a California nonprofit, public benefit corporation that has been determined to be an exempt organization within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. In the Loan Agreement, the Borrower agrees to pay amounts sufficient to pay the principal of, premium, if any, and interest on the Bonds and the Series 2020B Bonds as the same become due.



The Issuer has approved the issuance of the Series 2020 Bonds pursuant a bond resolution adopted by the Issuer on June 10, 2020. The Series 2020 Bonds are being issued pursuant to the Act (as defined in the Indenture).

The Series 2020 Bonds are secured by the Mortgage with Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of June 1, 2020, by the Borrower in favor of the Issuer and assigned to the Trustee, as the same may from time to time be replaced, amended or supplemented as provided therein (the “*Mortgage*”), which creates a lien on and a security interest in the Mortgaged Property (as defined in the Indenture), which lien and security interest are more fully described in the Mortgage.

Reference is hereby made to the Indenture, the Loan Agreement, and the Mortgage, and to all amendments and supplements thereto, for a description of the provisions, among others, with respect to the terms on which the Series 2020 Bonds are issued, the nature and extent of the security for the Series 2020 Bonds, the rights, duties and obligations of the Issuer and the Trustee, the rights of the Holders of the Series 2020 Bonds and the provisions for defeasance of such rights.

The Series 2020A Bonds are subject to optional, mandatory and extraordinary redemption prior to maturity as provided in the Indenture.

The owner 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 proceeding with respect thereto, except as provided in the Indenture. In certain events, on conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Series 2020 Bonds issued under the Indenture and then outstanding may become or may be declared due and payable before their stated maturities, together with accrued interest thereon. Modifications or alterations of the Indenture, the Loan Agreement or the Notes or of any supplements thereto, may be made only to the extent and in the circumstances permitted by the Indenture.

The Series 2020 Bonds are issuable only as registered bonds without coupons, while registered as a Greenwich Investor Bond (as such term is defined in the Indenture), in denominations of \$5,000 or any integral multiple of \$5,000 in excess thereof. At such time as a Bond is no longer a Greenwich Investor Bond, Authorized Denomination means \$100,000 and any integral multiples of \$5,000 in excess thereof; provided that, a Bond may be (i) purchased, sold or transferred in multiples of \$5,000 so long as, upon completion of such purchase, transfer or sale, each Beneficial Owner owns at least the applicable Authorized Denomination in principal amount of the Bonds, and (ii) exchanged after mandatory redemption for a Bond in a denomination of less than \$100,000 but in \$5,000 integral multiples to the extent necessary to represent the unredeemed portion of any Bond. At the designated corporate trust office of the Trustee, in the manner and subject to the limitations and conditions and upon payment of charges provided in the Indenture, this may be exchanged for an equal aggregate principal amount of Series 2020 Bonds of different authorized denominations as requested by the owner hereof or his duly authorized attorney or legal representative.

The transfer of this Bond may be registered by the registered owner thereof in person or by his duly authorized attorney or legal representative at the designated corporate trust office of the

Trustee, but only in the manner and subject to the limitations and conditions provided in the Indenture and upon surrender and cancellation of the Bond. Upon any such registration of transfer the Issuer shall execute and the Trustee shall authenticate and deliver in exchange for this Bond a new Bond, registered in the name of the transferee, of authorized denominations. The Trustee, the Issuer and the Borrower shall, prior to due presentment for registration of transfer, treat the registered owner as the person exclusively entitled to payment of principal, premium, if any, and interest and the exercise of all other rights and powers of the owner, except that all payments of interest shall be made to the registered owner as of the fifteenth day of the month preceding each interest payment date.

Any exchange or registration of transfer shall be without charge except that the Trustee shall make a charge to any bondholder requesting such exchange or registration in the amount of any tax or other governmental charge required to be paid with respect thereto.

All acts, conditions and things required to happen, exist or be performed precedent to and in the issuance of this Bond have happened, exist and have been performed.

**IT IS HEREBY CERTIFIED, RECITED, AND DECLARED** that all acts, conditions, and things required to exist, happen, and be performed precedent to and in the issuance of this Bond do exist, have happened, and have been performed in due time, form, and manner as required by law in order to make this Bond a valid and legal revenue obligation of the Issuer and that the issuance of the Series 2020 Bonds, together with all other obligations of the Issuer, does not exceed or violate any constitutional or statutory limitation applicable to the Issuer.

This Bond shall not become obligatory for any purpose or be entitled to any security or benefit under the Indenture, hereinafter defined, or be valid until the Trustee shall have executed the Certificate of Authentication appearing hereon.

*[Remainder of page intentionally left blank.]*

**IN WITNESS WHEREOF**, the City of Falcon Heights, Minnesota has caused this Bond to be executed by its Authorized Signatories by their manual or facsimile signatures, all as of the Issue Date set forth above.

**CITY OF FALCON HEIGHTS,  
MINNESOTA**

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

Name: Randy Gustafson

Its: Mayor

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

Name: Sack Thongvanh

Its: City Administrator

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

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

**WILMINGTON TRUST, NATIONAL  
ASSOCIATION**, as Trustee

By: \_\_\_\_\_  
Authorized Officer

Date of Authentication:

\_\_\_\_\_

**ASSIGNMENT**

For value received \_\_\_\_\_ the undersigned does hereby sell, assign and transfer unto \_\_\_\_\_ the within-mentioned Bond and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney, to transfer the same on the Bond Register of the Trustee with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed: \_\_\_\_\_

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Social Security or Other  
Identifying Number  
of Transferee: \_\_\_\_\_

**NOTE:** The signature on this Assignment must correspond with the name as written on the face of the within-mentioned Certificate in every particular without alteration or enlargement or any change whatsoever.

## ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of the within Certificate, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM – as tenants in common  
TEN ENT – as tenants by the entireties  
JT TEN – as joint tenants with the right of survivorship and not as  
tenants in common

UNIFORM GIFT MIN ACT – \_\_\_\_\_ Custodian \_\_\_\_\_  
(Cust) (Minor)  
under Uniform Gifts to Minors Act  
\_\_\_\_\_  
(State)

Additional abbreviations may also be used though not in the above list.

## **DTC FAST RIDER**

Each Series 2020A Bond certificate shall remain in the Trustee's custody subject to the provisions of the FAST Balance Certificate Agreement currently in effect between the Trustee and DTC.

**EXHIBIT B**

**FORM OF SERIES 2020B BOND**

**THIS BOND HAS BEEN AUTHORIZED AND ISSUED PURSUANT TO THE LAWS OF THE STATE OF MINNESOTA, INCLUDING PARTICULARLY CHAPTER 462C, AS AMENDED, OF THE MINNESOTA STATUTES. BONDS ISSUED UNDER CHAPTER 462C SHALL NOT BE INVALID FOR ANY IRREGULARITY OR DEFECT IN THE PROCEEDINGS FOR THEIR SALE OR ISSUANCE.**

**THIS BOND IS SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND UNLESS THE TRUSTEE AND THE ISSUER HAVE RECEIVED AN INVESTMENT GRADE NOTICE, AND THE ISSUER HAS GIVEN ITS WRITTEN CONSENT, MAY NOT BE REOFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT TO A PERSON WHO IS (I) A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED UNDER RULE 144A PROMULGATED BY THE SECURITIES ACT, OR (II) AN “ACCREDITED INVESTOR” UNDER REGULATION D PROMULGATED PURSUANT TO THE SECURITIES ACT, OR (III) THE TRUSTEE OF A TRUST WHOSE SECURITIES ARE REGISTERED PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT. EACH BENEFICIAL OWNER HEREOF AGREES TO PROVIDE ADVANCE WRITTEN NOTICE OF THE RESTRICTION ON TRANSFERS TO ANY PROPOSED TRANSFEREE OF A BENEFICIAL OWNERSHIP INTEREST IN THE PURCHASED BOND.**

**UNLESS THE RESTRICTIONS TO TRANSFER DESCRIBED ABOVE HAVE BEEN WAIVED AS PROVIDED UNDER THE INDENTURE, EACH TRANSFEREE OF THIS BOND, BY ITS PURCHASE HEREOF, REPRESENTS THAT SUCH TRANSFEREE IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED UNDER RULE 144A PROMULGATED BY THE SECURITIES ACT, OR AN “ACCREDITED INVESTOR” UNDER REGULATION D PROMULGATED PURSUANT TO THE SECURITIES ACT OR THE TRUSTEE OF A TRUST WHOSE SECURITIES ARE REGISTERED PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND WILL ONLY TRANSFER, RESELL, REOFFER, PLEDGE OR OTHERWISE TRANSFER THIS BOND TO A SUBSEQUENT TRANSFEREE WHO IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED UNDER RULE 144A PROMULGATED BY THE SECURITIES ACT, AN “ACCREDITED INVESTOR” UNDER REGULATION D PROMULGATED PURSUANT TO THE SECURITIES ACT, OR THE TRUSTEE OF A TRUST WHOSE SECURITIES ARE REGISTERED PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT.**

**UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, NEW YORK, NEW YORK (“DTC”), TO THE ISSUER OR ITS AGENT FOR REGISTRATION OR TRANSFER, EXCHANGE, OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED**



**REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.**

**UNITED STATES OF AMERICA**

**STATE OF MINNESOTA  
COUNTY OF RAMSEY**

**CITY OF FALCON HEIGHTS, MINNESOTA  
TAXABLE SENIOR HOUSING REVENUE BONDS  
(SUITE LIVING SENIOR CARE OF RAMSEY PROJECT)  
SERIES 2020B**

**Registered Number: R-1**

**Registered Dollars: \$335,000**

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Issue Date</u>	<u>CUSIP No.</u>
____%	December 1, 2022	June __, 2020	

**REGISTERED OWNER: CEDE & Co.**

**PRINCIPAL AMOUNT: FIVE HUNDRED FIFTY THOUSAND DOLLARS**

The **CITY OF FALCON HEIGHTS, MINNESOTA**, a municipal corporation existing under the laws of the State of Minnesota (the “Issuer”), for value received, hereby promises to pay, upon presentation and surrender hereof at the corporate trust office of **WILMINGTON TRUST, NATIONAL ASSOCIATION**, as Trustee, or its successor in trust (the “Trustee”), solely from the sources and as hereinafter provided, to the registered owner hereof, or registered assigns or legal representative, the principal sum set forth above on the maturity date set forth above, subject to prior redemption as described below, and to pay, solely from such sources, on September 1, 2020, and on each March 1, June 1, September 1, and December 1 thereafter (each, an “Interest Payment Date”, interest hereon at the interest rate per year specified above, from the interest payment date next preceding the date on which this Bond is authenticated. Notwithstanding anything herein to the contrary, at no point shall this Bond bear interest at a rate in excess of the Maximum Rate.

Interest hereon shall be paid to the person in whose name this Bond is registered prior to the close of business on the Record Date by wire transfer in immediately available funds to a bank within the continental United States in accordance with written wire transfer instructions filed by such Holder with the Trustee.

Notwithstanding the foregoing, if and for so long as Cede & Co. or any other nominee of DTC is registered owner of all of the Series 2020B Bonds (hereinafter defined), the principal of and premium, if any, on this Bond shall be paid to Cede & Co. or such other nominee as provided

under the Indenture (hereinafter defined). The principal, premium, if any, and interest are payable in lawful money of the United States of America.

Undefined capitalized terms used herein shall have the meanings assigned to such terms in the Indenture.

THIS BOND IS A SPECIAL LIMITED, OBLIGATION OF THE ISSUER PAYABLE SOLELY FROM THE TRUST ESTATE, AND EXCEPT FROM SUCH SOURCE, NONE OF THE ISSUER, ANY ISSUER INDEMNIFIED PERSON, THE STATE OF MINNESOTA, OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF OR PREMIUM, IF ANY, OR INTEREST HEREON OR ANY COSTS INCIDENTAL HERETO. THIS BOND IS NOT A DEBT OF THE STATE OF MINNESOTA AND DOES NOT DIRECTLY, INDIRECTLY OR CONTINGENTLY OBLIGATE, IN ANY MANNER, THE STATE OF MINNESOTA OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF TO LEVY ANY TAX OR TO MAKE ANY APPROPRIATION FOR PAYMENT OF THE PRINCIPAL OF OR PREMIUM, IF ANY, OR INTEREST ON THIS BOND OR ANY COSTS INCIDENTAL HERETO. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF MINNESOTA, THE ISSUER, OR ANY POLITICAL SUBDIVISION OR AGENCY THEREOF, NOR THE FAITH AND CREDIT OF THE ISSUER, OR ANY ISSUER INDEMNIFIED PERSON, SHALL BE PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR PREMIUM, IF ANY, OR INTEREST ON, THIS BOND OR ANY COSTS INCIDENTAL HERETO.

This Bond is one of an issue of \$335,000 City of Falcon Heights, Minnesota Taxable Senior Housing Revenue Bonds (Suite Living Senior Care of Ramsey Project), Series 2020B (the “*Series 2020B Bonds*” or “*Bonds*”). The Series 2020B Bonds are being issued simultaneously with the \$7,680,000 City of Falcon Heights, Minnesota Senior Housing Revenue Bonds (Suite Living Senior Care of Ramsey Project), Series 2020A (the “*Series 2020A Bonds*”). The Series 2020A Bonds and the Series 2020B Bonds (collectively, the “*Series 2020 Bonds*”) are being issued for the purpose of providing funds to (i) finance and refinance, including repayment of the Prior Obligations (as defined in the Indenture) and through reimbursement, all or part of the costs of the acquisition, construction, and equipping of a senior living facility known as Suite Living Senior Care of Ramsey, to be located at 139th Lane Northwest at the intersection of Jasper Street Northwest in Ramsey, Minnesota, and consisting of an approximately 32-unit high acuity assisted living and memory care facility (the “*Project*”), (ii) finance capitalized interest on the Series 2020 Bonds, (iii) fund required reserves, and (iv) pay certain costs of issuing the Series 2020 Bonds.

The Series 2020 Bonds are issued under and secured by a Trust Indenture, dated as of June 1, 2020 (the “*Indenture*”), between the Issuer and the Trustee, which assigns to the Trustee, as security for the Series 2020 Bonds, certain rights of the Issuer under the Loan Agreement, dated as of June 1, 2020 (the “*Loan Agreement*”), between the Issuer and Hampton Properties of Ramsey, LLC, a Minnesota limited liability company (the “*Borrower*”), the sole member of which is Suburban Housing & Community Services Corporation, a California nonprofit, public benefit corporation that has been determined to be an exempt organization within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. In the Loan Agreement, the Borrower agrees to pay amounts sufficient to pay the principal of, premium, if any, and interest on the Bonds and the Series 2020A Bonds as the same become due.

The Issuer has approved the issuance of the Series 2020 Bonds pursuant a bond resolution adopted by the Issuer on June 10, 2020. The Series 2020 Bonds are being issued pursuant to the Act (as defined in the Indenture).

The Series 2020 Bonds are secured by the Mortgage with Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of June 1, 2020, by the Borrower in favor of the Issuer and assigned to the Trustee, as the same may from time to time be replaced, amended or supplemented as provided therein (the “*Mortgage*”), which creates a lien on and a security interest in the Mortgaged Property (as defined in the Indenture), which lien and security interest are more fully described in the Mortgage.

Reference is hereby made to the Indenture, the Loan Agreement, and the Mortgage, and to all amendments and supplements thereto, for a description of the provisions, among others, with respect to the terms on which the Series 2020 Bonds are issued, the nature and extent of the security for the Series 2020 Bonds, the rights, duties and obligations of the Issuer and the Trustee, the rights of the Holders of the Series 2020 Bonds and the provisions for defeasance of such rights.

The Series 2020B Bonds are subject to optional, mandatory and extraordinary redemption prior to maturity as provided in the Indenture.

The owner 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 proceeding with respect thereto, except as provided in the Indenture. In certain events, on conditions, in the manner and with the effect set forth in the Indenture, the principal of all the Series 2020 Bonds issued under the Indenture and then outstanding may become or may be declared due and payable before their stated maturities, together with accrued interest thereon. Modifications or alterations of the Indenture, the Loan Agreement or the Notes or of any supplements thereto, may be made only to the extent and in the circumstances permitted by the Indenture.

The Series 2020 Bonds are issuable only as registered bonds without coupons, while registered as a Greenwich Investor Bond (as such term is defined in the Indenture), in denominations of \$5,000 or any integral multiple of \$5,000 in excess thereof. At such time as a Bond is no longer a Greenwich Investor Bond, Authorized Denomination means \$100,000 and any integral multiples of \$5,000 in excess thereof; provided that, a Bond may be (i) purchased, sold or transferred in multiples of \$5,000 so long as, upon completion of such purchase, transfer or sale, each Beneficial Owner owns at least the applicable Authorized Denomination in principal amount of the Bonds, and (ii) exchanged after mandatory redemption for a Bond in a denomination of less than \$100,000 but in \$5,000 integral multiples to the extent necessary to represent the unredeemed portion of any Bond. At the designated corporate trust office of the Trustee, in the manner and subject to the limitations and conditions and upon payment of charges provided in the Indenture, this may be exchanged for an equal aggregate principal amount of Series 2020 Bonds of different authorized denominations as requested by the owner hereof or his duly authorized attorney or legal representative.

The transfer of this Bond may be registered by the registered owner thereof in person or by his duly authorized attorney or legal representative at the designated corporate trust office of the

Trustee, but only in the manner and subject to the limitations and conditions provided in the Indenture and upon surrender and cancellation of the Bond. Upon any such registration of transfer the Issuer shall execute and the Trustee shall authenticate and deliver in exchange for this Bond a new Bond, registered in the name of the transferee, of authorized denominations. The Trustee, the Issuer and the Borrower shall, prior to due presentment for registration of transfer, treat the registered owner as the person exclusively entitled to payment of principal, premium, if any, and interest and the exercise of all other rights and powers of the owner, except that all payments of interest shall be made to the registered owner as of the fifteenth day of the month preceding each interest payment date.

Any exchange or registration of transfer shall be without charge except that the Trustee shall make a charge to any bondholder requesting such exchange or registration in the amount of any tax or other governmental charge required to be paid with respect thereto.

All acts, conditions and things required to happen, exist or be performed precedent to and in the issuance of this Bond have happened, exist and have been performed.

**IT IS HEREBY CERTIFIED, RECITED, AND DECLARED** that all acts, conditions, and things required to exist, happen, and be performed precedent to and in the issuance of this Bond do exist, have happened, and have been performed in due time, form, and manner as required by law in order to make this Bond a valid and legal revenue obligation of the Issuer and that the issuance of the Series 2020 Bonds, together with all other obligations of the Issuer, does not exceed or violate any constitutional or statutory limitation applicable to the Issuer.

This Bond shall not become obligatory for any purpose or be entitled to any security or benefit under the Indenture, hereinafter defined, or be valid until the Trustee shall have executed the Certificate of Authentication appearing hereon.

*[Remainder of page intentionally left blank.]*

**IN WITNESS WHEREOF**, the City of Falcon Heights, Minnesota has caused this Bond to be executed by its Authorized Signatories by their manual or facsimile signatures, all as of the Issue Date set forth above.

**CITY OF FALCON HEIGHTS,  
MINNESOTA**

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

Name: Randy Gustafson

Its: Mayor

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

Name: Sack Thongvanh

Its: City Administrator

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

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

**WILMINGTON TRUST, NATIONAL  
ASSOCIATION**, as Trustee

By: \_\_\_\_\_  
Authorized Officer

Date of Authentication:

\_\_\_\_\_

**ASSIGNMENT**

For value received \_\_\_\_\_ the undersigned does hereby sell, assign and transfer unto \_\_\_\_\_ the within-mentioned Bond and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney, to transfer the same on the Bond Register of the Trustee with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed: \_\_\_\_\_

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Social Security or Other  
Identifying Number  
of Transferee: \_\_\_\_\_

**NOTE:** The signature on this Assignment must correspond with the name as written on the face of the within-mentioned Certificate in every particular without alteration or enlargement or any change whatsoever.

## ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of the within Certificate, shall be construed as though they were written out in full according to applicable laws or regulations.

TEN COM – as tenants in common  
TEN ENT – as tenants by the entireties  
JT TEN – as joint tenants with the right of survivorship and not as  
tenants in common

UNIFORM GIFT MIN ACT – \_\_\_\_\_ Custodian \_\_\_\_\_  
(Cust) (Minor)  
under Uniform Gifts to Minors Act  
\_\_\_\_\_  
(State)

Additional abbreviations may also be used though not in the above list.



## **DTC FAST RIDER**

Each Series 2020B Bond certificate shall remain in the Trustee's custody subject to the provisions of the FAST Balance Certificate Agreement currently in effect between the Trustee and DTC.

**EXHIBIT C**

**FORM OF REQUISITION FROM THE COST OF ISSUANCE FUND**

**CITY OF FALCON HEIGHTS, MINNESOTA  
SENIOR HOUSING REVENUE BONDS  
(SUITE LIVING SENIOR CARE OF RAMSEY PROJECT),  
SERIES 2020**

No. \_\_\_\_\_

\_\_\_\_\_, 20\_\_\_\_

Wilmington Trust, National Association  
Institutional Client Services  
1 Light Street, 14<sup>th</sup> Floor  
Baltimore, MD 21202  
Attn: Jay Smith  
Telephone: (410) 545-2193  
Email: [jhsmith@wilmingtontrust.com](mailto:jhsmith@wilmingtontrust.com)

Ladies and Gentlemen:

Pursuant to the Trust Indenture, dated as of June 1, 2020 (the “Indenture”), by and among City of Falcon Heights, Minnesota (the “Issuer”) and Wilmington Trust, National Association, as trustee (the “Trustee”) and the Loan Agreement, dated as of June 1, 2020 (the “Loan Agreement”), by and among Hampton Properties of Ramsey, LLC (the “Borrower”) and the Issuer, the undersigned Authorized Borrower Representative, as defined in the Indenture, hereby requests and authorizes the Trustee to pay from the Cost of Issuance Fund, the sum of \$ \_\_\_\_\_ to be paid to:

Payee:  
Address:  
Amount to be Paid:

(include wire instructions if wire is needed):

Purpose (in reasonable detail) for which the obligation(s) to be paid was incurred:

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Attached hereto is an invoice or other appropriate evidence of the incurrence of each obligation described above. I hereby certify that: (a) the obligation stated on this requisition constitutes a Cost of Issuance as defined in the Indenture, and is a proper charge against the Cost of Issuance Fund and has not been the basis for a prior requisition that has been paid, and (b) as of the date hereof no event or condition has happened or existed or is happening or exists that

constitutes, or that with notice or lapse of time or both, would constitute, an “Event of Default” under the Indenture or the Loan Agreement (as such terms are defined in the Indenture), or if such an event has happened or exists, the nature of the event and what action the Borrower has taken with respect thereto is described on an attachment hereto.

**HAMPTON PROPERTIES OF RAMSEY, LLC,**  
a Minnesota limited liability company

By: \_\_\_\_\_  
Authorized Borrower Representative

**EXHIBIT D**  
**[RESERVED]**

**EXHIBIT E**

**REQUISITION FROM WORKING CAPITAL FUND**

**REQUISITION NO. \_\_\_\_\_**

To: Wilmington Trust, National Association, as Trustee

Pursuant to the Trust Indenture, dated as of June 1, 2020 (the “Indenture”), by and among City of Falcon Heights, Minnesota (the “Issuer”) and Wilmington Trust, National Association, as trustee (the “Trustee”) and the Loan Agreement, dated as of June 1, 2020 (the “Loan Agreement”), by and among Hampton Properties of Ramsey, LLC (the “Borrower”) and the Issuer, the undersigned Borrower Representative, as defined in the Indenture, hereby requests and authorizes the Trustee to pay to the person(s) listed on the Disbursement Schedule attached hereto out of the moneys on deposit in the Working Capital Fund created by the Indenture the aggregate sum of \$\_\_\_\_\_ for advances, payments and expenditures made or incurred by the Borrower in connection with the items listed in the Disbursement Schedule.

In connection with the foregoing request and authorization, the undersigned hereby certifies that: (1) each item for which disbursement is requested hereunder is properly payable out of the Working Capital Fund in accordance with the terms and conditions of the Indenture and none of those items has formed the basis for any disbursement heretofore made from the Working Capital Fund; (2) each such item is or was a necessary expenditure permitted under the Indenture; (3) this statement and all exhibits hereto, including the Disbursement Schedule, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warrant, protection and authority to the Trustee for its actions taken pursuant hereto; and (4) this statement constitutes the approval of the Borrower of each disbursement hereby requested and authorized.

Dated: \_\_\_\_\_, 20\_\_.

**HAMPTON PROPERTIES OF RAMSEY,  
LLC**, a Minnesota limited liability company

By: \_\_\_\_\_  
Authorized Borrower Representative

**DISBURSEMENT SCHEDULE  
FOR REQUISITION NO. \_\_\_\_  
FROM THE WORKING CAPITAL FUND**

(wire instructions if wire is needed)

Name and Address of Payee:

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Description of Component:

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Describe Nature of Obligation:

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Amount to be Paid to Payee:

\$\_\_\_\_\_

Attach:

Invoice Supporting Payment Applicable Lien Waiver

**EXHIBIT F**

**REQUISITION FROM REPAIR AND REPLACEMENT RESERVE FUND**

**REQUISITION NO. \_\_\_\_\_**

To: Wilmington Trust, National Association, as Trustee

Pursuant to the Trust Indenture, dated as of June 1, 2020 (the “Indenture”), by and among City of Falcon Heights, Minnesota (the “Issuer”) and Wilmington Trust, National Association, as trustee (the “Trustee”) and the Loan Agreement, dated as of June 1, 2020 (the “Loan Agreement”), by and among Hampton Properties of Ramsey, LLC (the “Borrower”) and the Issuer, the undersigned Borrower Representative, as defined in the Indenture, hereby requests and authorizes the Trustee to pay to the person(s) listed on the Disbursement Schedule attached hereto out of the moneys on deposit in the Repair and Replacement Reserve Fund created by the Indenture the aggregate sum of \$\_\_\_\_\_ for advances, payments and expenditures made or incurred by the Borrower in connection with the items listed in the Disbursement Schedule.

In connection with the foregoing request and authorization, the undersigned hereby certifies that: (1) each item for which disbursement is requested hereunder is properly payable out of the Repair and Replacement Reserve Fund in accordance with the terms and conditions of the Indenture and none of those items has formed the basis for any disbursement heretofore made from the Repair and Replacement Reserve Fund; (2) each such item is or was a necessary expenditure permitted under the Indenture; (3) this statement and all exhibits hereto, including the Disbursement Schedule, shall be conclusive evidence of the facts and statements set forth herein and shall constitute full warrant, protection and authority to the Trustee for its actions taken pursuant hereto; and (4) this statement constitutes the approval of the Borrower of each disbursement hereby requested and authorized.

Dated: \_\_\_\_\_, 20\_\_.

**HAMPTON PROPERTIES OF RAMSEY,  
LLC**, a Minnesota limited liability company

By: \_\_\_\_\_  
Authorized Borrower Representative

**DISBURSEMENT SCHEDULE  
FOR REQUISITION NO. \_\_\_\_  
FROM THE REPAIR AND REPLACEMENT RESERVE FUND**

(wire instructions if wire is needed)

Name and Address of Payee:

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Description of Component:

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Describe Nature of Obligation:

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Amount to be Paid to Payee:

\$\_\_\_\_\_

Attach:

Invoice Supporting Payment Applicable Lien Waiver



**EXHIBIT G**

**FORM OF INSURANCE AND TAX ESCROW FUND REQUISITION**

Requisition No. \_\_\_\_\_

Date: \_\_\_\_\_

To: Wilmington Trust, National Association, as Trustee (the "Trustee") under the Indenture  
Attention: Trust Department

The undersigned Borrower hereby requests that there be paid from the Insurance and Tax Escrow Fund, created by the Indenture, the sum set forth below, and in that connection, I HEREBY CERTIFY, as follow:

An obligation in each of the amounts set forth below has been incurred in connection with the Project and is authorized to be paid from the Insurance and Tax Escrow Fund.

<u>Payee Name and Address</u>	<u>Purpose</u>	<u>Amount</u>
		\$
		\$
		\$
Total		

(include wire instructions if wire is needed)

The Borrower hereby certifies that:

(1) all evidence, statements, and other writings required to be furnished under the terms of the Indenture are true and omit no material fact, the omission of which may make them misleading; and

(2) all money previously disbursed from the Insurance and Tax Escrow Fund has been used solely to pay for costs allowed by the Indenture, and the Borrower has written evidence to support this item of warranty.

Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Indenture.

**HAMPTON PROPERTIES OF RAMSEY, LLC**, a Minnesota limited liability company

By: \_\_\_\_\_  
Authorized Borrower Representative

**EXHIBIT H**

**OFFICER’S CERTIFICATE**

Reference is made to the Trust Indenture, dated as of June 1, 2020 (the “Indenture”), between City of Falcon Heights, Minnesota (the “Issuer”) and Wilmington Trust, National Association, as trustee (the “Trustee”) and the Loan Agreement, dated as of June 1, 2020 (the “Loan Agreement” and, together with the Indenture, the “Governing Documents”), between the Issuer and Hampton Properties of Ramsey, LLC (the “Borrower”), a Minnesota limited liability company.

The undersigned officer of the Borrower hereby certifies to the Trustee that:

I have read all relevant sections of the Governing Documents relating to insurance and the definitions relating thereto;

I have made such examination or investigation as is necessary or appropriate in order to make the statements contained herein;

I have made such examination or investigation as is necessary to enable me to express an informed opinion as to whether or not the terms, conditions and covenants in the Governing Documents with respect to insurance matters have been complied with; and

Based on examination and review of the Governing Documents, all of the terms, conditions and covenants set forth in the Governing Documents as they relate to Insurance matters have been satisfied and are in full force and effect.

IN WITNESS WHEREOF, the undersigned has executed this Officer’s Certificate this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**HAMPTON PROPERTIES OF RAMSEY,  
LLC**, a Minnesota limited liability company

By: \_\_\_\_\_  
Authorized Borrower Representative

**EXHIBIT I**

**FORM OF WEEKLY DIRECTION TO TRUSTEE AS TO TRANSFERS TO ADMINISTRATION FUND, INSURANCE AND TAX ESCROW FUND, AND OPERATING ACCOUNT HELD BY BORROWER; AND STATEMENT AND ACCOUNTING OF HOLDBACK AMOUNT HELD IN HOLDBACK ACCOUNT**

To: Wilmington Trust, National Association, as Trustee (the “Trustee”) under the Trust Indenture, dated as of June 1, 2020 (the “Indenture”), between City of Falcon Heights, Minnesota and the Trustee

Attention: Trust Department

The undersigned Borrower hereby directs the Trustee to transfer from the Revenue Fund the amounts set forth below to the Administration Fund, the Insurance and Tax Escrow Fund, and the operating account held by the Borrower in accordance with clauses First, Second, and Fourth of Section 6.02(a) of the Indenture:

<u>Fund or Account</u>	<u>Amount</u>
Administration Fund	\$
Insurance and Tax Escrow Fund	\$
Operating account of the Borrower	\$

Pursuant to Section 6.02(a) of the Indenture, attached hereto is a weekly balance statement with respect to the Holdback Account. The Borrower hereby certifies that:

(1) Gross Receipts retained in the amount of \$\_\_\_\_\_ was deposited in the Holdback Account; and

(2) the balance in the Holdback Account does not exceed the Holdback Amount (\$45,000); and

(3) in the prior week, the Borrower expended \$\_\_\_\_\_ from the Holdback Account for the payment of Total Cash Operating Expenses of the Borrower, including the amounts described below:

<u>Payee Name and Address</u>	<u>Purpose</u>	<u>Amount</u>
		\$
		\$
		\$
Total		

Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Indenture.

**HAMPTON PROPERTIES OF RAMSEY,  
LLC, a Minnesota limited liability company**

By: \_\_\_\_\_  
Authorized Borrower Representative

**EXHIBIT J**

**CERTIFICATE OF BONDHOLDER REPRESENTATIVE**

**\$7,680,000**  
City of Falcon Heights, Minnesota  
Senior Housing Revenue Bonds (Suite Living  
Senior Care of Ramsey Project)  
Series 2020A

**\$335,000**  
City of Falcon Heights, Minnesota  
Taxable Senior Housing Revenue Bonds (Suite  
Living Senior Care of Ramsey Project)  
Series 2020B

**CERTIFICATE OF BONDHOLDER REPRESENTATIVE**

**June \_\_, 2020**

City of Falcon Heights, Minnesota  
2077 Larpenteur Avenue West  
Falcon Heights, MN 55113

Ladies and Gentlemen:

The undersigned (the “Bondholder Representative”) is the purchaser, on behalf of each Investor (defined below), of the Senior Housing Revenue Bonds (Suite Living Senior Care of Ramsey Project), Series 2020A and Taxable Senior Housing Revenue Bonds (Suite Living Senior Care of Ramsey Project), Series 2020B (collectively, the “Bonds”), issued by the City of Falcon Heights, Minnesota (the “Issuer”), pursuant to that certain Trust Indenture, dated as of June 1, 2020 (the “Indenture”), between the Issuer and Wilmington Trust, National Association, a national banking association, as trustee (the “Trustee”).

Capitalized terms not defined herein shall be given the respective meanings ascribed thereto in the Loan Agreement, dated as of June 1, 2020 (the “Loan Agreement”), between the Issuer and Hampton Properties of Ramsey, LLC, a Minnesota limited liability company (the “Borrower”), the sole member of which is Suburban Housing & Community Services Corporation, a California nonprofit, public benefit corporation that has been determined to be an exempt organization within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Sole Member”).

The Bondholder Representative has been informed that the Issuer will not sell or permit any Bonds to be sold to the Bondholder Representative unless the Bondholder Representative makes the representations, warranties and covenants herein and authorizes the Issuer and the Trustee to rely thereon and such representations, warranties and covenants are made by the Bondholder Representative AS AN INDUCEMENT to the sale of the portion of the Bonds to each Investor.

In connection with the sale of the Bonds, the Bondholder Representative hereby makes the following representations upon which you are authorized to rely:

1. The Bondholder Representative is the duly appointed representative of the initial beneficial owners of the Bonds (each an “Investor”). All statements and representations made with respect to “Investor” herein are deemed to be made for and on behalf of each Investor, individually.

2. Each Investor has executed an investment management agreement with the Bondholder Representative pursuant to which, among other things, the Bondholder Representative is authorized to deliver this letter on the Investor’s behalf.

3. The Bondholder Representative has received and read copies of the Indenture (including the form of Bond) and the Loan Agreement and such other documents, agreements, certificates and instruments referenced therein or pertaining thereto or to the Bonds to which Bondholder Representative is a party or deems necessary and appropriate in its evaluation of the Bonds.

4. Each Investor has sufficient knowledge and experience in financial and investment matters to be able to evaluate the risks and merits of an investment in the Bonds.

5. Each Investor is acquiring the Bonds for its own account for investment purposes and not with a view to the resale or other distribution thereof, and each Investor intends to hold the Bonds for its own account to maturity, and does not intend to dispose of all or any part of the Bonds.

6. Each Investor understands that it may be required to bear the risks of this investment in the Bonds for an indefinite time, since any sale prior to maturity may not be possible.

7. The Bonds are a financially suitable investment for each Investor consistent with each Investor’s investment needs and objectives.

8. Each Investor is (i) an “accredited investor” within the meaning of Rule 501(a)(1) of Regulation D under the Securities Act of 1933, as amended (the “1933 Act”), (ii) a “Qualified Institutional Buyer” as defined in Rule 144A under the 1933 Act, or (iii) or the trustee of a trust whose securities are registered pursuant to an effective registration statement under the Securities Act; the Bondholder Representative acknowledges and each Investor understands that the Bonds are not registered under the 1933 Act and that such registration is not legally required as of the date hereof; and further acknowledges and understands that the Bonds (A) are not being registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any state, (B) will not be listed in any stock or other securities exchange, (C) will not carry a rating from any rating service, and (D) will be delivered in a form which may not be readily marketable.

9. The Bondholder Representative acknowledges and each Investor has been informed that the Bonds are not transferable except in Authorized Denominations to another accredited investor or a “Qualified Institutional Buyer” as provided by the Indenture, and each Investor agrees to abide by the transfer restrictions set forth in the Indenture; and that each Investor shall be solely and exclusively responsible for compliance with such transfer restrictions, including verifying that its transferee is an accredited investor or a Qualified Institutional Buyer, as the case may be.

10. The Bondholder Representative acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, to which a reasonable investor would attach significance in making investment decisions, and the Bondholder Representative has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Borrower and the Bonds and the security therefor so that, as a reasonable investor, the Bondholder Representative has been able to make its decision to purchase the Bonds for the investment account of each Investor. The Bondholder Representative acknowledges that it has not relied upon the Issuer for any information in connection with the purchase of the Bonds.

11. THE BONDHOLDER REPRESENTATIVE ACKNOWLEDGES AND EACH INVESTOR HAS BEEN INFORMED THAT THE BONDS ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM REVENUES OF THE BORROWER AND OTHER FUNDS PLEDGED FOR THEIR PAYMENT PURSUANT TO THE INDENTURE, AND THE ISSUER SHALL NOT BE DIRECTLY OR INDIRECTLY OR CONTINGENTLY OR MORALLY OBLIGATED TO USE ANY OTHER MONEYS OR ASSETS OF THE ISSUER FOR ALL OR ANY PORTION OF THE PRINCIPAL OF AND INTEREST ON THE BONDS.

12. The Bondholder Representative has made its own inquiry and analysis with respect to the Bonds and the security therefor (including, without limitation, a credit evaluation of the Borrower and any guarantors, obligors or lessees of the Project, to the extent the Bondholder Representative deemed it necessary or appropriate), and other material factors affecting the security and payment of the Bonds. The Bondholder Representative is aware, and each Investor has been informed, that the business of the Borrower involves certain economic variables and risks that could adversely affect the security for the Bonds.

13. The Bondholder Representative agrees to indemnify and hold harmless the Issuer and each Issuer Indemnified Person with respect to any claim asserted against the Issuer or any such Issuer Indemnified Person that is based upon the Bondholder Representative's breach of any representation, warranty or agreement made by it herein, other than any claim that is based upon the willful misconduct of the Issuer Indemnified Person seeking indemnification.

14. Each Investor has been informed that the Bonds are not general obligations of the Issuer, but are special, limited obligations payable and secured solely as provided for in the Bond Documents (as defined in the Indenture).

15. Each Investor is not now, and has never been controlled by, or under common control with, the Borrower. The Borrower has never been, and is not now, controlled by any Investor. No Investor has entered into any arrangements with the Borrower or with any affiliate of the Borrower in connection with the Bonds, other than as disclosed to the Issuer or Trustee.

16. The Issuer, the City of Ramsey, Minnesota, and the Trustee have not undertaken and will not undertake steps to ascertain the accuracy or completeness of the information furnished to any Investor with respect to the Borrower, the Bonds, or the Project financed by the Bonds. No Investor has relied or will rely upon the Issuer, the City of Ramsey, Minnesota, or the Trustee in any way with regard to the accuracy or completeness of the information furnished to any Owner

in connection with the purchase of the Bonds, nor have any such parties made any representation to any Owner with respect to that information.

17. The undersigned understands that the foregoing information will be relied upon by: (i) the Issuer, the Borrower, and the Sole Member with respect to certain of the representations set forth in a tax certificate of the Borrower and the Sole Member, and endorsed by the Issuer, executed on the date hereof with respect to compliance with the federal income tax rules affecting the Bonds; and (ii) Taft Stettinius & Hollister LLP, in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038 (Rev. September 2018), and other federal income tax advice that it may give to the Issuer and the Borrower from time to time relating to the Bonds.

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



IN WITNESS WHEREOF, the undersigned has executed this CERTIFICATE OF BONDHOLDER REPRESENTATIVE as of the date and year first written above.

**GREENWICH INVESTMENT  
MANAGEMENT, INC.**

on behalf of the various investment accounts it manages that are the initial beneficial owners of the Bonds, as their investment manager

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

Name: Drew J. Collins

Its: Managing Director

[Signature page to Certificate of Bondholder Representative]

## JOINT POWERS AGREEMENT

THIS JOINT POWERS AGREEMENT, dated as of \_\_\_\_\_ 1, 2020 (the “Joint Powers Agreement”), is made and entered into between the CITY OF FALCON HEIGHTS, MINNESOTA, a statutory city and political subdivision of the State of Minnesota (the “Issuer”), and the CITY OF RAMSEY, MINNESOTA, a statutory city and political subdivision of the State of Minnesota (the “Host City”).

### RECITALS

WHEREAS, Hampton Properties of Ramsey, LLC, a Minnesota limited liability company (the “Borrower”), whose sole member is Suburban Housing & Community Services Corporation, a California nonprofit corporation and 501(c)(3) organization, proposes to (i) finance, in part, the acquisition, construction, and equipping of an approximately 32-unit high acuity assisted living and memory care senior housing facility located on approximately 1.75 acres on 139<sup>th</sup> Lane Northwest at the intersection of Jasper Street Northwest in the Host City (the "Facility"); (ii) fund capitalized interest on the Bonds; (iii) fund required reserve funds; and (iv) pay all or a portion of the costs of issuance (collectively, the "Project"). The Facility is and will be owned and operated by the Borrower; and

WHEREAS, pursuant to Minnesota Statutes, Section 471.656, as amended, a municipality may issue obligations to finance the acquisition or improvement of property located outside of the corporate boundaries of such municipality if the obligations are issued under a joint powers agreement in which one or more of the parties to the joint powers agreement issue such obligations and the property is located entirely within the boundaries of one or more of the parties to the joint powers agreement; and

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

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

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

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

WHEREAS, the governing bodies of the Host City and the Issuer have authorized the execution and delivery of this Joint Powers Agreement; and

NOW, THEREFORE, the Host City and the Issuer hereby agree as follows:

1. The Issuer will issue its Senior Housing Revenue Bonds (Suite Living Senior Care of Ramsey Project) Series 2020 (the “Bonds”). The Bonds will be issued in the original aggregate principal amount of \$\_\_\_\_\_, and the proceeds of the Bonds will be used to finance the acquisition, construction, and equipping of the Facility, fund any required reserves, finance capitalized interest during the construction of the Facility, and pay the costs of issuing the Bonds.

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

3. The governing bodies of the Host City and the Issuer have each adopted a resolution approving this Joint Powers Agreement and authorizing its execution and delivery.

4. The governing body of the Issuer has adopted a resolution approving a housing finance program for the Project in accordance with Minnesota Statutes, Chapter 462C.

5. The Host City hereby consents to and approves (a) the issuance of the Bonds by the Issuer; and (b) the financing of the Project by the Issuer with the proceeds of the Bonds.

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

7. All costs incurred by the Host City and the Issuer in the authorization, execution, delivery, and performance of this Joint Powers Agreement and all related transactions shall be paid by the Borrower.

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

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

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

IN WITNESS WHEREOF, duly authorized officers of the Host City and the Issuer have executed this Joint Powers Agreement as of the date and year first written above.

**CITY OF FALCON HEIGHTS,  
MINNESOTA, as the Issuer**

By \_\_\_\_\_  
Its Mayor

By \_\_\_\_\_  
Its City Administrator

Execution page of the City of Ramsey to the Joint Powers Agreement, dated as of the date and year first written above.

**CITY OF RAMSEY, MINNESOTA**, as the  
Host City

By \_\_\_\_\_  
Its Mayor

By \_\_\_\_\_  
Its City Administrator

**LOAN AGREEMENT**

by and between

**CITY OF FALCON HEIGHTS, MINNESOTA**

and

**HAMPTON PROPERTIES OF RAMSEY, LLC**

relating to

**\$7,680,000**

**City of Falcon Heights, Minnesota  
Senior Housing Revenue Bonds  
(Suite Living Senior Care of Ramsey Project)  
Series 2020A**

**\$335,000**

**City of Falcon Heights, Minnesota  
Taxable Senior Housing Revenue Bonds  
(Suite Living Senior Care of Ramsey Project)  
Series 2020B**

Dated as of June 1, 2020

The interest of the City of Falcon Heights, Minnesota in this Loan Agreement (except for Unassigned Rights of the Issuer defined in the hereinafter described Trust Indenture) has been assigned pursuant to and as provided in the Trust Indenture dated as of the date hereof from the Issuer to Wilmington Trust, National Association, as trustee (the “*Trustee*”), and is subject to the security interest of Trustee thereunder.

## TABLE OF CONTENTS

	Page
<b>ARTICLE I</b>	<b>DEFINITIONS AND RULES OF CONSTRUCTION ..... 2</b>
Section 1.01	Definitions..... 2
Section 1.02	Rules of Construction ..... 2
<b>ARTICLE II</b>	<b>REPRESENTATIONS ..... 3</b>
Section 2.01	Representations by Issuer ..... 3
Section 2.02	Representations by the Borrower..... 4
<b>ARTICLE III</b>	<b>FINANCING OF PROJECT ..... 10</b>
Section 3.01	Issuance of the Bonds; Loan by the Issuer, Agreement to Construct Project ..... 10
Section 3.02	Repayment of Loan..... 10
Section 3.03	Borrower to Provide Funds to Carry Out Purposes for Which Bonds Issued ..... 12
Section 3.04	Limitation of Issuer’s Liability ..... 12
Section 3.05	Recordation and Filing..... 14
Section 3.06	Mortgagee Title Policy ..... 15
Section 3.07	Disclaimer of Warranties ..... 15
Section 3.08	No Warranty of Condition or Suitability by Issuer..... 15
Section 3.09	Security for Borrower’s Performance..... 16
Section 3.10	Closing Expenses ..... 16
<b>ARTICLE IV</b>	<b>PAYMENTS ON SERIES 2020 NOTES ..... 16</b>
Section 4.01	Amounts Payable ..... 16
Section 4.02	Gross Receipts ..... 17
Section 4.03	Default in Payments..... 17
Section 4.04	Obligations of Borrower Unconditional ..... 17
Section 4.05	Advances by Issuer, Bondholder Representative or Trustee ..... 18
Section 4.06	Agreement of Trustee ..... 18
Section 4.07	Arbitrage and Rebate Requirements ..... 18
<b>ARTICLE V</b>	<b>SPECIAL COVENANTS ..... 19</b>
Section 5.01	Compliance with Covenants, Conditions, Agreements in the Bond Documents ..... 19
Section 5.02	[Omitted]..... 19
Section 5.03	Examination of Books and Records; Information to the Issuer..... 19
Section 5.04	[Omitted]..... 19
Section 5.05	Damage, Destruction, Condemnation and Loss of Title..... 19
Section 5.06	Indemnification and Release..... 20
Section 5.07	Solvency; Adequate Capital..... 22
Section 5.08	Tax Covenants ..... 22
Section 5.09	Investment and Use of Trust Funds ..... 25
Section 5.10	Additional Collateral..... 25
Section 5.11	Security Interests..... 26
Section 5.12	Payment of Series 2020 Notes ..... 26

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Section 5.13 Covenants as to Corporate Existence, Maintenance of Properties, Performance of Covenants, Construction of the Project, Etc .....	27
Section 5.14 Insurance .....	30
Section 5.15 Insurance and Condemnation Proceeds .....	33
Section 5.16 Limitation of Liens .....	34
Section 5.17 Limitations on Indebtedness .....	36
Section 5.18 Long-Term Debt Service Coverage Ratio .....	39
Section 5.19 Sale, Lease or Other Disposition of Assets.....	40
Section 5.20 Consolidation, Merger, Sale or Conveyance .....	40
Section 5.21 Mortgages; Additional Filings .....	42
Section 5.22 [Days' Cash on Hand .....	43
Section 5.23 Occupancy Reporting.....	43
Section 5.24 Management.....	43
Section 5.25 [Omitted].....	44
Section 5.26 Annual Budget .....	44
Section 5.27 Environmental Matters.....	45
Section 5.28 Stable Occupancy.....	49
Section 5.29 Compliance, Contracts, Licenses and Permits .....	49
Section 5.30 Filing of Financial Statements; Other Information .....	49
Section 5.31 Distributions.....	51
Section 5.32 Competition.....	51
Section 5.33 Manager, Consultants, Architect and General Contractor .....	52
Section 5.34 Enforcement of Contractor Agreements .....	52
Section 5.35 UCC Financing Statements.....	52
Section 5.36 Management Fees .....	52
Section 5.37 Developer Fees.....	53
Section 5.38 Licenses.....	53
Section 5.39 Related Party Transactions .....	53
Section 5.40 Representations and Covenants Relating to Status of Sole Member for Federal Income Tax Purposes .....	53
Section 5.41 Special Purpose Entity Covenants .....	56
Section 5.42 Appointment of Arbitrage Analyst .....	57
Section 5.43 Use of Holdback Amount and Accounting Thereof .....	57
<b>ARTICLE VI EVENTS OF DEFAULT AND REMEDIES .....</b>	<b>57</b>
Section 6.01 Event of Default Defined .....	57
Section 6.02 Remedies on Default.....	59
Section 6.03 Application of Amounts Realized in Enforcement of Remedies.....	59
Section 6.04 No Remedy Exclusive.....	59
Section 6.05 Payments to Issuer, Bondholder Representative and Trustee.....	60
Section 6.06 No Additional Waiver Implied by One Waiver .....	60
Section 6.07 Remedies Subject to Applicable Law .....	60



**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
<b>ARTICLE VII PREPAYMENT OF SERIES 2020 NOTES .....</b>	<b>60</b>
Section 7.01 [Omitted].....	60
Section 7.02 Option to Prepay Series 2020 Notes in Whole .....	60
Section 7.03 Option to Prepay Series 2020 Notes in Part.....	61
Section 7.04 Amount Required for Prepayment .....	61
Section 7.05 Conditions Precedent to Prepayments .....	61
<b>ARTICLE VIII CONTINUING DISCLOSURE .....</b>	<b>62</b>
Section 8.01 Continuing Disclosure .....	62
<b>ARTICLE IX MISCELLANEOUS.....</b>	<b>62</b>
Section 9.01 Term of Loan Agreement.....	62
Section 9.02 Notices .....	63
Section 9.03 Amendments .....	64
Section 9.04 Successors and Assigns.....	65
Section 9.05 Severability .....	65
Section 9.06 Applicable Law; Entire Understanding; Modification of Documents .....	65
Section 9.07 Issuer’s Obligations Limited; Immunity of Directors, Officers, Employees.....	65
Section 9.08 Usury; Total Interest .....	66
Section 9.09 Counterparts.....	67
Section 9.10 Receipt of and Compliance with Indenture .....	67
Section 9.11 Benefit of and Enforcement by Bondholders.....	68
Section 9.12 No Liability for Consents or Appointments.....	68
Section 9.13 Notice to and Effect of Actions by Bondholder Representative.....	68
Section 9.14 Bondholder Representative.....	69
Section 9.15 Post-Issuance Compliance .....	69
Section 9.16 [Omitted].....	69
Section 9.17 Annual Certificate; Other Reporting.....	69
Section 9.18 No Obligation to Enforce Assigned Rights .....	69
Section 9.19 No Impairment of Rights .....	70
Section 9.20 The Issuer’s Performance .....	70
Section 9.21 Survival.....	70
<b>EXHIBIT A-1 FORM OF SERIES 2020A NOTE .....</b>	<b>A-1-1</b>
<b>EXHIBIT A-2 FORM OF SERIES 2020B NOTE.....</b>	<b>A-2-1</b>
<b>[EXHIBIT B REQUIREMENTS FOR SUBORDINATE INDEBTEDNESS .....</b>	<b>B-1</b>

## **LOAN AGREEMENT**

This Loan Agreement, dated as of June 1, 2020, by and between the **CITY OF FALCON HEIGHTS, MINNESOTA**, a municipal corporation existing under the laws of the State of Minnesota (the “*Issuer*”), and **HAMPTON PROPERTIES OF RAMSEY, LLC**, a limited liability company duly organized and existing under the laws of the State of Minnesota (as hereinafter defined as, the “*Borrower*”) , the sole member of which is Suburban Housing & Community Services Corporation, a California nonprofit, public benefit corporation that has been determined to be an exempt organization within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “*Sole Member*”);

### **WITNESSETH:**

**WHEREAS**, the Borrower has applied for the financial assistance of the Issuer in the financing and refinancing of the acquisition, construction, and equipping of a senior living facility known as Suite Living Senior Care of Ramsey (f/k/a Sanctuary in Ramsey), to be located at 139th Lane Northwest at the intersection of Jasper Street Northwest in Ramsey, Minnesota, and consisting of an approximately 32-unit high acuity assisted living and memory care facility (the “*Project*”); and

**WHEREAS**, the Project is to be located within the territorial limits of the City of Ramsey, State of Minnesota (the “*Project Jurisdiction*”), and the Issuer, based on representations of the Borrower but without independent investigation, has found and determined that the financing and refinancing of the Project will promote significant economic, cultural and community development opportunities, including the creation or retention of employment, the stimulation of economic activity and the promotion of improvements in the health, safety and welfare of persons in the Project Jurisdiction; and

**WHEREAS**, the Issuer has authorized the issuance of the Series 2020 Bonds, and has entered into this Loan Agreement with the Borrower specifying the terms and conditions of a loan by the Issuer to the Borrower of the proceeds of the Series 2020 Bonds to provide for financing or refinancing of the Project and of the payment by the Borrower to the Issuer of amounts sufficient for the payment of the principal of and premium, if any, and interest on the Series 2020 Bonds and costs incidental thereto;

**NOW, THEREFORE, IN CONSIDERATION OF** the respective representations and agreements hereinafter contained, the parties hereto agree as follows, provided, that in the performance of the agreements of the Issuer herein contained, any obligation it may thereby incur for the payment of money will be payable solely out of the revenues, receipts, and other payments derived from this Loan Agreement, the Trust Indenture, dated as of June 1, 2020 (the “*Indenture*”), by and between the Issuer and Wilmington Trust, National Association, as trustee (the “*Trustee*”), and the sale of the Series 2020 Bonds referred to in Section 3.01 hereof and insurance proceeds, foreclosure proceeds, proceeds from released property, and condemnation awards as herein provided, and the Series 2020 Bonds will not constitute a general obligation of the Issuer nor constitute an indebtedness or general obligation of the State or any political subdivision or agency of the State, within the meaning of any constitutional or statutory provision whatsoever:

## ARTICLE I

### DEFINITIONS AND RULES OF CONSTRUCTION

#### Section 1.01 Definitions.

Except as set forth below or unless the context otherwise requires, all undefined capitalized terms shall have the meanings assigned to them in the Indenture.

#### Section 1.02 Rules of Construction.

The following rules shall apply to the construction of this Loan Agreement unless the context otherwise requires:

(a) To the extent there are any inconsistencies or ambiguities between the terms of this Loan Agreement and the Indenture, the Indenture shall control and any such discrepancies shall be construed and resolved in favor of the Series 2020 Bonds and the Trustee, as applicable.

(b) Singular words shall connote the plural number as well as the singular and vice versa.

(c) Words importing the redemption or calling for redemption of Series 2020 Bonds shall not be deemed to refer to the payment of Series 2020 Bonds at their stated maturity.

(d) All references herein to particular Articles or Sections are references to Articles or Sections of this Loan Agreement unless otherwise indicated.

(e) Any headings preceding the texts of the several Articles and Sections of this Loan Agreement, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Loan Agreement, nor shall they affect its meaning, construction or effect.

(f) All references herein to the payment of Series 2020 Bonds are references to payment of principal of, premium, if any, and interest on Series 2020 Bonds.

(g) All accounting terms used herein that are not otherwise expressly defined in this Loan Agreement shall have the meanings respectively given to them in accordance with GAAP. Except as otherwise expressly provided herein, all financial computations made pursuant to this Loan Agreement shall be made in accordance with GAAP and all balance sheets and other Financial Statements shall be prepared in accordance with GAAP.

(h) Unless otherwise specified, the interest rate applicable to all Series 2020 Bonds shall be calculated based on a year consisting of 360 days comprised of twelve 30-day months.

(i) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public bodies, as well as natural persons.

(j) Any certificates, letters or opinions required to be given pursuant to this Loan Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Loan Agreement. Notwithstanding the foregoing or any other provision hereof to the contrary, whenever any certificate or opinion is required by the terms of this Loan Agreement to be given by the Issuer on its own behalf, any such certificate or opinion may be made or given by an Authorized Signatory (and in no event individually) and may be based (i) insofar as it relates to factual matters, upon a certificate of or representation by the Trustee, the Borrower, or the Sole Member; and (ii) insofar as it relates to legal or accounting matters, upon a certificate or opinion of or representation by counsel or an accountant, in each case under clause (i) and (ii) without further investigation or inquiry by such Authorized Signatory or otherwise on behalf of the Issuer.

(k) Every “request,” “order,” “demand,” “application,” “appointment,” “notice,” “statement,” “certificate,” “consent,” “direction” or similar action under this Loan Agreement by any party must be in writing and signed by a duly authorized representative of such party with a duly authorized signature.

(l) All references in this Loan Agreement to “counsel fees,” “attorneys’ fees” or the like mean and include fees and actual, out-of-pocket disbursements allocable to in-house or outside counsel, whether or not suit is instituted, and including fees and disbursements preparatory to and during any proceedings of a governmental or regulatory body, judicial or administrative hearing, trial and appeal and in any bankruptcy or arbitration proceedings.

(m) Whenever the word “includes” or “including” is used, such word means “includes or including by way of example and not limitation.”

(n) All approvals, consents and acceptances required to be given or made by any person or party hereunder shall be at the reasonable discretion of the party whose approval, consent or acceptance is required except to the extent otherwise specified herein.

(o) For purposes hereof, the Issuer shall not be deemed to have knowledge of any fact or the occurrence of any event unless and until an Authorized Signatory has written notice thereof or actual knowledge thereof.

## ARTICLE II

### REPRESENTATIONS

#### **Section 2.01** Representations by Issuer.

The Issuer makes the following representations:

- (a) The Issuer is a municipal corporation existing under the laws of the State.
- (b) The Issuer has full power and authority under the Act to adopt the Bond Resolution and to enter into and to perform its obligations under the Issuer Documents.

(c) When executed and delivered by the respective parties thereto, the Issuer Documents will constitute the legal, valid and binding obligations of the Issuer enforceable in accordance with their respective terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, by the application of equitable principles, by the exercise of judicial discretion in appropriate cases and by the limitation on legal remedies against joint powers commissions or governmental units of the State.

(d) By official action of the Issuer prior to or concurrently herewith, the Issuer has authorized and approved the execution and delivery of the Issuer Documents and the consummation by the Issuer of the transactions contemplated thereby.

(e) To the knowledge of the Issuer, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending against the Issuer seeking to restrain or enjoin the sale or issuance of the Series 2020 Bonds, or in any way contesting or affecting any proceedings of the Issuer taken concerning the sale thereof, the pledge or application of any moneys or security provided for the payment of the Series 2020 Bonds, in any way contesting the validity or enforceability of the Issuer Documents or contesting in any way the existence or powers of the Issuer relating to the authorization, issuance and sale of the Series 2020 Bonds.

(f) The execution and delivery by the Issuer of the Issuer Documents and compliance with the provisions on the Issuer's part contained therein will neither (i) conflict with or constitute a material breach of or default under any law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Issuer is a party or is otherwise subject, nor (ii) result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the Issuer under the terms of any such law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, except as provided by the Issuer Documents.

## **Section 2.02** Representations by the Borrower.

The Borrower makes the following representations, warranties and covenants as of the date of this Loan Agreement and as of the Closing Date, and such representations and warranties shall survive the issuance of the Series 2020 Bonds and shall remain operative and in full force and effect regardless of the issuance of the Series 2020 Bonds and regardless of any investigation by or on behalf of the Issuer or the results thereof:

(a) The Borrower is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Minnesota and duly authorized to conduct business in the State of Minnesota.

(b) The Sole Member is the only member of the Borrower and is a California nonprofit corporation duly organized, in good standing and existing under the laws of the State of California, and the Sole Member has full power and authority to undertake its actions and responsibilities as contemplated by this Loan Agreement.

(c) The Sole Member of the Borrower is a Tax-Exempt Organization and no revenues derived from any portion of the Project does or shall constitute “unrelated business income” within the meaning of Section 513(a) of the Code, except as may be specifically permitted by Section 145(a) of the Code in amounts that would not require the interest on the Series 2020A Bonds to become includable in gross income, for purposes of Federal income taxation.

(d) The Borrower has all requisite power and authority to own its properties and has applied for all necessary licenses and permits to operate its properties and to carry on its business in the State of Minnesota as it is now being conducted and as it is presently proposed to be conducted. The Borrower has no subsidiaries. Nothing has come to the Borrower’s attention that would lead the Borrower to believe that the applications referenced in this subsection (d) will not be approved. The Borrower has the power to enter into the Bond Documents and the Project Documents to which it is a party and the transactions contemplated thereunder.

(e) The Borrower intends to own and operate the Project from the date hereof to the expiration or sooner termination of this Loan Agreement, as provided herein, except to the extent such operation may be interrupted by strikes, riots, acts of God or public enemy or other circumstances beyond the control of the Borrower.

(f) The proceeds of the Series 2020 Bonds to be deposited in accordance with the Indenture, together with all other funds to be contributed to the Project by the Borrower in accordance with this Loan Agreement will be sufficient to pay all costs to be incurred in connection with the acquisition, construction, and equipping of the Project.

(g) The Borrower is not in default in the payment of the principal of or interest on any of its indebtedness for borrowed money and is not in default under any instrument under and subject to which any indebtedness has been incurred, and no event has occurred and is continuing under the provisions of any such agreement that with the lapse of time or the giving of notice, or both, would constitute an event of default thereunder.

(h) There is no litigation at law or in equity or any proceeding before any governmental agency involving the Borrower pending or, to the knowledge of the Borrower, threatened in which any liability of the Borrower is not adequately covered by insurance or which, if adversely determined, would have a material adverse effect upon the business or assets of the Borrower or affect its existence or authority to do business, the operation of the Project, the validity of the Bond Documents or the performance of the Borrower’s obligations thereunder.

(i) The execution and delivery by the Borrower of the Borrower Documents, and all other agreements, instruments and documents executed in connection therewith, the performance by the Borrower of its obligations thereunder and the consummation of the transactions therein contemplated do not and will not conflict with, or constitute a breach or result in a violation of, the articles of incorporation, articles of organization, operating agreement or bylaws of the Borrower, any agreement or other instrument to which the Borrower is a party or by which it is bound or any constitutional or statutory provision or order, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over the Borrower or its property.

(j) The Borrower has obtained all consents, approvals, authorizations and orders of any governmental or regulatory authority (referred to in this paragraph as “*Consents*”) that are required to be obtained by the Borrower as a condition precedent to the issuance of the Series 2020 Bonds, the financing of the Project, the acquisition and construction of the Project, and the execution and delivery of the Bond Documents, and all other agreements, instruments and documents executed in connection therewith. The Borrower has obtained all Consents that, to its knowledge, are obtainable to date for the performance by the Borrower of its obligations hereunder and thereunder, or required as of the date hereof for the operation of the Project. The Borrower will obtain when needed all other Consents required for the performance of its obligations under the Bond Documents, and for the operation of the Project and has no reason to believe that all such Consents cannot be promptly obtained when needed.

(k) The execution and delivery by the Borrower of the Borrower Documents, the consummation of the transactions contemplated hereby, and the fulfillment of the terms and conditions hereof and thereof do not and will not conflict with or result in a breach of any of the terms or conditions of its organizational documents or of any material agreement or instrument to which it is now a party, and do not and will not constitute a default under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon any of its Property except for Permitted Liens. It has good and marketable fee simple title to any and all of its Property constituting real property other than that which it leases, in which case it has a valid leasehold estate in the real property demised by each such lease, and good and marketable title to any and all of its other Property, in all cases, free and clear of all Liens except for Permitted Liens. The Permitted Liens existing with respect to any of its Property do not and will not in the aggregate materially adversely affect the value of the Property currently affected thereby, materially impair the same, or materially impair or materially interfere with the operation and usefulness thereof for the purpose for which it was acquired or is held by it. The Borrower is not in violation, in any material respect, of any applicable zoning, land use, environmental or similar law or restriction.

(l) The Project is a “project” within the meaning of the Act, and the Borrower agrees and undertakes that only eligible persons will be permitted to use the Facilities constituting a part of the Project or to enjoy or benefit from any of the services to be rendered in connection with a part of such Project.

(m) The representations and warranties of the Borrower contained in the Borrower Documents, and any certificate, document, written statement, or other instrument furnished by or on behalf of the Borrower to the Issuer, the Underwriter, the Bondholder Representative, or the Trustee in connection with the transactions contemplated by the Borrower Documents, do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements contained herein or therein not misleading. To the best knowledge of the Borrower, there is no fact that the Borrower or a representative of the Borrower has not disclosed to the Issuer, the Underwriter, the Bondholder Representative, or the Trustee in writing that materially adversely affects, or in the future may (so far as the Borrower can now reasonably foresee) materially adversely affect, the acquisition, construction, installation or operation of the Project or the properties, activities, revenues, or condition (financial or otherwise) of the Borrower, or the ability of the Borrower to perform its obligations under the Borrower Documents.

(n) The Borrower agrees to protect, preserve, and defend its interest in the Project and its title thereto, and to appear and defend said interest and title in any action or proceeding affecting or purporting to affect the Project.

(o) The Borrower is not subject to any charter, or other legal restriction, or any judgment, decree, order, rule or regulation that has or is expected in the future to have a materially adverse effect on the business assets or financial condition of the Borrower. The Borrower is not, and will not be, a party to any contract or agreement that has or is expected, in the judgment of the Borrower, to have any materially adverse effect on the business or financial condition of the Borrower.

(p) The Borrower has furnished to the Issuer all information necessary for the Issuer to file an IRS Form 8038 with respect to the Series 2020A Bonds, and all of such information is and will be on the date of filing, true, complete and correct.

(q) The Borrower is not contemplating the filing of a petition by it under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property, and the Borrower has no knowledge of any Person contemplating the filing of any such petition against it.

(r) The Borrower is not an “employee benefit plan,” as defined in Section 3(3) of ERISA, subject to Title I of ERISA, and none of the assets of the Borrower constitutes or will constitute “plan assets” of one or more such plans within the meaning of 29 C.F.R. Section 2510.3 101.

(s) No part of the proceeds of the Loan will be used for the purpose of purchasing or acquiring any “margin stock” within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation U or any other Regulation of such Board of Governors, or for any purpose prohibited by Legal Requirements or any Bond Document.

(t) The Borrower is not (i) an “investment company” or a company “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended; (ii) a “holding company” or a “subsidiary company” of a “holding company” or an “affiliate” of either a “holding company” or a “subsidiary company” within the meaning of the Public Utility Holding Company Act of 1935, as amended; or (iii) subject to any other federal or state law or regulation which purports to restrict or regulate its ability to borrow money.

(u) The Borrower has not entered into this Loan Agreement or any other Borrower Document with the actual intent to hinder, delay, or defraud any creditor, and the Borrower has received reasonably equivalent value in exchange for its obligations under the Bond Documents. The Borrower’s assets do not and, immediately following the execution and delivery of the Borrower Documents, will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. The Borrower does not intend to, and does not believe it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of the Borrower).



(v) The Borrower has reviewed, commented on and approved the **[Initial Demand Assessment for Senior Housing in Ramsey, Minnesota]**, dated July \_\_, 2019 (the “Market Feasibility Study”), by Viewpoint Consulting Group, Inc. and relating to the Project, and to the best of the Borrower’s knowledge, the assumptions underlying the financial projections therein are reasonable.

(w) The Mortgaged Property is located on the real property described in the exhibit to the Mortgage and identified as the property of the Borrower, and as of the Closing Date, complies in all material respects with all applicable building and zoning, health, environmental and safety ordinances and laws, and all other applicable laws, rules and regulations. The Mortgaged Property is not subject to any Liens except those Liens listed on the Title Policy.

(x) Based on the survey for the Mortgaged Property and such other documents received from applicable utility providers, all utility services necessary for the operation of the Mortgaged Property are available to the Mortgaged Property, including water supply, storm and sanitary sewer facilities, and gas, electric and telephone facilities.

(y) The Mortgaged Property, as of the date of issuance of the Series 2020 Bonds, is insured in accordance with the requirements of this Loan Agreement and has not been and is not damaged or injured as a result of any fire, explosion, accident, flood or other casualty which would materially adversely affect the intended use of the Mortgaged Property.

(z) Except for Permitted Liens, the property pledged by the Mortgage and the Indenture is not and will not be mortgaged, pledged, or hypothecated in any manner, for any purpose, or subject to any encumbrance, and has not been and will not be the subject of a grant of a security interest by the Borrower other than as provided herein and in the other Bond Documents as security for its obligations under the Bond Documents.

(aa) The Borrower has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement, or other agreement or instrument to which the Borrower is a party or by which the Borrower or the Mortgaged Property is otherwise bound, other than Permitted Liens and as contemplated or permitted by the Bond Documents.

(bb) The Borrower agrees that during the term of this Loan Agreement it will not transfer its interest in the Mortgaged Property except as permitted by the terms of this Loan Agreement and the Mortgage.

(cc) Any work performed in connection with the Mortgaged Property shall be performed in compliance with all applicable federal, state, county, and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter.

(dd) No elected or appointed public official, employee, agent or representative of the Issuer or the State or any of their official boards, commissions or committees or any member of the governing body of the Issuer has any direct or indirect interest of any kind, or any right, agreement or arrangement to acquire such an interest in any of the Mortgaged Property, as owner, or, to the knowledge of any member of the Borrower, as contractor, subcontractor, shareholder, member, general or limited partner, or tenant.

(ee) The Borrower will take such action or actions, including being a party to or consenting to such amendments of this Loan Agreement or such other documents pertaining to the Series 2020 Bonds, as may be necessary, in the Opinion of Bond Counsel, to comply fully with all applicable rules, rulings, regulations, policies, procedures or other official statements promulgated or proposed by the Internal Revenue Service pertaining to obligations the interest on which is excludable from gross income under Section 103 of the Code, and that pertain to the Series 2020A Bonds. Nothing in this paragraph shall be construed as to provide any ongoing obligation of Bond Counsel after opinions contemplated by this paragraph have been delivered.

(ff) Except as disclosed to the Underwriter and the Bondholder Representative, and based on the survey for the Mortgaged Property, neither the Mortgaged Property nor any portion thereof is located in a “special flood hazard area” as defined in the Flood Disaster Protection Act of 1973.

(gg) The representations made by or on behalf of the Borrower in the Bond Documents are true and accurate, and the written information, exhibits, reports, certificates, documents and other instruments taken as a whole do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make statements contained herein or therein not misleading. There is no fact currently known to the Borrower that has not been disclosed to the Underwriter or to the Bondholder Representative that materially adversely affects, nor as far as the Borrower can foresee, might materially adversely affect the business, operations or condition (financial or otherwise) of the Borrower or the Project.

(hh) The Borrower shall not enter into any contract or agreement with any Affiliate of the Borrower, except as specifically permitted by the Bond Documents, or otherwise upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arms-length basis with unaffiliated third parties. The Borrower will allocate fairly and reasonably any overhead expenses that are shared with an Affiliate, including paying for office space and services performed by any employee of an Affiliate.

(ii) This Loan Agreement, when assigned to the Trustee pursuant to the Indenture, and the other Borrower Documents and the Project Documents will constitute the legal, valid and binding agreements of the Borrower enforceable against the Borrower in accordance with their terms, including, without limitation, by the Trustee for the benefit of the Holders of the Series 2020 Bonds, and (ii) the Unassigned Rights constitute the legal, valid, and binding agreements of the Borrower enforceable against the Borrower (A) by the Issuer in its own right, or (B) in the case of the rights of any Issuer Indemnified Person (including, without limitation, the right of any Issuer Indemnified Person to indemnification and immunity from liability), by such Issuer Indemnified Person in his, her or its own right in accordance with their respective terms, except to the extent limited by (x) bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting creditors’ rights generally heretofore or hereafter enacted to the extent of their enforcement and (y) judicial discretion in the application of principles of equity. The officers executing the Bond Documents and the Project Documents on behalf of each Borrower are duly and properly in office and are fully authorized and empowered to execute the same for and on behalf of such Borrower.

(jj) No written information, exhibit or report furnished to the Issuer by the Borrower in its application for financing or by the Borrower or its representatives in connection with the

negotiation of this Loan Agreement or the other Borrower Documents, regardless of whether the Issuer is a party thereto (including, without limitation, any financial statements, whether audited or unaudited, and any other financial information provided in connection therewith) contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the representation and warranty in this paragraph (u) is made only to the Issuer and may not be relied upon by any other Person.

(kk) The Limited Public Offering Memorandum relating to the issue and sale of the Series 2020 Bonds does not contain any untrue statement of a material fact and does not omit to state a material fact which is necessary in order to make the statements contained therein not misleading.

### ARTICLE III

#### FINANCING OF PROJECT

##### **Section 3.01** Issuance of the Bonds; Loan by the Issuer, Agreement to Construct Project.

In order to provide funds to finance or refinance Costs of the Project and Issuance Costs, the Issuer agrees that it will issue, sell, and deliver the Series 2020A Bonds in the original aggregate principal amount of \$7,680,000, and the Series 2020B Bonds in the original aggregate principal amount of \$335,000 to, or as directed by, the Underwriter. Upon the terms and conditions of this Loan Agreement and the Indenture, the Issuer shall lend to the Borrower the proceeds of the sale of the Series 2020 Bonds. The Loan shall be made by depositing proceeds of such sale in accordance with Section 2.06(c) of the Indenture. The Loan shall be disbursed to the Borrower as provided in Article V of the Indenture.

The Borrower shall cause the Project to be constructed, and improved with due diligence and pursuant to the requirements of the Borrower Documents and applicable laws of the State of Minnesota in all material respects.

##### **Section 3.02** Repayment of Loan.

(a) Prior to or simultaneously with the issuance of the Series 2020 Bonds, to evidence its obligation to repay the Loan, the Borrower shall execute and deliver the Series 2020 Notes to the Issuer for assignment to the Trustee on behalf of itself and the Borrower as security for the payment of the Series 2020 Bonds. The Borrower shall pay the principal of, premium, if any, and interest on the Series 2020 Bonds (the “*Loan Payments*”), as more specifically set forth in Section 5.12 hereof and in the Indenture.

(b) In addition to the Loan Payments, the Borrower shall also pay to the Issuer or to the Trustee, as the case may be, Additional Payments as follows:

(i) All taxes and assessments of any type or character charged to the Issuer or to the Trustee affecting the amount available to the Issuer or to the Trustee from payments to be received hereunder or in any way arising due to the transactions contemplated hereby including taxes and assessments assessed or levied by any public agency or governmental

authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the Trustee and taxes based upon or measured by the net income of the Trustee; *provided*, however, that the Borrower shall have the right to protest any such taxes or assessments and to require the Issuer or the Trustee, at the Borrower's expense, to protest and contest, any such taxes or assessments levied against them and that the Borrower shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Issuer or the Trustee;

(ii) The fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Issuer or the Trustee in connection with the performance of its duties hereunder or in the Indenture and to prepare audits, financial statements, reports, opinions or provide such other services required under the Indenture, this Loan Agreement, or the other Borrower Documents, or the Indenture, including, but not limited to any audit or inquiry by the Internal Revenue Service or any other governmental body; and

(iii) The fees and expenses of the Issuer or any agent or attorney selected by the Issuer to act on its behalf in connection with this Loan Agreement, the other Borrower Documents, the Series 2020 Bonds or the Indenture, including, without limitation, any and all expenses incurred in connection with the authorization, issuance, sale and delivery of any such Series 2020 Bonds or in connection with any litigation, investigation, inquiry or other proceeding which may at any time be instituted involving this Loan Agreement, the other Borrower Documents, the Series 2020 Bonds or the Indenture or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of this Loan Agreement and the other Borrower Documents.

(iv) The reasonable expenses of the Bondholder Representative or any agent or attorney selected by the Bondholder Representative in connection with this Loan Agreement.

Such Additional Payments shall be billed to the Borrower by the Issuer, the Trustee, Bond Counsel or Bondholder Representative from time to time, together with a statement certifying that the amount billed has been incurred or paid by the Issuer, the Trustee, Bond Counsel or Bondholder Representative for one or more of the above items. After such a demand, amounts so billed shall be paid by the Borrower within thirty (30) days after receipt of the bill by the Borrower.

Any invoice furnished to the Borrower by the Issuer, the Trustee, Bond Counsel or Bondholder Representative, pursuant to this Section 3.02(b) shall be deemed to constitute a written notice under Section 6.01(b) hereof sufficient to cause the sixty (60) day period specified in said Section 6.01(b) to commence.

Should the Borrower fail to make any of the payments required in this Section, the item or installment so in default will continue as an obligation of the Borrower until the amount in default

have been fully paid and will bear interest at the highest rate of interest on the Series 2020 Bonds but in no event greater than the Maximum Rate.

**Section 3.03** Borrower to Provide Funds to Carry Out Purposes for Which Bonds Issued.

If the proceeds derived from the Loan are not sufficient to pay in full the Cost of the Project, the Borrower shall pay such moneys as are necessary to provide for payment in full of such costs. The Borrower shall not be entitled to any reimbursement therefor from the Issuer or the Trustee nor shall it be entitled to any abatement, diminution, or postponement of its payments hereunder or under the Series 2020 Notes.

**Section 3.04** Limitation of Issuer's Liability.

(a) The Issuer shall not be obligated to pay the principal of or premium, if any, or interest on the Series 2020 Bonds or any costs incidental thereto, except from the Trust Estate. Neither the faith and credit nor the taxing power of any Sponsor, any Member, the State or any other political subdivision or agency thereof or any political subdivision thereof approving the issuance of the Series 2020 Bonds, nor the faith and credit of the Issuer, is pledged to the payment of the principal of or premium, if any, or interest on the Series 2020 Bonds or any costs incidental thereto. The Issuer has no taxing power. The Issuer shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with the Indenture, the Series 2020 Bonds or this Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Loan Agreement.

(b) The Borrower hereby acknowledges that the Issuer's sole source of moneys to repay the Series 2020 Bonds will be provided by payments made by the Borrower to the Trustee pursuant to this Loan Agreement, together with investment income on certain funds and accounts held by the Trustee under the Indenture, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal of and premium, if any, and interest on the Series 2020 Bonds as the same shall become due (whether by maturity, redemption, acceleration or otherwise), or any costs incidental thereto, then upon notice or demand from the Trustee the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal, premium, if any, or interest when due, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance or malfeasance on the part of the Trustee, the Borrower, the Issuer or any third party, subject to any right of reimbursement from the Trustee, the Issuer or any such third party, as the case may be, therefor.

(c) No Issuer Indemnified Person shall be individually or personally liable for the payment of any principal of or premium, if any, or interest on the Series 2020 Bonds or any costs incidental thereto or any sum hereunder or under the Indenture or any claim based thereon, or be subject to any personal liability or accountability by reason of the execution and delivery of the Indenture, this Loan Agreement or any other Bond Documents.

(d) The Issuer makes no representation or warranty, either express or implied, concerning the suitability of the Project for the purpose for which it is used and proposed to be used by the Borrower. The Issuer makes no representation or warranty, express or implied, that

the Borrower will have quiet and peaceful possession of the Project. The Issuer makes no representation or warranty, express or implied, with respect to the merchantability condition or workmanship of any part of the Project. The Issuer has not made any independent investigation as to the feasibility or creditworthiness of the Borrower. The Issuer makes no representation concerning the suitability of an investment in the Series 2020 Bonds. Any bond purchaser, assignee of this Loan Agreement or any other party with any interest in this transaction, shall make its own independent investigation as to the creditworthiness of the Borrower and the Project and the feasibility of its undertakings, independent of any representations of the Issuer.

(e) No recourse shall be had against any commissioner, member, director, officer, employee, agent or counsel, past, present, or future of the Issuer, either directly or through the Issuer or otherwise for payment for or to the Issuer or any receiver thereof, or for or to any Bondholder, or otherwise, of any sum that may be due and unpaid by the Issuer upon the Series 2020 Bonds or under or upon any obligation, covenant or agreement contained in this Loan Agreement or in any other document executed in connection therewith. Neither shall any recourse be had against any of such persons on account of the issuance and sale of the Series 2020 Bonds or on account of any representations in connection therewith. Any and all personal liability or obligation, whether in common law or in equity, or by reason of statute or constitution or by the enforcement of any assessment or otherwise, of such commissioner, member, director, officer, employee, agent or counsel to respond by reason of any act or omission on his part or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to any Bondholder or otherwise, of any sum that may remain due and unpaid upon the Series 2020 Bonds or under any documents executed in connection with the issuance thereof is hereby expressly waived and released as a condition of and in consideration for the execution of this Loan Agreement and the issuance of the Series 2020 Bonds.

(f) In the exercise of the powers of the Issuer and its Indemnified Parties and the Trustee, under the Indenture, the Tax Certificate, the Continuing Disclosure Agreement, this Loan Agreement and any other Bond Documents, the Issuer Indemnified Persons and the Trustee shall not be accountable to the Borrower for any action taken or omitted by it or its officers in good faith and believed by it or them to be authorized or within their discretion or rights or powers conferred on them. The Issuer Indemnified Persons, the Trustee and their officers shall be protected in its or their acting upon any paper or document believed by it or them to be genuine, and it and they may conclusively rely upon the advice of counsel and may (but need not) require further evidence of any fact or matter before taking any action.

(g) Notwithstanding anything to the contrary contained herein or in any of the Series 2020 Bonds, the Indenture, or in any other Bond Document, or any other instrument or document executed by or on behalf of the Issuer in connection herewith, (i) the Issuer shall have no obligation to take action under this Loan Agreement, the Series 2020 Bonds, the Mortgage, the other Bond Documents, or such other instruments or documents, unless the Issuer is reasonably requested in writing by an appropriate person to take such action and the Issuer is provided with indemnity and assurances satisfactory to it of payment of or reimbursement for any expenses (including attorneys' fees) in such action, (ii) neither the Issuer nor any member of the Issuer or any officer, agent relating to the Series 2020 Bonds or the Project, or employee of the Issuer shall be personally liable to the Borrower, the Trustee or any other person for any action taken by the Issuer or by its officers, agents relating to the Series 2020 Bonds or the Project, or employees or

for any failure to take action under this Loan Agreement, the Series 2020 Bonds, the other financing documents, the Mortgage or such other instruments or documents, except that the Issuer agrees to take, or to refrain from taking, any action if so required by an injunction or if required to comply with any final judgment for specific performance; and (iii) any judgment rendered against the Issuer for breach of its obligations under this Loan Agreement, the Series 2020 Bonds, the Mortgage, the other Bond Documents, or such other instruments or documents, shall be payable solely from the revenues derived from the Project by the Issuer under this Loan Agreement, the Series 2020 Bonds, the other financing documents or the Mortgage, as applicable, and no other personal liability or charge payable directly or indirectly from the general funds of the Issuer shall arise therefrom.

(h) Notwithstanding anything to the contrary contained herein or in any of the Series 2020 Bonds, or this Loan Agreement, the Indenture, the Mortgage, other Bond Documents, or in any other instrument or document executed by or on behalf of the Issuer in connection herewith, no stipulation, covenant, agreement or obligation contained herein or therein shall be deemed or construed to be a stipulation, covenant, agreement, or obligation of any present or future member, officer, employee or agent of the Issuer, or of any councilmember, member, director, trustee, officer, employee or agent of any successor to the Issuer, in any such person's individual capacity, and no such person, in his individual capacity, shall be liable personally for any breach or non-observance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements or obligations, nor shall any recourse be had for the payment of the principal of, premium, if any, or interest on any of the Series 2020 Bonds or for any claim based thereon or on any such stipulation, covenant, agreement, or obligation, against any such person, in his individual capacity, either directly or through the Issuer or any successor to the Issuer, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such person, in his individual capacity, is hereby expressly waived and released.

(i) In the Issuer accepting the provisions for the Borrower to indemnify the Issuer from claims of third parties, and in the Borrower agreeing to make such indemnities, as provided herein, the Issuer intends to retain, and does not waive, the limits and scope of sovereign immunity enjoyed by the Issuer as provided pursuant to State law with respect to such claims, as well as all other immunities, defenses, and privileges the Issuer may enjoy with respect to such claims under State or federal law. By the same token, it is intended that the Borrower be able, and the Borrower may assert, with respect to claims for which indemnity is provided by the Borrower to the Issuer for claims of third parties against the Issuer, the Issuer's sovereign immunity under State law with respect to such claims, as well as all other immunities, defenses, and privileges the Issuer may enjoy with respect to such claims as may be provided under State or federal law.

(j) The provisions of this Section 3.04 shall survive the termination of this Loan Agreement.

### **Section 3.05** Recordation and Filing.

The Borrower shall record, or cause to be recorded, the Mortgage and all amendments thereto and financing statements, including continuation statements, with respect to the security interests granted under this Loan Agreement, the Mortgage and the Indenture.

**Section 3.06** Mortgagee Title Policy.

Upon execution and delivery of Series 2020 Notes, the Borrower shall deliver a marked-up title commitment for the Mortgaged Property to the Trustee as required by the Indenture, in form and substance satisfactory to the Bondholder Representative.

**Section 3.07** Disclaimer of Warranties.

NEITHER THE ISSUER, THE BONDHOLDER REPRESENTATIVE NOR THE TRUSTEE MAKES ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION OR WORKMANSHIP OF ANY PART OF THE PROJECT OR THEIR SUITABILITY FOR THE PURPOSES OF THE BORROWER OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THE SALE OF THE SERIES 2020 BONDS WILL BE SUFFICIENT TO CONSTRUCT AND IMPROVE THE PROJECT.

**Section 3.08** No Warranty of Condition or Suitability by Issuer.

The Borrower recognizes that the Issuer does not deal in goods or services of the kind comprising components of the Project or otherwise hold itself out as having knowledge or skill peculiar to the practices or goods involved in the Project, and that the Issuer is not one to whom such knowledge or skill may be attributed by its employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill. The Borrower further recognizes that since the components of the Project have been designated and selected by the Borrower, THE ISSUER HAS NOT MADE AN INSPECTION OF THE PROJECT OR OF ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, AND MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED OR OTHERWISE, WITH RESPECT TO THE SAME OR TO THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY THEREOF, TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, TO LATENT DEFECTS THEREIN, THE VALUE THEREOF, OR THE FUTURE PERFORMANCE OR THE COMPLIANCE THEREOF WITH ANY LEGAL REQUIREMENTS; IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY THE BORROWER.

IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN THE PROJECT, OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER PATENT OR LATENT, THE ISSUER SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO. THE PROVISIONS OF THIS SECTION HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESS OR IMPLIED (TO THE EXTENT PERMITTED BY APPLICABLE LAW), WITH RESPECT TO THE PROJECT, OR ANY FIXTURE OR OTHER ITEM CONSTITUTING A PORTION THEREOF, WHETHER ARISING PURSUANT TO THE UNIFORM COMMERCIAL CODE OR ANOTHER LAW NOW OR HEREAFTER IN EFFECT OR OTHERWISE.



**Section 3.09** Security for Borrower's Performance.

This Loan Agreement is a general obligation of the Borrower and it, and the Borrower's obligations hereunder, are evidenced by the Series 2020 Notes and secured by the Pledged Assets, and the other collateral described herein and in the Indenture; the full faith and credit of the Borrower is pledged to pay all amounts due or to become due hereunder.

**Section 3.10** Closing Expenses.

In addition to and without in any way limiting the Borrower's obligations to pay and indemnify the Issuer and the Issuer Indemnified Persons against fees, costs and charges arising out of or in connection with this Loan Agreement, the other Borrower Documents, the Series 2020 Bonds or the Indenture, the Borrower shall pay, on the Closing Date and as a condition thereto to the Issuer, the Issuer's issuance fee equal to 0.50% of the par amount of the Series 2020 Bonds.

**ARTICLE IV**

**PAYMENTS ON SERIES 2020 NOTES**

**Section 4.01** Amounts Payable.

(a) The Borrower agrees to make all payments required by the Series 2020 Notes, this Loan Agreement, the Mortgage and the Indenture as and when they become due and shall promptly pay all other amounts necessary to enable the Trustee to make the transfers required by Article VI of the Indenture and all other payments, deposits and transfers required under the Indenture, including, without limitation, any amounts necessary pursuant to the Indenture to provide for payment of principal of, and premium, if any and interest on, the Series 2020 Bonds when due at maturity, upon redemption, acceleration or otherwise, and to provide the full amount of any reserves required to be deposited and held as provided by the Indenture.

(b) The Borrower shall also pay, as and when the same become due in accordance with the Indenture, an amount equal to the following (collectively, the "Administration Expenses"):

(A) The fees and charges of the Trustee, the Bondholder Representative and any paying agent incurred in connection with the issuance of the Series 2020 Bonds and the rendering of their services (including without limitation, consents, directions, approvals, waivers and similar actions) as such under the Indenture, as and when the same become due, including all advances and the reasonable fees and expenses of their specific counsel, and advisers and indemnitees required under the Indenture; and

(B) All other fees and expenses payable to any party as contemplated by the Bond Documents.

(c) In addition to the payments required to be paid by the Borrower under this Loan Agreement, the Borrower agrees that it shall pay the costs of issuance of the Series 2020 Notes, including, without limitation, printing expenses in connection with the Series 2020 Bonds, the offering materials relating to the Series 2020 Bonds; underwriting fees; financial advisory fees, if

any, of the Issuer; legal fees and expenses of Borrower's Counsel, Bond Counsel, counsel to the Issuer, counsel to the Underwriter, counsel to the Bondholder Representative and other counsel; the initial fees and expenses (including legal fees and expenses) of the Trustee and Bondholder Representative; and other fees and expenses incurred in connection with the issuance of the Series 2020 Bonds, provided that a written invoice for the same shall have been presented and approved by the Borrower at or prior to the date of issuance of the Series 2020 Bonds. The Borrower agrees that it also shall pay all expenses incurred by it, including the expenses of its counsel. The Borrower shall also pay the costs of filing any financing statement(s) pursuant to the Indenture or the other Bond Documents. The Borrower shall pay, or cause to be paid, on the date of issuance of the Series 2020 Bonds, any applicable recording fees and mortgage transfer taxes required in connection with the recording of the Mortgage and any other document required to be recorded with respect to the transactions contemplated by the Indenture and this Loan Agreement, and the title insurance premium relating to the Mortgaged Property.

(d) The provisions of this Section 4.01 shall survive the termination of this Loan Agreement.

#### **Section 4.02** Gross Receipts.

The Borrower consents to the assignment made by the Indenture of the Series 2020 Notes and of certain rights of the Issuer under this Loan Agreement to the Trustee. The Borrower agrees to deposit or cause to be deposited via wire transfer on each Friday that is a Business Day or on the immediately following Business Day, all Gross Receipts directly into the Revenue Fund of the Indenture. The Borrower agrees that all Gross Receipts have been pledged to the Trustee under the Indenture and the Mortgage, and that for so long as such Gross Receipts are on deposit with the Trustee, they shall be in possession of and controlled by the Trustee (as assignee of the Issuer) in accordance with Article 9 of the UCC, and that the Trustee shall be entitled to exercise any and all rights and remedies available to the Trustee under the Bond Documents or under applicable law with respect to the Gross Receipts. No portion of the Gross Receipts shall be paid to the Borrower except in accordance with the terms of the Indenture. Upon default, if required by the Bondholder Representative, all Gross Receipts will be deposited pursuant to a deposit account control agreement or other lockbox arrangement acceptable to the Bondholder Representative and approved by the Trustee prior to their disbursement by the Trustee pursuant to the terms of the Indenture.

#### **Section 4.03** Default in Payments.

If the Borrower fails to make any payments required by this Loan Agreement when due and as further provided in the Indenture for other amounts owed by the Borrower, the Borrower shall pay to the Trustee, or the Issuer, as the case may be, interest thereon until paid at the rate equal to the highest rate on any Series 2020 Bonds then Outstanding.

#### **Section 4.04** Obligations of Borrower Unconditional.

Notwithstanding anything herein to the contrary, the obligation of the Borrower to make the payments on the Series 2020 Bonds and to observe and perform all other covenants, conditions and agreements hereunder is a general obligation of the Borrower, and is and shall be absolute and

unconditional, irrespective of any rights of setoff, recoupment or counterclaim they might otherwise have against the Issuer or the Trustee. Subject only to the prepayment of the Series 2020 Notes as provided herein, the Borrower shall not suspend or discontinue any payment on the Series 2020 Notes or hereunder or fail to observe and perform any of its other covenants, conditions or agreements hereunder for any cause, including without limitation, any acts or circumstances that may constitute an eviction or constructive eviction, failure of consideration, failure of title to any part or all of the Project or commercial frustration of purpose, or any damage to or destruction or condemnation of all or any part of the Project, or any change in the tax or other laws of the United States of America, the State of Minnesota or any political subdivision of either, or any failure of the Issuer or the Trustee to observe and perform any covenant, condition or agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with the Indenture or this Loan Agreement. The Borrower may, after giving to the Issuer, the Bondholder Representative and the Trustee ten (10) days' notice of its intention to do so, at its own expense and in its own name, prosecute or defend any action or proceeding or take any other action involving third persons that the Borrower reasonably deems necessary to secure or protect any of its rights hereunder.

**Section 4.05** Advances by Issuer, Bondholder Representative or Trustee.

If the Borrower fails to make any payment or perform any act required of it hereunder, the Issuer, the Bondholder Representative or the Trustee, after prior notice and demand on the Borrower and without waiving or releasing any obligation or default, may (but shall be under no obligation to) make such payment or perform such act. All amounts so paid by the Issuer, the Bondholder Representative or the Trustee and all costs, fees and expenses incurred in connection therewith shall be payable by the Borrower on demand as an additional obligation under the Series 2020 Notes, together with interest thereon equal to the highest interest rate on the Series 2020 Bonds, then outstanding or such other rate agreed to by the affected parties.

**Section 4.06** Agreement of Trustee.

At the written direction of the Borrower, and subject to the terms of the Indenture, the Trustee shall (a) at any time moneys held pursuant to the Indenture are sufficient to effect a redemption of any Series 2020 Bonds and if the same are then redeemable under the Indenture, take or cause to be taken all steps that may be necessary to effect a redemption thereunder, and (b) take or cause to be taken any other action required by the Indenture or as directed by the Borrower pursuant to the provisions of the Indenture or this Loan Agreement, all at the sole cost and expense of the Borrower.

**Section 4.07** Arbitrage and Rebate Requirements.

The Issuer and the Borrower acknowledge that the excludability of interest on the Series 2020A Bonds from federal income taxation depends, in part, upon compliance with the arbitrage limitations and requirements imposed by Sections 1.03(b)(2) and 148 of the Code. The Issuer hereby authorizes and directs the Borrower, and the Borrower hereby acknowledges sole responsibility as between the Issuer and the Borrower, to take all actions necessary to comply with these limitations and requirements, as provided for in the Tax Certificate or the Code.

## ARTICLE V

### SPECIAL COVENANTS

**Section 5.01** Compliance with Covenants, Conditions, Agreements in the Bond Documents.

So long as the Series 2020 Bonds are Outstanding, the Borrower shall comply with each and every covenant, condition, and agreement in the Bond Documents and the Project Documents. Each such covenant, condition and agreement in the Bond Documents and the Project Documents is hereby incorporated by reference and made a part of this Loan Agreement with the same effect intended as though the text of each such covenant, condition and agreement were set forth in this Loan Agreement as express covenants, conditions and agreements of the Borrower. Further, the Borrower shall do such things as it is called upon to do by the Indenture.

**Section 5.02** [Omitted].

**Section 5.03** Examination of Books and Records; Information to the Issuer.

Each of the Trustee, the Bondholder Representative and the Issuer shall be permitted, during normal business hours, to: (i) examine the books and records (other than confidential resident records) of the Borrower with respect to the Borrower's financial standing or its compliance with its obligations hereunder and under the Bond Documents; (ii) to enter upon the site of the Mortgaged Property to examine and inspect the Mortgaged Property; and (iii) the Borrower shall make its management and the management of the Manager available for periodic inquiries from the Trustee, the Bondholder Representative or the Issuer.

**Section 5.04** [Omitted].

**Section 5.05** Damage, Destruction, Condemnation and Loss of Title.

The Borrower shall give prompt notice to the Trustee, the Bondholder Representative and the Issuer of (i) any material damage to or destruction of any part of the Project, (ii) a taking of all or any part of the Project or any right therein under the exercise of the power of eminent domain, (iii) any loss of any part of the Project because of failure of title thereto, or (iv) the commencement of any proceedings or negotiations that might result in such a taking or loss. Each such notice shall describe generally the nature and extent of such damage, destruction, taking, loss, proceedings or negotiations.

(a) The Borrower shall promptly pay or cause to be paid any Net Proceeds directly to the Trustee to be deposited with the Trustee pursuant to Section 5.15 hereof and administered in accordance with the provisions of the Indenture, this Loan Agreement and the Mortgage. The Borrower shall simultaneously provide to the Trustee and the Bondholder Representative the Officer's Certificates and consultant reports required to be delivered to the Trustee pursuant to the Indenture and this Loan Agreement.

(b) The Borrower shall not by reason of the payment of the cost of replacement, repair, rebuilding or restoration be entitled to any reimbursement from the Issuer, the Bondholder

Representative or the Trustee or to any abatement or diminution of the amount payable under the Series 2020 Notes or hereunder. All real and personal property acquired with Net Proceeds derived from Mortgaged Property shall be free and clear of all liens and encumbrances of any kind except Permitted Liens and become part of the Mortgage, and the Borrower shall take all steps necessary to subject such property to the lien and security interest of the Mortgage and to obtain an amendment to the Title Policy required by this Loan Agreement to insure title to all such real property acquired.

**Section 5.06** Indemnification and Release.

The Borrower hereby fully and forever and irrevocably releases and, to the fullest extent permitted by law, agrees to defend, indemnify and hold harmless the Issuer and each Issuer Indemnified Person, and each Trustee Indemnified Party, the Underwriter, the Bondholder Representative, the members of their respective boards of directors and their respective officers, attorneys, accountants, financial advisors, agents, employees and staff (collectively, with the Issuer and the Issuer Indemnified Persons, the “*Indemnified Persons*”) against any and all fees, costs and charges, losses, damages, claims, actions, liabilities and expenses of any conceivable nature, kind or character (including, without limitation, fees and expenses of attorneys, accountants, consultants, agents, and other experts, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Persons, or any of them, may become subject under or any statutory law or regulation (including federal or state securities laws and regulations and federal tax laws of regulations) or at common law or otherwise (collectively, “*Liabilities*”), arising out of or based upon or in any way relating to:

(a) the Series 2020 Bonds, the Indenture, this Loan Agreement or any other of the Bond Documents, the Tax Certificate, and the Bond Purchase Agreement or the execution or amendment hereof or thereof or in connection with transactions contemplated hereby or thereby, including the issuance, sale or resale of the Series 2020 Bonds;

(b) the performance or observance by or on behalf of the Issuer, the Trustee or the Bondholder Representative of those things on the part of the Issuer, the Trustee or the Bondholder Representative agreed to be performed or observed hereunder and under the Indenture and the documents identified in subsection (a) above;

(c) any act or omission of the Borrower or any of its Affiliates or affiliated persons, agents, contractors, servants, employees, tenants or licensees in connection with the Project, the operation of the Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation or construction of, the Project or any part thereof;

(d) any lien or charge upon payments by the Borrower to the Issuer or the Trustee hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Issuer or the Trustee in respect of any portion of the Project;

(e) any violation of any Environmental Laws with respect to, or the release of any Hazardous Substances from, the Project or any part thereof;

(f) the defeasance and/or redemption, in whole or in part, of the Series 2020 Bonds;

(g) any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact contained in any offering or disclosure document or disclosure or continuing disclosure document for the Series 2020 Bonds or any of the documents relating to the Series 2020 Bonds, or any omission or alleged omission from any offering or disclosure document or disclosure or continuing disclosure document for the Series 2020 Bonds of any material fact necessary to be stated therein in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading;

(h) any declaration of taxability of interest on the Series 2020A Bonds, or allegations that interest on the Series 2020A Bonds is taxable or any regulatory audit or inquiry regarding whether interest in the Series 2020A Bonds is taxable;

(i) the Trustee's acceptance or administration of the trust of the Indenture, or the exercise or performance of any of its powers or duties thereunder or under any of the Bond Documents; or

(j) any injury to or death of any Person or damage to property in or upon the Project or growing out of or connected with the use, nonuse, condition or occupancy of the Project;

except (A) in the case of the foregoing indemnification of the Trustee Indemnified Persons, to the extent such Liabilities are caused by the gross negligence or willful misconduct of such Trustee Indemnified Person; or (B) in the case of the foregoing indemnification of the Issuer and the Issuer Indemnified Persons, to the extent such Liabilities are caused by the willful misconduct of the Person seeking indemnification.

**THE BORROWER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE ISSUER AND THE ISSUER INDEMNIFIED PERSONS SHALL BE RELEASED FROM, AND INDEMNIFIED HEREUNDER AGAINST, LIABILITIES ARISING FROM THE ISSUER'S OR ANY ISSUER INDEMNIFIED PERSON'S OWN NEGLIGENCE OF ANY KIND, DESCRIPTION OR DEGREE (EXPRESSLY WAIVING THE COMPARATIVE NEGLIGENCE PROVISIONS IN THE MINNESOTA STATUTES AND THE STATUTORY AND COMMON LAW COMPARATIVE OR CONTRIBUTORY NEGLIGENCE LAWS OF ANY OTHER STATE OR JURISDICTION), OR BREACH OF CONTRACTUAL DUTY, WITHOUT REGARD TO OR THE NECESSITY OF ANY BREACH OR FAULT ON THE PART OF THE BORROWER, EXCEPT INsofar AS AND TO THE EXTENT THAT ANY SUCH LIABILITIES ARISE FROM THE WILLFUL MISCONDUCT OF THE PERSON SEEKING INDEMNIFICATION.**

In the event that any action or proceeding is brought against any Indemnified Person with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Person, shall assume the investigation and defense thereof, including the employment of counsel selected by the Indemnified Person, and shall assume the payment of all expenses

related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Person shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Person shall have the right to employ separate counsel in any such action or proceeding and participate in the investigation and defense thereof, and the Borrower shall pay the fees and expenses of such separate counsel; provided, however, that such Indemnified Person may only employ separate counsel at the expense of the Borrower if in the judgment of such Indemnified Person a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

The rights of any Persons to indemnity hereunder and rights to payment of fees and reimbursement of expenses shall survive the final payment or defeasance of the Series 2020 Bonds and in the case of the Trustee any resignation or removal. The provisions of this Section shall remain valid and in effect notwithstanding repayment of the Loan hereunder or payment, redemption or defeasance of the Series 2020 Bonds or termination of this Loan Agreement or the Indenture. The Trustee's right to indemnification as set forth herein shall also apply to any action or inaction that it takes at the direction or consent of the Bondholder Representative.

Insofar as any document or instrument issued or delivered in connection with the Series 2020 Bonds (including, without limitation, the documents referred to in subsection (a) above) purports to constitute an undertaking by, or impose an obligation upon, the Borrower to provide indemnification to the Issuer or the Issuer Indemnified Persons, the indemnification provision or provisions of such document shall not be deemed, interpreted or construed in any way as a modification of or limitation upon the Borrower's obligations or the rights of the Issuer and the Issuer Indemnified Persons under this Section 5.06 and the provisions of this Section 5.06 shall in every respect supersede the indemnification provisions of any such other document and shall apply thereto as if fully set forth therein.

#### **Section 5.07** Solvency; Adequate Capital.

The Borrower will (a) remain solvent and pay all of its indebtedness from its assets as the same become due, and (b) maintain adequate capital for the normal obligations reasonably foreseeable for a business of its size and character and in light of its contemplated business operations.

#### **Section 5.08** Tax Covenants.

It is the intention of the parties hereto that the interest paid on the Series 2020A Bonds will not be included in the gross income of the recipients of said interest by reason of Sections 103 and 145 and related Sections of the Internal Revenue Code. In order to confirm and carry out such intention:

(a) The Borrower agrees that it will not directly or indirectly use or permit the use of any of the proceeds of the Series 2020A Bonds or any other of its funds, or direct the Trustee to invest any funds held by the Trustee under the Indenture or this Loan Agreement, in such manner as would, or enter into, or allow any other Person to enter into, any arrangement, formal or

informal, that would, or take or omit to take any other action that would, cause any Series 2020A Bond to be an “arbitrage bond” within the meaning of Section 148(a) of the Code.

(b) The Borrower further covenants and agrees to comply with all requirements of the Code at and subsequent to the issuance of the Series 2020A Bonds, as is necessary for the interest on the Series 2020A Bonds to be, and to remain, excludible from the gross income of the owners thereof for federal income tax purposes and not to take any actions that would adversely affect such excludability under the provisions of the Code.

(c) The Borrower acknowledges having read the Indenture and the Tax Certificate and agrees to perform all duties imposed upon it by the Indenture and the Tax Certificate. Insofar as the Indenture and the Tax Certificate impose duties and responsibilities on the Borrower, they are specifically incorporated by reference into this Loan Agreement. If any member of the Borrower becomes aware of any situation, event or condition that would result in the interest on the Series 2020A Bonds becoming includable in gross income for federal income tax purposes, the Borrower shall promptly give written notice thereof to the Issuer, the Bondholder Representative and the Trustee, and shall take all reasonable actions necessary to remedy such situation, event or condition.

(d) The Borrower shall (i) provide such certificates of the Authorized Borrower Representative, opinions of Bond Counsel, and other evidence as may be necessary or requested by the Issuer, the Trustee or the Bondholder Representative to establish the tax exempt status of interest on the Series 2020A Bonds under Sections 103 and 145 and related Sections of the Code, and (ii) file such information and statements, acting alone or with the Issuer, with the Internal Revenue Service, as may be required from the Borrower or the Issuer to establish or preserve such tax exempt status or as may be required by Section 149(e) and related Sections of the Code, regulations thereunder and related provisions of law or regulation.

(e) Unless the Trustee shall have received an opinion of Bond Counsel to the effect that the same will not cause the interest on the Series 2020A Bonds to be included in gross income for federal income tax purposes, no more than 5% of the proceeds of the Series 2020A Bonds (less any portion thereof used to pay or reimburse Issuance Expenses) will in the aggregate be used to finance properties used or to be used in an unrelated trade or business of the Borrower within the meaning of Section 513(a) of the Code or used directly or indirectly in any trade or business carried on by a person who is not a Tax Exempt Organization within the meaning of Section 141 of the Code.

(f) If there shall occur a Determination of Taxability with respect the Series 2020A Bonds, the Borrower shall have the obligation to, and hereby covenants and agrees that it shall forthwith repay that portion of the Loan relating to such series and the Series 2020B Bonds and cause both the Series 2020A Bonds and the Series 2020B Bonds to be redeemed on a business day occurring not less than 45 days nor more than 90 days following notice to the Borrower of the Determination of Taxability and the Trustee agrees to call the Series 2020A Bonds and the Series 2020B Bonds for redemption on such date. Any redemption required under this Section shall be effected upon the following terms and conditions:



(i) Within 10 days after notice to the Borrower of the Determination of Taxability the Borrower shall give written notice of the Determination of Taxability and of its intention to redeem the Series 2020A Bonds for which a Determination of Taxability shall have been made and the Series 2020B Bonds to the Issuer, the Trustee, and the Bondholder Representative stating the date of redemption and the Borrower shall make arrangements satisfactory to the Trustee for the giving of notice required for redemption of the outstanding Series 2020A Bonds for which a Determination of Taxability shall have been made and the Series 2020B Bonds and for the transmittal of funds needed for such redemption in advance of that date.

(ii) The aggregate redemption price payable by the Borrower shall be an amount which, when added to all amounts then held under the Indenture and available for the purpose, will be equal to, in the case of the Series 2020A Bonds, the principal amount of all then outstanding Series 2020A Bonds, plus accrued interest thereon to the redemption date and plus a premium equal to 5% of the principal amount of each Bond redeemed and, in the case of Series 2020B Bonds, the principal amount of all then outstanding Series 2020B Bonds, plus accrued interest thereon to the redemption date.

(iii) The Borrower shall also pay an amount equal to the Trustee's and any paying agent's fees under the Indenture, accrued and to accrue until final payment and redemption of the Series 2020A Bonds and the Series 2020B Bonds and all other advances, fees, costs and expenses incurred by the Trustee under the Indenture.

(g) If there shall be a Determination of Taxability and the Borrower shall fail to give notice thereof and of its intention to redeem the Series 2020A Bonds and the Series 2020B Bonds as above described, the Trustee shall nevertheless be authorized to give notice of redemption of the outstanding Series 2020A Bonds for which a Determination of Taxability has been made and the Series 2020B Bonds on a business day occurring not less than 45 days nor more than 90 days thereafter whenever it shall have determined, in good faith, based upon actual notice of the Determination of Taxability or an opinion of Bond Counsel, that a Determination of Taxability has been made; and the Trustee shall give such notice of redemption if the Issuer or any Bondholder shall furnish to the Trustee a copy of the Determination of Taxability duly certified or authenticated to be a true and correct copy thereof. The Trustee shall furnish to the Borrower and the Issuer a copy of the notice given or to be given by it pursuant to this paragraph, and the Borrower shall thereupon become obligated to pay the aggregate redemption price to the Trustee as a Loan Repayment prior to the redemption date and to pay all fees, expenses, costs and advances of the Trustee and any paying agent under the Indenture.

(h) The Borrower hereby acknowledges and confirms its obligations under Section 148(f) of the Code and regulations thereunder. Specifically, the Borrower agrees to comply with the rebate requirements imposed under Section 148(f) and pertinent regulations, including the requirement to make or cause to be made periodic computations (but without expense to the Issuer or the Trustee) of the amount subject to rebate thereunder, and to maintain or cause the Trustee to maintain records of such determinations until six years after the retirement of the Series 2020A Bonds, and the requirement to make payment of all rebatable arbitrage with respect to the Series 2020A Bonds to the United States not later than 60 days after each installment computation date to and until the date which is 60 days after the final computation date and for such purpose to pay

to the Trustee for the account of the Issuer or to the United States for the account of the Issuer the amount (if any) to be rebated to the United States on account of earnings from nonpurpose investments of gross proceeds (as defined in Section 148(f) of the Code and regulations thereunder) of the Series 2020A Bonds, all to the extent and in the amounts and at the times required by the Code and regulations thereunder, including Section 148(f) of the Code. If the Borrower shall fail to pay or deposit with the Trustee the amount of any rebate required to be paid by the Borrower when such deposit is due, the Trustee is authorized and directed to make payment of the rebate from monies on deposit in the Series 2020 Subaccount of the Principal Account of the Bond Fund, as provided in the Indenture, and upon notice to the Borrower from the Trustee, the Borrower shall forthwith reimburse the Trustee for any amount so withdrawn from the Series 2020A Subaccount of the Principal Account of the Bond Fund. In construing the Borrower's obligations hereunder, all terms used in this paragraph (h) shall have the meanings provided in said Section 148(f) and regulations thereunder, and all provisions set forth in the Indenture for the purpose of complying with said Section and regulations shall be incorporated herein by reference. Rebate payments required to be made by the Borrower shall constitute additional Loan Repayments under Section 3.02(b) hereof.

#### **Section 5.09** Investment and Use of Trust Funds.

To the extent authorized by the Act, moneys on deposit to the credit of any Fund or Account maintained by the Trustee under the Indenture shall be invested by the Trustee, upon request by an Authorized Borrower Representative to the Trustee, in Qualified Investments. Investments permitted under this Section may be purchased from the Trustee or any of its affiliates. Investments so purchased shall be deemed at all times to be a part of the respective Fund, but may from time to time be sold or otherwise converted into cash, whereupon the proceeds derived from such sale or conversion shall be credited to the respective Fund. Except as hereinafter provided in this Section 5.09, any interest or profit shall be credited to the respective Fund. The Trustee shall redeem or sell, at a fair market price, any investments so purchased, whenever it shall be necessary to do so in order to provide moneys to meet any payment from the Bond Fund. Neither the Trustee nor the Issuer shall be liable for any loss resulting from any such investment, nor from failure to preserve rights against endorsers or other prior parties to instruments evidencing any such investment. Investment of funds pursuant to this Section shall be limited as to amount and yield of investment in such manner that no part of the outstanding Series 2020A Bonds shall be deemed "arbitrage bonds" under Section 148 of the Internal Revenue Code and regulations thereunder.

#### **Section 5.10** Additional Collateral.

(a) The Borrower shall pledge such additional collateral with the consent of the Bondholder Representative to secure the Series 2020 Bonds or other indebtedness evidenced by this Loan Agreement as shall be required pursuant to the Bond Documents.

(b) In addition, the Trustee, with the consent of the Bondholder Representative, or the Bondholder Representative, in connection with the issuance of Additional Bonds, may reasonably require a pledge of (and the Borrower may determine to pledge (and once pledged shall have no right to remove except as otherwise provided herein)) such additional collateral as the Bondholder Representative deems reasonably necessary in order to assure the Borrower meets the financial covenants set forth herein.

### **Section 5.11** Security Interests.

(a) To secure the prompt payment of the principal of and premium, if any, and the interest on the Series 2020 Bonds, all other amounts payable hereunder, and the observance and performance by the Borrower of its covenants, agreements and other obligations hereunder, (i) the Borrower hereby assigns and grants to the Trustee, and covenants, agrees and acknowledges that the Trustee has and shall continue to have, for the equal and ratable benefit of the Trustee and the Holders of the Series 2020 Bonds, an assignment of and a security interest in all Pledged Assets, including an assignment and security interest in the Gross Receipts of the Borrower, to the fullest extent permitted by law, subject, however, in the case of any Permitted Liens and (ii) the Borrower hereby agrees to execute and deliver the Assignment of Contract Documents.

(b) The Borrower shall also execute and deliver to the Trustee from time to time such amendments or supplements to this Loan Agreement, Assignment of Contract Documents and any other Bond Documents as may be necessary or appropriate to include as security hereunder any Pledged Assets and carry out the purposes of this Loan Agreement.

(c) The Borrower covenants that it will not pledge or grant a security interest in any of its Pledged Assets to any Person, except for Permitted Liens.

(d) The foregoing provisions of this Section constitute an absolute and unconditional present assignment of the Pledged Assets.

### **Section 5.12** Payment of Series 2020 Notes.

The Borrower unconditionally and irrevocably agrees that it shall promptly pay or cause to be paid the principal of, premium, if any, and interest on the Series 2020 Bonds at the place, on the dates and in the manner provided in the Indenture according to the terms and their true intent and meaning thereof whether at maturity, upon proceedings for redemption, by acceleration or otherwise and shall promptly pay all other amounts required to be paid pursuant to this Loan Agreement and the Indenture. Notwithstanding any schedule of payments upon the Series 2020 Bonds set forth in the Indenture, the Borrower unconditionally and irrevocably agrees to make payments upon the Series 2020 Bonds and be liable therefor at the times and in the amounts (including principal, interest, and premium, if any) equal to the amounts to be paid as interest, principal at maturity or by mandatory sinking fund redemption, or premium, if any, upon the Series 2020 Bonds or other loan from time to time Outstanding.

(a) If an Event of Default shall have occurred and be continuing, subject to the terms hereof, the Borrower shall assist the Trustee in taking possession of Pledged Assets and, to the extent permitted under the same, assign all leases not previously assigned to the Trustee. The Borrower shall assist the Trustee in gathering information with respect to Pledged Assets and the collection of rents, checks, drafts, cash and other remittances to the Borrower with respect to its Pledged Assets. If any Pledged Assets arise out of contracts with the United States of America or any department, agency or instrumentality thereof, the Borrower shall notify the Trustee thereof in writing, and execute any and all instruments and take any steps that may be required by the Trustee in order that money due and to become due under such contracts shall be assigned to the Trustee and notice thereof given under the Federal Assignment of Claims Act. The Trustee may

notify the person obligated on any Pledged Assets to make payments thereof directly to the Trustee and may take control of all proceeds therefrom. All moneys received by the Trustee pursuant to any right given or action taken hereunder shall be applied in accordance with the Indenture.

(b) The obligation of the Borrower with respect to the Series 2020 Notes shall not be abrogated, prejudiced or affected by:

(i) the granting of any extension, waiver or other concession given to the Borrower by the Trustee, the Bondholder Representative or any Holder or by any compromise, release, abandonment, variation, relinquishment or renewal of any of the rights of the Trustee, the Bondholder Representative or any Holder or anything done or omitted or neglected to be done by the Trustee, the Bondholder Representative or any Holder in exercise of the authority, power and discretion vested in them by this Loan Agreement or the Indenture, or by any other dealing or thing that, but for this provision, might operate to abrogate, prejudice, or affect such obligation; or

(ii) the liability of the Borrower under this Loan Agreement or Indenture ceasing for any cause whatsoever.

(c) The obligation of the Borrower with respect to the Series 2020 Notes is a continuing one and is to remain in effect until all the corresponding Series 2020 Bonds shall have been paid in full. All moneys from time to time received by the Trustee to reduce liabilities on the Series 2020 Bonds, whether from or on account of the Borrower or otherwise, shall be regarded as payments in gross without any right on the part of the Borrower to claim the benefit of any moneys so received until the whole of the amounts owing on the Series 2020 Bonds shall have been paid or satisfied.

(d) The Series 2020 Bonds shall be a primary obligation and shall not be treated as ancillary to or collateral with any other obligation and shall be independent of any other security so that the obligation of the Borrower shall be enforceable without first having recourse to any such security or source of payment and without first taking any steps or proceedings against any other Person. The Trustee, the Bondholder Representative, and each of them, are empowered to enforce the Series 2020 Notes, and as herein and in the Indenture provided, and, as so provided, to enforce the making of payments on the Series 2020 Notes; and the Borrower hereby authorizes the Trustee, the Bondholder Representative, and each of them, to enforce or refrain from enforcing the Series 2020 Notes and to make any arrangement or compromise the Trustee or the Bondholder Representative may deem appropriate, consistent with this Loan Agreement and the other Bond Documents, and hereby waives any such rights that it may have with respect thereto, in favor of the Borrower, the Trustee, and the Bondholder Representative, insofar as is necessary to give effect to any of the provisions of this Section.

**Section 5.13** Covenants as to Corporate Existence, Maintenance of Properties, Performance of Covenants, Construction of the Project, Etc.

The Borrower hereby covenants and agrees as follows:

(a) Except as otherwise expressly provided hereunder, the Borrower shall preserve its corporate or other legal existence and all its rights and licenses to the extent necessary for the

operation of its business and affairs and be qualified to do business in each jurisdiction where its ownership of the Property or the conduct of its business requires such qualifications; provided, however, that nothing herein shall obligate the Borrower to retain or preserve any of its rights or licenses no longer used or, in the judgment of its Governing Body (evidenced by an authorizing resolution of its Governing Body delivered to the Trustee and the Bondholder Representative) and the Borrower, useful in the conduct of its business.

(b) The Borrower shall at all times cause its business to be carried on and conducted and its Property to be maintained, preserved, and kept in good repair, working order, and condition and to make all needed and proper repairs, renewals and replacements thereof; provided, however, that nothing in this Section shall (i) prevent it from ceasing to operate any portion of its Property if, in its judgment it is advisable not to operate the same or if it intends to sell or otherwise dispose of the same and within a reasonable time endeavors to effect such sale or other disposition in accordance with this Loan Agreement, or (ii) obligate it to operate, retain, preserve, repair, renew, or replace any Property, leases, rights, privileges, or licenses no longer used or, in the judgment of its Governing Body (evidenced by an authorizing resolution of its Governing Body delivered to the Trustee and the Bondholder Representative), useful in the conduct of its business.

(c) The Borrower shall do all things reasonably necessary to conduct its affairs and carry on its business and operations in such manner as to comply with any and all applicable laws of the United States and the State of Minnesota, and duly observe and conform to all valid orders, regulations or requirements of any Governing Authority relating to the conduct of its business and the ownership of its Property and the Project; provided, that nothing herein shall require it to comply with, observe and conform to any such law, order, regulation or requirement of any Governing Authority so long as the validity thereof or the applicability thereof to it shall be contested in good faith without material adverse effect upon the operations of the Borrower.

(d) The Borrower shall promptly pay all lawful taxes, governmental charges and assessments at any time levied or assessed upon or against it or its Property; provided, however, that it shall have the right to contest in good faith any such taxes, charges, or assessments or the collection of any such sums and pending such contest may delay or defer payment thereof so long as the Liens created hereunder on the Pledged Assets are not adversely affected.

(e) The Borrower shall promptly pay or otherwise satisfy and discharge all of its Indebtedness as and when the same become due and payable, other than any of such (exclusive of the Series 2020 Bonds or the Series 2020 Notes) whose validity, amount or ability to be collected is being contested in good faith by appropriate proceedings.

(f) The Borrower shall at all times comply with all material terms, covenants and provisions of any Liens at such time existing upon its Property or any part thereof or securing any of its Indebtedness.

(g) The Borrower shall procure and maintain all necessary licenses and permits to operate the Project at all times during the term of this Loan Agreement.

(h) So long as the Indenture shall remain in force and effect, and all amounts due or to become due on the Series 2020A Bonds have not been fully paid to the Holder thereof, the

Borrower shall take no action or suffer any action to be taken by others that would result in the interest on any Series 2020A Bond becoming subject to federal income taxes.

(i) The Borrower shall perform at all times any and all covenants, undertakings, stipulations, and provisions contained in this Loan Agreement and in the Series 2020 Notes and the other Borrower Documents.

(j) The Borrower shall commence the acquisition, construction, development, installation, furnishing and equipping of the Project promptly from the date of issuance of the Series 2020 Bonds, will diligently pursue construction and equipping of the Project in accordance with the Plans and Specifications and will pay all sums and perform all such acts as may be necessary or appropriate to complete such construction and equipping of the Project. The Borrower has obtained all Project approvals necessary for the acquisition, construction, development, installation, furnishing and equipping of the Project. All construction and construction management contracts shall be on a guaranteed maximum price basis.

(k) The Borrower shall (a) keep true and accurate records and books of account in which full, true and correct entries will be made in accordance with GAAP (excluding interim financial statements), which records and books will not be maintained on a consolidated basis with those of any other Person, including any Affiliate of the Borrower, and such records and books of account shall be available for inspection by the Bondholder Representative and any Bondholder, or his or her agent or representative duly authorized in writing, at reasonable hours and under reasonable circumstances; and (b) maintain adequate accounts and reserves for all taxes (including income taxes), depreciation and amortization of its properties, contingencies, and other reserves, all of which accounts shall not be commingled with accounts of any other Person, including any Affiliate of the Borrower.

(l) The Borrower shall protect, preserve and defend its interest in the Project and its title thereto, to appear and defend said interest and title in any action or proceeding affecting or purporting to affect the Project, the liens of the Mortgage thereon, or any of the rights of the Trustee, the Bondholder Representative and the Bondholders thereunder, and to pay on demand all costs and expenses reasonably incurred by the Trustee in or in connection with any such action or proceeding, including reasonable attorneys' fees, whether any such action or proceeding progresses to judgment and whether brought by or against the Trustee. If the Borrower does not take the action contemplated herein, the Trustee, except as may be directed by the Bondholder Representative, shall not be under any obligation to appear or intervene in any such action or proceeding and retain counsel therein and defend the same or otherwise take such action therein as it may be advised and may settle or compromise the same and, in that behalf and for any of such purposes, may expend and advance such sums of money as it may deem necessary, and such sums shall be an advance payable in accordance with this Loan Agreement.

(m) The Borrower will use the Project and the revenues derived therefrom only in furtherance of the exempt purposes of the Sole Member, as set forth in the Form 1023-EZ, Streamlined Application for Recognition of Exemption under Section 501(c)(3) of the Internal Revenue Code (Rev. January 2018) submitted to the Internal Revenue Service, and will cause the Project to be used and operated only as a facility eligible to be financed pursuant to the Act.

#### **Section 5.14 Insurance.**

(a) At all times throughout the term of this Loan Agreement, the Borrower agrees that, subject to paragraph (c) hereof, it will maintain insurance covering such risks and in such amount as, in its reasonable judgment, is adequate to protect it and its Property and operations. The Borrower will keep the Facilities insured or require the same to be kept continuously insured by others against such risks as are customarily insured against with respect to facilities of like size and type, as recommended by the Insurance Consultant, paying as the same become due all premiums in respect thereto, which may include but are not limited to the following:

(i) commencing on the Completion Date, insurance upon the repair or replacement basis in an amount of not less than one hundred percent (100%) of the then actual cost of replacement (excluding costs of replacing excavations and foundations but without deduction for depreciation) of the Facilities (with deductible provisions not to exceed \$10,000 in any one casualty) against “all risk of loss” now or hereafter included in the uniform standard extended coverage endorsement in common use for similar structures;

(ii) commencing on the Completion Date, business interruption including extra expense insurance (also referred to as “use and occupancy insurance” or “rental income insurance”) covering loss of revenues and other income by the Borrower by reason of total or partial suspension of, or interruption in, the operation of any of the Facilities in an amount not less than \$5,000,000 per occurrence;

(iii) comprehensive commercial general liability insurance against liability for personal and bodily injury, including death, and damage to property, occurring on or in any way related to the Facilities or any part thereof or the operation thereof, providing insurance (with deductible provisions not to exceed \$10,000 per occurrence) to the extent of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate;

(iv) automobile liability insurance against liability for personal injury, including death resulting therefrom, and for damage to property arising from the use of any vehicle used in conjunction with the Facilities, whether owned, non-owned or hired, providing insurance (with deductible provisions not to exceed \$10,000 per occurrence) to the extent of not less than \$1,000,000 in the occurrence and \$2,000,000 in the aggregate;

(v) insurance under the Federal Flood Insurance Program must be maintained at all times within the minimum requirements and amounts required for federally financed or assisted loans under the Flood Disaster Protection Act of 1973, as amended, if the Facilities are eligible under such program;

(vi) workers’ compensation coverage, or other provision therefor, as required by the laws of the State of Minnesota;

(vii) commencing on the Completion Date, boiler explosion insurance on steam boilers, if any, pressure vessels and pressure piping in an amount not less than one hundred percent (100%) of the then actual cost of replacement (excluding costs of replacing excavations and foundations but without deduction for depreciation) of the Facilities (with deductible provisions not to exceed \$10,000 in any one occurrence; provided, that such

insurance need not be taken out until steam boilers, pressure vessels, or pressure piping are installed in any Facility);

(viii) commencing on the Completion Date, professional liability insurance providing insurance (with deductible provisions not to exceed \$10,000 per occurrence) to the extent of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate against liability for death, injury, loss or damage as a result of or arising out of the treatment or care of any resident or patient of the Facilities;

(ix) fidelity bonds or employee dishonesty insurance in an amount recommended by the Insurance Consultant, but not less than \$500,000, covering all officers, agents and employees of the Borrower and any manager responsible for the financial operations of any Facilities, the proceeds of any Indebtedness to be disbursed and responsible for handling Gross Receipts;

(x) an additional umbrella or all risk policy in an amount \$5,000,000 per occurrence and in the aggregate relating to (iii), (iv) and (vi) above; and

(xi) commencing on the Completion Date, windstorm insurance on the Facilities and Property in amounts not less than is customary in the case of corporations engaged in the same or similar activities and similarly situated and as is adequate to protect its Facilities, Property and operations to the extent such insurance is available at commercially reasonable costs.

The Borrower agrees that it will, at all times during the construction, renovation, installation and equipping of the Project, maintain or cause the General Contractor to maintain in full force and effect Builder's Risk - Completed Value Form insurance or other similar product insuring the Project against fire, lightning, and all other risks covered by the extended coverage endorsement then in use in the State of Minnesota to the full insurable value of the Project. In addition, the Borrower shall require the General Contractor at all times during the construction of the Project to maintain general liability insurance in an amount not less than that required to be maintained by the Borrower and such policies shall name the Borrower as an additional insured party. The Borrower shall require the General Contractor to maintain worker's compensation insurance as required by law. Said insurance policy or policies shall contain a provision that such insurance may not be canceled by the issuer thereof without at least thirty (30) days' advance written notice to the Borrower, the Bondholder Representative and the Trustee. The Borrower further agrees that, in connection with the construction of the Project, the construction contract relating to the Project shall require the General Contractor thereunder to maintain separate performance and labor and material payment bonds with respect to such construction contract, and in the full amount of such construction contract, made by the General Contractor thereunder as the principal and a surety company, or companies, rated "A" or higher by A. M. Best & Company, Inc. and listed on the current Department of Treasury Circular 570, as most recently published in the Federal Register, as holding a certificate of authority as an acceptable surety on federal bonds, and legally doing business in the State of Minnesota. Said bonds shall name the Borrower and the Trustee as obligees.



(b) All insurance required by paragraph (a) hereof must be taken out and maintained in insurance companies qualified to do business in the State of Minnesota that are rated “A” or higher by A. M. Best & Company, Inc. The Trustee shall be named as an additional insured on all insurance required to be taken out and maintained pursuant to this Loan Agreement. All policies evidencing such insurance must provide for payment to the Borrower and the Trustee as their respective interests may appear; the policies required by paragraph (a)(iii), (iv) and (viii) must name the Trustee as additional insureds; and the policies required by paragraph (a)(i), (v), (vii), (x) and (xi) hereof must name the Trustee as mortgagee and loss payee under the Standard New York Mortgage Endorsement providing that no act or omission by the named insured will in any way prejudice the rights of the Trustee under such policies and will require that all Net Proceeds of insurance be paid to the Trustee and will be applied by the Trustee pursuant to Section 5.15 hereof; provided, however, that all claims regardless of amount may be adjusted by the Borrower with the insurers, subject to prior written approval of the Insurance Consultant and Bondholder Representative as to any settlement of any claim in excess of \$250,000, which approval will not be unreasonably withheld. Not later than forty-five (45) days after the end of its Fiscal Year, the Borrower shall deliver to the Trustee and Bondholder Representative an Officer’s Certificate in form and substance attached to the Indenture as Exhibit H, signed by the Borrower, and insurance certificates evidencing the insurance required by this section, together with the certificate of the Insurance Consultant described in Section 5.14(c) below and the Trustee shall be authorized to conclusively rely on such Officer’s Certificate and certificate of the Insurance Consultant. If the Borrower fails at any time to obtain or maintain at least the minimum insurance required under this Loan Agreement, it shall immediately notify the Trustee and the Bondholder Representative in writing of such failure. In lieu of separate policies, the Borrower may maintain one or more blanket policies of insurance having the coverage required by paragraph (a) hereof. Unless such an undertaking is unavailable, as confirmed by a certificate of the Insurance Consultant delivered to the Trustee and the Bondholder Representative, all such policies will provide that the issuer thereof must give at least thirty (30) days’ written notice to the Borrower, the Bondholder Representative and the Trustee before such insurance is modified adversely to the interests of the Trustee or is canceled. The Trustee has no duty or obligation to determine the sufficiency of such insurance requirements, the rating or financial quality of the issuing insurer or if the insurance requirements hereunder are being met. The Borrower shall provide copies of such policies upon request of the Issuer or the Trustee.

(c) On or before the date of execution and delivery of this Loan Agreement, and at all times during the term of this Loan Agreement, an Insurance Consultant shall be designated by the Borrower. At the time of the issuance of the Series 2020 Bonds, the Borrower will provide a certificate of the Insurance Consultant to the effect that all insurance required by this Loan Agreement is in effect. The insurance or self-insurance required to be maintained pursuant to this Section shall be reviewed by an Insurance Consultant by **[January 31]** of every year, commencing on **[January 31, 2021]**, and the Borrower shall follow any reasonable recommendations of the Insurance Consultant. In order to establish compliance with this Section, the Borrower shall deliver or cause to be delivered to the Trustee annually, within forty-five (45) days after the end of the Borrower’s Fiscal Year, commencing with Fiscal Year 2020, (i) the report of an Insurance Consultant stating either (x) that the insurance in place meets the requirements under this Section, or (y) the types of insurance policies that the Borrower should maintain or the types of risks against which the Borrower should self-insure, that in the opinion of such Consultant would comply with the requirements of this Section and adequately protect the Borrower and its Property and

operations, and (ii) reports of one or more Insurance Consultants stating the insurance or self-insurance maintained, or caused to be maintained, by the Borrower pursuant to this Section and then in effect and stating whether, in the opinion of such Insurance Consultant, the amount and manner of providing such insurance or self-insurance and any reductions or eliminations of the amount of any insurance or self-insurance coverage (including amounts on deposit or to be deposited to self-insurance funds or trusts) during the period covered by such report comply with the requirements of this Section and adequately protect the Borrower and its Property and operations.

(d) To the extent the Borrower receives any moneys from payment, performance or any similar type of bond, including, without limitation, the release of funds escrowed in connection with any such bond, at or upon the Project receiving its certificate of occupancy, the Borrower covenants and agrees that any such moneys shall immediately be paid to the Trustee for deposit in the Working Capital Fund created pursuant to the Indenture. The Borrower covenants that any such escrowed funds will be released by any such surety upon receipt of the certificate of occupancy and covenants that such funds, upon such release, will be applied in accordance with this paragraph (d).

#### **Section 5.15 Insurance and Condemnation Proceeds.**

(a) The Borrower shall cause any Net Proceeds received by the Borrower as insurance proceeds with respect to any casualty loss or as Condemnation Awards solely relating to the Mortgaged Property to be deposited to a special trust fund to be held by the Trustee. Such Net Proceeds may be used in such manner as the Borrower may determine, including, without limitation, rebuilding or restoring the Facilities subjected to such casualty loss or Condemnation, or applying such moneys to the payment or prepayment of the Series 2020 Bonds, all subject to compliance with the provisions hereof and subsections (b) through (d) below.

(b) If the amount of such proceeds or awards received with respect to any casualty loss or Condemnation related to the Mortgaged Property does not exceed ten percent (10%) of the Book Value of the Property, Plant and Equipment of the Borrower as of the date of the most recent Financial Statements, the Borrower may withdraw such proceeds or awards for any purpose. The Trustee may require, with the consent of the Bondholder Representative, and shall be entitled to conclusively rely upon, an Officer's Certificate of the Borrower as to whether such proceeds or award exceeds the foregoing Book Value. However, if the amount of such proceeds or awards received with respect to any casualty loss or Condemnation related to Mortgaged Property exceeds ten percent (10%) of the Book Value of the Property, Plant and Equipment of the Borrower as of the date of the most recent Financial Statements, such proceeds or awards shall be used to prepay or redeem the Series 2020 Bonds with the written consent of the Bondholder Representative; provided that such proceeds or awards may, notwithstanding the foregoing, be used to rebuild or reconstruct the Mortgaged Property so long as the Borrower immediately notifies the Trustee and the Bondholder Representative and, within twelve (12) months after the casualty, loss or taking, delivers to the Trustee and to the Bondholder Representative, as a precondition to the Trustee disbursing funds from the special trust fund described in (a) above, the following:

(i) An Officer's Certificate certifying that the expected Long-Term Debt Service Coverage Ratio for each of the two (2) rolling periods of twelve (12) consecutive

months following the date on which such proceeds or awards are expected to have been fully applied is not less than the Long-Term Debt Service Coverage Ratio required in Section 5.18(a) hereof, as shown by pro forma financial statements for such periods, accompanied by a statement of the relevant assumptions as to the use of such proceeds or awards upon which such pro forma statements are based; or

(ii) If required by the Bondholder Representative, a written report of a Consultant stating the Consultant's recommendations, including recommendations as to the use of such proceeds or awards to cause the Long-Term Debt Service Coverage Ratio for each of the periods described in subsection (b)(i) to be its highest practicable level that shall not be less than the Long-Term Debt Service Coverage Ratio required in this Loan Agreement, and (B) an Officer's Certificate stating that the Borrower covenants to follow the Consultant's recommendations to cause the Long-Term Debt Service Coverage Ratio for each of the periods described in subsection (b)(i) to be its highest practicable level, but not less than the Long-Term Debt Service Coverage Ratio required in Section 5.18(a) hereof.

(c) The Borrower shall not require any disbursement of proceeds of insurance or Condemnation as otherwise permitted herein until there shall have been filed with the Trustee an Opinion of Bond Counsel to the effect that such application of proceeds, in and of itself, will not adversely affect the federal income tax status of the interest on the Series 2020A Bonds.

(d) The Borrower agrees that it will use all proceeds or awards for casualty loss or condemnation, to the extent permitted by law, only in accordance with the provisions of this Section and only with the consent of the Bondholder Representative.

(e) Notwithstanding the foregoing, any action taken or proposed to be taken with respect to the Mortgaged Property shall require the consent of the Bondholder Representative.

#### **Section 5.16** Limitation of Liens.

(a) The Borrower shall not create or suffer to be created, or permit the existence of, any Lien upon any Property now owned or hereafter acquired by it other than Permitted Liens.

(b) The term "Permitted Liens" as to any Property constituting real property means and shall be limited to the following:

(i) the Mortgage, and any encumbrance on title to any Property created by this Loan Agreement and the Mortgage and otherwise directly securing the Series 2020 Bonds;

(ii) with the consent of the Bondholder Representative, a Lien securing the incurrence of Additional Indebtedness or any other Lien;

(iii) any judgment lien against the Borrower so long as such judgment is being contested in good faith and execution thereon is stayed, provided that payment in full of the judgment has been made in accordance with applicable law or by the deposit with the Trustee or with a commercial bank or trust company acceptable to the Trustee and the Bondholder Representative of cash or a bond;

(iv) any Liens on any Property for taxes, assessments, levies, fees, water and sewer fees, and other governmental and similar charges and any Liens of mechanics, materialmen, laborers, suppliers or vendors for work or services performed or materials furnished in connection with such Property that are not due and payable or that are not delinquent, the amount or validity of which are being contested and execution thereon is stayed or, with respect to Liens of mechanics, materialmen, laborers, suppliers or vendors that have been due for less than ninety (90) days;

(v) any Lien on Property hereafter acquired by the Borrower securing Indebtedness permitted under the provisions of Section 5.17 hereof that was assumed in connection with the acquisition of such Property, provided that the consent of the Bondholder Representative has been obtained and the total of the Indebtedness secured by Liens described in clauses (v) and (vi) of this subsection (b) may not exceed the greater of (i) Five Hundred Thousand Dollars (\$500,000), or (ii) ten percent (10%) of the Total Operating Revenues for the most recent Fiscal Year for which Financial Statements are available;

(vi) Purchase Money Liens for Property hereafter acquired securing Indebtedness hereafter incurred and permitted by Section 5.17 hereof, provided that the consent of the Bondholder Representative has been obtained and the total of the Indebtedness secured by Liens described in clauses (v) and (vi) of this subsection (b) may not exceed the greater of (i) Five Hundred Thousand Dollars (\$500,000), or ten percent (10%) of the Total Operating Revenues for the most recent Fiscal Year for which Financial Statements are available;

(vii) the lien on the Trust Estate in favor of the Trustee pursuant to the Granting Clauses of the Indenture;

(viii) any Lien securing Non-Recourse Debt; and

(ix) any Lien described on the Title Policy.

(c) The term "Permitted Liens" as to any Property other than real property means and shall be limited to the Permitted Liens in Section 5.16(b) hereof and the following:

(i) any Lien arising with respect to deposits with, the giving of any form of security to, or the restriction of the use of funds at the order of, any governmental agency or any body created or approved by law or governmental regulation for any purpose at any time as required by law or governmental regulation as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Borrower to maintain self-insurance or to participate in any funds established to cover any insurance risks or in connection with workers compensation, unemployment insurance, pension or profit sharing plans or other social security, or to share in the privileges or benefits required for companies participating in such arrangements;

(ii) any Lien in favor of a creditor or a trustee on the proceeds of Indebtedness and any earnings thereon prior to the application of such proceeds and such earnings;

(iii) Liens on moneys deposited by residents or others with the Borrower as security for or as prepayment for the cost of care;

(iv) Liens on Property received by the Borrower through gifts, grants, or bequests, such Liens being due to restrictions on such gifts, grants, or bequests of Property or the income thereon;

(v) Any Lien arising by reason of any escrow established to pay debt service with respect to Permitted Indebtedness;

(vi) the lien on the Trust Estate in favor of the Trustee pursuant to the Granting Clauses of the Indenture;

(vii) any Lien on Property hereafter acquired by the Borrower securing Indebtedness permitted under the Bond Documents that was assumed in connection with the acquisition of such Property, provided that the consent of the Bondholder Representative has been obtained and the total of the Indebtedness secured by Liens described in clauses (vii) and (viii) of this subsection (c) may not exceed the greater of (1) Five Hundred Thousand Dollars (\$500,000), or (2) ten percent (10%) of the Total Operating Revenues for the most recent Fiscal Year for which Financial Statements are available;

(viii) Purchase Money Liens for Property hereafter acquired securing Indebtedness hereafter incurred and permitted by Section 5.17 hereof, provided that, (A) unless the aggregate total of the Indebtedness secured by Liens described in this clause (viii) does not exceed One Hundred Thousand Dollars (\$100,000), the consent of the Bondholder Representative has been obtained, and (B) the total of the Indebtedness secured by Liens described in clauses (vii) and (viii) of this subsection (c) may not exceed the greater of (1) Five Hundred Thousand Dollars (\$500,000), or (2) ten percent (10%) of the Total Operating Revenues for the most recent Fiscal Year for which Financial Statements are available; and

(ix) any Lien consented to by the Bondholder Representative

#### **Section 5.17** Limitations on Indebtedness.

The Borrower shall not incur any Indebtedness, except as follows (each such case shall constitute “*Permitted Indebtedness*”):

(a) **[Long-Term]** Indebtedness may be incurred if prior to the incurrence thereof, there exists no Event of Default and the Bondholder Representative gives its written consent thereto[, **and one of the following conditions is met, unless waived in writing by the Bondholder Representative:**

(i) ***Historical Pro Forma Test.*** There is delivered to the Trustee and the Bondholder Representative an Officer’s Certificate certifying that the Long-Term Debt Service Coverage Ratio, taking into account all Outstanding Long-Term Indebtedness and the Long-Term Indebtedness to be incurred as if it had been

incurred at the beginning of such period, for the most recent Fiscal Year preceding the date of delivery of the Officer's Certificate for which Financial Statements are available is not less than 1.20:1; or

(ii) *Historical Test and Forecast.* In lieu of the requirements of paragraph (i) above, there is delivered to the Trustee and the Bondholder Representative:

(A) an Officer's Certificate certifying that the Long-Term Debt Service Coverage Ratio, taking into account all Outstanding Long-Term Indebtedness, but not the Long-Term Indebtedness then proposed to be incurred, for the most recent rolling Fiscal Year preceding the date of delivery of the Officer's Certificate, for which Financial Statements are available is not less than 1.20:1, and

(B) a report of a Consultant stating that the forecasted Long-Term Debt Service Coverage Ratio (taking the proposed Long-Term Indebtedness into account) is expected not to be less than 1.25:1 for (1) in the case of Long-Term Indebtedness to finance capital improvements, the Fiscal Year immediately succeeding the year in which such capital improvements are expected to be placed in operation or (2) in the case of Long-Term Indebtedness not financing capital improvements, the Fiscal Year immediately succeeding the year in which the Long-Term Indebtedness is incurred; or

(iii) *Pro Forma Test.* In lieu of the requirements of paragraphs (i) and (ii) above, a written report of a Consultant (prepared in accordance with industry standards) to the effect that the estimated Long-Term Debt Service Coverage Ratio of the Borrower will be not less than 1.20:1 for the first full Fiscal Year following the later of (1) the estimated completion of the development, marketing, acquisition, construction, renovation or replacement of facilities being paid for with the proceeds of such additional Long-Term Indebtedness, or (2) the first full Fiscal Year following the attainment of Stable Occupancy in the case of construction, renovation or replacement of senior living facilities being financed with the proceeds of such additional Long-Term Indebtedness, provided that the attainment of Stable Occupancy is projected to occur no later than during the fourth (4th) full Fiscal Year following the incurrence of such Long-Term Indebtedness, or (3) following the incurrence of Long-Term Indebtedness for other purposes; provided that such report shall include forecast balance sheets, statements of revenues and expenses and statements of changes in financial position for such Fiscal Year and a statement of the relevant assumptions upon which such forecasted statements are based, which financial statements must indicate that sufficient revenues and cash flow could be generated to pay the operating expenses of the Borrower's proposed and existing Facilities and the debt service on the Borrower's other existing Indebtedness during such Fiscal Year.

In addition to satisfying one of the conditions set forth in (i) through (iii) above, if Long-Term Indebtedness is incurred for the purpose of completing the construction or equipping of facilities for which Long-Term Indebtedness has theretofore been incurred, the

**Borrower shall first provide the Trustee and the Bondholder Representative prior to the incurrence thereof a written statement of the architect for such facility setting forth the architect's estimate of the cost of completing the facility and the date on which the facility will be completed and an Officer's Certificate stating that the proceeds of such additional Long-Term Indebtedness, together with any other moneys available for such purpose, will be sufficient to cover the cost of completing the facility.**

**(b) Long-Term Indebtedness may be incurred to refund, refinance or replace less than all of the Borrower's Outstanding Long-Term Indebtedness if prior to the incurrence thereof: (i) either (A) the Trustee and the Bondholder Representative receive an Officer's Certificate stating that, taking into account the Long-Term Indebtedness proposed to be incurred, and the existing Long-Term Indebtedness to remain Outstanding after the refunding of the Long-Term Indebtedness to be refunded, Maximum Annual Debt Service will not be increased by more than ten percent (10%) or (B) the conditions described in subsection (a)(i) or (ii) above are met with respect to such proposed Long-Term Indebtedness, (ii) the Long-Term Debt Service Coverage Ratio after refunding any Outstanding Long-Term Indebtedness will not be lower than it would be assuming no refunding of such Outstanding Long-Term Indebtedness and (iii) the Trustee receives an Opinion of Counsel stating that upon the incurrence of such proposed Long-Term Indebtedness and the application of the proceeds thereof, the Outstanding Long-Term Indebtedness to be refunded will no longer be Outstanding.**

**(c) Subordinate Indebtedness may be incurred without limit, so long as all Subordinate Indebtedness complies with the provisions of Exhibit B of this Loan Agreement as evidenced by an Officer's Certificate upon which the Trustee may conclusively rely.**

**(d) Short-Term Indebtedness may be incurred without limit if immediately after the incurrence of such Indebtedness the Borrower shall have delivered to the Trustee and the Bondholder Representative an Officer's Certificate that the aggregate Outstanding principal amount of Short-Term Indebtedness of the Borrower does not exceed ten percent (10%) of the Total Operating Revenues for the twelve (12)-month period or Fiscal Year immediately preceding the date of calculation at the option of the Borrower; provided, however, that for a period of at least thirty (30) consecutive calendar days in each twelve (12)-month period or Fiscal Year, Short-Term Indebtedness of the Borrower shall be reduced to or below, or shall otherwise be not more than, three percent (3%) of the Total Operating Revenues for the twelve (12)-month period or Fiscal Year immediately preceding the date of calculation. For the purposes of this subsection, Short-Term Indebtedness shall not include overdrafts to banks to the extent there are immediately available funds of the Borrower sufficient to pay such overdrafts and such overdrafts are incurred and corrected in the normal course of business.**

**(e) Indebtedness may be incurred without limitation by the Borrower under a line of credit, letter of credit, standby bond purchase agreement or credit enhancement or similar facility (and any reimbursement agreement relating thereto) established in connection with the incurrence of any Permitted Indebtedness; provided, however, that any liabilities resulting from the use of or drawing under such credit enhancement or similar facility shall be included in Indebtedness for all other purposes of this Loan Agreement. If a facility is**

used or drawn upon to purchase, but not retire, Indebtedness, then an amount equal to the outstanding principal balance owed under such facility shall be excluded from Indebtedness.

(f) In the case of Completion Indebtedness, in lieu of meeting the requirements set forth in subsections (a)(i) or (a)(ii) of this Section 5.17, the Borrower may incur Long-Term Indebtedness upon the presentation to the Trustee and the Bondholder Representative, unless waived in writing by the Bondholder Representative, of either (a) an Officer's Certificate showing the principal amount of the proposed Long-Term Indebtedness does not exceed ten percent (10%) of the principal amount of the Long-Term Indebtedness originally incurred to finance the Project or (b) a report of a Consultant stating that the forecasted Long-Term Debt Service Coverage Ratio for each of the two (2) Fiscal Years immediately following the completion of a Project will not be less than what such Long-Term Debt Service Coverage Ratio would have been without the incurrence of such Indebtedness.]

#### **Section 5.18** Long-Term Debt Service Coverage Ratio.

(a) The Borrower shall set rates and collect charges for its facilities, services and products, without considering any forecasted capital gains or losses, and exercise such skill and diligence in the operation of the Facilities, such that the Long-Term Debt Service Coverage Ratio on each Annual Evaluation Date and Quarterly Evaluation Date (each as more fully described below), determined on an annualized basis based on audited financial statements or unaudited financial statements, as applicable for the four (4) preceding quarters, commencing [December 31, 2021] will not be less than 1.15:1 (the "*Long-Term Debt Service Coverage Covenant*"). The Long-Term Debt Service Coverage Ratio shall be calculated for the twelve months ending [December 31] of each year, commencing [December 31, 2021] (an "*Annual Evaluation Date*"), based on audited financial statements. The Long-Term Debt Service Coverage Ratio shall be calculated for the prior rolling twelve months ending March 31, June 30 and September 30 of each year, commencing [March 31, 2021] (each "*Quarterly Evaluation Date*"), based on unaudited financial statements.

The Borrower shall submit to the Trustee and the Bondholder Representative a report evidencing its compliance or noncompliance with the Long-Term Debt Service Coverage Ratio within forty-five (45) days of the Annual Evaluation Date and the Quarterly Evaluation Date.

(b) Failure to comply with the Long-Term Debt Service Coverage Ratio for any twelve month period will not constitute an Event of Default hereunder unless otherwise directed by the Bondholder Representative.

(c) This Section shall not be construed to (i) limit the right of the Borrower to establish and implement policies for the admission of residents to the Facilities, or (ii) prohibit the Borrower from providing services without charge or at reduced rates to persons unable to pay in whole or in part if reasonably deemed necessary by the Borrower to maintain the "tax exemption" of the interest on any Series 2020A Bonds under applicable law or to comply with any applicable Legal Requirements of law then in effect.

(d) Compliance with the covenants contained in this Section shall be determined by the Borrower on the basis of the Financial Statements and by the Trustee solely on the basis of the



Officer's Certificate delivered to the Trustee in accordance with the provisions herein upon delivery to the Trustee of such Financial Statements and Officer's Certificate, as the case may be.

**Section 5.19** Sale, Lease or Other Disposition of Assets.

(a) The Borrower agrees that it will not in any Fiscal Year transfer Property, Plant and Equipment, except for the following transfers listed below, which are expressly permitted:

(i) leases to residents in the ordinary course of business;

(ii) to any Person, of Property, Plant and Equipment if prior to the transfer the Trustee receives an Officer's Certificate of the Borrower stating that such Property, Plant and Equipment has become inadequate, obsolete, worn out, unsuitable, unprofitable, undesirable or unnecessary and the sale, lease, removal or other disposition thereof will not impair the structural soundness or revenue producing capacity of the remaining Property, Plant and Equipment or the Facilities of the Borrower; provided, however, that no Officer's Certificate shall be required to be delivered to the Trustee with respect to any Property, Plant and Equipment having a Book Value as shown on the most recent Financial Statements of less than \$50,000 not to exceed \$100,000 per Fiscal Year; or

(iii) to any Person of Property that is real property in an arm's length transaction for the fair market value thereof established by an MAI appraisal delivered to the Trustee, provided that Borrower applies the proceeds of such transfer to purchase additional real property that shall be subject to the Mortgage and provide an Opinion of Bond Counsel to the Trustee that such transfer shall not cause interest on any Outstanding Series 2020A Bond to be included in gross income for federal income tax purposes, provided no transfers for less than fair market value.

(b) The provisions of this Section shall not apply to, and the Borrower shall have the express right to dispose of any of its cash, securities and other liquid investments to provide for: (i) payment by the Borrower of operating expenses, or the principal of, premium, if any, and interest on the Series 2020 Bonds; (ii) transfers by the Borrower in payment for goods, property or services at market value in the ordinary course of business; or (iii) the expenditure by the Borrower of the proceeds of gifts, grants, bequests, donations or contributions (collectively "*Gifts*") heretofore or hereafter made that are designated by the donor or the Borrower at the time made for specific purposes other than described in clauses (i) through (ii) of this sentence.

(c) The Trustee shall, upon approval by the Bondholder Representative, release the Lien of the Mortgage from real and personal property transferred in accordance with this Section at the request of the Borrower accompanied by an Officer's Certificate setting forth that the conditions for such a permitted transfer under a specifically referred to subsection of this Section have been satisfied, and together with a survey of any real property proposed to be released and to remain under the Lien of the Mortgage and endorsement of any Title Policy relating thereto.

**Section 5.20** Consolidation, Merger, Sale or Conveyance.

(a) The Borrower agrees that so long as the Series 2020A Bonds are outstanding, it and the Sole Member will each maintain its existence as a limited liability company or a Tax-Exempt

Organization and nonprofit corporation, as applicable, under the laws of Minnesota; will not dissolve or otherwise dispose of all or substantially all of its assets; and will not consolidate with or merge into another corporation or permit one or more other corporations to consolidate with or merge into it; provided, that the Borrowers may, without violating the agreement contained in this Section, consolidate with or merge into another institution, or permit one or more other of such institutions to consolidate with or merge into it, or sell or otherwise transfer to another such institution all or substantially all of its assets as an entirety and thereafter dissolve upon satisfaction of the following conditions:

(i) such successor Person shall execute and deliver to the Trustee and the Bondholder Representative an appropriate instrument, satisfactory to the Trustee and the Bondholder Representative, containing the agreement of such successor Person to assume the due and punctual payment of the principal of, premium, if any, and interest on the Series 2020 Bonds according to their tenor and the due and punctual performance and observance of all the covenants and conditions of this Loan Agreement and the other Bond Documents;

(ii) immediately after such merger or consolidation, or such sale or conveyance, the Borrower would not be in default in the performance or observance of any covenant or condition of this Loan Agreement or the Bond Documents;

(iii) the successor Person is qualified to do business in the State of Minnesota, is a domestic corporation, limited liability company, or other entity, and assumes in writing all of the obligations of the Borrower hereunder and obtains all licenses and permits required by law to operate the Project;

(iv) there shall have been delivered to the Trustee and the Bondholder Representative an Opinion of Bond Counsel, in form and substance satisfactory to the Trustee and the Bondholder Representative, to the effect that under then existing law, the consummation of such merger, consolidation, sale or conveyance would not, by itself, adversely affect the excludability from the gross income of the holders of the Series 2020A Bonds for purposes of federal income taxation;

(v) there is delivered to the Trustee and the Bondholder Representative a written report of a Consultant demonstrating that the conditions described in Section 5.17 would have been satisfied for the incurrence of one dollar (\$1) Additional Indebtedness, assuming that any Indebtedness of any successor or acquiring Person is Indebtedness of the Borrower and that the revenues and expenses of the Borrower for the most recent Fiscal Year include the revenues and expenses of such other Person;

(vi) if the surviving, resulting or transferee institution, as the case may be, is other than the Borrower, such surviving, resulting or transferee institution shall be shall be a governmental unit or Tax-Exempt Organization.

(vii) the Bondholder Representative's written consent shall have been obtained.

(b) In case of any such consolidation, merger, sale or conveyance and upon any such assumption by the successor Person, such successor Person shall succeed to and be substituted for its predecessor, with the same effect as if it had become the Borrower.

(c) In case of any such consolidation, merger, sale or conveyance, such changes in phraseology and form (but not in substance) may be made in the Series 2020 Notes as may be appropriate and approved by the Trustee and Bondholder Representative.

(d) The Trustee may accept an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale or conveyance, and any such assumption, complies with the provisions of this Section.

(e) In addition to the requirements set forth in paragraphs (a) through (d) above, any successor corporation must meet all requirements to which the Borrower is subject that is a party to the merger, consolidation, sale, or conveyance and the requirements set forth in this Section.

(f) If merger or sale or other transfer is made as provided in this Section, the provisions of this Section shall continue in full force and effect and no further merger or sale or other transfer shall be made except in compliance with the provisions of this Section.

#### **Section 5.21** Mortgages; Additional Filings.

The Series 2020 Bonds and the Series 2020 Notes shall be secured, among other things, by the Mortgage, and the Borrower covenants to comply with the provisions of the Mortgage.

The Borrower shall promptly execute and file from time to time all appropriate amendments to the Mortgage as are necessary (i) to subject to its Lien additional Property that is real property of the Borrower not previously subjected to such Lien (except the Property of the Borrower that was not Mortgaged Property on the date of the issuance of the Series 2020 Bonds, unless Additional Indebtedness has been incurred with respect to such Property as permitted herein), and (ii) to reflect the issuance of any Additional Indebtedness, as permitted herein. In the event of (i) and (ii) of the previous sentence, the Borrower shall promptly (i) execute an appropriate Mortgage for the equal and ratable benefit of the Trustee on behalf of the Holders of the Series 2020 Bonds, granting a first Lien on all of its Property that is real property (not already subjected to the Mortgage) in the same manner and to the same degree as the Borrower subjected its Property in the Mortgage in connection with the issuance of the Series 2020 Bonds, (ii) record such Mortgage in the appropriate real estate records of the applicable jurisdiction, (iii) file a copy of such Mortgage together with evidence of its recordation with the Trustee, and (iv) amend such Mortgage (A) to subject to its Lien any Property not previously subjected to such Lien, and (B) to reflect the issuance of any additional Indebtedness not specified therein. All such Mortgages shall be substantially identical to the Mortgage, consistent with, and with changes to the form thereto required by, applicable law, and all such Mortgages and amendments thereto and to the Mortgage shall be in form reasonably acceptable to the Trustee and the Bondholder Representative. The Borrower shall prepare and file such financing statements, amendments thereto, continuation statements or termination statements as, in the Opinion of Counsel, are necessary or desirable to perfect and maintain the security interest in the Pledged Assets and shall file copies of such statements and the Opinion of Counsel with the Trustee and the Bondholder Representative. The

Borrower shall also prepare and file any instruments with respect to the security interests created hereunder or the Pledged Assets and under the Mortgage and any other Mortgage made hereunder that, in the Opinion of Counsel, are required due to changes in the Borrower and shall provide copies of the same to the Trustee and the Bondholder Representative.

If any real property shall become subject to the Mortgage pursuant to this Loan Agreement, the Borrower shall obtain an amendment or endorsement to any mortgagee title policy delivered in connection with the issuance and delivery of any Outstanding Indebtedness, including such real property in the real property described in Exhibit A to such policy. In connection with the same, the Borrower shall, at its expense, provide the Trustee a mortgagee title policy, or an amendment thereto, on any of its real Property subjected to a Mortgage made hereunder such that the amount of coverage under all such mortgagee title policies will equal, in the aggregate, the principal amount of all Bonds outstanding after the issuance of the Additional Bonds.

Notwithstanding the foregoing, the Mortgaged Property shall not be subject to any other Lien except that securing the Series 2020 Bonds and Permitted Liens without the consent of the Bondholder Representative.

#### **Section 5.22 [Days' Cash on Hand.**

**The Borrower covenants that it will calculate the Days' Cash on Hand on each Liquidity Testing Date, defined as June 30 and December 31 of each year, commencing December 31, 2020. The Borrower shall deliver an Officer's Certificate setting forth such calculation to the Trustee and the Bondholder Representative not later than forty-five (45) days after each Liquidity Testing Date.]**

#### **Section 5.23 Occupancy Reporting.**

The Borrower covenants that for each month starting with the month which ends not less than thirty (30) days following the earlier of (i) the issuance of the Completion Certificate or (ii) receipt of a license from the proper State of Minnesota authorities and ending with the first full month following Stable Occupancy (each an "*Occupancy Month*"), the Borrower will provide a report to the Bondholder Representative, within five (5) Business Days of the end of each such Occupancy Month, as to the percentage of Available Units occupied at the end of each such Occupancy Month. Following Stable Occupancy, the Borrower covenants that it will continue to provide such reports on a quarterly basis not less than five (5) Business Days from the end of each fiscal quarter.

#### **Section 5.24 Management.**

The Manager will manage the Project initially. The Borrower shall be required to immediately notify the Trustee and the Bondholder Representative if any of the following events has occurred: the Manager has resigned, been removed or otherwise changed, if either party to the Management Agreement has provided a notice of termination or has indicated it intends to provide such a notice, if either party has failed to comply, or has been alleged to have failed to comply, with its obligations thereunder, if any material term of the Management Agreement has changed or has been proposed to be changed, or if the Management Agreement has been terminated. The Borrower shall not amend, waive, modify or change any provision in the Management Agreement

without the consent of the Bondholder Representative. Notwithstanding anything to the contrary contained in this Loan Agreement, the occurrence of any of the events listed in the second sentence of this Section 5.24 shall constitute an Event of Default hereunder if directed by the Bondholder Representative. The Borrower may replace the Manager only with the written approval of the Bondholder Representative and after an Opinion of Bond Counsel has been filed with the Trustee to the effect that such action, in and of itself, will not adversely affect the federal income tax status of the interest on the Series 2020A Bonds. The Borrower is required to engage a Manager for operation of the Facilities at all times so long as the Series 2020 Bonds remain outstanding. Except as provided below, unless otherwise consented to by the Bondholder Representative, the Borrower shall be required to retain a new Manager for operation of the Facilities, if:

- (a) the Borrower fails to make any payment required on the Series 2020 Bonds; or
- (b) the Borrower fails to maintain a Long-Term Debt Service Coverage Ratio of at least 1.15:1 as shown on any Annual Evaluation Date.

Whenever the Borrower is required to retain a new Manager, as described above, the Borrower, if required by the Bondholder Representative, shall promptly retain a Consultant, who shall, within thirty (30) days of the event requiring appointment of a new Manager, submit to the Trustee and the Bondholder Representative a list of Qualified Managers. A “Qualified Manager” shall mean a property manager which (i) is a reputable management company having at least five (5) years’ experience in the management of assisted living facilities with similar uses as the Facilities, (ii) has, for at least five (5) years prior to its engagement as property manager, managed at least ten (10) properties of the same property type as the Facilities, (iii) at the time of its engagement as property manager has under management not less than ten (10) properties of the same property type as the Facilities under management and (iv) is not the subject of a bankruptcy or similar insolvency proceeding. If the Borrower is required to retain a new Manager under the circumstances described above, the Borrower shall retain as Manager a Person from the list submitted by the Consultant and acceptable to the Bondholder Representative. In the event that a new Manager is appointed by the Borrower at any time when the Long-Term Debt Service Coverage Ratio is less than the level required pursuant to this Loan Agreement, the provisions of this Loan Agreement shall not be applied to require the further appointment of another Manager until the new Manager has been employed for at least twelve (12) months.

In lieu of meeting the requirements of the previous paragraph, the Borrower may engage a replacement Manager upon the written approval of the Bondholder Representative.

**Section 5.25** [Omitted]

**Section 5.26** Annual Budget.

At least thirty (30) days prior to the Completion Date and at least thirty (30) days prior to the first day of each Fiscal Year commencing with the Fiscal Year beginning January 1, 2021, the Borrower shall prepare or have prepared the Annual Budget for the next succeeding Fiscal Year, which Annual Budget shall contain Total Cash Operating Expenses on a monthly basis. The Annual Budget is subject to written approval of the Manager. If the Borrower fails to prepare or have prepared the Annual Budget for any Fiscal Year, the Annual Budget for the preceding Fiscal

Year shall continue in effect until the Annual Budget is prepared for the remainder of the applicable Fiscal Year. Promptly following preparation by the Borrower and approval by the Manager, a copy of each Annual Budget or amendment thereto shall be furnished to the Trustee and the Bondholder Representative. The Borrower shall deliver an Officer's Certificate at the time of delivery of the Annual Budget, which certificate shall indicate whether the Long-Term Debt Service Coverage Ratio is anticipated to be met for the Fiscal Year to which such Annual Budget relates.

The Annual Budget may be amended from time to time by the Borrower during the course of the Fiscal Year, and such amendments shall be certified and submitted in the same manner as the Annual Budget. Aggregate increases in a new or amended Annual Budget in the category of costs to be paid or reimbursed shall not exceed ten percent (10%) on an annual basis unless the Borrower provides to the Trustee and the Bondholder Representative a statement of an Accountant or Consultant to the effect that the increase is reasonable under the circumstances and that such amendment will not violate the Long-Term Debt Service Coverage Ratio.

If the Annual Budget indicates that the Long-Term Debt Service Coverage Ratio will not be met, a Consultant shall be employed by the Borrower, if required by the Bondholder Representative, to review the Annual Budget and shall certify to the Trustee that the Annual Budget, revised to reflect such recommendations or variations as may be presented in writing by the Consultant, is reasonable, and that the Long-Term Debt Service Coverage Ratio for the Fiscal Year to which such revised Annual Budget relates will be met based on the rates, fees, and charges recommended and the Total Cash Operating Expenses projected by the Consultant.

#### **Section 5.27** Environmental Matters.

(a) In addition to and without limiting the scope of any representations and warranties contained elsewhere in this Loan Agreement, the Borrower further represents and warrants with respect to the Facilities that, to the best of its knowledge:

(i) it has been and continues to be in material compliance with all Environmental Laws and that no notice has been given to the Borrower by any Governing Authority or any person or entity claiming any violation of any Environmental Law, or demanding remediation of or payment or contribution for any environmental condition, contamination or any damages, costs or fees attributable thereto;

(ii) no summons, citation, directive, complaint, notice of violation, investigation, administrative order, consent order, lien, super lien or agreement, litigation or settlement with respect to any Hazardous Materials of any kind located in, on, about, under or from all or any portion of the Facilities or that is attributable from all or any portion of any Facilities or that is attributable to the Borrower at any location or in any jurisdiction, exists, is pending, or to the best of its knowledge, is proposed, threatened or anticipated;

(iii) the Project will not be used by the Borrower or by previous owners, lessees, operators or any other persons or entities to refine, produce, store, handle transfer, process, treat, transport, dispose of or otherwise deposit Hazardous Materials including but not

limited to asbestos in any form or condition, PCBs and urea-formaldehyde, no Hazardous Materials are present in, on, about or under any portion of the Facilities, and no above ground or underground storage tanks are or have ever been located on any portion of the Facilities, except as disclosed in that certain Phase I Environmental Site Assessment issued by Haugo GeoTechnical Services LLC, dated October 4, 2017, a copy of which was delivered to the Issuer and the Trustee; and

(iv) there is no actual or threatened release of any Hazardous Materials or any other environmental condition in, on, about, under or from any portion of the Facilities, or any other property that may restrict the development or any use of any portion of the Facilities, increase the cost of operating or maintaining any portion of the Facilities, present any risk to any persons or things on or off of any portion of the Facilities or diminish or impair the value or marketability of any portion of the Facilities.

(b) In addition to and without limiting any covenants contained elsewhere in this Loan Agreement, the Borrower covenants that:

(i) it will not treat, discharge, spill, dispense, dispose, leak, pump, emit, pour, empty, dump or otherwise release or create a threat of release of any Hazardous Materials or any waste of any kind in, on or under any portion of the Facilities and it will not cause, suffer, allow or permit any other person or entity to do so;

(ii) it will not refine, produce, handle, transfer, process, treat, transport, use, generate, hold or store any Hazardous Materials or any waste of any kind, except that: (A) construction materials, office equipment, other office furnishings, cleaning solutions and other maintenance materials that are or contain Hazardous Materials may be used, held or stored on any portion of the Facilities, provided such use, holding or storage is normally incident to and reasonably necessary for the construction, operation or maintenance of any portion of the Facilities as an assisted living facility and is in accordance with all applicable law, except that no asbestos, asbestos-containing materials or PCBs shall be brought onto any portion of the Facilities; (B) reasonable quantities of Hazardous Materials may be used, stored or held on any portion of the Facilities if such activity is incident to the Borrower's customary use of such substances on any portion of the Facilities, provided such substances are properly packaged, labeled, stored, held and used in a safe manner in accordance with all applicable law; (C) reasonable quantities of municipal waste may be generated by the Borrower on any portion of the Facilities and such waste may be stored temporarily on any portion of the Facilities, provided such activity is performed in compliance with all applicable law and provided all such waste is removed within a reasonable amount of time after it is generated; and (D) reasonable quantities of infectious waste, as may be defined by any applicable laws of any state, may be generated and stored on any portion of the Facilities, so long as the storage, disposal and treatment of such waste is performed in accordance with all applicable laws, rules and regulations;

(iii) it will not generate, use, hold or store any Hazardous Materials that are permitted under subparagraph (ii) above, in a manner so as to create a risk or threat of its release on, under or from any portion of the Facilities;

(iv) it will provide written notice to the Trustee and the Bondholder Representative within one (1) week of the Borrower's knowledge of any and all discharges, spills, disposals or other releases on or from any portion of the Facilities to the environment of any Hazardous Materials that are not completely cleaned up and removed within three (3) Business Days of such release;

(v) except for water or oxygen tanks, it will give written notice to the Trustee and the Bondholder Representative of any installation of any type of storage tank, whether it is under or above-ground, at any portion of the Facilities, and will comply with all applicable laws and regulations concerning installation of any type of storage tank, including water tanks;

(vi) it will, within five (5) Business Days of receipt, notify the Trustee and the Bondholder Representative and provide the Trustee and the Bondholder Representative with copies of any notice of violation from any government agency, notice of filing of any administrative, civil or criminal action by any person or entity, notice of any investigation or request, other than routine administrative requests for information or related materials by any government agency, relative to any environmental condition in, on, about, under or from any portion of the Facilities;

(vii) if there is a spill, discharge, disposal, or other release or the threat thereof, of Hazardous Materials from any portion of the Facilities to the environment, the Borrower will: (A) promptly take all measures necessary to contain and remove discharges, spills, disposals or other releases of any Hazardous Materials to the environment and remedy and mitigate any and all threats to health, property and the environment in a manner consistent with all applicable law; and (B) provide the Trustee, within thirty (30) days after demand by the Trustee, with a bond, letter of credit, or similar financial assurance evidencing to the Trustee's satisfaction that the necessary funds are available to pay the costs of investigating, removing, treating and disposing of Hazardous Materials, wastes of any kind or material contaminated by such Hazardous Materials or wastes and discharging any assessments that are or may be imposed on the Borrower and/or any portion of the Facilities as a result thereof;

(viii) it will include or have included in any contracts and agreements of any kind entered into or renewed after the date of execution and delivery of this Loan Agreement for the operation or management or occupancy of or the performing of any activities (other than routine maintenance service and other insubstantial activities) at any portion of the Facilities substantially the same limitations on the activities of such other contracting party as are placed on the Borrower by this subsection; and

(ix) it will permit the Trustee and the Bondholder Representative and their authorized representatives to enter and inspect and assess the Facilities at reasonable times to determine the Borrower's compliance with the above conditions. The Trustee, however, is not under a duty to visit or observe the Facilities or to conduct tests, and any such acts by the Trustee will be solely for the purposes of protecting the Trustee's security and preserving the Trustee's rights hereunder and under the mortgage securing and interests. No site visit, observation or testing or any report or findings made as a result thereof



("*Environmental Report*"): (i) will result in a waiver of any default of the Trustee; (ii) impose any liability on the Trustee; or (iii) be a representation or warranty of any kind regarding the Facilities (including its condition or value or compliance with any laws) or the Environmental Report (including its accuracy or completeness). In the event the Trustee has a duty or obligation under applicable laws, regulations or other requirements to disclose an Environmental Report to the Borrower or any other Person, including any regulatory authority, the Borrower authorizes the Trustee to make such disclosure. The Trustee may also disclose an Environmental Report to any third party, including any regulatory authority, and to any other parties as necessary or appropriate in its judgment. As permitted by applicable law, before disclosing an Environmental Report to a third party, the Trustee, agrees to provide ten (10) days' written notice and an opportunity of the Borrower to comment on any such disclosure prior to providing such disclosure to such third party. The Borrower further understands and agrees that any Environmental Report or other information regarding a site visit, observation or testing that is disclosed to the Borrower by the Trustee, or its agents and representatives is to be evaluated (including any reporting or other disclosure obligations of the Borrower) by the Borrower without advice or assistance from the Trustee. The Trustee may disclose any Environmental Report to potential buyers in connection with default proceedings hereunder, and the Borrower acknowledges that any such disclosure, depending upon the results of an Environmental Report, may, under certain circumstances, affect the amount of money that may be realized in such default proceedings;

(x) shall give written notice to the Trustee of the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Facilities that could cause the Facilities to be classified in a manner which may support a claim under any Environmental Law; and

(xi) shall give written notice to the Trustee of the discovery of any occurrence or condition on any part of the Facilities or any real property adjoining or in the vicinity of the Facilities which could subject the Borrower or any part of the Facilities to any limitations or restrictions on the ownership, occupancy, transferability, or use thereof.

(c) The Borrower covenants that it will protect, indemnify, defend, and hold harmless the Issuer, the Trustee, the Bondholder Representative, the Holders and their respective directors, officers, members, partners, employees, shareholders, agents, successors, and assigns (the "*Environmental Indemnitees*") from and against the following (collectively, the "*Losses*"):

(i) any loss, liability, demand, damage, cost, expense, claim, action, or cause of action, including without limitation attorneys' fees and disbursement and costs of litigation, arising from the imposition or recording of a lien, the incurring of costs of required repairs, remediation, clean up, or detoxification and removal under any Environmental Law (including other associated costs, interest, fees, and penalties) with respect to all or any part of the Facilities or liability to any third party in connection with any violation of an Environmental Law;

(ii) any other loss, liability, damage, cost, expense, or claim (including, without limitation, attorneys' fees and disbursements and expenses, and costs and expenses

incurred by an Environmental Indemnitee in investigating, preparing, settling, or defending against any litigation or claim, action, suit, proceeding, or demand of any kind or character, including, without limitation, those arising by reason of any action taken by an Environmental Indemnitee under the Indenture, which is not caused by its own negligence or willful misconduct), which may be incurred by or asserted against an Environmental Indemnitee, directly or indirectly, arising from the presence on or under, or the discharge, emission or release from any part of the Facilities into or upon the land, atmosphere, or any watercourse, body of surface or subsurface water or wetland, arising from the installation, use, generation, manufacture, treatment, handling, refining, production, processing, storage, removal, remediation clean up, or disposal of any Hazardous Material or any other violation of any Environmental Law on any part of the Facilities; and

(iii) loss of value of any of the Facilities resulting in direct out-of-pocket loss to any Environmental Indemnitee as a result of any such lien, remediation clean up, detoxification, loss, liability, damage, expense, claim, or a failure or defect in title occasioned by any Hazardous Material or Environmental Law.

The Borrower shall defend such claim, and the Environmental Indemnitees, shall, at the expense of the Borrower, cooperate in the defense.

The indemnification of the Environmental Indemnitees and as provided in this Section 5.27 shall remain in full force and effect if Losses directly or indirectly result from, arise out of, or relate to, or are asserted to have resulted from, arisen out of or relate to, the sole or contributory negligence of any of the Environmental Indemnitees, but not to the extent that such losses result from the gross or willful misconduct or the negligence of the Environmental Indemnitee. Notwithstanding any provision hereof to the contrary, in the event of any conflict between the provisions of this Section 5.27 and Section 5.06, the provisions of Section 5.06 shall control.

**Section 5.28** Stable Occupancy.

The Borrower shall provide the Trustee and the Bondholder Representative written notice within ten (10) days of the occurrence of Stable Occupancy.

**Section 5.29** Compliance, Contracts, Licenses and Permits.

The Borrower will comply in all material respects with (a) all Legal Requirements, (b) the provisions of its corporate organizing documents, (c) all material applicable decrees, orders and judgments, (d) the terms of all Borrower Documents and (e) all licenses and permits required by applicable laws and regulations for the conduct of its business or the ownership, use or operation of its properties, including its Project Approvals.

**Section 5.30** Filing of Financial Statements; Other Information.

The Borrower will furnish or cause to be furnished to each Required Information Recipient (and the Trustee shall have no duty or obligation to review or examine the contents thereof), all of the following:

(a) A monthly statement of the Borrower as soon as practicable after the information is available but in no event more than forty-five (45) days after the completion of such month, including:

(i) prior to the issuance of a certificate of occupancy for the Project, (A) a summary statement as to the status of construction; (B) unaudited financial reports on the development costs of the Project incurred during that month and on an aggregate basis; and (C) statements of the balances for each fund and account required to be established hereunder or under the Indenture as of the end of such month (obtained from the Trustee), all in reasonable detail and certified by an officer of the Borrower, and

(ii) after the issuance of a certificate of occupancy for the first building, (A) occupancy levels of the Project as of the end of such month (once the Project reaches Stable Occupancy, occupancy levels need only be reported quarterly, as provided below); and (B) statements of the balances for each fund and account required to be established hereunder or under the Indenture as of the end of such month (obtained from the Trustee), all in reasonable detail and certified by an officer of the Borrower.

The obligation to provide monthly statements shall terminate when the Project achieves Stable Occupancy.

(b) Quarterly unaudited financial statements of the Borrower as soon as practicable after they are available but in no event more than forty-five (45) days after the completion of such fiscal quarter, including a combined or combining statement of revenues and expenses and statement of cash flows of the Borrower during such period, a combined or combining balance sheet as of the end of each such fiscal quarter, and a calculation of [**Days' Cash on Hand,**] Long-Term Debt Service Coverage Ratio and occupancy levels at the Facilities, for such fiscal quarter all prepared in reasonable detail and certified, subject to year-end adjustment, by an officer of the Borrower. Such financing statements and calculations will be accompanied by a comparison to the annual budget provided pursuant to Section 5.26 hereof.

(c) [Omitted].

(d) Within one hundred fifty (150) days of the end of each Fiscal Year, an annual audited financial report of the Borrower prepared by an Accountant, including a combined and an unaudited combining balance sheet as of the end of such Fiscal Year and a combined and an unaudited combining statement of cash flows for such Fiscal Year and a combined and an unaudited combining statement of revenues and expenses for such Fiscal Year, showing in each case in comparative form the financial figures for the preceding Fiscal Year, together with a separate written statement of the Accountants preparing such report (or another Accountant) containing calculations of the Borrower's Long-Term Debt Service Coverage Ratio [**and Days' Cash on Hand of the Borrower**] at the end of such Fiscal Year and a statement that such Accountants have no knowledge of any default under this Loan Agreement insofar as it relates to accounting matters or to the Borrower's financial covenants, or if such Accountants have obtained knowledge of any such default or defaults, they are required to disclose in such statement the default or defaults and the nature thereof. The information required by this paragraph (d) shall be posted on EMMA.

(e) On or before the date of delivery of the financial report referred to in paragraph (b) above, an Officer's Certificate of the Borrower (i) stating that the Borrower is in compliance with all of the financial terms, provisions and conditions of this Loan Agreement and Indenture or, if not, specifying all such financial defaults and the nature thereof, (ii) commencing[ **December 31, 2021**] and the end of each fiscal quarter thereafter, calculating and certifying the Long-Term Debt Service Coverage Ratio [**and Days' Cash on Hand**] in accordance with Sections 5.18 [**and 5.22**] hereof, and (iii) attaching a summary of the Borrower's annual operating and capital budget for the coming Fiscal Year and information about the occupancy at the Project, sources of revenue for such units, turnover statistics and any changes in services offered at the Project.

(f) On or before the date of delivery of the financial report referred to in paragraph (d) above, a management's discussion and analysis of results for the applicable Fiscal Year; provided, however, in the event a covenant violation exists for any fiscal quarter, a management's discussion and analysis of results for the applicable fiscal quarter will be delivered on or before the date of delivery of the financial report referred to in paragraph (b) above.

(g) The Borrower shall make available one or more representatives for a telephone conference call which shall occur: (i) in the event the Long-Term Debt Service Coverage Ratio covenant is met, at least once each Fiscal Year and (ii) in the event the Long-Term Debt Service Coverage Ratio covenant is not met, at least every other fiscal quarter. The Borrower shall post notice of such calls to EMMA at least two (2) weeks prior to the scheduled date of each call. Prior to Stable Occupancy, the Borrower shall organize and hold quarterly conference calls in the same manner as described in this subsection (g).

(h) Such additional information as the Trustee or the Bondholder Representative may reasonably request.

### **Section 5.31** Distributions.

The Borrower covenants not to distribute any cash, including any cash on deposit in the Borrower Distribution Account, to any Person except:

(a) for fees payable to the Developer or the Manager, as the case may be pursuant to the Development Agreement and the Management Agreement, unless otherwise provided herein or in the Indenture; and

(b) in accordance with the charitable mission of the Sole Member; provided that such distribution shall only be made if [**the Days' Cash on Hand will exceed forty-five (45) after such distribution would be made,**] no Event of Default exists hereunder or under the Indenture and the Borrower is in compliance with the covenants relating to Long-Term Debt Service Coverage. No such distributions shall be made more often than once every ninety (90) days[ **and the Days' Cash on Hand calculation shall be evidenced by a certificate of an Accountant**].

### **Section 5.32** Competition.

Except with the prior written consent of the Bondholder Representative, while any of the Series 2020 Bonds are outstanding, the Borrower and each of its Affiliates hereby agrees not to acquire, own, lease, develop, construct, control, operate or manage any new managed care, assisted

living or memory care facility other than the Project within the primary market for the Project, as defined in the Market Feasibility Study.

**Section 5.33** Manager, Consultants, Architect and General Contractor.

Whenever the Borrower is required to engage a Manager, Consultant, Architect or General Contractor pursuant to this Loan Agreement or the Indenture, the selection or replacement of the same must be approved by the Bondholder Representative. The Borrower shall provide notice of the selection of the Manager, Consultant, Architect or General Contractor to the Trustee and the Bondholder Representative, and shall direct the Dissemination Agent to post such information to EMMA.

**Section 5.34** Enforcement of Contractor Agreements.

The Borrower covenants to enforce and exercise all remedies under each agreement with a General Contractor and shall take all direction with respect to such enforcement and remedies from the Construction Monitor and the Trustee, with the consent of the Bondholder Representative, and from the Bondholder Representative.

**Section 5.35** UCC Financing Statements.

The Borrower shall file or cause to be filed, and shall deliver, or cause to be delivered to the Trustee evidence of the filing of, UCC financing statements that perfect and continue the security interest granted by the Borrower to the Trustee pursuant to the Bond Documents as provided in Section 3.05 of this Loan Agreement. The Borrower hereby expressly grants to the Trustee the full right and authority to file any UCC financing statements that may be required by law or is necessary to maintain the security interest perfected by the Bond Documents; provided, however, the Trustee shall not be responsible for filing or for the sufficiency or accuracy of any financing statements filed to perfect security interests granted under the Bond Documents

**Section 5.36** Management Fees.

Management Fees shall be paid as set forth in the Indenture unless otherwise consented to by the Bondholder Representative. Upon the occurrence and continuance of an Event of Default (as defined in either this Loan Agreement or the Indenture), unless otherwise consented to by the Bondholder Representative, the payment of 50% of the Management Fees payable to such Manager when due shall be deferred until the Event of Default has been cured or no longer exists, at which time the deferred portion of the Management Fees shall be paid from the Revenue Fund, as provided in Section 6.02(a), clause Seventh of the Indenture, over a period equal to the remaining term of the Management Agreement in equal monthly installments, and provided that payment of such deferred amounts would not cause an Event of Default; provided further that any deferred Management Fees shall be payable at least annually, and shall be paid no later than five years after the original due date of such Management Fees, plus interest accruing on the deferred amount at the rate of Prime +1%. "Prime" shall mean the rate calculated by the average of the three largest banks headquartered in Minnesota. No Manager may be an Affiliate of the Borrower. The salaries, benefits and related taxes for all employees or contracted professionals employed in

the operation of the Facilities constitute operating expenses and shall not be subject to subordination and deferment.

#### **Section 5.37** Developer Fees.

While any Series 2020 Bonds are Outstanding, the payment of any Developer Fees shall be subordinate, in all respect, to the payment of principal, premium, if any, and interest on, and all other payments due with respect to, Series 2020 Bonds and the Series 2020 Notes, as and when the same shall be due and payable and no Developer Fees shall be payable at any time that an Event of Default exists of which the Trustee is deemed to have notice or has received written notice. The Developer Fee shall not exceed \$275,000 in the aggregate. The Developer Fee shall be payable as follows: 1/3 of the Developer Fee (the “First Payment”) shall be payable on the Closing Date; 1/3 of the Developer Fee (the “Second Payment”) shall be payable on the date a certificate of occupancy is issued by the Project Jurisdiction[, **and shall be payable from the Surplus Fund**]; and, 1/3 of the Developer Fee (the “Third Payment”) shall be payable at Stable Occupancy [**from the Surplus Fund as set forth in Section 6.09(a) of the Indenture**]. Prior to the Second Payment or the Third Payment being made by the Trustee, the Borrower shall provide the Trustee with a written certificate that the conditions precedent stated above for such Second Payment and Third Payment, respectively, have been met and the Trustee may conclusively rely upon such certifications as being accurate.

#### **Section 5.38** Licenses.

The Borrower covenants, not later than thirty (30) days following receipt of a certificate of occupancy for the Project, to obtain and maintain the necessary licenses from the State of Minnesota necessary to operate the Project, provided that the Borrower shall use its commercially reasonable best efforts to obtain such licenses as soon as possible.

#### **Section 5.39** Related Party Transactions.

The Borrower will not enter into any transaction, including, without limitation, the purchase, sale, lease, or exchange of property or the rendering of any service, with any Affiliate except in the ordinary course of business and pursuant to the reasonable requirements of the Borrower’s business and upon terms found by the governing body of the Borrower to be fair and reasonable and no less favorable to the Borrower than would be obtained in a comparable arm’s length transaction with a Person not an Affiliate.

#### **Section 5.40** Representations and Covenants Relating to Status of Sole Member for Federal Income Tax Purposes.

The Borrower and the Sole Member acknowledge that the issuance of the Series 2020 Bonds is contingent on, among other things, the status of the Sole Member as an exempt organization under Section 501(c)(3) of the Code, the treatment of the Borrower as a “disregarded entity” for federal income tax purposes, and the Project being used in a manner or pursuant to arrangements that do not result in private business use under Section 141(b) or Section 145(a)(2)(B) of the Code. Accordingly, the Borrower and the Sole Member represent, covenant, and warrant as follows:

(a) the Sole Member is a Tax-Exempt Organization, duly organized, validly existing, and in good standing under the laws of the State of California and duly authorized to conduct business in the State of Minnesota;

(b) the Sole Member has received a determination letter from the Internal Revenue Service to the effect that it is a Tax-Exempt Organization;

(c) the Sole Member is in full compliance with all terms, conditions, and limitations, if any, contained in such determination letter;

(d) the Sole Member's status as a Tax-Exempt Organization has not been adversely modified, limited, or revoked;

(e) the facts and circumstances that formed the basis for the status of the Sole Member, as represented to the Internal Revenue Service in the Sole Member's application for a determination letter, either substantially exist for the Sole Member or differ in a manner consistent with, as permitted by, and in accordance with the requirements of Section 501(c)(3) of the Code;

(f) the Sole Member is the sole member of the Borrower, and the Borrower is a "disregarded entity" for federal income tax purposes;

(g) the Sole Member will not take any action, or permit any action to be taken, that would adversely affect its status as a Tax-Exempt Organization;

(h) the Sole Member shall remain the sole member of the Borrower and will not take any action, or permit any action to be taken, that would cause the Borrower to lose its status as a "disregarded entity" for federal income tax purposes;

(i) the Sole Member is and will remain the owner of property of the Borrower for federal income tax purposes;

(j) less than three percent (3%) of the net proceeds of the Tax-Exempt Bonds shall be used (i) by a Tax-Exempt Organization in an activity that constitutes an unrelated trade or business, and (ii) in a trade or business by a Person other than a Tax-Exempt Organization or a governmental unit (within the meaning of Section 141 of the Code);

(k) not more than two percent (2%) of the proceeds of the Tax-Exempt Bonds shall be applied to the payment of Costs of Issuance, and all Costs of Issuance in excess of that amount shall be paid by the Borrower from funds other than proceeds of the Tax-Exempt Bonds;

(l) the Borrower has not leased, sold, assigned, granted, or conveyed, and shall not lease, sell, assign, grant, or convey, all or any portion of the Project financed or refinanced with the proceeds of the Tax-Exempt Bonds (other than leases of units within the Project to occupants in the normal course of operating the Project) or any interest thereon to the United States or any agency or instrumentality thereof within the meaning of Section 149(b) of the Code;

(m) no portion of the proceeds of the Tax-Exempt Bonds shall be used to provide any of the following facilities related or incidental thereto: any airplane, skybox or other private luxury

box, facility used primarily for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises;

(n) as of the date hereof, the Borrower will be the only “principal user” of the Project financed or refinanced by the Tax-Exempt Bonds, and the Borrower shall not permit any other Person to become a “principal user” of the Project if such action would cause the interest on the Tax-Exempt Bonds to become subject to federal income taxation in the hands of the Holders thereof;

(o) the average maturity of the Tax-Exempt Bonds does not exceed one hundred twenty percent (120%) of the average reasonably expected economic life of the Project financed or refinanced with the proceeds of the Tax-Exempt Bonds;

(p) no tax-exempt obligations have been or shall be issued that are being sold at substantially the same time as the Tax-Exempt Bonds, pursuant to the same plan of financing and that are reasonably expected to be paid from substantially the same source of funds as the Tax-Exempt Bonds;

(q) the Borrower shall provide the Issuer all information required to satisfy the informational requirements set forth in Section 149(e) of the Code, including the information necessary to complete the Information Return for Tax-Exempt Private Activity Bond Issues, IRS Form 8038, as amended as of the Closing Date;

(r) the Borrower shall not use the proceeds of the Tax-Exempt Bonds in such a manner as to cause the Tax-Exempt Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and applicable Treasury Regulations, and to this end, the Borrower shall comply with the provisions of the Tax Certificates delivered in connection with the issuance of the Tax-Exempt Bonds;

(s) the Borrower reasonably expects that at least eighty-five percent (85%) of the spendable proceeds of the Tax-Exempt Bonds will be used to carry out the governmental purpose of the issue within three (3) years of the dates the Tax-Exempt Bonds are issued, and not more than fifty percent (50%) of the proceeds of the Tax-Exempt Bonds will be invested in nonpurpose investments (as defined in Section 149(f)(6)(A) of the Code) having a substantially guaranteed yield for four (4) years or more;

(t) the Borrower shall comply with and fulfill all other requirements and conditions of the Code and Treasury Regulations and rulings issued pursuant thereto relating to the acquisition, construction, and operation of the Project financed or refinanced by the Tax-Exempt Bonds to the end that interest on the Tax-Exempt Bonds shall at all times be free from federal income taxation;

(u) the Borrower, the Sole Member, and any “related party,” as defined in Treasury Regulations, Section 1.150-1(b), shall not, pursuant to an arrangement, formal or informal, purchase Tax-Exempt Bonds of the Issuer in an amount related to the principal amount of this Loan Agreement acquired by the Issuer from the Borrower; and

(v) neither the Borrower nor the Sole Member shall make any use of the Project, including but not limited to entering into any agreement for the management of the Project or any



similar agreement, the effect of which would cause the Tax-Exempt Bonds not to constitute “qualified 501(c)(3) bonds,” within the meaning of Section 145 and related Sections of the Code, and the Borrower shall not enter into a management contract that does not comply with the “safe-harbor” provisions of Revenue Procedure 97-13, 1997-1 C.B. 632, issued January 10, 1997, as amended by Revenue Procedure 2001-39, 2001-2 C.B. 38, issued June 20, 2001, as amplified by Notice 2014-67, 2014-46 I.R.B. 822, issued November 10, 2014, as amplified by Revenue Procedure 2016-44, 2016-36 I.R.B. 316, issued October 31, 2016, and as further modified and amplified by Revenue Procedure 2017-13, 2017-6 I.R.B., issued March 21, 2017, or any successor management contract guidance provided by the Internal Revenue Service and determined by Bond Counsel to be applicable to the Project financed or refinanced with the proceeds of the Tax-Exempt Bonds.

**Section 5.41** Special Purpose Entity Covenants.

The Borrower agrees that, except as otherwise in this Loan Agreement provided, it will be, and at all times will hold itself out to the public as, a legal entity separate and distinct from any other entity (including any Affiliate of the Borrower, any constituent party of the Borrower, any guarantor or any Affiliate or constituent party of any guarantor), and to that end and except as expressly otherwise set forth herein further agrees as follows:

- (a) To maintain books and records separate from any other person.
- (b) To maintain its accounts separate from any other person.
- (c) Not to commingle its assets with those of any Affiliate of the Borrower or the Sole Member.
- (d) To conduct its own business in its own name.
- (e) To maintain separate financial statements.
- (f) To pay its own liabilities out of its own funds.
- (g) To observe all material business organization formalities.
- (h) To maintain an arm’s length relationship with Affiliates.
- (i) To pay the salaries of its own employees and maintain a sufficient number of employees in light of its contemplated business operations.
- (j) Not to guarantee or become obligated for the debts of any other entity or hold out its credit as being available to satisfy the obligations of others.
- (k) Not to acquire obligations of its partners, members or shareholders.
- (l) To allocate fairly and reasonably any overhead for shared office space.
- (m) To use separate stationery, invoices and checks.

- (n) Not to pledge its assets for the benefit of any other entity or make any loans or advances to any person.
- (o) To hold itself out as a separate entity.
- (p) To correct any known misunderstanding regarding its separate identity.
- (q) To maintain adequate capital in light of its contemplated business operations.

**Section 5.42** Appointment of Arbitrage Analyst.

The Borrower has appointed [**Hilltop Securities Asset Management**] as the arbitrage analyst with respect to the Tax-Exempt Bonds to prepare and submit arbitrage reports regarding the Tax-Exempt Bonds to the Trustee.

**Section 5.43** Use of Holdback Amount and Accounting Thereof

The Borrower shall not retain Gross Receipts in the Holdback Account in an amount that would cause the amount on deposit therein to exceed the Holdback Amount. The Borrower shall use the Holdback Amount on deposit in the Holdback Account solely for the payment of Total Cash Operating Expenses. The Borrower shall present to the Trustee on each Friday during the term hereof a statement in the form attached to the Indenture as Exhibit I setting forth any amount of Gross Receipts retained by the Borrower and deposited to the Holdback Account and any portion of the Holdback Amount spent in the prior week, and attaching a weekly balance statement with respect to the Holdback Account. The terms “Holdback Account” and “Holdback Amount” have the meanings set forth in the Indenture

## ARTICLE VI

### EVENTS OF DEFAULT AND REMEDIES

**Section 6.01** Event of Default Defined.

Each of the following events shall constitute an Event of Default hereunder:

(a) (i) failure of the Borrower to make any payment of interest, principal or premium on the Series 2020 Notes when the same become due and payable, whether at maturity, redemption, acceleration or otherwise pursuant to the terms thereof or this Loan Agreement, after expiration of any applicable grace period, (ii) failure of the Borrower to make any payment required pursuant to the terms of this Loan Agreement, after expiration of any applicable grace period, or (iii) the occurrence of a Determination of Taxability;

(b) failure of the Borrower to observe or perform any of its other material covenants, conditions or agreements hereunder or under any of the Bond Documents for a period of sixty (60) days after notice in writing (unless the Borrower and the Trustee, with the consent of or at the direction of the Bondholder Representative, shall agree in writing to an extension of such time prior to its expiration), specifying such failure and requesting that it be remedied, given by the Issuer or the Trustee to the Borrower, or in the case of any default that cannot with due diligence

be cured within such sixty (60) day period, failure by the Borrower to proceed promptly to prosecute the curing of the same with due diligence and to cure such within one hundred eighty (180) days;

(c) unless waived, in writing, by the Issuer, failure of the Borrower to pay the Issuer's Annual Fee and the Additional Payments then due in accordance with Section 3.02(b) hereof within thirty (30) days of the due date of the Issuer's Annual Fee and any other Additional Payments;

(d) failure of the Borrower to make any required payment with respect to any Indebtedness (other than Non-Recourse Indebtedness or Subordinate Indebtedness or to which no lien attaches) for borrowed money (other than Notes issued and outstanding hereunder), the principal amount of which Indebtedness is in excess of two percent (2%) of Total Operating Revenues (determined on the basis of the most recent Financial Statements and Officer's Certificate delivered to the Trustee in accordance with the provisions herein), whether such Indebtedness now exists or shall hereafter be created, and any period of grace with respect thereto shall have expired, or an event of default as defined in any mortgage, indenture or instrument under which there may be issued, or by which there may be secured or evidenced, any Indebtedness, whether such Indebtedness now exists or shall hereafter be created, shall occur, which event of default shall not have been waived by the holder of such mortgage, indenture or instrument, and as a result of such failure to pay or other event of default such Indebtedness shall have been accelerated; provided, however, that such default shall not constitute an Event of Default within the meaning of this Section if within thirty (30) days, or within the time allowed for service of a responsive pleading if any proceeding to enforce payment of the Indebtedness is commenced, the Borrower in good faith shall commence proceedings to contest the obligation to pay or the existence of such Indebtedness and such enforcement proceeding is stayed;

(e) the entry of a decree or order by a court for relief against the Borrower, or approving as properly filed a petition, seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower, under the United States Bankruptcy Code or any other similar applicable federal or state law, or appointing a receiver, liquidator, custodian, assignee or sequestrator (or other similar official) of the Borrower or of any substantial part of its Property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of ninety (90) consecutive days;

(f) the filing by the Borrower of proceedings for an order for relief, or the consent by it to an order for relief against it, or the filing by it of a petition or answer or consent seeking reorganization, arrangement, adjustment, composition or relief, under the United States Bankruptcy Code or any other similar applicable federal or state law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, custodian, assignee, trustee or sequestrator (or other similar official) of the Borrower or of any substantial part of its Property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due;

(g) an Event of Default under the Mortgage or the Indenture.

(h) the occurrence of any of the events listed in Section 5.24 hereof, which constitute an Event of Default as provided therein.

**Section 6.02 Remedies on Default.**

(a) Whenever an Event of Default shall have happened and be continuing, the Trustee in its own right and as the assignee of the Issuer may, with the consent of the Bondholder Representative, or shall, at the direction of the Bondholder Representative, but subject to the rights of the Trustee under Article X of the Indenture, (i) declare all amounts due under this Loan Agreement to be immediately due and payable or (ii) take any action at law or in equity necessary or desirable to collect the amounts then due and thereafter to become due or to enforce observance or performance of any covenant, condition, or agreement of the Borrower under the Series 2020 Notes or this Loan Agreement. Whenever an Event of Default shall have happened and be continuing with respect to the rights of the Issuer not assigned to the Trustee, the Issuer may take any action at law or in equity necessary or desirable to collect the amounts owing to the Issuer and to enforce observance or performance of any such covenant, condition, or agreement of the Borrower under this Loan Agreement.

(b) Notwithstanding any other provision of this Loan Agreement or any right, power or remedy existing at law or in equity or by statute, the Trustee shall not under any circumstances declare the entire unpaid aggregate amount of the Series 2020 Notes to be immediately due and payable except with the consent of or at the direction of the Bondholder Representative.

(c) If the Trustee exercises any of its rights or remedies under this Section, it shall give notice of such exercise to the Borrower and the Bondholder Representative in writing in the manner provided in Section 9.02 hereof.

(d) Whenever an Event of Default shall have happened and be continuing with respect to the Unassigned Rights of the Issuer not assigned to the Trustee, the Issuer may take any action at law or in equity necessary or desirable to enforce observance or performance of any such covenant, condition, or agreement of the Borrower under this Loan Agreement.

**Section 6.03 Application of Amounts Realized in Enforcement of Remedies.**

Any amounts collected pursuant to action taken under Section 6.02 hereof shall be applied in accordance with the provisions of the Indenture or, if payment of the Series 2020 Bonds shall have been made, shall be applied according to the provisions of Section 6.15 of the Indenture.

**Section 6.04 No Remedy Exclusive.**

No remedy herein conferred on or reserved to the Issuer, the Bondholder Representative or the Trustee or the holder of Series 2020 Notes is intended to be exclusive of any other remedy, and every remedy shall be cumulative and in addition to every other remedy herein or now or hereafter existing at law, in equity or by statute. No delay or failure to exercise any right or power accruing upon an Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, and any such right or power may be exercised from time to time and as often as may be deemed expedient.

**Section 6.05** Payments to Issuer, Bondholder Representative and Trustee.

Upon an Event of Default, the Borrower shall on demand, but only in accordance with the payment priority established under Section 9.05 of the Indenture, pay to the Issuer, the Bondholder Representative and the Trustee the fees, disbursements, and expenses of the Issuer, the Bondholder Representative and Trustee, including but not limited to attorneys and other disbursements and expenses incurred by them or their agents (including attorneys' fees and expenses) in the collection of payments due on the Series 2020 Notes or the enforcement of performance of any other obligations of the Borrower.

**Section 6.06** No Additional Waiver Implied by One Waiver.

The Bondholder Representative may waive the occurrence of any Event of Default or any Event of Default hereunder, except with respect to any of the Unassigned Rights of the Issuer, particularly including payments to the Issuer required pursuant to Section 4.01(b)(A) hereof. Any such waiver hereunder shall require the written consent of the Bondholder Representative. If either party or the Bondholder Representative or its assignee waives a failure by a party hereto any covenant, condition, or agreement herein, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other failure hereunder.

**Section 6.07** Remedies Subject to Applicable Law.

All rights, remedies and powers provided by this Article VI may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Loan Agreement invalid or unenforceable.

## ARTICLE VII

### PREPAYMENT OF SERIES 2020 NOTES

**Section 7.01** [Omitted].

**Section 7.02** Option to Prepay Series 2020 Notes in Whole.

The Borrower shall have the option to prepay the Series 2020 Notes in whole, with any applicable premium and terminate this Loan Agreement so long as any such payment allocable to the principal of such Series 2020 Notes shall be used contemporaneously to discharge the corresponding Series 2020 Bonds in full; provided however, that (i) no such prepayment may be made unless all unpaid Issuer's Annual Fees, Additional Payments, and any other Issuer's Fees and Expenses due and owing shall have been paid; (ii) all fees and charges of the Trustee and the Bondholder Representative incurred in connection with the rendering of their respective services under the Indenture and the Bond Documents, as and when the same become due, including all advances and the reasonable fees and expenses of their respective counsel, and advisers and indemnities required under the Indenture shall have been paid; (iii) such prepayment is permitted under the Indenture, and (iv) the covenants in Section 5.08 hereof shall continue until the final maturity date of all Bonds or the earlier date on which all Bonds shall have been redeemed and the

covenant in Section 4.07 hereof shall continue for six years thereafter. In such case, the Borrower, on behalf of the Issuer, shall cause the Trustee to redeem the Series 2020 Bonds as provided in Section 3.01 of the Indenture. Notwithstanding any provision herein to the contrary, the covenants in Sections 3.04, 4.01, 4.07, 5.06, 5.08 and the last sentence of Section 7.02 hereof shall survive the termination of this Loan Agreement.

**Section 7.03** Option to Prepay Series 2020 Notes in Part.

Subject to the terms of the Indenture, the Borrower shall have the option to prepay the Series 2020 Notes in part, with any applicable premium, so long as any such payment allocable to the principal of such Series 2020 Notes shall be used contemporaneously to discharge a like amount of the corresponding Series 2020 Bonds that such prepayment of the particular series of Bonds is permitted under Section 3.01 of the Indenture, all unpaid Additional Payments, Issuer's Annual Fee and any other Issuer's Fees and Expenses due and owing shall have been paid, all fees and charges of the Trustee incurred in connection with the rendering of its services as Trustee under the Indenture, and all fees and charges of the Bondholder Representative and any paying agent, as and when the same become due, including all advances and the reasonable fees and expenses of its counsel, and advisers and indemnities required under the Indenture. The amount so prepaid shall be (a) used to redeem Series 2020 Bonds to the extent possible under Section 3.01 of the Indenture if Series 2020 Bonds shall then be redeemable as provided in such Section of the Indenture, or (b) if Series 2020 Bonds shall not then be redeemable, be transferred to the Bond Fund.

The Borrower shall be required to prepay the Series 2020 Bonds and the Series 2020 Notes in whole, with any applicable premium, if a Determination of Taxability should occur pursuant to Section 3.05 of the Indenture. In such case, the Borrower, on behalf of the Issuer, shall cause the Trustee to redeem such Series 2020 Bonds as provided in Section 3.05 of the Indenture.

**Section 7.04** Amount Required for Prepayment.

To prepay a Series 2020 Note in whole or in part as provided for herein and in the Indenture, the Borrower shall pay to the Trustee, for deposit in the Bond Fund of the Indenture, an amount of cash and/or Defeasance Obligations, as defined in the Indenture, that will be sufficient (a) in the case of prepayment in whole, to discharge the lien of the Indenture pursuant to Section 8.01 thereof, and (b) in the case of prepayment in part, to cause any Series 2020 Bonds that will be paid with the prepayment to be no longer Outstanding under the Indenture. If the Borrower has prepaid a Series 2020 Note, as provided above, the Borrower shall not direct the expenditure of any funds from such prepayment in the Bond Fund for any purpose other than the payment of principal of or premium, if any, or interest on the corresponding Series 2020 Bonds to be paid. The Borrower shall instruct the Trustee to give the notice of redemption required by Section 3.03 of the Indenture if any of the Series 2020 Bonds are to be paid other than at maturity.

**Section 7.05** Conditions Precedent to Prepayments.

Notwithstanding the foregoing, any prepayment allowed by this Article VII shall be conditioned upon deposit with the Trustee of funds in an amount equal to the principal, premium,

if any, and interest on the Series 2020 Bonds to be redeemed and in compliance with the terms of the Indenture.

## **ARTICLE VIII**

### **CONTINUING DISCLOSURE**

#### **Section 8.01** Continuing Disclosure.

The Borrower hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement and that the Issuer shall have no obligations thereunder. The Borrower agrees to execute and deliver a continuing disclosure certificate or agreement for the benefit of the Bondholder Representative and the Holders of the Series 2020 Bonds and to assist the Underwriter of the Series 2020 Bonds in complying with Rule 15c2-12(b)(5) promulgated by the Securities and Exchange Commission under Securities Exchange Act of 1934, as amended, and in complying with all other statutes, regulations, judicial decisions or laws relating to disclosure then in effect. Notwithstanding any other provision of this Loan Agreement, failure of the Borrower to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default; provided, however, the Trustee may (and, at the request of the Bondholder Representative, any participating underwriter or, if there is not Bondholder Representative, the Holders of at least twenty-five percent (25%) aggregate principal amount in Outstanding Bonds, upon the Trustee being provided indemnity satisfactory to it, shall) or the Bondholder Representative, or, if there is no Bondholder Representative, any Holder of the Series 2020 Bonds, may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the Borrower to comply with its obligations under this Section. For purposes of this Section, "Holder" means any person that (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Series 2020 Bonds (including persons holding Series 2020 Bonds through nominees, depositories, or other intermediaries), or (b) is treated as the owner of any Series 2020 Bonds for federal income tax purposes.

## **ARTICLE IX**

### **MISCELLANEOUS**

#### **Section 9.01** Term of Loan Agreement.

This Loan Agreement shall be effective upon its execution and delivery and, subject to earlier termination upon prepayment in full of Series 2020 Notes and other amounts described in Articles IV, VI and VII hereof, shall expire on the first date upon which the Series 2020 Bonds are no longer Outstanding; provided, however, that the covenants in Section 3.04, 4.01, 4.07, 5.06, 5.08 and the last sentence of Section 7.02 shall survive the termination of this Loan Agreement and the covenants in Section 5.08 shall continue until the final maturity date of all Series 2020 Bonds or the earlier redemption date. In such case, the Borrower, on behalf of the Issuer, shall cause the Trustee to redeem the Series 2020 Bonds as provided in Section 3.01 of the Indenture.

Termination of this Loan Agreement as to the Mortgaged Property shall not become effective until all requirements of this Loan Agreement are completed and during the time between the notice given by the Borrower specifying the date of termination and the effective date of such termination, the Borrower shall make all payments required by the Indenture and this Loan Agreement. The Borrower shall pay all costs and expenses of such termination, including any recording or mortgage release fees.

**Section 9.02** Notices.

(a) Unless otherwise provided herein all demands, notices, approvals, consents, requests, opinions, and other communications hereunder shall be in writing and shall be deemed to have been given when delivered in person or mailed by first class registered or certified mail, postage prepaid, addressed:

To the Issuer: City of Falcon Heights, Minnesota  
2077 Larpenteur Avenue  
Falcon Heights, MN 55113  
Attention: City Administrator  
Email: sack.thongvanh@falconheights.org

To the Trustee: Wilmington Trust, National Association  
Institutional Client Services  
1 Light Street, 14<sup>th</sup> Floor  
Baltimore, MD 21202  
Attn: Jay Smith  
Telephone: (410) 545-2193  
Email: jhsmith@wilmingtontrust.com

Delivery of Series 2020 Bonds for transfer or for payment: Manufacturers and Traders Trust Company  
c/o Wilmington Trust  
Corporate Trust Operations  
Attn: Work Flow Management  
1100 N. Market Street  
Wilmington, DE 19890



To the Borrower or the  
Sole Member of the Borrower:

Hampton Properties of Ramsey, LLC  
1824 Buerkle Road  
White Bear Lake, Minnesota 55150  
Attention: Tim C. Eppler  
Telephone: (916) 390-0016  
Email: tim@cofcapital.com

To the Underwriter:

Zions Bank Public Finance  
50 Glen Avenue  
Newton Center, MA 02459  
Attention: Susan Winshall, Managing Director  
Telephone: (617) 969-3400  
Facsimile: (617) 969-3410  
Email: swinshall@zionsboston.com

To the Bondholder Representative:

Greenwich Investment Management, Inc.  
200 First Stamford Place, 2 East  
Stamford, Connecticut 06902  
Attention: Drew Collins, Managing Director  
Telephone: (203) 625-5316  
Facsimile: (203) 862-4527

A duplicate copy of each demand, notice, approval, consent, request, opinion or other communication given hereunder by either the Issuer or the Borrower to the other shall also be given to the Trustee and the Bondholder Representative and, for information purposes only, the Underwriter. The Borrower, the Trustee, the Issuer, the Underwriter or the Bondholder Representative may, by notice given hereunder, designate any further or different addresses to which subsequent demands, notices, approvals, consents, requests, opinions or other communications shall be sent or persons to whose attention they shall be directed.

(b) Any such communication also may be transmitted to the appropriate party by telephone, facsimile, email or other electronic transmission and shall be deemed given or made at the time of such transmission if, and only if, such transmission of notice shall be confirmed in writing sent as specified above.

### **Section 9.03** Amendments.

(a) Neither this Loan Agreement nor the Series 2020 Notes shall be amended or supplemented, and no substitution shall be made for the Series 2020 Notes before payment of the Series 2020 Bonds, except (i) at the direction or with the consent of the Bondholder Representative or (ii) given in accordance with and subject to Article XII of the Indenture.

(b) The Borrower shall not amend or supplement any of the Bond Documents or the Project Documents without the written consent of the Bondholder Representative.

**Section 9.04** Successors and Assigns.

This Loan Agreement shall be binding on, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

**Section 9.05** Severability.

If any provision of this Loan Agreement shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision hereof.

**Section 9.06** Applicable Law; Entire Understanding; Modification of Documents.

(a) This Loan Agreement and the Series 2020 Notes and all disputes, claims, defenses, controversies or causes of action (whether in contract or tort) that may be based upon, arise out of or relate hereto, including as to any representation or warranty made by the Borrower in or in connection with this Loan Agreement or as an inducement to enter into this Loan Agreement, shall be governed by the applicable laws of the State of Minnesota, without regard to any conflicts of law principles.

(b) All claims of whatever character arising out of this Loan Agreement shall be brought in any state or federal court of competent jurisdiction located in Ramsey County, Minnesota. By executing and delivering this Loan Agreement, each party hereto irrevocably: (i) accepts generally and unconditionally the exclusive jurisdiction and venue of such courts; (ii) waives any defense of *forum non conveniens*; and (iii) agrees not to seek removal of such proceedings to any court or forum other than as specified above. The foregoing shall not be deemed or construed to constitute a waiver by the Issuer of any prior notice or procedural requirements applicable to actions or claims against or involving governmental units of the State that may exist at the time of and in connection with such matter.

(c) This Loan Agreement and the Series 2020 Notes (including the applicable provisions of the Indenture and the other Bond Documents) express the entire understanding and all agreements between the parties and may not be modified except in writing signed by the parties and acknowledged by the Trustee. For the avoidance of doubt, the provision of the previous sentence shall be interpreted to include (but shall not be limited to) the prohibition of the amendment or modification of any covenant, condition and agreement in this Loan Agreement that has been, pursuant to the terms hereof, incorporated by reference and made a part of this Loan Agreement without the express written consent of the Issuer and the Bondholder Representative and in accordance with the terms of the Indenture.

**Section 9.07** Issuer's Obligations Limited; Immunity of Directors, Officers, Employees.

(a) Except as otherwise expressly herein provided, no recourse under or upon any obligation or agreement contained in this Loan Agreement or in any Bond or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, under or independent of the Indenture, shall be had against the Issuer.

(b) Notwithstanding anything in this Loan Agreement to the contrary, it is expressly understood and agreed by the parties hereto that (i) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Issuer by the Trustee or the Borrower as to the existence of any fact or state of affairs required hereunder to be noticed by the Issuer, (ii) the Issuer shall not be under any obligation hereunder to perform any record-keeping or to provide any legal services, it being understood that such services shall be performed either by the Trustee, for documents furnished to it to the extent required under the Bond Documents, or the Borrower, and (iii) none of the provisions of this Loan Agreement shall require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless it shall first have been adequately indemnified to its satisfaction against the cost, expenses and liability that may be incurred thereby.

(c) The Series 2020 Bonds are special limited obligations of the Issuer payable solely from the revenues, income and receipts of the Issuer pledged to the payment thereof. The Series 2020 Bonds have been issued pursuant to the Act, and do not constitute, within the meaning of any statutory or constitutional provision, an indebtedness, an obligation or a loan of credit of the state, the Issuer, or any other municipality, county or other municipal or political corporation, public agency or subdivision of the State. The Series 2020 Bonds do not create a moral obligation on the part of the State, the Issuer, or any other municipality, county or other municipal or political corporation, public agency or subdivision of the State and none of such entities is obligated to make any payments with respect to the Series 2020 Bonds except from the Trust Estate described herein.

(d) No recourse shall be had for the enforcement of any obligation, promise or agreement of the Issuer contained in the Indenture, this Loan Agreement or in any Bond issued under the Indenture for any claim based thereon or otherwise in respect thereof, against any director, officer, employee, agent or counsel, as such, in his or her individual capacity, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assignment or penalty or otherwise; it being expressly agreed and understood that the Bonds, the Indenture and this Loan Agreement are solely municipal obligations and that no personal liability whatsoever shall attach to, or be incurred by, any member, director, officer, employee, agent or counsel, as such, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity, under or by reason of any of the obligations, promises or agreements entered into between the Issuer and the Borrower whether contained in this Loan Agreement or to be implied therefrom as being supplemental hereto or thereto, and that all personal liability of that character against every such member, director, officer, employee, agent or counsel is, by the execution of this Loan Agreement and the Indenture, and as a condition of, and as part of the consideration for, the execution of this Loan Agreement and the Indenture, expressly waived and released.

#### **Section 9.08** Usury; Total Interest.

In no event shall the aggregate amounts contracted for, demanded, charged, or collected in connection herewith which are deemed “interest” exceed the Maximum Rate. It is expressly stipulated and agreed to be the intent of the Borrower and the Issuer at all times to comply with

the applicable law governing the Maximum Rate or amount of interest payable on or in connection with the Series 2020 Notes (or applicable United States federal law to the extent that it permits the Issuer to contract for, demand, charge, take, reserve, or receive a greater amount of interest than under the laws of the State). If the applicable law, as judicially interpreted from time to time, shall ever render usurious any amount called for under this Loan Agreement, the Series 2020 Notes, or under the Mortgage or any of the other Bond Documents or contracted for, demanded, charged, taken, reserved, or received with respect to the Series 2020 Notes, or if acceleration of the maturity of the Series 2020 Notes or if any prepayment by the Borrower results in the Borrower having paid any interest in excess of that permitted by law, then it is the Borrower's and the Issuer's express intent that all excess amounts theretofore collected by the Issuer be credited on the principal balance of the Series 2020 Notes (or, if the Series 2020 Notes have been or would thereby be paid in full, the excess refunded to the Borrower), and the provisions of the Series 2020 Notes, the Mortgage and the other Bond Documents immediately be deemed reformed and the amounts thereafter collectible hereunder and thereunder reduced, without the necessity of the execution of any new documents, so as to comply with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder and thereunder. The right to accelerate maturity of the Series 2020 Notes does not include the right to accelerate any interest which has not otherwise accrued on the date of acceleration, and the Issuer does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to the Issuer for the use, forbearance, or detention of the Indebtedness evidenced hereby shall, to the extent permitted by applicable law, be amortized, prorated, allocated, and spread throughout the full term of such Indebtedness until payment in full so that the rate or amount of interest on the account of such Indebtedness does not exceed the Maximum Rate. Notwithstanding any provision contained in the Series 2020 Notes, the Mortgage or in any other Bond Documents that permits the compounding of interest, including, without limitation, any provision by which any accrued interest is added to the principal amount of the Series 2020 Notes, the total amount of interest that the Borrower is obligated to pay and the Issuer is entitled to receive with respect to the Series 2020 Notes shall not exceed the amount calculated on a simple (i.e., noncompounded) interest basis at the Maximum Rate on principal amounts actually advanced to or for the account of the Borrower, so long as such advances remain outstanding, including all current and prior advances and any advances made pursuant to the Mortgage or other Bond Documents (such as the payment of taxes, insurance premiums, and similar expenses or costs). This Loan Agreement is also subject to the condition that amounts paid hereunder representing late payment or penalty charges or the like shall only be payable to the extent permitted by law.

#### **Section 9.09** Counterparts.

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

#### **Section 9.10** Receipt of and Compliance with Indenture.

The Borrower acknowledges that it has received an executed copy of the Indenture, and accepts and agrees to the provisions thereof, and agrees that it will take all such actions as are required or contemplated of it under the Indenture to preserve and protect the rights of the Trustee, the Bondholder Representative, the Issuer and of the Owners thereunder and that it will not take any action which would cause a default or Event of Default thereunder. It is agreed by the

Borrower and the Issuer that all redemption of Series 2020 Bonds prior to maturity shall be effected as provided in the Indenture. The Borrower hereby agrees that its interest in the Mortgaged Property and its rights hereunder are subject to and subordinated to the interest and rights of the Trustee under the Indenture and acknowledges that the Trustee has entered into the Indenture in reliance upon the assignment to the Trustee of the Issuer's rights under this Loan Agreement and the Borrower's provision of indemnity. The Borrower covenants that it will perform all of the Issuer's obligations and covenants under the Indenture to the extent that they can be performed by the Borrower thereunder. The Borrower further agrees that it will reimburse the Issuer for any expenses incurred in the administration of any of the foregoing agreements and this Loan Agreement and will hold the Issuer harmless from any liabilities thereunder. The Borrower further covenants that it will perform all of the duties and obligations of the Borrower that are set forth in the Indenture.

**Section 9.11** Benefit of and Enforcement by Bondholders.

The Issuer and the Borrower agree that this Loan Agreement is executed in part to induce the purchase by others of the Series 2020 Bonds and for the further securing of the Series 2020 Bonds, and accordingly that all covenants and agreements on the part of the Issuer and the Borrower (other than the Issuer's Unassigned Rights) and the representations of the Issuer and the Borrower are hereby declared to be for the benefit of the Trustee, the Bondholder Representative and the Holders from time to time of the Series 2020 Bonds and may be enforced as provided in the Indenture on behalf of the Bondholders by the Trustee, as consented to or as directed by the Bondholder Representative. Notwithstanding the foregoing or any provision hereof to the contrary, it is specifically acknowledged and agreed that, to the extent of their rights hereunder (including, without limitation, their rights to immunity and exculpation from pecuniary liability) each Issuer Indemnified Person is a third-party beneficiary of this Loan Agreement entitled to enforce such rights in his, her, its or their own name.

**Section 9.12** No Liability for Consents or Appointments.

Whenever any provision herein provides for the giving of consent or direction of the Issuer or the Bondholder Representative, the Issuer and the Bondholder Representative shall not be liable to the Borrower, the Trustee or any Beneficial Owner of the Series 2020 Bonds for the giving of such consent or direction or for withholding such consent or direction. The Issuer and the Bondholder Representative shall have no liability for appointments which are required to be made by such party under the Indenture, this Loan Agreement or any related documents. The Trustee, when acting or refraining from action under this Loan Agreement, is afforded all the indemnification, liability and other protections afforded to the Trustee under the Indenture and the Trustee shall have no liability in action, or refraining from action, at the direction or with the consent of the Bondholder Representative.

**Section 9.13** Notice to and Effect of Actions by Bondholder Representative.

Notwithstanding any provision to the contrary contained herein, any notice, request, consent, direction, waiver, approval, agreement or other action of the Bondholder Representative shall constitute and have the same effect as a notice, request, consent, direction, waiver, approval,

agreement or other action of the Beneficial Owners. A copy of any notice given or sent to the Trustee or any Beneficial Owner also shall be provided to the Bondholder Representative.

**Section 9.14** Bondholder Representative.

The Bondholder Representative or, in the absence of a Bondholder Representative, the registered owners of more than 50% in aggregate principal amount of the Series 2020 Bonds then outstanding, shall have the right at any time, to the extent permitted by law, to direct, by an instrument or document or instruments or documents in writing executed and delivered to the Borrower and the Trustee, the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Loan Agreement, the Series 2020 Notes and the Mortgage, or the appointment of a receiver or any other proceedings hereunder, in accordance with the terms of the Indenture.

**Section 9.15** Post-Issuance Compliance.

The Borrower hereby covenants and agrees that it will maintain and comply with and carry out all of the provisions of written policies and procedures to ensure post-issuance tax compliance with respect to the Tax-Exempt Bonds.

**Section 9.16** [Omitted].

**Section 9.17** Annual Certificate; Other Reporting.

For each year that the this Loan Agreement remains in effect, the Borrower will furnish the Issuer, the Trustee and the Bondholder Representative on or before the 120<sup>th</sup> day following the end of its fiscal year, a certificate of the Borrower, signed by an authorized officer, stating that (i) the Borrower has made a review of its activities during the preceding calendar year for the purpose of determining whether or not the Borrower has complied with all the terms, provisions and conditions of this Loan Agreement, (ii) the Borrower has kept, observed, performed, and fulfilled each every covenant, provision, and condition of this Loan Agreement on its part to be performed, and (iii) the Borrower is not in default in the performance or observance of any of the covenants, provisions or conditions hereof, or if the Borrower shall be in default, such certification specify all such defaults and the nature thereof. The Borrower shall also promptly provide the Issuer and the Bondholder Representative with such information as it shall reasonably request, including, without limitation, information as to employee levels, financial status and outstanding principal balance of the Series 2020 Bonds.

**Section 9.18** No Obligation to Enforce Assigned Rights.

Notwithstanding anything to the contrary in the Indenture or this Loan Agreement, the Issuer shall have no obligation to and instead the Trustee and/or the Bondholder Representative for so long as any Series 2020 Bonds are Outstanding, in accordance with the Indenture or this Loan Agreement, shall have the right, without any direction from or action by the Issuer, to take any and all steps, actions and proceedings, to enforce any or all rights of the Issuer (other than the Unassigned Rights) under the Indenture or this Loan Agreement, including, without limitation, the rights to enforce the remedies upon the occurrence and continuation of an Event of Default and the obligations of the Borrower under this Loan Agreement.

**Section 9.19** No Impairment of Rights.

Nothing herein shall be deemed or construed to limit, impair or affect in any way the Issuer's (or any the Issuer Indemnified Person's) right to enforce the Unassigned Rights, regardless of whether there is then existing an Event of Default (including, without limitation, a payment default), or any action based thereon or occasioned by an Event of Default or alleged Event of Default, and regardless of any waiver or forbearance granted by the Trustee or the Bondholder Representative in respect thereof. Any default or Event of Default in respect of the Unassigned Rights may only be waived with the Issuer's written consent.

**Section 9.20** The Issuer's Performance.

None of the provisions of this Loan Agreement or the Indenture shall require the Issuer to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder or thereunder, unless payable from the Trust Estate, or unless the Issuer shall first have been adequately indemnified to its satisfaction against the cost, expense, and liability which may be incurred thereby. The Issuer shall not be under any obligation hereunder to perform any administrative service with respect to the Series 2020 Bonds or the Project (including, without limitation, record keeping and legal services), it being understood that such services shall be performed or provided by the Trustee or the Borrower. The Issuer covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations, and provisions expressly contained in the Indenture, this Loan Agreement, and any and every Bond executed, authenticated and delivered under the Indenture; provided, however, that the Issuer shall not be obligated to take any action or execute any instrument pursuant to any provision hereof unless and until it shall have (a) been directed to do so in writing by the Borrower, the Trustee, or the Bondholder Representative (including reference to the provisions of the applicable Indenture or Loan Agreement authorizing such direction); (b) received from the Person requesting such action or execution assurance satisfactory to the Issuer that the Issuer's expenses incurred or to be incurred in connection with taking such action or executing such instrument have been or will be paid or reimbursed to the Issuer; and (c) if applicable, received in a timely manner the instrument or document to be executed, in form and substance satisfactory to the Issuer.

In complying with any provision herein or in the Indenture including, but not limited to, any provision requiring the Issuer to "cause" another Person to take or omit any action, the Issuer shall be entitled to rely conclusively (and without independent investigation or verification) (i) on the faithful performance by the Trustee or the Borrower, as the case may be, of their respective obligations hereunder and under the Indenture and (ii) upon any written certification or opinion furnished to the Issuer by the Trustee or the Borrower, as the case may be. In acting, or in refraining from acting, under this Loan Agreement, the Issuer may conclusively rely on the advice of its counsel. The Issuer shall not be required to take any action hereunder or under an Indenture that it reasonably believes to be unlawful or in contravention hereof or thereof.

**Section 9.21** Survival.

The provisions of this Loan Agreement and the Indenture and any other document in connection with the issuance of the Series 2020 Bonds to which the Issuer is a party concerning

(a) the tax-exempt status of any of the Series 2020A Bonds including, but not limited to, provisions concerning rebate; (b) the interpretation of this Loan Agreement; (c) governing law, jurisdiction and venue; (d) the Issuer's right to rely on written representations of others contained herein or in any other document or instrument issued or entered into in respect of the Series 2020 Bonds, regardless of whether the Issuer is a party thereto; (e) the indemnification rights and exculpation from liability of the Issuer and the Issuer Indemnified Persons; and (f) any other provision of this Loan Agreement not described or enumerated above that expressly provides for its survival, shall survive and remain in full force and effect notwithstanding the payment or redemption in full, or defeasance of the Series 2020 Bonds, the discharge of the Indenture, and the termination or expiration of this Loan Agreement.



**IN WITNESS WHEREOF**, the parties hereto have executed this Loan Agreement under seal, all as of the day and year first above written.

**CITY OF FALCON HEIGHTS, MINNESOTA**

By: \_\_\_\_\_  
Name: Randy Gustafson  
Its: Mayor

By: \_\_\_\_\_  
Name: Sack Thongvanh  
Its: City Administrator

**HAMPTON PROPERTIES OF RAMSEY,  
LLC**

By: SUBURBAN HOUSING & COMMUNITY  
SERVICES CORPORATION,  
Its: Sole Member

By: \_\_\_\_\_  
Name: Tim C. Eppler  
Its: CEO

Acknowledged, accepted and agreed as to  
the matters set forth in Section 5.40 hereof.

**SUBURBAN HOUSING & COMMUNITY  
SERVICES CORPORATION**

By: \_\_\_\_\_  
Name: Tim C. Eppler  
Its: CEO

**RECEIPT**

Receipt of the foregoing original counterpart of this Loan Agreement, dated as of the day and year first above written, between the City of Falcon Heights, Minnesota and Hampton Properties of Ramsey, LLC is hereby acknowledged.

**WILMINGTON TRUST, NATIONAL ASSOCIATION**

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

Name: \_\_\_\_\_

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

**EXHIBIT A-1**  
**FORM OF SERIES 2020A NOTE**

THIS PROMISSORY NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THIS PROMISSORY NOTE HAS BEEN ENDORSED TO THE ORDER OF THE TRUSTEE DEFINED BELOW TO SECURE THE SERIES 2020A BONDS DEFINED BELOW.

**SERIES 2020A**  
**PROMISSORY NOTE**  
**(NON-NEGOTIABLE)**

June \_\_, 2020

**\$7,680,000**

**FOR VALUE RECEIVED**, the undersigned, **HAMPTON PROPERTIES OF RAMSEY, LLC**, a limited liability company organized under the laws of the State of Minnesota (the “*Borrower*” which term shall be construed to include the successors and assigns of the Borrower), having as its sole member Suburban Housing & Community Services Corporation, a California nonprofit, public benefit corporation that has been determined to be an exempt organization within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualified to conduct business in Minnesota, hereby promises to pay to the order of the City of Falcon Heights, Minnesota, a municipal corporation existing under the laws of the State of Minnesota, and its successors and assigns (the “*Issuer*”), the principal sum of Seven Million Six Hundred Eighty Thousand Dollars (\$7,680,000), payable in such installments as will permit the Issuer to pay the principal of the hereinafter defined Series 2020A Bonds and to pay interest thereon at the rates and on the Interest Payment Dates set for the Series 2020A Bonds in the Indenture defined herein.

The principal of, premium, if any, and interest on this Series 2020A Note are payable in lawful money of the United States of America at the corporate trust office of Wilmington Trust, National Association (the “*Trustee*”), in Baltimore, Maryland, or its successor or successors, as trustee under a Trust Indenture, dated as of June 1, 2020 (the “*Indenture*”), between the Issuer, as grantor, and the Trustee, when due and payable, whether at maturity or by acceleration, for deposit in the Bond Fund, as hereinafter defined, for the account of the Issuer. This Series 2020A Note shall bear interest on overdue principal and, to the extent permitted by law, on overdue premium, if any, and interest at the aforesaid rates.

This Series 2020A Note constitutes the Series 2020A Note issued under and pursuant to and is entitled to the benefits and subject to the conditions of a Loan Agreement, dated as of June 1, 2020 (the “*Loan Agreement*”), between the Borrower and the Issuer, to which Loan Agreement reference is hereby made for a description of the circumstances under which there shall be credits allowed against the installments of principal and interest on this Series 2020A Note and for a description of the terms and conditions upon which this Series 2020A Note may be subject to optional or mandatory prepayment, in whole or in part, or may be accelerated. Reference is hereby made to the Loan Agreement for a description of the security for this Series 2020A Note and the options and obligations of the Borrower and the Issuer hereunder. Upon an Event of Default (as

defined in the Loan Agreement), the entire principal of and interest on this Series 2020A Note may be declared or may become immediately due and payable as provided in the Loan Agreement.

This Series 2020A Note is given for value received and in consideration of the issuance by the Issuer of \$7,680,000 in aggregate principal amount of its Senior Housing Revenue Bonds (Suite Living Senior Care of Ramsey Project), Series 2020A (the “*Series 2020A Bonds*”), dated the date of their issuance and delivery, issued by the Issuer under the terms of a Bond Resolution, adopted by the Issuer on June 10, 2020, and the Indenture.

Payments shall be made under this Note in accordance with the Loan Agreement. Until the entire principal of and interest and premium (if any) on the Series 2020A Bonds have been paid or duly provided for as allowed by the Indenture, if at any such payment date on the Series 2020A Bonds the balance in the Bond Fund available for the payment of the principal of and premium (if any) and interest on the Series 2020A Bonds is insufficient to make such required payments on such date, the Borrower shall forthwith pay any such deficiency to the Trustee, for the account of the Issuer, for Bond Fund. Any amount at any time held by the Trustee in the Bond Fund created under the Indenture (the “*Bond Fund*”) shall, in the manner prescribed in and to the extent permitted by the Loan Agreement and the Indenture, be credited against the next succeeding payment under this Series 2020A Note and shall reduce the payment to be made by the Borrower hereunder. If the amount held by the Trustee in the Bond Fund shall be sufficient to pay at the times required the principal of and interest on the Series 2020A Bonds then remaining unpaid, as provided in Article VIII of the Indenture, the Borrower shall not be obligated to make any further payments under this Series 2020A Note. There shall also be a credit against payments under this Series 2020A Note for Series 2020A Bonds purchased, redeemed, or cancelled, as provided in Article III of the Indenture. If at any time all principal and interest and any premium payments on the Series 2020 Bonds have been paid within the meaning of the Indenture, the Borrower shall not be obligated to make any further principal or interest or premium payments hereunder, and the Issuer or the Trustee shall surrender this Series 2020A Note to the Borrower for cancellation, provided, however, that the obligations of the Borrower under the Loan Agreement shall survive cancellation of this Series 2020A Note.

This Series 2020A Note shall be construed in accordance with Section 9.06 of the Loan Agreement.

The Borrower hereby waives presentment, demand, protest, and notice of demand, protest, and non-payment and assents to the addition or release of any other party or person primarily or secondarily liable under this Series 2020A Note. The Borrower agrees to pay attorneys’ fees and expenses as provided by the Loan Agreement or the Indenture. No waiver by the Issuer or its assigns of any default under this Series 2020A Note shall be effective unless in writing, and no such waiver shall be a waiver of any other default. This Series 2020A Note shall bind the successors and assigns of the Borrower.

*[Remainder of page intentionally left blank; signature page follows]*

**IN WITNESS WHEREOF**, the undersigned has executed this Series 2020A Note as of the date and year first written above.

**HAMPTON PROPERTIES OF RAMSEY,  
LLC**

By: SUBURBAN HOUSING & COMMUNITY  
SERVICES CORPORATION,  
Its: Sole Member

By: \_\_\_\_\_  
Name: Tim C. Eppler  
Its: CEO

**ENDORSEMENT**

**FOR VALUE RECEIVED**, the City of Falcon Heights, Minnesota (the “*Issuer*”) hereby irrevocably assigns and transfers the foregoing Series 2020A Note, without recourse or warranty, to the order of Wilmington Trust, National Association (the “*Trustee*”), Baltimore, Maryland, as trustee under a Trust Indenture, dated as of June 1, 2020, between the Issuer and the Trustee. The Issuer hereby directs the maker of the Series 2020A Note, Hampton Properties of Ramsey, LLC, to make all payments with respect to principal of, premium, if any, and interest on the Series 2020A Note and all other payments required thereby directly to the order of the Trustee for the account of the Issuer at the Trustee’s corporate trust office in Baltimore, Maryland, or such other place as the Trustee, or its successor in trust, may designate in writing.

Dated and executed on June \_\_, 2020.

**CITY OF FALCON HEIGHTS, MINNESOTA**

By: \_\_\_\_\_  
Name: Randy Gustafson  
Its: Mayor

By: \_\_\_\_\_  
Name: Sack Thongvanh  
Its: City Administrator

**ACKNOWLEDGMENT OF ASSIGNMENT**

The undersigned hereby acknowledges and agrees to the aforesaid assignment of the Series 2020A Note by the City of Falcon Heights, Minnesota to Wilmington Trust, National Association, as trustee as of the date and year first written above.

**HAMPTON PROPERTIES OF RAMSEY,  
LLC**

By: SUBURBAN HOUSING & COMMUNITY  
SERVICES CORPORATION,  
Its: Sole Member

By: \_\_\_\_\_  
Name: Tim C. Eppler  
Its: CEO



**EXHIBIT A-2**  
**FORM OF SERIES 2020B NOTE**

THIS PROMISSORY NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THIS PROMISSORY NOTE HAS BEEN ENDORSED TO THE ORDER OF THE TRUSTEE DEFINED BELOW TO SECURE THE SERIES 2020B BONDS DEFINED BELOW.

**SERIES 2020B**  
**PROMISSORY NOTE**  
**(NON-NEGOTIABLE)**

June \_\_, 2020

**\$335,000**

**FOR VALUE RECEIVED**, the undersigned, **HAMPTON PROPERTIES OF RAMSEY, LLC**, a limited liability company organized under the laws of the State of Minnesota (the "*Borrower*" which term shall be construed to include the successors and assigns of the Borrower), having as its sole member Suburban Housing & Community Services Corporation, a California nonprofit, public benefit corporation that has been determined to be an exempt organization within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualified to conduct business in Minnesota, hereby promises to pay to the order of the City of Falcon Heights, Minnesota, a municipal corporation existing under the laws of the State of Minnesota, and its successors and assigns (the "*Issuer*"), the principal sum of Three Hundred Thirty-Five Thousand Dollars (\$335,000), payable in such installments as will permit the Issuer to pay the principal of the hereinafter defined Series 2020B Bonds and to pay interest thereon at the rates and on the Interest Payment Dates set for the Series 2020B Bonds in the Indenture defined herein.

The principal of, premium, if any, and interest on this Series 2020B Note are payable in lawful money of the United States of America at the corporate trust office of Wilmington Trust, National Association (the "*Trustee*"), in Baltimore, Maryland, or its successor or successors, as trustee under a Trust Indenture, dated as of June 1, 2020 (the "*Indenture*"), between the Issuer, as grantor, and the Trustee, when due and payable, whether at maturity or by acceleration, for deposit in the Bond Fund, as hereinafter defined, for the account of the Issuer. This Series 2020B Note shall bear interest on overdue principal and, to the extent permitted by law, on overdue premium, if any, and interest at the aforesaid rates.

This Series 2020B Note constitutes the Series 2020B Note issued under and pursuant to and is entitled to the benefits and subject to the conditions of a Loan Agreement, dated as of June 1, 2020 (the "*Loan Agreement*"), between the Borrower and the Issuer, to which Loan Agreement reference is hereby made for a description of the circumstances under which there shall be credits allowed against the installments of principal and interest on this Series 2020B Note and for a description of the terms and conditions upon which this Series 2020B Note may be subject to optional or mandatory prepayment, in whole or in part, or may be accelerated. Reference is hereby made to the Loan Agreement for a description of the security for this Series 2020B Note and the options and obligations of the Borrower and the Issuer hereunder. Upon an Event of Default (as

defined in the Loan Agreement), the entire principal of and interest on this Series 2020B Note may be declared or may become immediately due and payable as provided in the Loan Agreement.

This Series 2020B Note is given for value received and in consideration of the issuance by the Issuer of \$335,000 in aggregate principal amount of its Taxable Senior Housing Revenue Bonds (Suite Living Senior Care of Ramsey Project), Series 2020B (the “*Series 2020B Bonds*”), dated the date of their issuance and delivery, issued by the Issuer under the terms of a Bond Resolution, adopted by the Issuer on June 10, 2020, and the Indenture.

Payments shall be made under this Note in accordance with the Loan Agreement. Until the entire principal of and interest and premium (if any) on the Series 2020B Bonds have been paid or duly provided for as allowed by the Indenture, if at any such payment date on the Series 2020B Bonds the balance in the Bond Fund available for the payment of the principal of and premium (if any) and interest on the Series 2020B Bonds is insufficient to make such required payments on such date, the Borrower shall forthwith pay any such deficiency to the Trustee, for the account of the Issuer, for Bond Fund. Any amount at any time held by the Trustee in the Bond Fund created under the Indenture (the “*Bond Fund*”) shall, in the manner prescribed in and to the extent permitted by the Loan Agreement and the Indenture, be credited against the next succeeding payment under this Series 2020B Note and shall reduce the payment to be made by the Borrower hereunder. If the amount held by the Trustee in the Bond Fund shall be sufficient to pay at the times required the principal of and interest on the Series 2020B Bonds then remaining unpaid, as provided in Article VIII of the Indenture, the Borrower shall not be obligated to make any further payments under this Series 2020B Note. There shall also be a credit against payments under this Series 2020B Note for Series 2020B Bonds purchased, redeemed, or cancelled, as provided in Article III of the Indenture. If at any time all principal and interest and any premium payments on the Series 2020 Bonds have been paid within the meaning of the Indenture, the Borrower shall not be obligated to make any further principal or interest or premium payments hereunder, and the Issuer or the Trustee shall surrender this Series 2020B Note to the Borrower for cancellation, provided, however, that the obligations of the Borrower under the Loan Agreement shall survive cancellation of this Series 2020B Note.

This Series 2020B Note shall be construed in accordance with Section 9.06 of the Loan Agreement.

The Borrower hereby waives presentment, demand, protest, and notice of demand, protest, and non-payment and assents to the addition or release of any other party or person primarily or secondarily liable under this Series 2020B Note. The Borrower agrees to pay attorneys’ fees and expenses as provided by the Loan Agreement or the Indenture. No waiver by the Issuer or its assigns of any default under this Series 2020B Note shall be effective unless in writing, and no such waiver shall be a waiver of any other default. This Series 2020B Note shall bind the successors and assigns of the Borrower.

*[Remainder of page intentionally left blank; signature page follows]*

**IN WITNESS WHEREOF**, the undersigned has executed this Series 2020B Note on behalf of the Borrower as of the date and year first written above.

**HAMPTON PROPERTIES OF RAMSEY,  
LLC**

By: SUBURBAN HOUSING & COMMUNITY  
SERVICES CORPORATION,  
Its: Sole Member

By: \_\_\_\_\_  
Name: Tim C. Eppler  
Its: CEO

**ENDORSEMENT**

**FOR VALUE RECEIVED**, the City of Falcon Heights, Minnesota (the “*Issuer*”) hereby irrevocably assigns and transfers the foregoing Series 2020B Note, without recourse or warranty, to the order of Wilmington Trust, National Association (the “*Trustee*”), Baltimore, Maryland, as trustee under a Trust Indenture, dated as of June 1, 2020, between the Issuer and the Trustee. The Issuer hereby directs the maker of the Series 2020B Note, Hampton Properties of Ramsey, LLC, to make all payments with respect to principal of, premium, if any, and interest on the Series 2020B Note and all other payments required thereby directly to the order of the Trustee for the account of the Issuer at the Trustee’s corporate trust office in Baltimore, Maryland, or such other place as the Trustee, or its successor in trust, may designate in writing.

Dated and executed on June \_\_, 2020.

**CITY OF FALCON HEIGHTS, MINNESOTA**

By: \_\_\_\_\_  
Name: Randy Gustafson  
Its: Mayor

By: \_\_\_\_\_  
Name: Sack Thongvanh  
Its: City Administrator

**ACKNOWLEDGMENT OF ASSIGNMENT**

The undersigned hereby acknowledges and agrees to the aforesaid assignment of the Series 2020B Note by the City of Falcon Heights, Minnesota to Wilmington Trust, National Association, as trustee as of the date and year first written above.

**HAMPTON PROPERTIES OF RAMSEY, LLC**

By: SUBURBAN HOUSING & COMMUNITY  
SERVICES CORPORATION,  
Its: Sole Member

By: \_\_\_\_\_  
Name: Tim C. Eppler  
Its: CEO

**[EXHIBIT B  
REQUIREMENTS FOR SUBORDINATE INDEBTEDNESS**

Any issue of Subordinate Indebtedness, as used in the Loan Agreement to which this Exhibit B is attached, shall be evidenced by instruments, or issued under an indenture or other document, containing provisions for the subordination of such Indebtedness (to which appropriate reference shall be made in the instruments evidencing such Indebtedness) substantially as set forth below and consented to by the Bondholder Representative (the term “debentures” being, for convenience, used in the provisions set forth below to designate the instruments issued to evidence Subordinate Indebtedness):

All debentures issued under the Indenture shall be issued subject to the following provisions and each person taking or holding any such debenture whether upon original issue or upon transfer or assignment thereof accepts and agrees to be bound by such provisions:

(a) All debentures issued hereunder and any coupons thereto appertaining shall, to the extent and in the manner hereinafter set forth, be subordinated and subject in right to the prior payment in full of Superior Indebtedness. For all purposes of this Section the term “Superior Indebtedness” means all Obligations, including the Series 2020 Notes and Permitted Indebtedness, now or hereafter issued under the Indenture or as permitted by the Loan Agreement, as supplemented and modified to the date hereof, or as the same may hereafter from time to time be further supplemented and modified.

(b) No payment on account of principal, premium, if any, sinking funds or interest on the debentures shall be made, nor shall any property or assets be applied to the purchase or other acquisition or retirement of the debentures, unless full payment of amounts then due and payable for principal, premium, if any, sinking funds and interest on Superior Indebtedness has been made or duly provided for in accordance with the terms of such Superior Indebtedness. No payment on account of principal, premium, if any, sinking funds or interest on the debentures shall be made, nor shall any property or assets be applied to the purchase or other acquisition or retirement of the debentures, if, at the time of such payment or application or immediately after giving effect thereto, (i) there shall exist a default in the payment of principal, premium, if any, sinking funds or interest with respect to any Superior Indebtedness, or (ii) there shall have occurred an Event of Default (other than a default in the payment of principal, premium, if any, sinking funds or interest) with respect to any Superior Indebtedness, as defined therein or in the instrument under which the same is outstanding, permitting the holders thereof to accelerate the maturity thereof and such Event of Default shall not have been cured or waived or shall not have ceased to exist.

(c) No payment on account of principal, premium, if any, sinking funds or interest on the debentures shall be made unless the Borrower presents to the Trustee an Officers’ Certificate that the Borrower has 45 Days’ Cash on Hand, on any date thereafter and the Borrower is then in compliance with the Long-Term Debt Service Coverage Ratio and all required payments have been made to the Bond Fund. Such non-payment of debentures shall never be classified as an Event of Default under the Indenture or the Loan Agreement.

(d) Upon (i) any acceleration of maturity of the principal amount due on the debentures or (ii) any payment of distribution of any kind or character, whether in cash, property or securities, upon any dissolution or winding-up or total or partial liquidation, reorganization or arrangement of the Borrower, whether voluntary or involuntary or in bankruptcy, insolvency, receivership or other proceedings, all principal, premium, if any, and interest due or to become due upon all Superior Indebtedness shall first be paid in full, or payment thereof provided for in accordance with the terms of such Superior Indebtedness, before any payment is made on account of the principal, premium, if any, or interest on the indebtedness evidenced by the debentures, and upon any such dissolution or winding-up or liquidation, reorganization or arrangement, any payment or distribution of any kind or character, whether in cash, property or securities, to which the holders of the debentures or the trustee under the Indenture would be entitled, except for the provisions hereof, shall be paid by the Borrower, or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution, to the Trustee to the extent necessary to pay all Superior Indebtedness in full after giving effect to any concurrent payment or distribution to the Trustee for the holders of Superior Indebtedness, before any payment or distribution is made to the holders of the indebtedness evidenced by the debentures or to the Trustee under the Indenture.

(e) In the event that, in violation of any of the foregoing provisions, any payment or distribution of any kind or character, whether in cash, property or securities, shall be received by the Trustee under the Indenture or by the holders of the debentures before all Superior Indebtedness is paid in full, or provision made for such payment in accordance with the terms of such Superior Indebtedness, such payment or distribution shall be held in trust for the benefit of, and shall be paid over or delivered to the Trustee for application to the payment of all Superior Indebtedness remaining unpaid to the extent necessary to pay all such Superior Indebtedness in full in accordance with its terms, after giving effect to any concurrent payment or distribution to the Trustee for the holders of such Superior Indebtedness.

(f) No present or future holder of Superior Indebtedness shall be prejudiced in his right to enforce subordination of the indebtedness evidenced by the debentures by any act or failure to act on the part of any Borrower or anyone in custody of its assets or property.

The foregoing subordination provisions (a) through (f) of this Section shall be for the benefit of the holders of Superior Indebtedness and may be enforced by the Trustee against the holders of debentures or any trustee thereof; provided, however, that the indentures or other instruments creating or evidencing Subordinate Indebtedness or pursuant to which any Subordinate Indebtedness is issued shall provide: (i) that the foregoing provisions are solely for the purpose of defining the relative rights of the holders of Superior Indebtedness on the one hand and the holders of the Subordinate Indebtedness on the other hand, and that nothing therein shall impair, as between the Borrower and the holders of the Subordinate Indebtedness, the obligation of the Borrower, which is unconditional and absolute, to pay to the holders thereof the principal thereof, premium, if any, and interest thereon in accordance with its terms, nor shall anything therein prevent the holders of the Subordinate Indebtedness or any Trustee on their behalf from exercising all remedies otherwise permitted by applicable law or thereunder upon default thereunder, subject to the rights set

**forth above of the holders of Superior Indebtedness to receive cash, property or securities otherwise payable or deliverable to the holders of the Subordinate Indebtedness, (ii) that upon any payment or distribution of assets of the Borrower of the character referred to in the fourth paragraph of the foregoing provisions, the trustee under any indenture relating to Subordinate Indebtedness shall be entitled to rely upon any order or decree of a court of competent jurisdiction in which such dissolution, winding-up, liquidation, reorganization or arrangement proceedings are pending, and upon a certificate of the receiver, trustee in bankruptcy, liquidating trustee, agent or other person making any such payment or distribution, delivered to said trustee for the purpose of ascertaining the persons entitled to participate in such distribution, the holders of Superior Indebtedness and other indebtedness of the Borrower, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to the foregoing provisions, and (iii) that the trustee under any indenture relating to Subordinate Indebtedness and any paying agent therefor shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment of moneys to or by such trustee or such paying agent, unless and until such trustee or such paying agent, as the case may be, shall have received written notice thereof from the Borrower or from one or more holders of Superior Indebtedness, or from the Trustee.]**



**\$7,680,000**  
**City of Falcon Heights, Minnesota**  
**Senior Housing Revenue Bonds**  
**(Suite Living Senior Care of Ramsey Project)**  
**Series 2020A**

**\$335,000**  
**City of Falcon Heights, Minnesota**  
**Taxable Senior Housing Revenue Bonds**  
**(Suite Living Senior Care of Ramsey Project)**  
**Series 2020B**

**PURCHASE CONTRACT**

City of Falcon Heights, Minnesota  
2077 Larpenteur Avenue  
Falcon Heights, Minnesota 55113

Hampton Properties of Ramsey, LLC  
1824 Buerkle Road  
White Bear Lake, Minnesota 55150

The undersigned, Zions Bancorporation, N.A. dba Zions Bank (the “Underwriter”), offers to enter into the following agreement with the City of Falcon Heights, Minnesota (the “Issuer”) and Hampton Properties of Ramsey, LLC (the “Borrower”), which, upon acceptance of this offer by the Issuer and the Borrower, will be binding upon the Issuer and the Borrower and upon the Underwriter. This offer is made subject to acceptance of this Purchase Contract by the Issuer and the Borrower on or before 5:00 p.m., Boston, Massachusetts time, on the date set forth in item 1 of **Schedule A** attached hereto (the “Date Hereof”). Terms used herein and not otherwise defined shall have the same meanings assigned to them in the Limited Public Offering Memorandum dated June \_\_, 2020 (the “Limited Public Offering Memorandum”) relating to the offering of the Bonds (as hereinafter defined) or in the Indenture (as hereinafter defined).

1. Purchase Price. Upon the terms and conditions and upon the basis of the respective representations, warranties and covenants set forth herein, the Underwriter hereby agrees to purchase from the Issuer for limited offering to the public and the Issuer hereby agrees to sell and deliver to the Underwriter, all (but not less than all) of the City of Falcon Heights, Minnesota Senior Housing Revenue Bonds (Suite Living Senior Care of Ramsey Project), Series 2020A (the “Series 2020A Bonds”), and the City of Falcon Heights, Minnesota Taxable Senior Housing Revenue Bonds (Suite Living Senior Care of Ramsey Project), Series 2020B (the “Series 2020B Bonds” and, together with the Series 2020A Bonds, the “Bonds”) on the date set forth in item 2 of **Schedule A** attached hereto or such other date as shall have been mutually agreed upon (the “Closing Date”); **provided, however, that the Underwriter shall not be obligated to purchase the Bonds if Greenwich Investment Management, Inc., as bondholder representative (the “Bondholder Representative”), does not cause the Bonds to be purchased on the date of the Closing (as defined herein) from the Underwriter and the other conditions and requirements of this Purchase Contract have not been satisfied.** The Bonds will be issued pursuant to a Trust Indenture, dated as of June 1, 2020 (the “Indenture”), between the Issuer and Wilmington Trust National Association, as trustee (the “Trustee”). The proceeds of the Bonds will be loaned by the Issuer to the Borrower pursuant to a Loan Agreement, dated as of June 1, 2020 (the “Loan Agreement”), between the Issuer and the Borrower. The aggregate principal amounts of the Bonds, the date of the Bonds, the dates of maturities of the Bonds, the redemption provisions, the interest rates and the public offering prices of the Bonds are set forth in item 3 of **Schedule A** attached hereto, and shall in all other respects be the same Bonds described in the Limited Public Offering Memorandum. The aggregate

purchase price to be paid by the Underwriter for the Bonds shall be as set forth in item 4 of **Schedule A** attached hereto.

2. The Financing Documents. On the Date Hereof, the Issuer and the Borrower shall deliver, as applicable, to the Underwriter the forms of the Bonds, the Indenture, the Loan Agreement, the Series 2020 Notes, the Mortgage, the Construction Contract, the Assignment of Contract Documents, the Development Services Agreement, the Management Agreement, the Tax Certificate, the Disbursing Agreement and the Continuing Disclosure Agreement (collectively with this Purchase Contract, the “Financing Documents”).

3. Limited Public Offering. The Underwriter agrees to make a bona fide limited public offering of all the Bonds at a price not in excess of the respective initial public offering prices set forth in item 3 of **Schedule A** attached hereto; provided, however, the Underwriter reserves the right to change such initial public offering prices as the Underwriter deems necessary or desirable, in its discretion, in connection with the marketing of the Bonds, and may offer and sell the Bonds to certain dealers, unit investment trusts and money market funds, certain of which may be sponsored or managed by the Underwriter, at prices lower than the public offering prices set forth herein.

On or before the Closing Date, the Underwriter shall furnish to the Issuer a certificate acceptable to Taft Stettinius & Hollister LLP (“Bond Counsel”) setting forth the issue price and the calculation of the yield for fixed yield issues of the Series 2020A Bonds for purposes of Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”) and stating that the Issuer, the Borrower and Bond Counsel may rely on such certification for purposes of determining compliance with Sections 103 and 148 of the Code.

4. Limited Public Offering Memorandum. In order to enable the Underwriter to comply with Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (the “Rule”), and rules of the Municipal Securities Rulemaking Board (the “MSRB”), the Borrower shall provide to the Underwriter sufficient copies of the Limited Public Offering Memorandum, which the Borrower (with respect to all statements therein except for the Issuer Portion (as hereinafter defined)) deems final as of its date, in sufficient time to accompany any confirmation that requires payment from any customer and, in any event, within seven (7) business days after the Date Hereof and in no event later than two (2) business days prior to the Closing (hereinafter defined).

The Underwriter acknowledges that the Issuer has not participated in the preparation of the Limited Public Offering Memorandum and has made no independent investigation and has furnished no information contained in the Limited Public Offering Memorandum, except the information contained under the headings “SHORT STATEMENT – The Issuer,” “THE ISSUER” and “LITIGATION – The Issuer” (collectively, the “Issuer Portion”) and that except for the Issuer Portion, the Issuer assumes no responsibility with respect to the sufficiency, accuracy, or completeness of any of the information contained in the Limited Public Offering Memorandum or any other document used in connection with the offer and sale of the Bonds. The Issuer Portion of the Limited Public Offering Memorandum has been “deemed final” as of its date by the Issuer for purposes of the Rule, except for the permitted omissions described in paragraph (b)(1) of the Rule, if any.

The Issuer and the Borrower each hereby consents to the use of the Limited Public Offering Memorandum by the Underwriter in connection with the limited public offering and sale of the Bonds. The Underwriter agrees to provide a certificate at Closing (as defined herein) stating that it has filed a copy of the Limited Public Offering Memorandum with the MSRB in accordance with the Rule.

Unless otherwise notified in writing by the Underwriter on or before the Closing Date, the Issuer

may assume that the “End of the Underwriting Period” for purposes of the Rule shall be the Closing Date.

5. Issuer’s Representations. The Issuer hereby represents, and agrees with each of the Borrower and the Underwriter as follows, all of which shall survive the Closing:

(a) The Issuer is a municipal corporation existing under the laws of the State of Minnesota.

(b) The Issuer has full power and authority under Minnesota Statutes, Chapter 462C, as amended (the “Act”), to adopt the resolution approving the Bonds on June 10, 2020 (the “Bond Resolution”) and to enter into and to perform its obligations under this Purchase Contract, the Indenture and the Loan Agreement.

(c) When executed and delivered by the respective parties thereto, this Purchase Contract, the Indenture, the Loan Agreement, and the Bonds will constitute the legal, valid and binding obligations of the Issuer enforceable in accordance with their respective terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors’ rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitation on legal remedies against municipal corporations in the State of Minnesota.

(d) By official action of the Issuer prior to or concurrently herewith, the Issuer has authorized and approved the execution and delivery of this Purchase Contract, the Indenture, and the Loan Agreement and the consummation by the Issuer of the transactions contemplated thereby.

(e) The Issuer makes no representation or warranty that interest on the Series 2020A Bonds is or will continue to be exempt from federal or state income taxation.

(f) If, after the date of this Purchase Contract and until the earlier of (i) ninety (90) days after the Closing Date or (ii) the time when the Limited Public Offering Memorandum is available to any person from the MSRB, but in no case less than twenty-five (25) days after the Closing Date provided, however, that if the Underwriter provides a certificate on the Closing Date stating that it still holds Bonds for distribution to the public then such foregoing periods shall be extended until twenty-five (25) days after the “end of the underwriting period” (as such phrase is defined in the Rule), the Issuer becomes aware of any event that would cause the information appearing under the Issuer Portion in the Limited Public Offering Memorandum to contain any untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the Issuer agrees to notify the Underwriter of such event (and for purposes of this paragraph to provide the Underwriter with such information as it may from time to time request), and if in the opinion of the Underwriter such event requires the preparation and publication of a supplement or amendment to the Limited Public Offering Memorandum, then, at the Borrower’s expense, the Issuer agrees to supplement or amend the Limited Public Offering Memorandum in a form and manner approved by the Underwriter, the Issuer and the Borrower and to furnish, at the Borrower’s expense, to the Underwriter a reasonable number of copies of such supplement or amendment.

(g) The information in the Issuer Portion of the Limited Public Offering Memorandum is as of the Date Hereof and will be as of the Closing true and correct in all material respects and does not and will not omit any material statement which should be included therein for the purpose for which the Limited Public Offering Memorandum is to be used, or which is necessary to make the statements as to such matters contained therein not misleading in light of the circumstances in which

they were made. The Issuer has assumed no responsibility for providing or reviewing any information contained in the Limited Public Offering Memorandum other than under the Issuer Portion.

(h) The Issuer will, but at the expense of the Underwriter, furnish such information, execute such instruments and take such other action in cooperation with the Underwriter as the Underwriter may reasonably request to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriter may designate; provided, however, that the Issuer will not be required to qualify as a foreign corporation or to file any general or special consents to service of process under the laws of any state.

6. Borrower's Representations and Warranties. As inducement to the Issuer and the Underwriter to enter into this Purchase Contract and to make the offering of Bonds herein contemplated, the Borrower hereby represents, warrants and agrees with each of the Issuer and the Underwriter as follows, all of which shall survive the Closing:

(a) The Borrower has full power and authority to execute and deliver the Financing Documents and to undertake and perform its obligations thereunder and hereunder.

(b) Suburban Housing & Community Services Corporation (the "Sole Member") is the only member of the Borrower and is a California nonprofit corporation duly organized, in good standing and existing under the laws of the State of California, and the Sole Member has full power and authority to undertake its actions and responsibilities as contemplated by the Loan Agreement.

(c) The Sole Member of the Borrower is a tax-exempt organization and no revenues derived from any portion of the Project does or shall constitute "unrelated business income" within the meaning of Section 513(a) of the Code, except as may be specifically permitted by Section 145(a) of the Code in amounts that would not require the interest on the Series 2020A Bonds to become includable in gross income, for purposes of Federal income taxation.

(d) The Borrower has duly authorized all necessary action to be taken by it for: (i) the loan to the Borrower of the proceeds from the issuance and delivery of the Bonds by the Issuer upon the terms set forth in this Purchase Contract and in the Limited Public Offering Memorandum; (ii) the approval of the Limited Public Offering Memorandum and the use by the Underwriter of the Limited Public Offering Memorandum in connection with the sale of the Bonds; and (iii) the execution, delivery and performance by the Borrower of and under the Financing Documents and any and all such other agreements and documents as may be required to be executed, delivered and received by the Borrower in order to carry out the transactions contemplated by such instruments and by the Limited Public Offering Memorandum. As of the Date Hereof, this Purchase Contract constitutes a legal, valid and binding agreement of the Borrower and enforceable against the Borrower in accordance with its terms, except as enforceability may be subject to the exercise of judicial discretion in accordance with general equitable principles and to applicable bankruptcy, insolvency, reorganization, moratorium and other laws for the relief of debtors heretofore or hereafter enacted to the extent that the same may be constitutionally applied and except as any indemnification or contribution provisions thereof may be limited under applicable securities laws. On the Closing Date, the other Financing Documents will have been duly executed and delivered by the Borrower and, assuming the due authorization, execution and delivery of such instruments by the other parties thereto and their authority to perform such instruments, will constitute legal, valid and binding obligations of the Borrower enforceable in accordance with their respective terms, except as the enforceability thereof may be limited by laws relating to bankruptcy, insolvency, reorganization or other similar laws of general application affecting the rights of creditors and general principles of equity and except as any indemnification or contribution provisions thereof may be limited under applicable securities laws.

(e) The execution and delivery of, and compliance with the terms and conditions of, the Financing Documents, and the carrying out and consummation of the transactions contemplated thereby and by the Limited Public Offering Memorandum, did not at the time of such execution and delivery, do not and will not violate or conflict with any of the terms and provisions of any statute, or any rule, order, regulation, judgment or decree of any court, agency, or other governmental or administrative board or body to which the Borrower is subject, or conflict with or constitute a breach of or a default under any provision of the Borrower's operating agreement or any material agreement, indenture, mortgage, lease, deed of trust, or other instrument to which the Borrower is a party or by which the Borrower or its properties are bound.

(f) The Borrower has obtained all consents, approvals, authorizations and orders of any governmental or regulatory authority (referred to in this paragraph as "Consents") that are required to be obtained by the Borrower as a condition precedent to the issuance of the Bonds, the financing of the Project, the acquisition and construction of the Project, and the execution and delivery of the Financing Documents, and all other agreements, instruments and documents executed in connection therewith. The Borrower has obtained all Consents that, to its knowledge, are obtainable to date for the performance by the Borrower of its obligations hereunder and thereunder, or required as of the date hereof for the operation of the Project. The Borrower will obtain when needed all other Consents required for the performance of its obligations under the Financing Documents, and for the operation of the Project and has no reason to believe that all such Consents cannot be promptly obtained when needed.

(g) The information in the Limited Public Offering Memorandum under the headings "SHORT STATEMENT" (other than the sub-heading "The Issuer"), "THE BORROWER," "PLAN OF FINANCE," "ESTIMATED SOURCES AND USES OF FUNDS," "DEBT SERVICE REQUIREMENTS," "CERTAIN BONDHOLDERS' RISKS," "LITIGATION – The Borrower," "NO RATINGS" and "CONTINUING DISCLOSURE AGREEMENT" and in Appendix A, is as of the Date Hereof and will be as of the Closing, true and correct in all material respects and did not, does not and will not omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The Borrower has approved and consents to the use of the Limited Public Offering Memorandum by the Underwriter.

(h) The Borrower has good and marketable title to the Facilities, free and clear of all mortgages, liens, security interests, charges and encumbrances except as disclosed to and consented in writing by the Bondholder Representative, and there exists no mortgage, lien, security interest, charge or encumbrance (including, without limitation, any mechanic's lien or judgment lien) on the Facilities that has or will have a material adverse effect upon the Borrower's operations.

(i) Except as described in the Limited Public Offering Memorandum, in the past five (5) years, the Borrower has not failed to comply in any material respect with any previous undertaking in a written contract or agreement of the type specified in paragraph (b)(5)(i) of the Rule.

(j) Since formation of the Borrower, there has been no material adverse change in the financial position of the Borrower not disclosed in writing to the Underwriter or disclosed in the Limited Public Offering Memorandum, nor has the Borrower incurred any material liabilities other than liabilities that have been incurred in the ordinary course of business or that are set forth in or contemplated by the Limited Public Offering Memorandum.

(k) The representations and warranties of the Borrower contained in the Financing Documents are true and correct as of the date hereof and will be true and correct on the Closing Date.

7. Covenants of the Borrower. The Borrower covenants and agrees with the Issuer and the Underwriter as follows:

(a) If either during (i) the period between the date of this Purchase Contract and the Closing Date or (ii) the period between the Closing Date and the date ninety (90) days after the end of the underwriting period (as defined in the Rule) (or, if earlier, the date by which the Limited Public Offering Memorandum is available to any person from the MSRB, but in no event less than twenty-five (25) days after the end of the underwriting period (as defined in the Rule)), any event shall occur as a result of which it is necessary to amend or supplement the Limited Public Offering Memorandum in order to make the statements therein, in light of the circumstances in which they were made and at the time when the Limited Public Offering Memorandum is delivered to a prospective purchaser true and correct in all material respects and with no omission of material facts necessary to make the statements therein, in light of the circumstances in which they were made not misleading, the Borrower will cooperate in the preparation of a revised Limited Public Offering Memorandum or amendments or supplements to the Limited Public Offering Memorandum so that the statements in the Limited Public Offering Memorandum, as revised, or the Limited Public Offering Memorandum, as so amended or supplemented, will not, in light of the circumstances in which they were made and at the time when such Limited Public Offering Memorandum is delivered to a prospective purchaser, be misleading. In the absence of notice from the Underwriter to the contrary, the Borrower shall deem the end of the underwriting period (as defined in the Rule) to be the Closing Date;

(b) The Borrower will cooperate with the Underwriter and its counsel in any endeavor to qualify the Bonds for offering and sale under the securities or “Blue Sky” laws of such jurisdictions of the United States as the Underwriter may request; provided, however, that the Borrower shall not be required to qualify as foreign corporations or to file a general written consent to suit or service of process in any jurisdiction.

(c) Between the Date Hereof and the Closing, the Borrower will not take any action that would cause the representations and warranties contained in Section 6 of this Purchase Contract to be untrue as of the Closing. On the Closing Date, the Borrower shall deliver or cause to be delivered all opinions, certificates and other documents to be delivered by it or on its behalf as provided for in this Purchase Contract, and to deliver such additional certificates and other documents as the Issuer or the Bondholder Representative may reasonably request to evidence performance of or compliance with the provisions of this Purchase Contract and the transactions contemplated by the Limited Public Offering Memorandum and the Financing Documents, all such certificates and other documents to be reasonably satisfactory in form and substance to the Underwriter, the Issuer and the Bondholder Representative;

(d) In order to permit the Underwriter to satisfy its obligations under Section 4 of this Purchase Contract, the Borrower will furnish to the Underwriter copies of the Limited Public Offering Memorandum and any amendments and supplements thereto, in each case as soon as practicable, but in any event within seven (7) Business Days of the date of this Purchase Contract and in no event less than two (2) business days prior to Closing, which copies shall be furnished at a minimum in such quantities as shall be reasonably requested by the Underwriter to fulfill its obligations under paragraph (b)(4) of the Rule;

(e) The Borrower shall indemnify and hold harmless (except to the extent, if any, that a court of competent jurisdiction determines that such agreement to indemnify and hold harmless is not enforceable as a result of being contrary to law or public policy) the Issuer and the Issuer Indemnified Persons (as defined in the Indenture) against any and all losses, claims, damages, liabilities, costs or expense whatsoever arising out of: (i) any breach by a Borrower of any of its representations and warranties as set forth in Section 6 hereof; and (ii) any allegation that there is as of the Date Hereof or as

of the Closing Date any untrue statement of a material fact contained in the Indemnified Information (as defined below) or the omission therefrom of any material fact necessary in order to make the statements made in light of the circumstances under which they were made not misleading. In case any claim shall be made or action brought against one or more of the Issuer or the Issuer Indemnified Persons, in respect of which indemnity may be sought against the Borrower, the Issuer or the Issuer Indemnified Persons shall promptly notify the Borrower in writing setting forth the particulars of such claim or action and the Borrower shall assume the defense thereof including the retention of counsel and the payment of all expenses. The Issuer and the Issuer Indemnified Persons shall have the right to retain separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Issuer or such Issuer Indemnified Persons unless (1) the retention of such counsel has been specifically authorized by the Borrower, (2) the Issuer or the Issuer Indemnified Persons shall have reasonably concluded that there may be a conflict of interest between it and the Borrower in the conduct of the defense of such action, or (3) the Borrower shall not in fact have employed counsel reasonably satisfactory to the Issuer or such Issuer Indemnified Persons. For the purposes of this paragraph and the next succeeding paragraph, the term “Indemnified Information” shall mean the statements and information contained in the Limited Public Offering Memorandum under the captions: “SHORT STATEMENT” (other than the sub-heading “The Issuer”), “THE BORROWER,” “PLAN OF FINANCE,” “ESTIMATED SOURCES AND USES OF FUNDS,” “DEBT SERVICE REQUIREMENTS,” “CERTAIN BONDHOLDERS’ RISKS,” “LITIGATION – The Borrower,” “NO RATINGS” and “CONTINUING DISCLOSURE AGREEMENT” and in Appendix A. The Borrower shall not be liable for any settlement of such action effected without its consent, but if settled with the consent of the Borrower, or if there is final judgment for the plaintiff in any such action with or without consent, the Borrower agrees to indemnify and hold harmless the Issuer and the Issuer Indemnified Persons from and against any loss or liability by reason of settlement or judgment to the extent set forth in this paragraph. The indemnity provided in this paragraph includes reimbursement for expenses incurred by the Issuer and the Issuer Indemnified Persons in investigating the claim and in defending it if the Borrower declines to assume the defense. The indemnity provided in this paragraph shall survive the Closing

Notwithstanding anything to the contrary contained in this Section 7(e), it is understood and agreed that nothing in this Section 7(e) or elsewhere in this Purchase Contract shall be deemed or construed as a modification of or limitation on the rights of the Issuer and the Issuer Indemnified Persons to indemnification from the Borrower under the indemnification provisions of the Loan Agreement AND THAT THE RELEASE AND INDEMNIFICATION OF THE ISSUER AND THE ISSUER INDEMNIFIED PERSONS PROVIDED FOR IN SECTION 5.06 OF THE LOAN AGREEMENT SHALL APPLY TO THIS PURCHASE CONTRACT AS IF FULLY SET FORTH HEREIN; THE BORROWER FURTHER ACKNOWLEDGES THAT SECTION 5.06 OF THE LOAN AGREEMENT PROVIDES THAT THE BORROWER SHALL RELEASE AND INDEMNIFY THE ISSUER AND THE ISSUER INDEMNIFIED PERSONS AGAINST THE BORROWER’S OR THE ISSUER’S OR THE ISSUER INDEMNIFIED PERSONS’ OWN NEGLIGENCE OF ANY KIND, DEGREE OR DESCRIPTION;

(f) The Borrower shall indemnify and hold harmless (except to the extent, if any, that a court of competent jurisdiction determines that such agreement to indemnify and hold harmless is not enforceable as a result of being contrary to law or public policy) the Underwriter, each officer, director, employee and agent of the Underwriter and each person, if any, who controls (as such term is defined in Section 15 of the Securities Act or Section 20 of the Exchange Act) any of such parties (hereinafter collectively called the “Underwriter Indemnified Parties”), against any and all losses, claims, damages, liabilities, costs or expense whatsoever arising out of: (i) any breach by the Borrower of any of its representations and warranties as set forth in Section 6 hereof; or (ii) any allegation that there is as of the Date Hereof or as of the Closing Date any untrue statement of a material fact contained in the

Indemnified Information or the omission therefrom of any material fact necessary in order to make the statements made in light of the circumstances under which they were made not misleading. In case any claim shall be made or action brought against one or more of the Underwriter Indemnified Parties, in respect of which indemnity may be sought against the Borrower, the Underwriter Indemnified Party or Parties shall promptly notify the Borrower in writing setting forth the particulars of such claim or action and the Borrower shall assume the defense thereof, including the retention of counsel and the payment of all reasonable expenses; provided, however, that failure to so notify the Borrower (1) will not relieve the Borrower from its liability unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the Borrower of substantial rights and defenses; and (2) will not, in any event, relieve the Borrower from any obligations to the Underwriter Indemnified Party or Parties other than the indemnification obligation. The Underwriter Indemnified Party or Parties shall have the right to retain separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Underwriter Indemnified Party unless (A) the retention of such counsel has been specifically authorized by the Borrower, (B) the Underwriter Indemnified Party shall have reasonably concluded that there may be a conflict of interest between it and the Borrower in the conduct of the defense of such action, or (C) the Borrower shall not in fact have employed counsel reasonably satisfactory to such Underwriter Indemnified Party. The Borrower shall not be liable for any settlement of such action effected without its consent, but if settled with the consent of the Borrower, or if there is final judgment for the plaintiff in any such action with or without consent, the Borrower agrees to indemnify and hold harmless the Underwriter Indemnified Party or Parties from and against any loss or liability by reason of settlement or judgment to the extent set forth in this paragraph. The indemnity provided in this paragraph includes reimbursement for expenses reasonably incurred by the Underwriter Indemnified Parties in investigating the claim and in defending it if the Borrower declines to assume the defense. The indemnity provided in this paragraph shall survive the Closing.

(g) In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in (f) above is for any reason held to be unavailable to the Underwriter in accordance with its terms, the Borrower and the Underwriter shall contribute to the aggregate losses, liabilities, claims, damages and expenses of the nature contemplated by said indemnity agreement incurred by the Borrower and the Underwriter in such proportions that the Underwriter is responsible for that portion represented by the percentage that the Underwriter's fee on the sale of the Bonds bears to the initial public offering price appearing on the inside front cover page of the Limited Public Offering Memorandum, and the Borrower is responsible for the balance; provided, however, that no person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. In addition, each person, if any, who controls the Underwriter within the meaning of Section 15 of the Securities Act shall have the same rights to contribution as the Underwriter.

8. The Bonds shall be in fully registered form, and one typewritten Bond in the aggregate principal amount of each series of the Bonds shall be registered initially in the name of CEDE & Co. as nominee of the Depository Trust Borrower ("DTC").

9. Reserved.

10. On the Closing Date, or such other date as shall have been mutually agreed upon, the Issuer and the Borrower will deliver to the Underwriter, by delivery of the Bonds to the Trustee as custodial agent for DTC, the Bonds in fully registered definitive form, duly executed and authenticated, together with the other documents hereinafter mentioned, and the Underwriter will accept such delivery and pay the purchase price of the Bonds as set forth in item 4 of **Schedule A** attached hereto. The Closing will be via the Fast Automated Securities Transfer program "FAST" of DTC and the Bonds will be held by the Trustee, as custodial agent for DTC. Payment for the Bonds as aforesaid shall be made at such place in Minnesota as



shall have been mutually agreed upon. This payment and delivery is herein called the “Closing.” The Bonds will be made available for examination at such location in Minnesota one (1) business day prior to the Closing.

11. The Underwriter’s obligations hereunder to purchase and pay for the Bonds shall be subject to the performance by the Issuer and the Borrower of their respective obligations to be performed hereunder at or prior to the Closing and the accuracy in all material respects of the representations and warranties contained herein as of the Date Hereof and as of the Closing and shall be subject to the following:

(a) That at the time of the Closing, (i) the Financing Documents shall be in full force and effect, and shall not have been amended, modified, or supplemented except as may have been agreed to by the Underwriter, the Issuer, the Borrower and the Bondholder Representative, and the Limited Public Offering Memorandum shall not have been amended, modified or supplemented except as may have been agreed to by the Underwriter, the Issuer, with respect to the Issuer Portion, and the Borrower; and (ii) there shall have been taken in connection with the issuance of the Bonds such actions as, in the opinion of Bond Counsel shall be necessary and appropriate in connection with the transactions contemplated hereby; and

(b) That at or prior to the Closing the undersigned shall receive the following documents:

(i) executed copies of the Financing Documents;

(ii) a copy of the Limited Public Offering Memorandum;

(iii) an opinion of Bond Counsel, dated as of the Closing Date, in substantially the form attached as Appendix G to the Limited Public Offering Memorandum;

(iv) a certificate, dated as of the Closing Date, of an authorized officer of the Issuer, in form and substance satisfactory to the Underwriter;

(v) a supplemental opinion of Bond Counsel, dated the Closing Date and addressed to the Issuer, the Bondholder Representative and the Underwriter, in the form of **Exhibit 1** hereto;

(vi) an opinion of counsel to the Issuer, dated the Closing Date and addressed to Bond Counsel, the Trustee and the Underwriter, in form and substance satisfactory to the Underwriter;

(vii) The opinions, dated as of the date of Closing, of Barton, Klugman & Oetting LLP and Huffman, Usem, Crawford & Greenberg, PA, counsel to the Borrower and the Sole Member, as applicable, addressed to the Issuer, the Bondholder Representative and the Underwriter, to the effect that: (1) the Borrower has been duly organized and is validly existing as a limited liability company under the laws of the State of Minnesota; (2) after due inquiry, no facts have come to their attention that would lead them to believe that those portions of the Limited Public Offering Memorandum, as of the Date Hereof and as of the Closing Date, entitled “SHORT STATEMENT” (only under the sub-headings “The Borrower,” “The Project,” “Certain Bondholders’ Risks” and “Continuing Disclosure”), “THE BORROWER,” “CERTAIN BONDHOLDERS’ RISKS,” “LITIGATION – The Borrower” and “CONTINUING DISCLOSURE AGREEMENT”

and Appendix A contained or contains an untrue statement of a material fact, as it relates to the Borrower and the Project, or omitted or omits to state a material fact, as it relates to the Borrower and the Project, necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; (3) the Borrower has full corporate power and authority to execute, deliver and perform the Financing Documents to which it is a party, and such Financing Documents have been duly authorized, executed and delivered by the Borrower and, assuming proper authorization, execution and delivery by the other parties thereto, constitute binding and enforceable agreements of the Borrower in accordance with their terms; (4) based upon inquiry of appropriate officers of the Borrower or docket search in specified courts, there is no action, suit, proceeding or investigation at law or in equity before or by any judicial or administrative court or agency, pending or threatened, against or affecting the Borrower, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Limited Public Offering Memorandum and the Financing Documents or the validity of the Bonds or, except as disclosed in the Limited Public Offering Memorandum, against or affecting in any material way the Borrower, the Sole Member or the Project; (5) the execution and delivery of the Financing Documents, and compliance with the provisions thereof, under the circumstances contemplated thereby, do not and will not in any material respect conflict with or constitute on the part of the Borrower or the Sole Member a breach of or default under the articles of organization of the Borrower or under any other agreement or instrument to which the Borrower or the Sole Member, as applicable, is a party or any existing law, regulation, court order or consent decree to which the Borrower or the Sole Member, as applicable, is subject; (6) no approval by, authorization of, or filing with any federal, state, municipal or other governmental commission, board, agency or authority (other than that which has been obtained) is necessary in connection with the execution and delivery of the Financing Documents or the consummation of the transactions contemplated therein; (7) the Mortgage and the Loan Agreement create in favor of the Trustee a valid security interest in all right, title and interest of the Borrower in such part of the Property (as defined in the Mortgage) consisting of leases and rents and tangible personal property or fixtures, and in the Pledged Assets that can be perfected by filing a financing statement on Form UCC-1 with the Secretary of State of the State of Minnesota, and when the financing statement on Form UCC-1 is properly filed with the Secretary of State of the State of Minnesota, such filing is sufficient to perfect such security interest; such opinion may state that it is subject to bankruptcy or insolvency laws affecting creditors' rights generally, general equitable principles, and laws concerning recourse by creditors to security in the absence of notice and hearing; (8) the Mortgage complies as to form with all statutory formalities and other requirements of the laws of the State of Minnesota necessary to create a valid mortgage deed encumbering those portions of the Property (as defined in the Mortgage) that constitute real property (the "Real Estate"), and upon the recording and filing of the Mortgage with the [Anoka] County Recorder/Registrar of Titles and the payment of the recording and filing fees therefor, the Trustee will hold (a) a valid mortgage encumbering the interest of the Borrower in the Real Estate, (b) a valid assignment of leases, rents and profits with respect to the interest of the Borrower in the Real Estate; (9) the Sole Member has been duly organized and is validly existing as a non-profit corporation under the laws of the State of California, is the sole member of the Borrower and is an organization described in Section 501(c)(3) of the Code, and as such has been determined by the Internal Revenue Service to be exempt from federal income taxation under Section 501(a) of the Code; (10) the Sole Member has full corporate power and authority to execute, deliver and perform the Tax Certificate, and the Tax Certificate has been duly authorized, executed and delivered by the Sole Member and,

assuming proper authorization, execution and delivery by the other party thereto, constitutes a binding and enforceable agreement of the Sole Member in accordance with its terms; and (11) the Borrower is disregarded as an entity separate from the Sole Member for federal tax purposes;

(viii) a certificate of the Borrower, dated the Closing Date and signed by an authorized officer of the Borrower, and in form and substance reasonably satisfactory to the Underwriter, to the effect that (i) each of the representations and warranties set forth in Section 6 hereof and in Section 2.02 of the Loan Agreement is true and correct on and as of the Closing in all material respects; the Borrower is not in default with respect to any of the covenants set forth in Section 7 hereof on and as of the Closing; and no Event of Default by the Borrower under the Loan Agreement or under any of the documents or agreements contemplated therein or under this Purchase Contract, and no event which but for the lapse of time or service of notice or both would constitute an Event of Default under the Loan Agreement, has occurred and is continuing; (ii) since the Date Hereof, there has been no material adverse change in the business or properties or financial condition of the Borrower, except as set forth in or contemplated by the Limited Public Offering Memorandum; (iii) since the date of the Limited Public Offering Memorandum, there has been no material change in, and no material change is contemplated in, the identity or control of the Borrower; (iv) there is no litigation, action, suit, proceeding, inquiry or investigation of any kind against the Borrower or the Sole Member before or by any Minnesota, California or federal court or governmental agency or body pending or, to the best knowledge and belief of the Borrower, threatened in writing (A) which in any case or in the aggregate, if adversely determined, would result in any material liability on the part of the Borrower or the Sole Member or inability of the Borrower to conduct its business or perform the obligations contemplated in the Financing Documents, or (B) wherein an adverse decision, ruling or finding would (a) materially adversely affect the transactions contemplated by the Financing Documents or the security for the Bonds, or (b) adversely affect the validity or enforceability of the Bonds or the Financing Documents; (v) the information contained in the Limited Public Offering Memorandum under the captions "SHORT STATEMENT" (other than the sub-heading "The Issuer"), "THE BORROWER," "PLAN OF FINANCE," "ESTIMATED SOURCES AND USES OF FUNDS," "DEBT SERVICE REQUIREMENTS," "CERTAIN BONDHOLDERS' RISKS," "LITIGATION – The Borrower," "NO RATINGS" and "CONTINUING DISCLOSURE AGREEMENT" and in Appendix A, as of the Date Hereof and as of the Closing Date, was and is true and correct, and did not and does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein not misleading in light of the circumstances under which they were made;

(ix) Certificates of the Manager, the Developer, the Architect and the General Contractor regarding the inclusion and accuracy of the respective information in Appendix A to the Limited Public Offering Memorandum;

(x) the Bonds;

(xi) a copy of the resolution adopted by the Sole Member of the Borrower authorizing the execution and delivery of the Financing Documents and the approval of the Limited Public Offering Memorandum, certified by the secretary or other authorized officer of the Borrower as having been duly adopted and being in full force and effect;

(xii) the opinion of counsel to Underwriter, dated the Closing Date, addressed to the Underwriter, in form satisfactory to the Underwriter;

(xiii) executed copy of the Tax Certificate dated the Closing Date, in form and substance satisfactory to Bond Counsel;

(xiv) a copy of the title policy in favor of the Trustee insuring title to the mortgaged property under the Mortgage, which shall be issued by a title insurer and shall be issued in such form and subject to such exceptions to title as are satisfactory to Bond Counsel, the Trustee, the Bondholder Representative and the Underwriter;

(xv) a certificate of the Borrower's Insurance Consultant as required by Section 5.14(c) of the Loan Agreement;

(xvi) executed copy of the certificate of the Bondholder Representative in the form attached to the Limited Public Offering Memorandum as Appendix H;

(xvii) a certificate of Viewpoint Consulting Group, Inc. consenting to the inclusion of its report as an appendix to the Limited Public Offering Memorandum;

(xviii) a certificate of Nicollet Partners, Inc. consenting to the inclusion of its report as an appendix to the Limited Public Offering Memorandum;

(xix) other certificates of the Issuer, the Borrower and the Sole Member listed on a closing memorandum to be approved by Bond Counsel, the Bondholder Representative, counsel to the Underwriter and counsel to the Bondholder Representative, including any certificates or representations of the Borrower, the Sole Member or other parties required in order for Bond Counsel to deliver the opinion referred to in paragraph (iii) above, as well as legal opinions, certificates, proceedings, instruments and other documents as the Bond Counsel may reasonably request to evidence compliance by the Issuer and the Borrower with legal requirements, the truth and accuracy, in all material respects as of the time of Closing, of the respective representations of the Issuer and of the Borrower contained herein and the due performance or satisfaction in all material respects by the Issuer and the Borrower at or prior to such time of all agreements then to be performed and all conditions then to be satisfied by the Issuer and the Borrower which certificates shall be deemed to be a representation to the Underwriter as to the statements made therein; and

(xx) A Transcript of the proceedings, in the usual form, relating to the authorization and issuance of the Bonds.

Notwithstanding any provision in this Section 11 to the contrary, if the Underwriter desires to waive any of the foregoing conditions in this Section 11, the Underwriter must first receive the Issuer's consent prior to granting any such waiver.

12. The Underwriter may terminate this Purchase Contract by notification in writing or by facsimile to the Issuer if at any time subsequent to the Date Hereof and at or prior to the Closing:

(a) legislation shall be enacted by the State of Minnesota or the United States or introduced in or favorably reported to either the United States House of Representatives or the United States Senate or a decision by a court of the United States or the United States Tax Court shall be

rendered or a ruling or regulation (final, temporary or proposed) shall be made by or on behalf of the Treasury Department of the United States, or a release or official statement shall be issued by the President, or the Treasury Department, that makes the revenues or other income of the general character expected to be derived by the Issuer under the Indenture or the Loan Agreement, or the interest received on bonds of the general character of the Series 2020A Bonds, subject to federal income taxation which would have the effect of changing directly or indirectly the federal income taxation of interest on bonds of the general character of the Series 2020A Bonds in the hands of the owners thereof, which in the reasonable opinion of the Underwriter materially affects the market price of the Series 2020A Bonds adversely; or

(b) (i) the United States shall have become engaged in hostilities that have resulted in a declaration of war or a national emergency or (ii) in the reasonable opinion of the Underwriter there shall have occurred any other outbreak of hostilities, local, national or international, or an escalation thereof, the effect of which on the financial markets of the United States is such as would, in the reasonable opinion of the Underwriter, affect materially and adversely the ability of the Underwriter to market the Bonds; or

(c) there shall have occurred a general suspension of trading on the New York Stock Exchange or additional material restrictions not in force as of the date hereof with respect to trading in securities generally, or to the Bonds or similar obligations shall have been imposed which, in the reasonable judgment of the Underwriter, materially adversely affects the market for the Bonds; or

(d) a general banking moratorium shall have been declared by federal, New York or Minnesota state authorities or a major financial crisis or a material disruption in commercial banking shall have occurred which, in the reasonable judgment of the Underwriter, materially adversely affects the market for the Bonds; or

(e) a stop order, ruling, regulation, proposed regulation or statement by or on behalf of the Securities and Exchange Commission or any other governmental agency having jurisdiction of the subject matter shall be issued or made to the effect that the issuance, offering, sale or distribution of obligations of the general character of the Bonds is in violation or would be in violation of any provisions of the Securities Act, the Exchange Act or the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"); or

(f) any legislation shall be enacted or any action shall be taken by the Securities and Exchange Commission or any other agency of the Federal government having jurisdiction of the subject matter or a court of competent jurisdiction, which has the effect of requiring registration of the Bonds under the Securities Act, or the Indenture, or any other document executed in connection with the transactions contemplated herein, to be qualified under the Trust Indenture Act; or that the issuance, offering, or sale of obligations of the general character of the Bonds, as contemplated hereby or by the Limited Public Offering Memorandum or otherwise, is or would be in violation of Federal securities law as amended and then in effect; or

(g) any event or condition shall occur that, in the reasonable judgment of the Underwriter, renders untrue or incorrect, in any material respect as of the time to which the same purports to relate, the information contained in the Limited Public Offering Memorandum, or that requires that information not reflected in such Limited Public Offering Memorandum should be reflected therein in order to make the statements and information contained therein, in light of the circumstances under which they were made, not misleading in any material respect as of such time; provided that, as applicable, the Issuer, the Borrower and the Underwriter will use their best efforts to amend or supplement the Limited

Public Offering Memorandum to reflect, to the satisfaction of the Underwriter, such changes in or additions to the information contained in the Limited Public Offering Memorandum.

If the obligations of the Underwriter to purchase and accept delivery of the Bonds shall be terminated for any reason permitted by this Purchase Contract, this Purchase Contract shall terminate and no party shall be under further obligation hereunder; except that the obligations for the payment of expenses, as provided in Section 13 hereof, shall continue in full force and effect.

13. Payment of Expenses. All expenses and costs of the Issuer incident to the performance of its obligations in connection with the authorization, sale and delivery of the Bonds to the Underwriter, specifically including, without limiting the generality of the foregoing, the cost of preparing, printing or reproducing the Bonds, the Limited Public Offering Memorandum, the Financing Documents, and all ancillary papers, and reasonable fees and expenses of Bond Counsel, Underwriter's counsel, Issuer's counsel, Borrower's counsel, Trustee's counsel and counsel to the Bondholder Representative, as previously agreed, shall be paid by the Borrower.

All expenses and costs incurred by the Borrower in connection with the transactions contemplated hereunder shall be paid by the Borrower, including any expenses incurred by the Underwriter on behalf of the Borrower's employees that are incidental to implementing this Purchase Contract, including, but not limited to meals of those employees. In addition, if the Closing does not occur as a result of the failure of the Borrower to meet its obligations hereunder, including without limitation the satisfaction of the conditions to Closing set forth in Section 11, the Borrower shall reimburse (a) the Underwriter for all reasonable out-of-pocket expenses, including but not limited to reasonable counsel fees, including the cost of producing this Purchase Contract, and the fees and expenses for qualification of Bonds for sale under state securities laws, and (b) the Bondholder Representative for all reasonable out-of-pocket expenses, including but not limited to reasonable counsel fees, incurred by the Underwriter and the Bondholder Representative in connection with the contemplated transactions hereunder. The Underwriter shall pay all of the other costs and expenses incurred by it in connection with the limited public offering and distribution of the Bonds.

In order to ensure compliance with applicable state and/or local ethics statutes that may apply to employees of the Issuer as well as federal securities regulations that may apply to the Underwriter, the Issuer shall be responsible for the payment of any expenses on behalf of the Issuer's employees that are incidental to implementing this Purchase Contract or the issuance of the Bonds, including, but not limited to, meals, transportation, lodging and entertainment of those employees. Notwithstanding anything herein to the contrary, the Underwriter shall not pay any such expenses on behalf of the Issuer's employees in connection with this Purchase Contract or the issuance of the Bonds.

14. Underwriter's Representations and Agreements. The Underwriter hereby represents, warrants and agrees as follows:

(a) The Underwriter has neither requested nor received from (nor does the Underwriter expect to receive from or have reviewed by) the Issuer or any of its directors, officers, employees or agents any information with respect to the Borrower, the Project, the Bonds or the security purported to be afforded by the Indenture, the Loan Agreement, the Mortgage or otherwise, except for any such information that is included within the express representations of the Issuer in this Purchase Contract, the Indenture or the Issuer Portion of the Limited Public Offering Memorandum or in any other instrument delivered to the Underwriter by or on behalf of the Issuer in connection with the transactions contemplated hereby or thereby.

(b) The Underwriter has not relied and does not rely on any findings or action taken by the Issuer or the findings made by the Issuer as required by the Act as constituting information with respect to the Borrower, the Project, the Bonds or the security purported to be afforded by the Indenture, or otherwise.

(c) Neither the Issuer nor any of its directors, officers, employees or agents shall have any responsibility to the Underwriter for the completeness of the information obtained by the Underwriter from any source with respect to the Borrower or its assets, businesses, circumstances, financial conditions and properties, or with respect to the Project, the Bonds or the security purported to be afforded by the Indenture, or otherwise, or, subject only to the exceptions stated in (a) above, for the accuracy of such information and the Underwriter acknowledges that, as between itself and the Issuer, the Underwriter assumes responsibility for obtaining such information and making such investigation as it deems necessary or desirable in connection with its decision to purchase the Bonds.

15. Establishment of Issue Price.

(a) The Underwriter agrees to assist the Issuer in establishing the issue price of the Series 2020A Bonds and shall execute and deliver to the Issuer at Closing a certificate substantially in the form attached hereto as **Exhibit 2**, together with the supporting pricing wires or equivalent communications, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter, the Issuer and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Series 2020A Bonds.

(b) The Underwriter confirms that it has offered the Series 2020A Bonds to the public (as defined in subsection 15(e) below) on or before the date of this Purchase Contract at the offering price or prices (the “initial offering price”), or at the corresponding yield or yields, set forth in **Exhibit 2** hereto, except as set forth therein. Except as otherwise set forth in **Exhibit 2** hereto, the Issuer will treat the first price at which at least 10% of each maturity of the Series 2020A Bonds (the “10% test”) is sold to the public as the issue price of that maturity (if different interest rates apply within a maturity, each separate CUSIP number within that maturity will be subject to the 10% test). At or promptly after the execution of this Purchase Contract, the Underwriter shall report to the Issuer the price or prices at which the Underwriter has sold to the public each maturity of the Series 2020A Bonds. If at that time the 10% test has not been satisfied as to any maturity of the Series 2020A Bonds, the Underwriter agrees to promptly report to the Issuer the prices at which the Series 2020A Bonds of that maturity have been sold by the Underwriter to the public. The reporting obligation set forth in the preceding sentence shall continue, whether or not the Closing has occurred, until the 10% test has been satisfied as to the Series 2020A Bonds of the maturity or until all Series 2020A Bonds of that maturity have been sold to the public.

(c) **Exhibit 2** hereto also sets forth, as of the date of this Purchase Contract, the maturities, if any, of the Series 2020A Bonds for which the 10% test has not been satisfied and for which the Issuer and the Underwriter agree that the restrictions set forth in the next sentence shall apply, which will allow the Issuer to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the “hold-the-offering-price rule”). So long as the hold-the-offering-price rule remains applicable to any maturity of the Series 2020A Bonds, the Underwriter will neither offer nor sell unsold Series 2020A Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

- (i) the close of the fifth (5<sup>th</sup>) business day after the sale date; or

(ii) the date on which the Underwriter has sold at least 10% of that maturity of the Series 2020A Bonds to the public at a price that is no higher than the initial offering price to the public.

The Underwriter shall promptly advise the Issuer when it has sold 10% of that maturity of the Series 2020A Bonds to the public at a price that is no higher than the initial offering price to the public, if that occurs prior to the close of the fifth (5th) business day after the sale date.

(d) The Underwriter confirms that:

(i) any agreement among underwriters, any selling group agreement and each retail distribution agreement (to which the Underwriter is a party) relating to the initial sale of the Series 2020A Bonds to the public, together with the related pricing wires, contains or will contain language obligating each underwriter, each dealer who is a member of the selling group, and each broker-dealer that is a party to such retail distribution agreement, as applicable, to (A) report the prices at which it sells to the public the unsold Series 2020A Bonds of each maturity allotted to it until it is notified by the Underwriter that either the 10% test has been satisfied as to the Series 2020A Bonds of that maturity or all Series 2020A Bonds of that maturity have been sold to the public and (B) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Underwriter and as set forth in the related pricing wires, and

(ii) any agreement among underwriters relating to the initial sale of the Series 2020A Bonds to the public, together with the related pricing wires, contains or will contain language obligating each underwriter that is a party to a retail distribution agreement to be employed in connection with the initial sale of the Series 2020A Bonds to the public to require each broker-dealer that is a party to such retail distribution agreement to (A) report the prices at which it sells to the public the unsold Series 2020A Bonds of each maturity allotted to it until it is notified by the Underwriter that either the 10% test has been satisfied as to the Series 2020A Bonds of that maturity or all of the Series 2020A Bonds of that maturity have been sold to the public and (B) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Underwriter and as set forth in the related pricing wires.

(e) The Underwriter acknowledges that sales of any Series 2020A Bonds to any person that is a related party to an underwriter shall not constitute sales to the public for purposes of this section. Further, for purposes of this Section 15:

(i) “public” means any person other than an underwriter or a related party,

(ii) “underwriter” means (A) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Series 2020A Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Series 2020A Bonds to the public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Series 2020A Bonds to the public),

(iii) a purchaser of any of the Series 2020A Bonds is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (i) at least 50% common ownership of the voting power or the total value of their stock, if both



entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and

(iv) “sale date” means the date of execution of this Purchase Contract by all parties.

16. Notices. Any notice or other communication to be given to the Issuer under this Purchase Contract may be given by mailing or delivering the same in writing to the Issuer at its address set forth above, Attn: City Administrator; any notice or other communication to be given to the Borrower under this Purchase Contract may be given by mailing or delivering the same in writing to the Borrower at its address set forth above, Attn: Tim C. Eppler; and any notice or other communication to be given to the Underwriter under this Purchase Contract may be given by mailing or delivering the same in writing to Zions Bank, 50 Glen Avenue, Newton, Center, MA 02459, Attn: Susan Winshall.

17. Parties. This Purchase Contract is made solely for the benefit of the Issuer, the Underwriter (including the successors or assigns of any Underwriter), the Borrower and the Bondholder Representative, and no other person shall acquire or have any right hereunder or by virtue hereof, except as otherwise provided in Section 21 below. All of the Issuer’s representations and agreements and the Borrower’s representations, warranties and agreements in this Purchase Contract shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of the Underwriter and delivery of and payment for the Bonds hereunder.

18. Underwriter Not a Fiduciary. Each of the Borrower and Issuer acknowledge and agree that the primary role of the Underwriter is to purchase securities for resale to investors in an arm’s length commercial transaction between the Issuer, the Borrower and the Underwriter, and the Underwriter has financial and other interests that differ from those of the Issuer and the Borrower. The Underwriter is acting as a principal hereunder and not as an agent of or a fiduciary to any party to this Purchase Contract. The Underwriter is not acting and has not acted as a municipal advisor or financial advisor to any party with respect to this Purchase Contract. The Underwriter’s engagement in the transactions described herein and in the Financing Documents, and all discussions and undertakings leading up thereto, is solely as an underwriter; such engagement shall not be, or shall not be construed to be, in any other capacity. Each of the Issuer and the Borrower hereby acknowledges and agrees that it is solely responsible for making its own judgments in connection with the transactions described herein and in the Financing Documents, regardless of whether the Underwriter has advised or is currently advising the Issuer or Borrower on any other matters, whether or not related to such transactions and each has consulted its own legal, financial and other advisors to the extent it deemed appropriate.

19. Governing Law. This Purchase Contract shall be governed by and construed in accordance with the laws of the State of Minnesota and shall constitute an instrument under seal thereunder. All claims of whatever character arising out of this Purchase Contract, or under any statute or common law relating in any way, directly or indirectly, to the subject matter hereof or to the dealings between the Issuer and any other party hereto, if and to the extent that such claim potentially could or actually does involve the Issuer or any Issuer Indemnified Person, shall be brought in any state or federal court of competent jurisdiction located in Ramsey County, Minnesota. By executing and delivering this Purchase Contract, each party hereto irrevocably: (i) accepts generally and unconditionally the exclusive jurisdiction and venue of such courts; (ii) waives any defense of *forum non conveniens*; and (iii) agrees not

to seek removal of such proceedings to any court or forum other than as specified above. The foregoing shall not be deemed or construed to constitute a waiver by the Issuer of any prior notice or procedural requirements applicable to actions or claims against or involving municipal corporations in the State of Minnesota that may exist at the time of and in connection with such matter.

20. Counterparts. This Purchase Contract may be executed in any number of counterparts, all of which taken together shall be one and the same instrument, and any parties hereto may execute this agreement by signing any such counterpart.

21. Third Party Beneficiaries. The indemnified parties identified in Section 7 of this Purchase Contract (other than the Issuer and the Underwriter) shall be considered to be intended third party beneficiaries of this Purchase Contract for purposes of indemnification and exculpation from liability, the provisions of which shall be IN ADDITION TO all liability that the Borrower may otherwise have and shall survive any termination of this Purchase Contract, the offering and sale of the Bonds, and the payment or provision for payment of the Bonds.

**[Signatures on next page]**

Very truly yours,

**ZIONS BANCORPORATION, N.A. DBA  
ZIONS BANK, as Underwriter**

By: \_\_\_\_\_  
Name:  
Title:

Accepted and Agreed to as of the Date Hereof

**CITY OF FALCON HEIGHTS, MINNESOTA**

By: \_\_\_\_\_  
Name:  
Title:

Accepted and Agreed to as of the Date Hereof

**HAMPTON PROPERTIES OF RAMSEY, LLC**

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE A**

**\$7,680,000**  
**City of Falcon Heights, Minnesota**  
**Senior Housing Revenue Bonds**  
**(Suite Living Senior Care of Ramsey Project)**  
**Series 2020A**

**\$335,000**  
**City of Falcon Heights, Minnesota**  
**Taxable Senior Housing Revenue Bonds**  
**(Suite Living Senior Care of Ramsey Project)**  
**Series 2020B**

Item  
Number

1. Date of this Purchase Contract: June \_\_, 2020
2. Closing Date: June \_\_, 2020
3. (a) Principal amounts of the Bonds: Series 2020A: \$7,680,000  
Series 2020B: \$335,000
- (b) Date of the Bonds: June \_\_, 2020
- (c) Dates of Maturities: Series 2020A: June 1, 2050  
Series 2020B: December 1, 2022
- (d) Interest Rates: Series 2020A: \_\_. \_\_%  
Series 2020B: \_\_. \_\_%
- (e) Prices: 100%
- (f) Redemption Provisions of the Bonds:

Optional Redemption.

The Series 2020A Bonds are not subject to optional redemption prior to June 1, 2025. The Series 2020A Bonds are subject to redemption in whole or in part on any date on or after June 1, 2025 from an optional prepayment in the event the Borrower exercises its right (under the Loan Agreement) to prepay all or a portion of the Series 2020A Bonds, with less than all of a single sinking fund payment of Series 2020A Bonds to be selected by lot by the Trustee in such manner as may be designated by the Trustee, at the redemption prices (expressed as percentages of principal amount) plus accrued interest to the date of redemption, as follows:

<b>REDEMPTION PERIOD (DATES INCLUSIVE)</b>	<b>REDEMPTION PRICES</b>
June 1, 2025 through May 31, 2025	103%
June 1, 2025 and thereafter	100%

The Series 2020B Bonds are subject to optional redemption in whole or in part on any date from an optional prepayment in the event the Borrower exercises its right (under the Loan Agreement) to prepay all or a portion of the Series 2020B Bonds, with less than all of a single sinking fund payment of Series 2020B Bonds to be selected by lot by the Trustee in such manner

as may be designated by the Trustee, at the redemption price of 100% of the principal amount, plus accrued interest to the date of redemption.

Mandatory Sinking Fund Redemption.

The Series 2020 Bonds shall be redeemed prior to maturity on June 1 and December 1 of each of the years set forth below in the principal amount equal to the sinking fund installment set forth opposite each such date, at the redemption price equal to 100% of the principal amount redeemed plus interest accrued to such redemption date, as follows:

Series 2020A Bonds

<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>
-------------	---------------	-------------	---------------

\*Final Maturity

Series 2020B Bonds

<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>	<u>AMOUNT</u>
-------------	---------------	-------------	---------------

\*Final Maturity

Extraordinary Redemption.

The Series 2020 Bonds shall be subject to redemption by the Issuer at the written direction of the Authorized Borrower Representative, in whole or in part, at a redemption price equal to 100% of the principal amount thereof, without premium, plus accrued interest to, but not including, the redemption date, on the earliest date for which notice of redemption can be given, (i) to the extent the Borrower makes a prepayment on the Series 2020 Notes in the event of any casualty loss of any Mortgaged Property or Condemnation of any Mortgaged Property pursuant to the Loan Agreement, and (ii) under the circumstance where proceeds of the Series 2020 Bonds remaining in the Project Fund on the Completion Date, less amounts that the Borrower has directed the Trustee to retain or set aside to meet costs not then due and payable or which are being contested, as provided in the Indenture.

Special Mandatory Redemption

The Series 2020 Bonds are subject to mandatory redemption in whole on the first date for which notice can be given in accordance with the Indenture at 105%, with respect to the Series 2020A Bonds, and at 100% with respect to the Series 2020B Bonds, of the principal amount Outstanding plus accrued interest to the redemption date following a Determination of Taxability.

4. Purchase Price of the Series 2020 Bonds: \$\_\_\_\_\_.00 (Series 2020A par amount of \$\_\_\_\_\_.00, plus Series 2020B par amount of \$\_\_\_\_\_.00).
5. Aggregate underwriting fee: \$\_\_\_\_\_.00.

**EXHIBIT 1**

**FORM OF SUPPLEMENTAL OPINION OF BOND COUNSEL**

June \_\_, 2020

City of Falcon Heights, Minnesota  
Falcon Heights, Minnesota

Zions Bancorporation, N.A.  
dba Zions Bank  
Newton Center, Massachusetts

\$ \_\_\_\_\_  
City of Falcon Heights, Minnesota  
Senior Housing Revenue Bonds  
(Suite Living Senior Care of Ramsey Project)  
Series 2020A

\$ \_\_\_\_\_  
City of Falcon Heights, Minnesota  
Taxable Senior Housing Revenue Bonds  
(Suite Living Senior Care of Ramsey Project)  
Series 2020B

Ladies and Gentlemen:

This supplemental opinion is being delivered to you in connection with the issuance and delivery of the above captioned bonds (collectively, the “Bonds”) pursuant to the Purchase Contract, dated June \_\_, 2020 (the “Bond Purchase Agreement”), by and among the City of Falcon Heights, Minnesota (the “Issuer”), Hampton Properties of Ramsey, LLC, a Minnesota limited liability company (the “Borrower”), and Zions Bancorporation, N.A. dba Zions Bank (the “Underwriter”).

Terms defined in the Bond Purchase Agreement have the meaning ascribed to them therein when used in this opinion.

As Bond Counsel, we have examined the laws of the United States of America, a copy of the Limited Public Offering Memorandum, dated June \_\_, 2020, relating to the Bonds (the “Limited Offering Memorandum”), and such other documents, records and certificates as we deem relevant to render the opinions herein. As to questions of fact material to our opinion, we have relied upon representations of the Underwriter, the Borrower, and the Issuer contained in the Bond Purchase Agreement, and in the certified proceedings and other certifications of public officials furnished to us, without undertaking to verify the same by independent investigation.

Based upon the foregoing and subject to the qualifications hereinafter set forth, we are of the opinion, as of the date hereof:

1. The Bonds constitute exempted securities within the meaning of Section 3(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”), and Section 304(a)(4) of the Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”), and it is not necessary in connection with the offering and sale of the Bonds to register the Bonds under the Securities Act or to qualify the Trust

Indenture, dated as of June 1, 2020, by and between the Issuer and Wilmington Trust, National Association, Baltimore, Maryland, as trustee (the “Trustee”) thereunder, under the Trust Indenture Act.

2. The description of the Bonds, the Loan Agreement, the Indenture, the Mortgage, the Disbursing Agreement, and the Assignment of Contract Documents contained in the Limited Offering Memorandum under the captions “SHORT STATEMENT,” “PLAN OF FINANCE,” “THE SERIES 2020 BONDS,” “SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2020 BONDS,” and “TAX MATTERS” conform in all material respects to the provisions of the Bonds and documents purported to be summarized therein. The statements relating to our approving opinion as Bond Counsel contained in the Limited Offering Memorandum under the caption “TAX MATTERS” and on the cover of the Limited Offering Memorandum conform to the corresponding portion of our approving opinion. In preparing the Limited Offering Memorandum, the Underwriter has been represented by its counsel and has been assisted by officers of the Borrower and Suburban Housing & Community Services Corporation (the “Sole Member”) and counsel for the Borrower and the Sole Member. We have therefore not been called upon to examine nor have we attempted to examine or verify any other provisions of the Limited Offering Memorandum with respect to the disclosures therein, except for the purposes of giving the opinion herein rendered, and we express no opinion with respect thereto.

The addressees hereof are entitled to rely upon our approving Bond Counsel opinion of even date herewith.

The scope of our engagement has not extended beyond the examinations and the rendering of the opinions expressed herein. Our engagement with respect to the transaction referred to herein terminates upon the date of this letter. This opinion is based solely upon existing federal laws, regulations, rulings and judicial decisions, and, therefore, should not be relied upon for any resale or other transfer of any of the Bonds in the future. We specifically express no opinion herein as of any subsequent date or with respect to any pending legislation. No one other than the addressees hereof shall be entitled to rely upon this opinion without our prior written approval.

We hereby consent to the use of our name and reference to our opinion in the Limited Offering Memorandum under the captions “TAX MATTERS” and “LEGAL MATTERS” and on the cover of the Offering Memorandum and the inclusion of our form of opinion in the Limited Offering Memorandum.

Professional Association



## EXHIBIT 2

### FORM OF UNDERWRITER'S ISSUE PRICE CERTIFICATE

\$ \_\_\_\_\_  
CITY OF FALCON HEIGHTS, MINNESOTA  
SENIOR HOUSING REVENUE BONDS  
(SUITE LIVING SENIOR CARE OF RAMSEY PROJECT) SERIES 2020A

The undersigned, a duly authorized representative of Zions Bancorporation, N.A. dba Zions Bank (“**Zions Bank**”), as the underwriter of the above-captioned obligations (the “**Bonds**”), being issued on the date hereof by the City of Falcon Heights, Minnesota (the “**Issuer**”), hereby certifies as set forth below with respect to the sale and issuance of the Bonds.

1. **Sale of the Bonds.** As of the date of this certificate, for each Maturity of the Bonds, the first price at which at least 10% of such Maturity of the Bonds was sold to the Public is the respective offering price listed in Schedule A.

2. **Defined Terms.**

(a) **Maturity** means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

(b) **Public** means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. For these purposes, term “related party” for purposes of this certificate means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(c) **Underwriter** means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents Zions Bank’s interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the with respect to certain of the representations set forth in the Tax Certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by Taft Stettinius & Hollister LLP in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038, and other federal income tax advice that it may give from time to time relating to the Bonds. The representations set forth herein are not necessarily based on personal knowledge.

**ZIONS BANCORPORATION, N.A. DBA ZIONS  
BANK**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: June \_\_, 2020

**SCHEDULE A**



*The City That Soars!*

## REQUEST FOR COUNCIL ACTION

<b>Meeting Date</b>	June 10, 2020
<b>Agenda Item</b>	Consent F1
<b>Attachment</b>	General Disbursements and Payroll
<b>Submitted By</b>	Roland Olson, Finance Director

<b>Item</b>	General Disbursements and Payroll
<b>Description</b>	General Disbursements through: 6/03/20 \$36,818.52 Payroll through: 5/31/20 \$19,068.85
<b>Budget Impact</b>	The general disbursements and payroll are consistent with the budget.
<b>Attachment(s)</b>	<ul style="list-style-type: none"> <li>• General Disbursements and Payroll</li> </ul>
<b>Action(s) Requested</b>	Staff recommends that the Falcon Heights City Council approve general disbursements and payroll.

PACKET: 02146 JUNE 3 PAYABLES

VENDOR SET: 01 City of Falcon Heights

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----			GROSS	P.O. #		
POST DATE	BANK CODE	-----DESCRIPTION-----	DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION
=====						
01-00250	AMERIPRIDE SERVICES					
I-1004788874		LINEN CLEAING SVC	76.13			
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N		
		LINEN CLEAING SVC		101 4124-82011-000	LINEN CLEANING	76.13
		=== VENDOR TOTALS ===	76.13			
=====						
01-05600	ASPEN MILLS					
I-257393		FIRE FIGHTING CLOTHING	293.85			
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N		
		FIRE FIGHTING CLOTHING		101 4124-77000-000	CLOTHING	293.85
		=== VENDOR TOTALS ===	293.85			
=====						
01-00284	AWARDS BY HAMMOND					
I-M7238		NAMEPLATE	16.50			
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N		
		NAMEPLATE		101 4124-70100-000	SUPPLIES	16.50
		=== VENDOR TOTALS ===	16.50			
=====						
01-05380	BERGANKDV					
I-1086834		2019 AUDIT BALANCE DUE	13,100.00			
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N		
		2019 AUDIT BALANCE DUE		101 4113-80310-000	AUDIT	13,100.00
		=== VENDOR TOTALS ===	13,100.00			
=====						
01-05422	BP					
I-202006037535		FUEL	688.95			
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N		
		FUEL		602 4602-74000-000	FUEL & LUBRICANTS	577.56
		FUEL		101 4124-74000-000	MOTOR FUEL & LUBRICANTS	111.39
		=== VENDOR TOTALS ===	688.95			
=====						
01-03103	CANON FINANCIAL SERVICES					
I-21462820		COPIER MAINT	122.39			
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N		
		COPIER MAINT		101 4131-87010-000	CITY HALL MAINTENANCE	122.39
		=== VENDOR TOTALS ===	122.39			

PACKET: 02146 JUNE 3 PAYABLES

VENDOR SET: 01 City of Falcon Heights

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----  
 POST DATE BANK CODE -----DESCRIPTION----- GROSS P.O. #  
 DISCOUNT G/L ACCOUNT -----ACCOUNT NAME----- DISTRIBUTION

01-06290 CITY OF ROSEVILLE

I-228978 MAR ENGINEERING 492.31  
 6/03/2020 APBNK DUE: 6/03/2020 DISC: 6/03/2020 1099: N  
 MAR ENGINEERING 101 4133-80100-000 ENGINEERING SERVICES 492.31

I-22898 APR ENGINEERING 1,092.85  
 6/03/2020 APBNK DUE: 6/03/2020 DISC: 6/03/2020 1099: N  
 APR ENGINEERING 419 4419-80100-000 ENGINEERING 1,092.85

I-228987 IT SUPPORT, SOFTWARE LIC 3,693.00  
 6/03/2020 APBNK DUE: 6/03/2020 DISC: 6/03/2020 1099: N  
 IT SUPPORT JUNE 101 4116-85070-000 TECHNICAL SUPPORT 1,817.75  
 IT SUPPORT JUNE 101 4124-85070-000 NETWORK/TECH SUPPORT(I-N 1,189.80  
 IT SUPPORT JUNE 101 4132-85070-000 NETWORK/TECH SUPPORT(I-N 297.45  
 IT EQUIPMENT 401 4401-90100-000 FURNITURE & EQUIPMENT 185.00  
 IT EQUIPMENT 101 4116-70100-000 SUPPLIES 203.00

=== VENDOR TOTALS === 5,278.16

01-04004 ECOLAB

55588988 PEROXIDE DISINFECTANT 354.81  
 6/03/2020 APBNK DUE: 6/03/2020 DISC: 6/03/2020 1099: N  
 PEROXIDE DISINFECTANT 101 4124-70100-000 SUPPLIES 354.81

=== VENDOR TOTALS === 354.81

01-04030 EMERGENCY RESPONSE SOLUTIONSKL

I-15360 SCBA FLOW TESTS 1,664.00  
 6/03/2020 APBNK DUE: 6/03/2020 DISC: 6/03/2020 1099: N  
 SCBA FLOW TESTS 101 4124-86110-000 MEMBERSHIPS 1,664.00

=== VENDOR TOTALS === 1,664.00

01-03143 F & M TRUCKING INC

I-3416 RED MULCH 839.67  
 6/03/2020 APBNK DUE: 6/03/2020 DISC: 6/03/2020 1099: N  
 RED MULCH 101 4132-87010-000 BOULEVARD MAINTENANCE 839.67

=== VENDOR TOTALS === 839.67

PACKET: 02146 JUNE 3 PAYABLES

VENDOR SET: 01 City of Falcon Heights

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----  
 POST DATE BANK CODE -----DESCRIPTION----- GROSS P.O. #  
 DISCOUNT G/L ACCOUNT -----ACCOUNT NAME----- DISTRIBUTION

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01-05115 GOPHER STATE ONE CALL

I-0050384 MAY 2020 LOCATES 79.65  
 6/03/2020 APBNK DUE: 6/03/2020 DISC: 6/03/2020 1099: N  
 MAY 2020 LOCATES 601 4601-88030-000 LOCATES 79.65  
 === VENDOR TOTALS === 79.65

01-05153 HOME DEPOT CRC/GECF

I-202006037537 CHAIN/ WEEK KILLER/ OAK/ HOSE 247.83  
 6/03/2020 APBNK DUE: 6/03/2020 DISC: 6/03/2020 1099: N  
 CHAIN/ WEEK KILLER/ OAK/ HOSE 101 4141-70100-000 SUPPLIES 247.83  
 === VENDOR TOTALS === 247.83

01-05235 JAN-PRO CLEANING SYSTEMS

I-94107 JANITORIAL SVC 450.00  
 6/03/2020 APBNK DUE: 6/03/2020 DISC: 6/03/2020 1099: N  
 JANITORIAL SVC 101 4131-87010-000 CITY HALL MAINTENANCE 225.00  
 JANITORIAL SVC 101 4124-61530-000 FIRE HALL CLEANING 225.00  
 === VENDOR TOTALS === 450.00

01-05418 JUSTIN MARKON

I-202006037534 MILEAGE AND CELL PHONE REIMB 27.76  
 6/03/2020 APBNK DUE: 6/03/2020 DISC: 6/03/2020 1099: N  
 MILEAGE AND CELL PHONE REIMB 101 4117-86010-000 MILEAGE 7.76  
 MILEAGE AND CELL PHONE REIMB 101 4117-85015-000 CELL PHONE 20.00  
 === VENDOR TOTALS === 27.76

01-05805 MCGEE, TIMOTHY

I-202006037536 REFUND 150.00  
 6/03/2020 APBNK DUE: 6/03/2020 DISC: 6/03/2020 1099: N  
 REFUND 101 34101-000 CITY FACILITY RENTAL 150.00  
 === VENDOR TOTALS === 150.00

01-05514 METRO CITIES

I-465 2020 DUES 2,442.00  
 6/03/2020 APBNK DUE: 6/03/2020 DISC: 6/03/2020 1099: N  
 2020 DUES 101 4111-86140-000 COMMISSIONS/MEMBERSHIPS/ 2,442.00  
 === VENDOR TOTALS === 2,442.00

PACKET: 02146 JUNE 3 PAYABLES

VENDOR SET: 01 City of Falcon Heights

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----		GROSS	P.O. #		
POST DATE	BANK CODE	DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION

01-05263 MID CITY SERVICES- INDUSTRIAL

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I-129394		FLOOR MATS SVC	42.15		
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N	
		FLOOR MATS SVC		101 4131-87010-000	CITY HALL MAINTENANCE 42.15
=== VENDOR TOTALS ===			42.15		

01-05343 MINNESOTA MULCH & SOIL

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I-W11333		ST SWEEPING DISPOSAL	445.50		
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N	
		ST SWEEPING DISPOSAL		602 4602-84000-000	STREET SWEEPINGS 445.50
=== VENDOR TOTALS ===			445.50		

01-05731 MN DEPARTMENT OF LABOR INDUSTR

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I-MRCH 1230152019		1ST QTR SURCHARGE 2019	2,691.27		
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N	
		1ST QTR SURCHARGE 2019		101 32210-000	BUILDING PERMITS 2,691.27
=== VENDOR TOTALS ===			2,691.27		

01-05427 NANDKUMAR, NALISHA

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I-202006037532		PHONE REIMB	20.00		
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N	
		PHONE REIMB		101 4116-85010-000	TELEPHONE 20.00
=== VENDOR TOTALS ===			20.00		

01-07263 NEXTEL COMMUNICATIONS, INC

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I-172868921-183		CELL PHONE TO MAY 26	17.08		
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N	
		CELL PHONE TO MAY 26		101 4124-85015-000	CELL PHONE 17.08

I-610189225-203		CELL PHONE TO MAY 14	101.26		
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N	
		CELL PHONE TO MAY 14		101 4131-85015-000	CELL PHONE 101.26
=== VENDOR TOTALS ===			118.34		



PACKET: 02146 JUNE 3 PAYABLES

VENDOR SET: 01 City of Falcon Heights

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----			GROSS	P.O. #		
POST DATE	BANK CODE	-----DESCRIPTION-----	DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION
=====						
01-05973		NORTH SUBURBAN ACCESS CORPORAT				
I-2020-067		WEBSTREAMING'/PRODUCTION SVCS	622.42			
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N		
		WEBSTREAMING		101 4116-85060-000	WEB SITE	170.67
		PRODUCTIN SVCS		101 4116-85050-000	CABLE TV	451.75
		=== VENDOR TOTALS ===	622.42			
=====						
01-06024		ON SITE SANITATION				
I-925111		HAND SANITIZERS PORTABE TOILE	75.00			
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N		
		HAND SANITIZERS PORTABE TOILET		601 4601-85080-000	PORTABLE TOILET PARKS	75.00
I-925112		HAND SANITIZERS/PORTABLE TOILE	160.00			
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N		
		HAND SANITIZERS/PORTABLE TOILET		601 4601-85080-000	PORTABLE TOILET PARKS	160.00
		=== VENDOR TOTALS ===	235.00			
=====						
01-06115		TIMOTHY PITTMAN				
I-2006037533		MILEAGE REIMB	36.80			
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N		
		MILEAGE REIMB		101 4132-86101-000	MILEAGE	36.80
		=== VENDOR TOTALS ===	36.80			
=====						
01-06185		RAMSEY COUNTY				
I-EMCOM 8432		APR RADIO FLEET SUPPORT	68.64			
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N		
		APR RADIO FLEET SUPPORT		101 4124-86800-000	RADIO MESB/FLEET SUPPORT	68.64
		=== VENDOR TOTALS ===	68.64			
=====						
01-00935		ST PAUL REGIONAL WATER SERVICE				
I-202006037530		WATER AND SS	130.14			
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N		
		WATER		101 4131-85040-000	WATER	80.28
		SS		101 4131-85070-000	SEWER	49.86
		=== VENDOR TOTALS ===	130.14			

PACKET: 02146 JUNE 3 PAYABLES

VENDOR SET: 01 City of Falcon Heights

SEQUENCE : ALPHABETIC

DUE TO/FROM ACCOUNTS SUPPRESSED

-----ID-----			GROSS	P.O. #		
POST DATE	BANK CODE	-----DESCRIPTION-----	DISCOUNT	G/L ACCOUNT	-----ACCOUNT NAME-----	DISTRIBUTION

01-05374 TENNIS SANITATION LLC

I-2665408		RECYCLING	6,249.75			
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N		
		RECYCLING		206 4206-82030-000	RECYCLING CONTRACTS	6,249.75

I-2665409		RECYCLING	66.50			
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N		
		SWMT AND CEC RECYLING		101 4131-87010-000	CITY HALL MAINTENANCE	66.50

=== VENDOR TOTALS === 6,316.25

01-07250 TRETSEVEN, DAVE

I-202006037531		TV MOUNT REIMB	50.99			
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N		
		TV MOUNT REIMB		101 4131-70110-000	SUPPLIES	50.99

=== VENDOR TOTALS === 50.99

01-05737 VERIZON WIRELESS

55315618		CELL PHONE	59.92			
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N		
		CELL PHONE		101 4117-85015-000	CELL PHONE	59.92

I-9855456215		CELL PHONE TO MAY 18	80.02			
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N		
		CELL PHONE TO MAY 18		101 4124-85015-000	CELL PHONE	80.02

=== VENDOR TOTALS === 139.94

01-05870 XCEL ENERGY

I-202006037529		ELECT	69.38			
6/03/2020	APBNK	DUE: 6/03/2020 DISC: 6/03/2020		1099: N		
		ELECT		101 4141-85020-000	ELECTRIC/GAS	27.80
		ELECT		101 4141-85020-000	ELECTRIC/GAS	29.87
		ELECT		209 4209-85020-000	STREET LIGHTING POWER	11.71

=== VENDOR TOTALS === 69.38

=== PACKET TOTALS === 36,818.52

EMP #	NAME	AMOUNT
C 022	RANDALL C GUSTAFSON	393.07
01-0023	MELANIE M LEEHY	262.05
01-0024	MARK J MIAZGA	262.05
01-0025	YAKASAH WEHYEE	262.05
01-0026	KAY ANDREWS	255.30
01-1005	SACK THONGVANH	3,660.81
01-1022	NALISHA NANDKUMAR	1,527.41
01-1136	ROLAND O OLSON	2,809.53
01-1021	JUSTIN M MARKON	1,593.90
01-0095	MICHAEL J POESCHL	167.20
01-0097	PATRICK GAFFNEY	128.61
01-0124	MICHAEL D KRUSE	128.61
01-2258	JOSEPH FLETT	779.71
01-1030	TIMOTHY J PITTMAN	2,239.40
01-1033	DAVE TRETSVEN	1,773.45
01-1143	COLIN B CALLAHAN	1,860.00
01-2257	BENJAMIN T STEINER	965.70

TOTAL PRINTED: 17 19,068.85

5-27-2020 7:48 AM

PAYROLL CHECK REGISTER

PAYROLL NO: 01 City of Falcon Heights

PAGE: 1

PAYROLL DATE: 5/27/2020

\*\*\* REGISTER TOTALS \*\*\*

REGULAR CHECKS:		
DIRECT DEPOSIT REGULAR CHECKS:	17	19,068.85
MANUAL CHECKS:		
PRINTED MANUAL CHECKS:		
DIRECT DEPOSIT MANUAL CHECKS:		
VOIDED CHECKS:		
NON CHECKS:		
-----		
TOTAL CHECKS:	17	19,068.85

\*\*\* NO ERRORS FOUND \*\*\*

\*\* END OF REPORT \*\*



**The City That Soars!**

## REQUEST FOR COUNCIL ACTION

<b>Meeting Date</b>	June 10, 2020
<b>Agenda Item</b>	Consent F2
<b>Attachment</b>	Project Location Map, Resolution
<b>Submitted By</b>	Jesse Freihammer, City Engineer

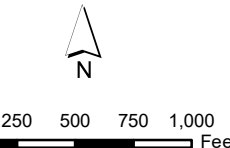
<b>Item</b>	Order Feasibility Report for the 2021 Pavement Management Program
<b>Description</b>	<p>City Staff is proposing to initiate the planning and preliminary design for roadway maintenance included in the 2021 Pavement Management Project (PMP). The proposed project includes the following streets:</p> <ul style="list-style-type: none"> <li>• Tatum St, from Larpenteur Ave to Roselawn Ave</li> <li>• Lindig St, from Larpenteur Ave to cul-de-sac</li> <li>• Fry St, from Larpenteur Ave to Maple Knoll Dr</li> <li>• Saint Marys St, from Larpenteur Ave to Maple Knoll Dr</li> <li>• Snelling Service Dr, from Hoyt to Hollywood Ct</li> <li>• Snelling Service Dr, from Idaho Ave to cul-de-sac</li> <li>• Asbury St, from Crawford Ave to Roselawn Ave</li> <li>• Arona St, from Crawford Ave to Roselawn Ave</li> <li>• Simpson St, from Crawford Ave to Roselawn Ave</li> <li>• Ruggles St, from Snelling Service Dr to Pascal St</li> <li>• Pascal St, from Larpenteur Ave to Roselawn Ave</li> <li>• Albert St, from Larpentuer Ave to Garden Ave</li> </ul> <p>The proposed project area abuts approximately 410 properties.</p> <p>A resolution ordering the preparation of the feasibility report is attached. A portion of the street projects are proposed to be assessed. The approval of the attached resolution is required for the Minnesota Chapter 429 Assessment Process.</p>
<b>Budget Impact</b>	<p>This project has the following financial implications for the city and property owners along the streets being considered for maintenance:</p> <ul style="list-style-type: none"> <li>• Assessments levied in accordance with the City’s assessment policy.</li> <li>• Use of Municipal State Aid (MSA) and street infrastructure funds to pay the City’s portion of the project.</li> <li>• Expenditure of utility fund dollars to pay for repairs needed to the existing utility system.</li> </ul>

<b>Attachment(s)</b>	<ul style="list-style-type: none"><li>• Project Location Map</li><li>• Resolution 20-26 Ordering Feasibility Report for the 2021 Pavement Management Program (PMP)</li></ul>
<b>Action(s) Requested</b>	Order Preparation of the Feasibility Report for the 2021 Pavement Management Program

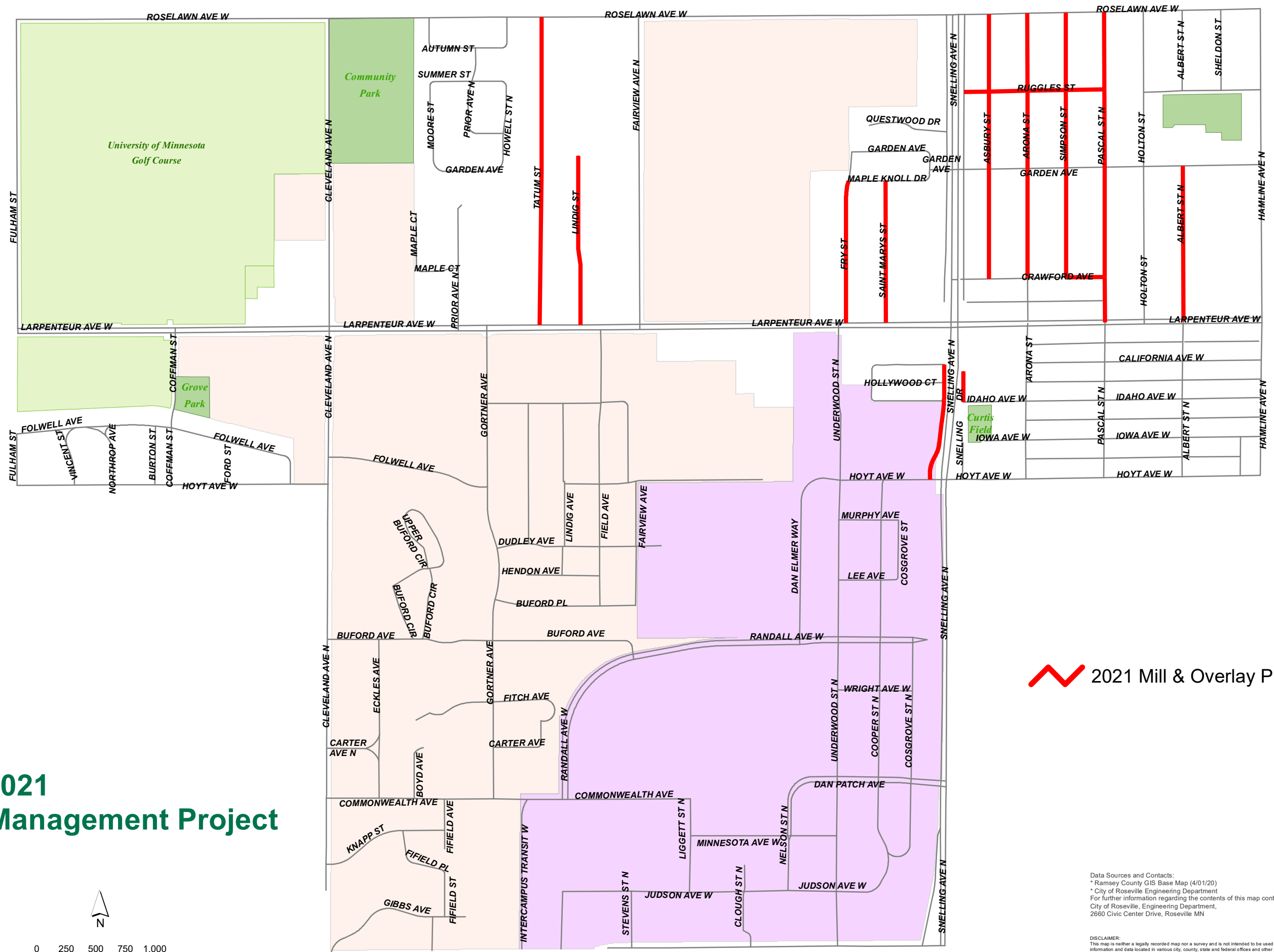
# Proposed 2021 Pavement Management Project Alternative




Prepared by:  
City of Roseville Engineering Department  
May 1, 2020



mapdoc: 2021PMP.mxd  
map: 2021PMP.pdf



 2021 Mill & Overlay Project

Data Sources and Contacts:  
\* Ramsey County GIS Base Map (4/01/20)  
\* City of Roseville Engineering Department  
For further information regarding the contents of this map contact:  
City of Roseville, Engineering Department,  
2660 Civic Center Drive, Roseville MN

DISCLAIMER:  
This map is neither a legally recorded map nor a survey and is not intended to be used as one. This map is a compilation of records, information and data located in various city, county, state and federal offices and other sources regarding the area shown, and is to be used for reference purposes only. The City does not warrant that the Geographic Information System (GIS) Data used to prepare this map are error free, and the City does not represent that the GIS Data can be used for navigational, tracking or any other purpose requiring exacting measurement of distance or direction or precision in the depiction of geographic features. If errors or discrepancies are found please contact 651-782-7075. The preceding disclaimer is provided pursuant to Minnesota Statutes §466.03, Subd. 21 (2000), and the user of this map acknowledges that the City shall not be liable for any damages, and expressly waives all claims, and agrees to defend, indemnify, and hold harmless the City from any and all claims brought by User, its employees or agents, or third parties which arise out of the user's access or use of data provided.

**CITY OF FALCON HEIGHTS  
COUNCIL RESOLUTION**

June 10, 2020

No. 20-26

-----  
**RESOLUTION ORDER FEASIBILITY REPORT FOR THE 2021 PAVEMENT MANAGEMENT  
PROJECT**

BE IT RESOLVED by the City Council of the City of Falcon Heights, as follows:

WHEREAS, The City of Falcon Heights plans to complete a Pavement Management Project in 2021.

WHEREAS, The City of Falcon Heights proposes to improve the following streets;

- Tatum St, from Larpenteur Ave to Roselawn Ave
- Lindig St, from Larpenteur Ave to cul-de-sac
- Fry St, from Larpenteur Ave to Maple Knoll Dr
- Saint Marys St, from Larpenteur Ave to Maple Knoll Dr
- Snelling Service Dr, from Hoyt to Hollywood Ct
- Snelling Service Dr, from Idaho Ave to cul-de-sac
- Asbury St, from Crawford Ave to Roselawn Ave
- Arona St, from Crawford Ave to Roselawn Ave
- Simpson St, from Crawford Ave to Roselawn Ave
- Ruggles St, from Snelling Service Dr to Pascal St
- Pascal St, from Larpenteur Ave to Roselawn Ave
- Albert St, from Larpentuer Ave to Garden Ave

WHEREAS, the City of Falcon Heights plans to assess all of a portion of the cost of the improvements to the benefited property owners, pursuant to Minnesota Statutes, Chapter 429,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF FALCON HEIGHTS, MINNESOTA:

That the proposed improvement, called Improvement 21-02, 2021 Pavement Management Project, be referred to the City Engineer for study and that that person is instructed to report to the council with all convenient speed advising the council in a preliminary way as to whether the proposed improvement is necessary, cost-effective, and feasible; whether it should best be made as proposed or in connection with some other improvement; the estimated cost of the improvement as recommended; and a description of the methodology used to calculate individual assessments for affected parcels.

Moved by:

Approved by: \_\_\_\_\_

Randall C. Gustafson  
Mayor

GUSTAFSON            \_\_\_    In Favor  
MIAZGA  
ANDREWS            \_\_\_    Against  
LEEHY  
WEYHEE

Attested by: \_\_\_\_\_

Sack Thongvanh  
City Administrator